



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

Consultation

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Section 1

Executive summary

Introduction

- 1.1 This consultation seeks stakeholders' views on Ofcom's proposals for amendments to:
- Ofcom's rules on Party Political and Referendum Broadcasts ("the PPRB Rules")¹ – see Section 3; and
 - guidance relating to Section Five (due impartiality) and Section Six (elections) of the Ofcom Broadcasting Code ("the Code"), including minor amendments to the Code – see Section 4. This proposed guidance ("the Proposed Code Guidance") is intended to help broadcasters comply with the Code when broadcasters produce their own coverage of elections and referendums².

Background

- 1.2 In Section 2, we lay out the legislative and regulatory background to this consultation.
- 1.3 During election and referendum campaigns, there are three types of broadcast content:
- party election broadcasts ("PEBs") granted 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"³, 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 service⁴ to include: "party 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

¹ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/ppbrules.pdf>

² Section 5 of the Code applies to broadcast content outside of election and referendum periods as well.

³ As defined under Rule 11 (see paragraph A1.11, Annex 1 of this consultation) of the PPRB Rules.

⁴ 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 also allocate party political and referendum broadcasts on a similar basis. However, neither the BBC nor S4C is regulated by Ofcom in this connection.

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 has designated the current review of the PPRB Rules as one of its work priorities during 2012/13⁵.

- 1.6 Several factors have informed our review of the PPRB Rules, including in particular the new generation of local television services expected to be launched in 2013. The Local Digital Television Programme Services Order 2012⁶ amended the Act to require the new local television licences to contain a condition, requiring them to offer PEBs, PPBs and RCBs in their services. Therefore, we are putting forward proposals for amendments to the PPRB Rules ahead of the launch of these services, to make clear what will be required in this area⁷.
- 1.7 In order to develop the proposals we lay out in this consultation document, Ofcom has met and sought the views of various stakeholders with a particular interest in the matters upon which we are now consulting, including: various political parties; relevant broadcasters⁸; and the Electoral Commission. The general consensus which emerged from these meetings is that the PPRB Rules broadly remain fit for purpose.
- 1.8 We are not consulting on the fundamental issue of whether particular Licensees should be required to offer such broadcasts or not, or considering the question 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 Parliament, possibly in any forthcoming Communications Bill.

The PPRB Rules

- 1.9 In Section 3 of this consultation we set out, and ask for stakeholders' views on our analysis of, and proposed limited amendments to, the current PPRB Rules. For reference, the current PPRB Rules are set out in Annex 1. Annex 2 contains a consolidated version of the PPRB Rules, which includes our proposed amendments.
- 1.10 We ask stakeholders' views on the following issues:
- **Major parties:** The list of "major parties" in the PPRB Rules means that a small number of established parties automatically receive PEBs. However, it could be argued that this is inflexible (i.e. being unable to adapt to changes in the electoral landscape) and gives those listed an unfair advantage over other parties. However, keeping the list: would be simple and easy to administer; recognises that certain parties have 'national' status; provides certainty for broadcasters; and does not prevent smaller parties from automatically qualifying for coverage where they have the relevant support. We are

⁵ See paragraph 4.51 of Ofcom's Annual Plan 2012/13 (http://www.ofcom.org.uk/files/2012/03/Annual_Plan_2012-13.pdf).

⁶ See http://www.legislation.gov.uk/uksi/2012/292/pdfs/ukxi_20120292_en.pdf (made 13 February 2012).

⁷ 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.

⁸ Including the Broadcasters' Liaison Group ("BLG"), which comprises the broadcasters who make airtime available for PPBs/PEBs/RCBs.

therefore proposing to remove the list from the PPRB Rules⁹ and placing it in an annex, which would be regularly reviewed and refreshed, taking account of relevant evidence, such as changes in the electoral landscape. We are also proposing that the Alliance Party in Northern Ireland should be added to any new list. We are not proposing to replace the current list with a set of flexible criteria for allocations of PEBs and PPBs at this stage, as having looked at this in detail, we consider this to be unworkable and could lead to greater uncertainty. A draft of the proposed list is contained in Annex 3.

- The allocation of PEBs to independent candidates: We are proposing to amend the PPRB Rules to make clear that independent candidates could be eligible, in principle, for PEBs in Mayoral and Police and Crime Commissioner (“PCC”) Elections, but this does not mean they would automatically qualify for PEBs in such elections.
- 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 elections¹⁰. There is a potential gap in the current PPRB Rules whereby a registered party who was running just for the London Mayoral Elections (and not the London Assembly) could not, in principle, be eligible for a PEB. We are therefore proposing amending the PPRB Rules to state that the relevant Channel 3 licensee should be required to carry a PEB for candidates from registered parties standing solely in the London Mayoral Election, where they have the appropriate level of support. We also propose to clarify the types of election for which Channel 3 licensees would *not* be required to carry PEBs.
- Local television: We are proposing amending the PPRB Rules as follows:
 - Scope – the elections and referendums for which local digital television programme services should carry broadcasts: We are proposing that local television services should be required to carry PEBs in a wide range of elections that would be of interest to local communities (i.e. the same range of elections as applies to the Channel 3 licensees, plus Mayoral Elections and PCC Elections). In addition, we are proposing that local television services should carry PPBs and RCBs.
 - Delivery – how local digital television programme services should carry broadcasts: We acknowledge that parties would probably prefer the option of including candidates in any locally-focused PEBs. However, as we discuss in Section 3, there are 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 are proposing 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 PPC Elections; and **Option (B)**, which is the same as

⁹ We are proposing an identical amendment to the list of “major parties” contained in Section Six of the Code.

¹⁰ These are: General Elections; European Elections; local government elections throughout the UK; Parliamentary/Assembly elections in the devolved nations; and Greater London Authority Elections.

Option (A) but with the difference that local television services can, if they want to, offer the option to parties of transmitting locally-focused PEBs which do not feature candidates.

- 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 considered various amendments to the allocation rules and in particular to 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. Some stakeholders have argued that raising the ‘one sixth’ threshold in Wales and Northern Ireland would stop smaller political parties ‘gaming’ 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 nations. We consider that, on balance, the ‘one sixth’ threshold remains fit for purpose. However, we are inviting stakeholders’ views as to whether the ‘one sixth’ threshold remains appropriate or whether a different threshold would be appropriate. In addition, we are proposing several minor amendments to the allocation rules.
- 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. We have received several representations that these rules should be amended, and are proposing various options in this area (see paragraphs 3.84 to 3.93 for more detail).
- 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). During our review, broadcast stakeholders argued for relaxing the scheduling rules for PEBs, PPBs and RCBs, whilst political parties wanted to retain the current rules. We are not satisfied that there are sufficient arguments and evidence for change either way and we have not drawn up any proposals to amend the PPRB Rules in this area. However, we are asking stakeholders for their views on this point.
- 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 is now an inconsistency between the PPRB Rules and those of the BBC Trust (which now require that PPBs should be allocated on a seasonal basis). We are proposing to amend the PPRB Rules to ensure that PPBs are allocated on a seasonal basis.
- Referendums and Scottish elections: We are proposing amending the PPRB Rules in relation to the allocation of RCBs during referendums. We are also proposing to make clear that the Channel 3 licensees for: the Borders and Isle of Man; and North East England regions, which straddle the Scottish-English border, should be required to carry: RCBs during the Scottish independence referendum; and PEBs during Scottish elections¹¹.

¹¹ We note that, as a matter of custom and practice, these two Channel 3 licensees have, in general, shown PEBs during Scottish elections.

Proposed Code Guidance

- 1.11 A broadcaster's own editorial coverage of the particular election or referendum has to comply with the rules in Section Five (due impartiality)¹² and Section Six (elections)¹³ of the Code. To assist broadcasters in interpreting and applying these sections of the Code, Ofcom has already published guidance to Section Five¹⁴ and Section Six¹⁵. Additionally, we recently published bespoke guidance ("the PCC Guidance")¹⁶ ahead of the elections for Police and Crime Commissioners ("PCCs") in England (outside London) and Wales.
- 1.12 In Section 2, we explain why 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.
- 1.13 However, in parallel with our review of the PPRB Rules, we consider that now is 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 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;
 - Ofcom has provided guidance to broadcasters through a number of separate published decisions, for example in the Ofcom Broadcast Bulletin, and we consider it appropriate to consolidate this guidance within our formal published guidance to the Code;
 - there is a need to provide guidance to broadcasters on recent and prospective developments during elections and referendums; and
 - there is a need to provide enhanced guidance to the new generation of local television licensees.
- 1.14 The Proposed Code Guidance will also cover the participation of PCC candidates in broadcast items, so that all Section Six Guidance will be contained in the same place.
- 1.15 Given the fact that Ofcom must consult the Electoral Commission on the draft code of practice, and proposed Rule change in relation to major parties, and the importance of the issues raised, we consider that that we should ascertain stakeholders' views more widely on the Proposed Code Guidance.
- 1.16 In Section 4 of the consultation we set out, and ask for stakeholders' views on, our Proposed Code Guidance. Our intention is that this guidance will replace the various pieces of Guidance laid out in paragraph 1.11 above.

¹² See <http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/section5.pdf>

¹³ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/section6.pdf>

¹⁴ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>

¹⁵ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section6.pdf>

¹⁶ See <http://stakeholders.ofcom.org.uk/binaries/consultations/2012-police-elections/statement/statement.pdf>

- 1.17 In the Proposed Code Guidance, we have sought to reflect our published decisions in this area, which contain a lot of helpful statements as to how the Code should be interpreted. We have also sought to include the issues that stakeholders have raised with us as meriting clarification in any updated Guidance. Issues include:
- candidates'/leaders' debates;
 - coverage of independent candidates; and
 - the Scottish independence referendum¹⁷.
- 1.18 The focus of the update of Code Guidance relates to broadcast coverage of elections (Section Six). However, due to the close links between Section Six and the due impartiality rules in Section Five, we have also reviewed the Guidance to Section Five, which also applies to all programming outside of elections which deals with matters of political controversy. The Proposed Code Guidance for Section Five covers issues which have been identified in our decisions such as:
- due impartiality in news;
 - matters of political controversy and current public policy; and
 - preserving due impartiality.
- 1.19 As mentioned in paragraph 1.10 above, we are proposing removing the current set list of major parties in the PPRB Rules and placing the list in an annex to those rules and the Code. We are proposing mirroring this approach with regard to the list of major parties contained in Section Six of the Code. In any future reviews of the list of major parties applicable to the PPRB Rules and Section Six, we will take account of relevant evidence, such as changes in the electoral landscape, across a range of elections. The initial list would consist of those parties who are currently listed as a "major party" in the Code, and we propose that the Alliance Party of Northern Ireland should also be added.
- 1.20 As mentioned in our statement relating to the PCC Guidance¹⁸, 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. Subject to any such feedback, we are proposing to amend the definition of "elections" in Section Six of the Code to include "Police and Crime Commissioner Elections".

Impact Assessment and Equality Impact Assessment

- 1.21 This document does not contain a separate impact assessment. Instead the document as a whole assesses the impact of our proposals.
- 1.22 In paragraph 2.32, we explain why we consider that the proposals in this document would not have any particular implications in relation to equality matters.

¹⁷ Broadcasters will need to ensure that they give appropriate coverage to all angles of a Scottish independence referendum (see paragraph 21 of the *Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland*", 15 October 2012, <http://www.scotland.gov.uk/Resource/0040/00404789.pdf>).

¹⁸ Ibid, paragraph 2.34.

Next steps

- 1.23 Interested parties should let us have their comments by **5pm on Monday, 21 January 2013**. Ofcom will consider carefully any comments received.
- 1.24 Our intention is to publish a Statement, including any revisions to the PPRB Rules, and to the Guidance to Sections Five and Six of the Code, in Spring 2013.

Section 2

Background

Introduction

- 2.1 During election and referendum campaigns, there are three types of broadcast content:
- party election broadcasts (“PEBs”) granted by relevant broadcasters to registered political parties under Ofcom’s rules on Party Political and Referendum Broadcasts (“the PPRB Rules”) ¹⁹. PEBs are produced by the political parties ²⁰, with no editorial input from the broadcasters (unless the broadcasters are concerned that the PEB would breach the Broadcasting Code) ²¹;
 - referendum campaign broadcasts (“RCBs”) granted by relevant broadcasters to designated organisations under the PPRB Rules. RCBs are also produced by designated referendum organisations ²²; 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.
- 2.2 Relevant broadcasters also allocate party political broadcasts (“PPBs”) to registered political parties, under the PPRB Rules. PPBs are currently granted to the “major parties” ²³, for broadcast at certain times during the political year, outside of election periods.
- 2.3 This consultation sets out Ofcom’s proposals for amendments to our:
- PPRB Rules (see Section 3); and
 - guidance relating to Section Five (due impartiality) and Section Six (elections) of the Code. This proposed guidance (“the Proposed Code Guidance”) is intended to help broadcasters comply with the Code when broadcasters produce their own coverage of elections and referendums ²⁴.

The PPRB Rules

- 2.4 Under section 333(1) of the Communications Act 2003 (“the Act”), every licensed public service television channel and every national commercial radio service must

¹⁹ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/ppbrules.pdf>

²⁰ “Designated referendum organisations” are designated by the Electoral Commission.

²¹ Rule 5 (see paragraph A1.5, Annex 1) 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)”.

²² These organisations are designated by the Electoral Commission.

²³ As defined under Rule 11 (see paragraph A1.11, Annex 1 of this consultation) of the PPRB Rules.

²⁴ Section 5 of the Code applies to broadcast content outside of election and referendum periods as well.

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.

- 2.5 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.
- 2.6 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 also allocate party political and referendum broadcasts on a similar basis. However, neither the BBC nor S4C is regulated by Ofcom in this connection.
- 2.7 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, we reviewed and consulted upon the PPRB Rules in September 2009 (“the 2009 Consultation”)²⁵. Ofcom’s revised PPRB Rules were published on 25 February 2010²⁶. At the same time, we published a summary of the responses (“the 2010 Summary of Responses”)²⁷ we had received to the 2009 Consultation.
- 2.8 In the 2010 Summary of Responses, 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 2012/13²⁸.
- 2.9 Several factors have informed our review of the PPRB Rules, such as:
 - Local television: The Government made clear its policy preference for the new local television services to carry PEBs, PPBs and RCBs²⁹. As a result the Local Digital Television Programme Services Order 2012³⁰ amended the Act to require the new local television licences to contain a condition, requiring them to offer PEBs, PPBs and RCBs in their services. Therefore, as part of our consultation, we are putting forward proposals for amendments to the PPRB Rules ahead of the launch of these services in 2013, to make clear what is required. In particular we have reviewed the application of the PPRB Rules on local television services

²⁵ See <http://stakeholders.ofcom.org.uk/binaries/consultations/pprb/summary/pprb.pdf>

²⁶ See footnote 19.

²⁷ See <http://stakeholders.ofcom.org.uk/binaries/consultations/pprb/Statement.pdf>

²⁸ See paragraph 4.51 of Ofcom’s Annual Plan 2012/13 (http://www.ofcom.org.uk/files/2012/03/Annual_Plan_2012-13.pdf).

²⁹ See paragraph 20, page 16 of *Local TV: Making the vision happen* (http://www.culture.gov.uk/images/consultation_responses/local-tv_making-the-vision-happen.pdf).

³⁰ See http://www.legislation.gov.uk/uksi/2012/292/pdfs/uksi_20120292_en.pdf (made 13 February 2012).

in the context of new elected positions at the local level, such as directly-elected mayors and Police and Crime Commissioners (“PCCs”)³¹; and

- 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. The announced changes are relatively minor in nature. However, we note that there is a material difference between the BBC PPB Criteria and the current PPRB Rules: whereas the BBC PPB Criteria state that PPBs (i.e. party broadcasts carried outside election periods) should be allocated on a seasonal basis (for example autumn, winter and spring), the existing PPRB Rules state that PPBs will be allocated “around key events in the political calendar, such as the Queen’s Speech, the Budget and party conferences”. Therefore, as part of our review, we are considering whether there is merit in the PPRB Rules being amended to ensure consistency with the BBC Trust’s rules, and provide clarity as to when PPBs will be required.

- 2.10 In order to develop the proposals we lay out in this consultation document, Ofcom has met and sought the views of various stakeholders with a particular interest in the matters upon which we are now consulting, 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; and the Electoral Commission³⁴. We also 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. In addition, we met with polling organizations to discuss criteria for measuring support for independent candidates.
- 2.11 In drawing up our proposals, we have considered the various views expressed by stakeholders in our pre-consultation meetings. The general consensus which emerged from these meetings is that the PPRB Rules broadly remain fit for purpose, although clearly specific changes must be made to accommodate the new obligations on local television licensees to carry PEBs, PPBs and RCBs.
- 2.12 Section 333(1) requires “every licensed public service channel, every local digital television programme service and... every national radio service” to include PEBs, PPBs and RCBs in accordance with the PPRB Rules. We are therefore not consulting on the fundamental issue of whether particular Licensees should be required to offer such broadcasts or not. In addition, our consultation is not considering the question 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 Parliament, possibly in any forthcoming Communications Bill.

³¹ As discussed further below, following a recent public consultation (see <http://stakeholders.ofcom.org.uk/binaries/consultations/2012-police-elections/summary/main.pdf> - “the PCC Consultation”) we published, on 28 September 2012, bespoke guidance (see <http://stakeholders.ofcom.org.uk/binaries/consultations/2012-police-elections/statement/statement.pdf> - “the PCC Guidance”) ahead of the November 2012 elections for Police and Crime Commissioners in England (outside London) and Wales. In the PCC Statement, we made clear that the PPRB Rules do not require relevant regional Channel 3 licensees to offer PEBs to the political parties during the PCC Elections.

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 PPBs/PEBs/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 As mentioned above, Ofcom is required under section 333(5) of the Act to have regard to any views expressed by the Electoral Commission before making (or changing) any PPRB Rules.

- 2.13 In the 2009 Consultation, we sought stakeholders' views on our Procedures for determination of disputes under the PPRB Rules, and we published these Procedures³⁵ at the same time as the PPRB Rules. We consider that these Procedures remain fit for purpose and, as a consequence, they are not included within the scope of this consultation.
- 2.14 In Section 3 of this consultation we set out, and ask for stakeholders' views on our analysis of, and proposed limited amendments to, the current PPRB Rules. For reference, the current PPRB Rules are set out in Annex 1. Annex 2 contains a consolidated version of the PPRB Rules, which includes our proposed amendments.

Proposed Code Guidance

- 2.15 Apart from PEBs/PPBs/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 in interpreting and applying these sections of the Code, Ofcom has already published guidance to Section Five³⁸ and Section Six³⁹. Additionally, following a recent consultation⁴⁰, we published bespoke guidance ("the PCC Guidance")⁴¹ ahead of the elections for PCCs in England (outside London) and Wales scheduled for November 2012. The PCC Guidance should be read in conjunction with Ofcom's published guidance to Sections Five and Six of the Code.
- 2.16 With the exception of the PCC Guidance, the rules in Sections Five and Six of the Code (and related guidance) on due impartiality and elections remain unchanged since the Code was introduced in 2005 (whereas other parts of the Code have been periodically reviewed and substantially revised). As discussed further below, we consider that now is an appropriate time to update the Guidance to Sections Five and Six.
- 2.17 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 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. We have reached this view, on the basis of:
- 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

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

³⁶ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/section5.pdf>

³⁷ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/section6.pdf>

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 See <http://stakeholders.ofcom.org.uk/binaries/consultations/2012-police-elections/summary/main.pdf> ("the PCC Consultation").

⁴¹ See <http://stakeholders.ofcom.org.uk/binaries/consultations/2012-police-elections/statement/statement.pdf>

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 in places such as London, Hartlepool and Torbay;

- the fact that no major problems have been identified by stakeholders or as a result of our own application of the Rules, which would point to a need to change the rules set out in Sections Five and Six of the Code;
- many of the key rules in Sections Five and Six directly reflecting provisions within the Act and electoral legislation, and so major changes may require legislative change and Parliamentary approval; and
- it being likely that significantly amending the rules surrounding the broadcast coverage of elections and due impartiality would be controversial. Undoubtedly any discussion about the rules pertaining to due impartiality will raise complex issues about the role of regulating impartiality in today's society, given the wide variety of media increasingly available. These issues will certainly be the subject of some debate in relation to the Government's current Communications Review, and ultimately it would be a matter for Parliament to decide to alter the current statutory provisions on these points, possibly in any forthcoming Communications Bill.

2.19 However, in parallel with our review of the PPRB Rules, we consider that now is 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 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;
- Ofcom has provided guidance to broadcasters through a number of separate published decisions, for example in the Ofcom Broadcast Bulletin, and we consider it appropriate to consolidate this guidance within our formal published guidance to the Code;
- there is a need to provide guidance to broadcasters on recent and prospective developments during elections and referendums, such as: leadership debates; coverage of independent candidates; appearances by candidates in the run-up to election periods, and the forthcoming Scottish Independence Referendum, due to be held in 2014; and
- there is a need to provide enhanced guidance to the new generation of local television licensees. This is because the Government has stated⁴² 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

⁴² 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* (http://www.culture.gov.uk/images/consultation_responses/local-tv_making-the-vision-happen.pdf), paragraph 21, page 16.

elected mayors and PCCs). Furthermore, following our pre-consultation meeting with local television stakeholders, and mindful that applications to run local television services were received from those without previous broadcasting experience, we consider that 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 are mindful of our obligations under section 93 of the Representation of the People Act 1983 (as amended) (“the RPA”). Under this provision 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 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 PCC⁴³. 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, and issuing special Guidance more recently for the PCC Elections. We are now revising the Guidance to ensure that it remains fit for purpose and that we continue to meet this statutory obligation. The updated Guidance will take account of recent changes in the electoral landscape and, in particular, take account of more recent decisions of the Ofcom Election Committee.
- 2.22 The Proposed Code Guidance will also cover the participation of PCC candidates in broadcast items, so that all Section Six Guidance will be contained in the same place. Therefore our Proposed Code Guidance incorporates the PCC Guidance, which was published on 28 September 2012.
- 2.23 Given the fact that Ofcom must consult the Electoral Commission on the draft code of practice, and proposed Rule change in relation to major parties, and the importance of the issues raised, we consider that that we should ascertain stakeholders’ views more widely on the Proposed Code Guidance. In this regard, during our pre-consultation meetings, broadcasters generally welcomed the fact that we would be reviewing the Guidance to Sections Five and Six of the Code. In particular, these stakeholders said they would welcome Guidance on issues such as leaders’ and candidates’ debates.
- 2.24 Therefore, in Section 4 of this consultation document, we lay out our Proposed Code Guidance (i.e. what we propose should replace the current Guidance to Sections Five and Six of the Code).
- 2.25 In the Proposed Code Guidance, we have sought to reflect our published decisions in this area, which contain a lot of helpful statements as to how the Code should be interpreted. We have also sought to include the issues that stakeholders have raised with us as meriting clarification in any revised Guidance. Issues include:

⁴³ 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.

- candidates'/leaders' debates: These are now likely to become an established feature across the UK, and we are stressing in the Proposed Code Guidance that the formats of such items are an editorial matter for the broadcaster, as long as they comply with the Code;
- coverage of independent candidates: We replicate the approach taken in the PCC Elections Guidance in relation to the coverage of such candidates. We therefore give information on how broadcasters might assess "current electoral support" for, in particular, independent candidates, when deciding whether to include them in an electoral area discussion (e.g. a candidates' debate); and
- the Scottish independence referendum: Broadcasters will need to ensure that they give appropriate coverage to all angles of a Scottish independence referendum. Paragraph 21 of the Agreement⁴⁴ between the UK Government and Scottish Government, makes clear that "The governments agree that it will be important to ensure that broadcast coverage of the Referendum is impartial. Broadcasters, Ofcom and the Electoral Commission will discuss the best way to achieve this". Our view is that Sections Five and Six of the Code are fit for purpose in relation to the regulation of broadcast coverage of any forthcoming Scottish independence referendum.

2.26 As mentioned above, although the focus of the update of Code Guidance relates to broadcast coverage of elections (Section Six), due to the close links between Section Six and the due impartiality rules in Section Five, we have also reviewed the Guidance to Section Five, which also applies to all programming outside of elections which deals with matters of political controversy. The Proposed Code Guidance for Section Five covers issues which have been identified in our decisions such as:

- due impartiality in news: We make clear that all appropriate news items need to be reported with due impartiality and not just matters of, for example, political controversy;
- matters of political controversy and current public policy: We give guidance as to the likely circumstances when the due impartiality rules will be engaged for non-news programmes; and
- preserving due impartiality: We suggest different editorial techniques that broadcasters can use to preserve due impartiality.

2.27 As we mention in paragraph 2.18 above, 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 in elections) are generally fit for purpose in ensuring that broadcasters comply with the relevant standards obligations. However, during the recent consultation on Guidance relating to broadcast coverage of the PCC Elections some stakeholders questioned whether rules in Section Six should apply to PCC Elections, and rather broadcasters should be required to comply solely with the due impartiality requirements in Section Five. In these stakeholders' view, the rules in Section Six impose onerous obligations on broadcasters, such as the requirements to: give "due weight" to the major parties during election periods;

⁴⁴ "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>).

and to offer the candidates of the major parties, and other candidates with evidence of previous significant electoral support or significant current support, the opportunity to take part in reports and discussions about constituencies and electoral areas.

- 2.28 In paragraph 1.7 of the PCC Guidance Statement⁴⁵ we stated that we would be considering the possibility of consulting on various options to alter the definition of “major parties” contained in Section Six of the Code. Therefore, in Section 3, this consultation puts forward a proposal which – if adopted – would involve a consequential amendment to the Code. Our proposal is to remove the current set list of major parties in the PPRB Rules (and also Section Six of the Code) and place the list in an annex to the PPRB Rules and the Code, which would be regularly reviewed and refreshed, taking account of relevant evidence, such as changes in the electoral landscape, across a range of elections. The initial list would consist of those parties who are currently listed as a “major party” in the Code, and we propose that the Alliance Party of Northern Ireland should also be added. In Section 3, we also explain why we have not proposed, as an option for consultation, the removal of the concept of “major parties” from the Code (or PPRB Rules).
- 2.29 Our view is that the rules laid out in Sections Five and Six are generally fit for purpose for all elections. However, in paragraph 2.11 of the PCC Guidance Statement we stated that we intended to take account of any issues arising from the PCC Elections, following the election period for these elections. Therefore, as mentioned in the PCC Guidance Statement⁴⁶, 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. Subject to any such feedback, we are proposing to amend the definition of “elections” in Section Six of the Code to include “Police and Crime Commissioner Elections”.
- 2.30 In proposing any specific and consequential changes to Section Six of the Code, we consider that this consultation fulfils the legislative requirement on Ofcom, set out in section 324(7)⁴⁷ of the Act, to ensure that we consult, as appropriate, on proposals to revise parts of the Code.

Impact Assessment and Equality Impact Assessment

- 2.31 This document does not contain a separate impact assessment. Instead the document as a whole assesses the impact of our proposals.
- 2.32 Ofcom is required by statute to have due regard to any potential impacts our proposals may have as a result of any inequality in relation to particular “equality groups” including gender, disability or ethnicity⁴⁸. Ofcom conducts Equality Impact Assessments (“EIA”) to analyse the potential impacts a proposed policy or project is likely to have on people, depending on their background or identity. In relation to equality (whether in Northern Ireland or the rest of the UK) and including considerations of gender, disability or ethnicity, we consider that the proposals in this document are likely to affect all citizens in the same way, and would not have any particular implications for people to whom the above considerations apply.

⁴⁵ See <http://stakeholders.ofcom.org.uk/binaries/consultations/2012-police-elections/statement/statement.pdf>

⁴⁶ Ibid, paragraph 2.34.

⁴⁷ Section 324(7) of the Act requires Ofcom to consult with, for example, Ofcom licensees when proposing any revisions to the Code.

⁴⁸ See the Equality Act 2010.

Next steps

- 2.33 Interested parties should let us have their comments by **5pm on Monday, 21 January 2013**. Ofcom will consider carefully any comments received.
- 2.34 Our intention is to publish a Statement, including any revisions to the PPRB Rules, and to the Guidance to Sections Five and Six of the Code, in Spring 2013.

Section 3

The proposed new PPRB Rules

Introduction

- 3.1 In this section, we lay out our proposals to amend the PPRB Rules.
- 3.2 In Section 2, we outline the background to Ofcom's powers in relation to the PPRB Rules, and the scope of our current review. For reference, the current PPRB Rules are set out in Annex 1. Where appropriate we refer to issues: raised by stakeholders during our recent pre-consultation meetings; or, which arose during our last 2009 public consultation into the PPRB Rules ("the 2009 Consultation")⁴⁹, and which we referred to in the summary of the responses ("the 2010 Summary of Responses")⁵⁰ received to the 2009 Consultation.
- 3.3 The PPRB Rules state minimum requirements set by Ofcom to assist Licensees in deciding the allocation, length, frequency and scheduling of PEBs, PPBs, and RCBs. In additions to a small number of changes to the rules suggested to make them work more effectively and fairly, we are proposing a number of clarifications to make the PPRB rules clearer in areas such as scope (i.e. at which elections different Licensees have to offer PEBs to registered political parties). This is because the PPRB Rules will cover the new local television Licensees, many of whom may have limited or no experience of the issues around PEBs, PPBs and RCBs.
- 3.4 We are consulting on possible changes to the PPRB Rules, having taken account of: our own experience of applying the rules; changes in the electoral landscape; and issues raised by stakeholders. Our overall approach is for any proposed changes to 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").
- 3.5 Rule 4 of the PPRB Rules (see paragraph A1.4, Annex 1) makes reference to Ofcom's Procedures on the referral and determination of disputes under the PPRB Rules. In the 2009 Consultation, we sought stakeholders' views on our Procedures for determination of disputes under the PPRB Rules, and we published these Procedures⁵¹ at the same time as the PPRB Rules. We consider that these Procedures remain fit for purpose and they are not included within the scope of this consultation.
- 3.6 For reference, a consolidated version of the PPRB Rules, which includes our proposed amendments to the current rules is set out in Annex 2.

⁴⁹ See <http://stakeholders.ofcom.org.uk/binaries/consultations/pprb/summary/pprb.pdf>

⁵⁰ See <http://stakeholders.ofcom.org.uk/binaries/consultations/pprb/Statement.pdf>

⁵¹ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/disputes.pdf>

The PPRB Rules

Major parties

The list of “major parties”⁵² in the PPRB Rules⁵³ means that a small number of established parties automatically receive PEBs. However it could be argued to be inflexible (i.e. being not able to adapt to changes in the electoral landscape) and gives those listed an unfair advantage over other parties.

We are proposing to remove the list of major parties from the PPRB Rules (and Code) and placing it in an annex, which would be regularly reviewed and refreshed, taking account of relevant evidence, such as changes in the electoral landscape. We are also proposing that the Alliance Party in Northern Ireland should be added to any new list.

- 3.7 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.
- 3.8 During our pre-consultation meetings, some stakeholders, in particular broadcasters, suggested that the PPRB Rules should not set out a list of “major parties” in Rule 11. Although it was recognised that the current list of major parties had hitherto proved relatively fit for purpose, concerns were expressed by some stakeholders that the current rule might become out of date if a particular major party (or parties) lost support and profile in a range of elections, to the extent that they might no longer reasonably be considered to be a “major party”. Similarly, in the near future, a political party not in the present list of “major parties” might gain popular support in a range of elections on a consistent basis to the extent that they have the profile of a “major party” in a particular nation, or on a UK-wide basis. In other words, the argument was put forward that the current rules are too inflexible to reflect in a timely way potential changes which might occur in the UK political landscape. In addition, it was argued by some smaller parties and independent candidates that the list gives those parties listed an unfair advantage over other parties with respect to PEBs and PPBs⁵⁴. At present ‘non-major’ parties are not automatically entitled to PPBs at all,

⁵² Rule 11 of the PPRB Rules define “major parties” as: Conservative; Labour; and Liberal Democrats for the UK. In addition: SNP and Plaid Cymru for Scotland and Wales respectively; and DUP, Sinn Fein, SDLP and UUP for Northern Ireland.

⁵³ And by extension Section Six of the Code, which sets out the rules for broadcasters’ election coverage, and uses the same list.

⁵⁴ Also, it can be argued, Section Six of the Code, which uses the same definition of “major parties” as laid out in the PPRB Rules. Under Rule 6.9 of the Code, broadcasters must offer candidates of major parties the opportunity to take part in a broadcast item about their constituency/electoral area. However, with regard to non-major party and independent candidates, by virtue of Rule 6.10, broadcasters are required to offer the opportunity to take part in a broadcast item about their constituency/electoral area only such candidates with “previous significant electoral support or where there is evidence of significant current support”.

and are only entitled to a PEB if they meet relevant criteria, such as the number of candidates they are standing in an election.

- 3.9 To respond to this potential concern Ofcom has considered the option of replacing the current list of major parties in Rule 11 of the PPRB Rules (see paragraph A1.11, Annex 1) by a list of criteria against which each broadcaster should individually judge at each election, and for each year whether a given party should be allocated PEBs or PPBs. These criteria might be: evidence of a substantial level of previous electoral support (or current support) across a range of elections; or a party having a certain number of elected representatives in Parliament or devolved assemblies.
- 3.10 The argument for removing the definition of ‘major parties’ and replacing it with criteria which seeks to establish on an election by election basis which are the major parties would be that this could future proof the rules. It could be argued that this would ensure flexibility which would allow the broadcasters to reflect in a timely way changes which are already occurring in the UK political landscape (e.g. parties gaining or dropping support), which the current list currently does not provide. Minor parties and independent candidates have argued that the current list of major parties entrenches the status quo and amplifies existing unfairness. Such an approach could: 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.
- 3.11 We are conscious that if the present wording about major parties was to be altered along these lines, it would leave 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. In our view, 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 Six⁵⁵ of the Code including references to the definition of major parties (e.g. Rules 6.2 and 6.9). In an extreme situation, one party may be a “major party” for the purpose of the Code (and therefore required to be included in constituency/electoral area reports, for example), but under a broadcaster’s assessment under the PPRB Rules, not considered to be a significant enough party in order to be automatically offered a PEB. In addition, Rule 5 of the PPRB Rules requires that the content of PEBs must comply with Section Six of the Code.
- 3.12 Our view is that retaining the list of “major parties” in Rule 11 of the PPRB Rules (and also in Section Six of the Code), has a number of advantages:
- the current list is simple and straightforward. It has worked well on the whole and has so far proved effective in fairly reflecting the current political system throughout the nations of the UK, and 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. Broadcasters, political parties and other stakeholders are familiar with the list and know how to employ it;

⁵⁵ 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...”.

- the current PPRB Rules automatically and clearly differentiate between major parties and other parties, because major parties: are automatically to be allocated two or more PEBs, whereas other parties if they qualify for a PEB will only automatically be allocated one PEB; and are the only parties eligible for PPBs. Thus it can be argued that the list provides a degree of certainty, or a baseline for broadcasters, when looking at their likely obligations. Due to the fact that the list of major parties has stayed static for a long time without controversy, it can also be argued that the PPRB Rules work well and the non-major party provisions have been suitably flexible in identifying which non-major parties should be allocated PEBs;
- as noted above, the list provides certainty in framing decisions concerning allocations of PEBs, as well as editorial decisions under the Code. Without a list, broadcasters' decisions about allocations of PEBs (or editorial decisions about, for example, which candidates to automatically cover in constituency or electoral area reports or discussions), would be more uncertain, and could be more open to challenge from political parties to the extent it might have a chilling effect on broadcast coverage of elections, particularly by local television licensees who lack experience in political broadcasting. There is also a related risk of a lack of consistency between the broadcasters in terms of decisions they take about, for example, PEB allocation decisions, especially at the local level;
- the current list is cost effective to apply and administer, not requiring broadcasters to devote time and effort to review which major parties should automatically receive coverage at each election, as well as considering the inclusion of smaller parties and individual candidates on a case by case basis. Without a list, and given the number of elections happening across the UK on an annual basis, this would increase the obligation on broadcasters to regularly reassess whether any party should receive coverage at different elections; 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. Whilst over nations and regions, the current major parties can demonstrate broad support (and this change will not impact on them negatively), this might not be the case at a local level. Therefore, theoretically, replacing a defined list of major parties with a list of more flexible allocation criteria might mean, at a local level, local television licensees not being required to allocate PEBs to parties, or cover candidates in their election coverage of particular elections, that are currently listed as major parties in the PPRB Rules and Section Six of the Code. This is because such parties may have, for example, little or no evidence of previous electoral support (or current support) in a local area. The implication might be that, for example, Conservative Party or Labour Party candidates might not receive coverage when standing in areas where they have little support. This outcome would be likely to prove controversial given the overall level of support these parties have across Great Britain as a whole. (However, this issue could be dealt with by ensuring that the criteria replacing the list of major parties could suggest that broadcasters, as well as taking account of levels of local support for candidates, also take account of how many candidates a party is fielding in an election overall).

3.13 One specific objection to the current list of major parties is that it excludes the Alliance Party in Northern Ireland. This stakeholder has informed Ofcom that it believes it is disadvantaged by not being designated as a major party, in that it has to press its position with broadcasters to ensure it is treated on a level basis with the

four parties already designated as major parties in Northern Ireland. The Alliance Party argues that it should be deemed to be a major party, given that it currently has: eight members of the Northern Ireland Assembly; two ministers in the Northern Ireland Government; and its first-ever MP. Against this, it should be noted that in fact the Alliance Party is allocated PEBs in elections, and has now started to be allocated PPBs, even though this is not strictly required under the PPRB Rules.

- 3.14 Ofcom notes the various arguments for and against replacing the list of major parties in the PPRB Rules with a list of more flexible criteria. After careful consideration of all the arguments, we are not proposing to consult on removing the list of major parties, as having looked at this in detail, we consider this option to be unworkable and could lead to greater uncertainty for all stakeholders, 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.
- 3.15 However, to respond to concerns that under the status quo there is not sufficient flexibility, we are proposing the removal 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 and refreshed, taking account of relevant evidence, such as changes in the electoral landscape, across a range of elections. We are also proposing that the Alliance Party of Northern Ireland should be added to any new list.
- 3.16 We envisage reviews under paragraph 3.15 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 this consultation) for the different types of elections, and levels of current support. We do not plan undertaking formal reviews of the list of major parties annually. Rather Ofcom would monitor the position of the UK's political parties on a rolling basis. Where we considered particular parties' performance would merit it (either for a party to be potentially added to the list of major parties and/or for a party to be potentially removed from the list of major parties), and taking into account all the relevant circumstances, we would undertake a formal review. Should circumstances and evidence dictate, if a party's performance over several elections of the same type are of such a magnitude, but are 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. In all cases where we undertake a formal review of the list of major parties, Ofcom will consult with stakeholders on any proposals we make.
- 3.17 At present there is an inconsistency between the definition of major parties in the PPRB Rules and the Code. In the Code it is stated that the Conservative Party, the Labour Party and the Liberal Democrats are "UK major parties". However, the PPRB Rules state that these three parties are "major parties in Great Britain". We consider it appropriate to correct this inconsistency and make clear 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".
- 3.18 In Annex 3 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.
- 3.19 Given the above we propose amending Rule 11 of the PPRB Rules as follows (amendments 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].

There would be the following consequential amendment to Section Six of the Code as follows (amendments 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].”

Question 1:

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

The allocation of PEBs to independent candidates

The PPRB Rules currently only apply to registered parties and not independent candidates. The current legislation is not clear on this point but it could be argued to be unfair if independent candidates could not in principle qualify for a PEB.

We are proposing to amend the PPRB Rules to make clear that independent candidates could be eligible, in principle, for PEBs in Mayoral and Police and Crime Commissioner (“PCC”) Elections, but this does not mean they would automatically qualify for PEBs in such elections.

- 3.20 During our pre-consultation meetings, a few individuals who have stood in elections as independent candidates, and smaller political parties, have strongly argued to us that any candidate contesting any election should automatically qualify for PEBs (irrespective to their level of support).
- 3.21 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”)⁵⁶, 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”.
- 3.22 The statute and Ofcom’s Rules are unclear, however, with regards to the specific position of independent candidates and PEBs. This has led to the question of whether an independent candidate can, as a matter of law, be allocated a PEB. The BBC Trust considered this issue with regard to the allocation of PEBs to an independent candidate in April 2012, and found that on the proper application of the law, an independent can be allocated a PEB⁵⁷.
- 3.23 Ofcom is not bound by the decisions of the BBC Trust, which is a separate regulatory body, responsible in part for elements of broadcast coverage not regulated by Ofcom. However, 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, as part of our review of the PPRB Rules we have considered the issues surrounding the application of the PPRB Rules to independent candidates, and in principle wish, as far as is reasonable and practicable, to interpret our obligations in a consistent way with other regulators. We agree with the BBC Trust that there is ambiguity in the wording of the legislation such that more than one construction is possible. We also consider that in this context, it is also important to strike the appropriate balance between both the broadcasters’ and political candidates’ rights to freedom of expression, consistent with the ECHR. Our view therefore is that the PPRB Rules should make clear that independent candidates can in principle be eligible for PEBs in certain circumstances.
- 3.24 We consider that 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. We intend, however, to ask the

⁵⁶ See http://www.legislation.gov.uk/ukpga/2000/41/pdfs/ukpga_20000041_en.pdf

⁵⁷ See http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2012/peb_finding.pdf

Electoral Commission to ask the Government to seek a clarification in the law to remove any ambiguity.

- 3.25 Having established that independent candidates can in principle be eligible for PEBs, we have considered in which elections independents should be eligible to receive a PEB; when broadcasters should then be *required* to allocate PEBs to independents; and which broadcasters should be required to do so.
- 3.26 As noted above, there are a large number of elections in the UK. We consider that to require any candidate contesting any election to be allocated a PEB, irrespective of their level of support, would be a disproportionate and impracticable obligation to impose on Licensees. The PPRB Rules act as a necessary ‘gating’ mechanism to ensure that political parties able to demonstrate a significant level of previous electoral and/or current support, are afforded a fair and reasonable opportunity to broadcast their policy message directly to the electorate unmediated by broadcasters, and to inform the voting public. If there was a general obligation on all Licensees to offer PEBs to all candidates (or even only independent candidates) we think this would be problematic in a number of respects. There would first be issues as to how this would work in practice, given the very large numbers of candidates contesting various elections. There is also a danger that individuals would run as candidates solely to obtain valuable broadcasting time to articulate issues, or win publicity, for purposes totally unrelated to the election in which the candidate was standing.
- 3.27 In addition, for most types of elections⁵⁸ where PEBs are broadcast by national and regional broadcasters, these PEBs do not focus on individual candidates or constituencies, as the broadcast area covered by the channel showing the PEB is much greater than any individual constituency. A PEB which related to only one constituency in a national or regional broadcast area which covers an extremely large number of constituencies would be irrelevant to a large number of viewers, in terms of providing information to inform voting decisions. In addition, 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. If an independent candidate is offered a PEB, in order to achieve due impartiality, other candidates standing in the same constituencies/electoral areas may need to be offered PEBs as well (depending on their level of support). Again, for the majority of elections, this would therefore impose a disproportionate burden on national and regional broadcasters, and would mean that, for example, an independent candidate’s PEB would be broadcast to a national or regional audience many of whom would not be part of the electorate at which the particular PEB was aimed.
- 3.28 However, we do consider 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 would be appropriate to require PEBs to be offered to independent candidates, where they can demonstrate a certain level of support. These elections are: mayoral elections and PCC Elections. As we discuss further in our proposals on ‘scope’⁵⁹ and local television⁶⁰, we propose that broadcasters should be required to allocate PEBs

⁵⁸ General Elections; European Parliamentary elections; Scottish Parliamentary Elections; Welsh Assembly Elections; Northern Ireland Assembly Elections; and local government elections.

⁵⁹ See paragraphs 3.37 to 3.38 below.

⁶⁰ See paragraph 3.44 below.

to independent candidates who can demonstrate certain levels of support, in the following elections:

- London Mayoral Elections covered by the relevant Channel 3 licensee;
- Mayoral Elections (where these exist) on the appropriate local digital television programme services; and
- PCC Elections (where these exist) on the appropriate local digital television programme services.

3.29 In respect of the London Mayoral Elections, we note the Electoral Commission, in its report⁶¹ on the 2012 Greater London Authority Elections said:

“...the criteria used at these elections were relatively inflexible and did not, for example, allow broadcasters to reflect the specific circumstances of an election by awarding a broadcast to the only independent candidate standing. We will therefore be discussing with the BBC and Ofcom, before they draw up allocation criteria ahead of the 2016 GLA elections, whether there is any scope within the current law for introducing more flexibility in the criteria for the allocation of party election broadcasts. If, following this, we believe a change in the law is required we will raise this issue with the Government”.

3.30 It should be stressed that the above 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 proposed allocation criteria laid out in Rules 13, 13A and 14 of the PPRB Rules⁶².

3.31 Given the above, we propose amending Rules 10 of the PPRB Rules 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 are also proposing to insert a new Rule 13A to make clear when we propose independent candidates are required to be offered a PEB (see paragraphs 3.82 to 3.83). In addition, where appropriate, we intend to insert various minor consequential references to independent candidates into the PPRB Rules, as detailed in Annex 3.

Question 2:

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

⁶¹ Greater London Authority elections: Report on the administration of the elections held on 3 May 2012, paragraph 3.19 (see http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/149424/2012-GLA-election-report-web.pdf).

⁶² See paragraph A1.13 and A1.14, Annex 1 of this consultation.

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 elections⁶³. There is a potential gap in the current PPRB Rules whereby a registered party who was running just for the London Mayoral Elections (and not the Greater London Authority) could not, in principle, be eligible for a PEB.

We are proposing to amend the PPRB Rules to state that the relevant Channel 3 licensee should be required to carry a PEB for candidates from registered parties standing solely in the London Mayoral Election, where they have the appropriate level of support. We also propose to clarify the types of election for which Channel 3 licensees would *not* be required to carry PEBs.

- 3.32 The PPRB Rules set out which Licensees must carry PEBs. In summary, the rules make clear 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.
- 3.33 During our pre-consultation meetings, there was broad acceptance of the current scope of the PPRB Rules. However, some broadcasters queried whether it was appropriate for the Channel 3 licensees still to be required to carry PEBs for local government elections. We noted that this was not a view shared by the vast majority of stakeholders. Furthermore, we consider the requirement to carry PEBs for local elections chimes with the Channel 3 licensees’ public service requirements and therefore are not proposing changes to the PPRB Rules on this point.
- 3.34 However, as part of our review we did consider the scope of the PPRB Rules in relation to the Channel 3 licensees in one area, namely the London Mayoral Election. 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 Greater London Authority Elections. We note however, that the London Mayoral Election is closely linked, but separate from the Greater London Authority Elections. Under Rule 9⁶⁴ of the PPRB Rules, the Channel 3 licensee in London is currently not required to offer PEBs in respect of the London Mayoral Election, although the licensee is required to offer PEBs in respect of the Greater London Authority Elections. In most circumstances registered parties who contest the London Mayoral Election would also contest the Greater London Authority Elections. As a result, subject to the allocation requirements of the PPRB Rules (i.e. the number of seats contested in the GLA), these registered parties would be offered a PEB by virtue of the requirement in Rule 9.
- 3.35 However, there might be exceptional circumstances where a registered party was standing a candidate solely for the London Mayoral Election and not the Greater London Authority Elections. Under the current rules, that party’s candidate would not

⁶³ These are: General Elections; European Elections; local government elections throughout the UK; Parliamentary/Assembly elections in the devolved nations; and Greater London Authority Elections.

⁶⁴ See paragraph A1.9, Annex 1 of this consultation.

be required to be offered a PEB at all. We consider that this would be potentially unfair and should be addressed by a proposed change to the rules. This is because registered parties fielding candidates in both the London Mayoral Election and the Greater London Authority Elections would be able to use any PEBs offered in respect of the Greater London Authority Elections to promote the candidacy of their London Mayoral candidate, whereas registered parties fielding a candidate in the London Mayoral Election only would not qualify for a PEB at all.

- 3.36 We are therefore asking stakeholders for their views on the point. However, we consider 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 paragraphs 13 and 14 of the PPRB Rules), this should not mean that registered parties who are running in both the London Mayoral Election and the Greater London Authority Elections should be allocated separate PEBs for each of the two types of London election. This would place too much of a burden on the broadcaster.
- 3.37 In relation the London Mayoral Election, we also noted that Siobhan Benita, the independent candidate in the 2012 London Mayoral Election, suggested that independent candidates standing in the London Mayoral Election should be offered PEBs. As mentioned in paragraphs 3.28 to 3.30 above, we are intending to amend the PPRB Rules to make clear that independent candidates could in principle qualify for PEBs in Mayoral Elections. This means that independent candidates for London Mayor could in principle qualify for a PEB on in respect of the regional Channel 3 licensee for London⁶⁵ (subject to meeting the proposed allocation criteria).
- 3.38 We also consider that it would be helpful to clarify for which types of election Channel 3 licensees will 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:
- Mayoral Elections (other than the London Mayoral Election); and
 - PCC Elections.
- 3.39 In addition, we propose 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.
- 3.40 Given the above, we propose amending Rule 9 of the PPRB Rules (see paragraph A1.9, Annex 1), with a footnote after “Greater London Authority elections” as follows (amendments shown in bold):

⁶⁵ As well as the local digital television programme service for London.

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”.***

Question 3:

Do you agree with amending Rule 9 of the PPRB Rules by inserting the proposed wording set out in paragraph 3.40 above? If you do not agree with this approach, please explain why, and, if appropriate, suggest alternative wording.

Local television

The Government has amended the Act, through the Local Digital Television Programme Services Order, to require Ofcom to set rules relating to the broadcast of PEBs/PPBs/RCBs by local television broadcasters.

We are proposing:

Scope (the elections and referendums for which local digital television programme services should carry broadcasts):

We are proposing that local television services should be required to carry PEBs in a wide range of elections that would be of interest to local communities (i.e. the same range of elections as applies to the Channel 3 licensees, plus Mayoral Elections and PCC Elections). In addition, we are proposing that local television services should carry PPBs and RCBs.

Delivery (how local digital television programme services should carry broadcasts):

We are proposing two options:

-Option (A): This option 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 PPC Elections; and

Option (B): This option is the same as Option (A) but with the difference that local television services can, if they want to, offer the option to parties, of transmitting locally-focused PEBs which do not feature candidates.

- 3.41 The Local Digital Television Programme Services Order⁶⁶, amended the Act to require Ofcom to set rules relating to the broadcast of PEBs/PPBs/RCBs by local television broadcasters. To date PEBs and PPBs have been essentially national in character, concentrating on the political parties' national positions. This position will change when local television services start broadcasting in the UK – expected sometime in the latter part of 2013. An obligation on these local television services to carry PEBs and PPBs creates the possibility for registered parties (and as discussed above, independent candidates in certain limited circumstances) for the first time to broadcast truly local PEBs and PPBs, potentially including appearances by candidates standing within a local television licence area.
- 3.42 We therefore intend to include provision requiring local digital television programme service licensees to comply with the PPRB Rules. In our review, we are considering: 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.

⁶⁶ See http://www.legislation.gov.uk/ukxi/2012/292/pdfs/ukxi_20120292_en.pdf

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

3.43 In relation to the scope of the PPRB Rules for local television services, we have taken 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”⁶⁷. Further, we note that the Government expects local television services to “contribute to local democracy”⁶⁸. In addition, the Local Digital Television Programme Services Order states that a local digital television programme service includes or would include a range of programmes which “facilitate civic understanding and fair and well-informed debate through coverage of local news and current affairs” (regulation 3(5)(a)).

- **PEBs**

3.44 In relation to PEBs, we are proposing that local television services should be required to carry PEBs for all elections of significance taking place in a given local television licence area. We are therefore suggesting that local digital television programme service licensees should be required to carry PEBs in relation to the same range of elections as applies to the Channel 3 licensees, when the election is 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 also propose that local digital television programme services licensees should also 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).

3.45 The above elections would, we believe, be particularly of relevance and interest to local television services’ audiences, and associated PEBs would inform relevant voters and contribute to local democracy. We will monitor the introduction of any future elected posts, to ascertain if such elections need to be added to the scope of the PPRB Rules.

3.46 In addition, we propose making clear that local television services would not be required to carry PEBs in relation to certain other elections, as follows :

- by-elections for any type of election for which local television licensees are required to carry PEBs;
- English Parish Council Elections;
- Scottish Community Council Elections; and

⁶⁷ *Local TV: Making the vision happen*, second bullet-point, page 9 (see http://www.culture.gov.uk/images/consultation_responses/local-tv_making-the-vision-happen.pdf).

⁶⁸ *Ibid*, paragraph 21, page 16.

- Welsh Community Council Elections.

3.47 We are proposing not to impose any requirements under the PPRB Rules to broadcast PEBs for the types of election listed in paragraph 3.46, so as not to impose a disproportionate burden on local television licensees in terms of the range of elections for which they would be required to offer airtime for PEBs. However, recognising the local nature of the types of election listed in paragraph 3.46 we anticipate that local television licensees may wish in any event to broadcast coverage of these types of election⁶⁹ during their own editorial output.

- **PPBs**

3.48 We have considered whether the requirement to carry PPBs should be extended to local television licensees. On the one hand by obliging them to carry these broadcasts, these services might help to foster democratic participation and so from this point of view it could be in the public interest. Against this, it can be argued that PPBs have historically been the opportunity for UK-wide or devolved national parties to communicate to the electorate at the UK-wide or devolved national level. Furthermore, given that we are proposing obliging local digital television programme service licensees to carry PEBs over a wider range of elections than other Licensees, it could be argued to be disproportionate to also oblige local digital television programme service licensees to carry PPBs.

3.49 However, we consider that on balance, taking into account both the broadcasters' and political candidates' rights to freedom of expression, it would be proportionate to oblige local television licensees to carry PPBs in addition to the various PEBs which we are proposing requiring them to broadcast. Therefore we propose to make clear in the revised PPRB Rules that local television services should be obliged to carry PPBs. In any case, we recognise 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**

3.50 In relation to RCBs, we propose 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. We are not proposing that local digital television programme 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 PPERA⁷⁰. However, recognising that local referendums are of interest to particular communities, we anticipate that local digital

⁶⁹ It should be noted that most of the detailed rules in Section Six of the Code do not apply to the coverage of the types of election listed in paragraph 3.46. However, by virtue of Rule 6.1, the rules in Section Five of the Code (and in particular Rules 5.11 and 5.12) apply to the coverage of the elections listed in paragraph 3.46. Rule 6.1 states: "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".

⁷⁰ 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.

television programme licensees will wish in any event to broadcast coverage of such polls during their own editorial output.

- 3.51 Given what we say above in relation to PEBs, PPBs and RCBs, we propose: amending Rule 7; amending Rule 8, with a footnote at the end of the rule; amending Rule 9 (see paragraphs A1.7 to A1.9, Annex 1); and inserting a 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, Five **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”.*.

****“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”***.*.

Question 4:

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

Delivery - how local digital television programme services should carry broadcasts

- 3.52 During our pre-consultation meetings, including the open meeting we had with local television stakeholders we discussed possible options as to how local digital television programme service licensees would deliver the obligation to carry PEBs, PPBs and RCBs. During these meetings, there was widespread recognition of the practical difficulties involved, in particular, around the delivery of PEBs by local digital television programme service licensees.
- 3.53 A key rationale for PEBs is to give political parties the opportunity to transmit their policy message unmediated by broadcasters at the time of elections, to inform voters. Traditionally, parties have used PEBs transmitted by national and regional broadcasters to articulate their nationwide or region-wide messages, but without focussing on particular candidates (other than party leaders) or constituencies/electoral areas. Given the specific nature of local television services, it could be argued that consistent with political candidates’ rights to freedom of expression, a key role for such services should be to provide political parties with the

ability to broadcast PEBs tailored to particular localities, and focussing on particular candidates or constituencies/electoral areas. Therefore, we have endeavoured to draw up proposals which, as far as it is possible and practicable, 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.

- 3.54 However, our analysis of exploring the possibility of local television services offering locally-focussed PEBs featuring candidates shows there are a number of practical difficulties with such an approach:
- 3.54.1 We have considered whether an obligation should be introduced whereby local television licensees should be obliged 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. In our view, given that each given local television licence will cover, for example, a number of Westminster Parliamentary constituencies, and substantially more local government electoral areas, this obligation would potentially mean local television licensees being obliged to offer PEBs to a very large number of candidates during particular elections. We consider that it would impose an unreasonable restriction on local television broadcasters' editorial freedom to oblige them to include such a large number of PEBs within their schedule during election periods.
- 3.54.2 We are also mindful of the concern expressed by some stakeholders that if local digital television programme services were obliged to broadcast a very large range of PEBs relating to different elections within their broadcast footprint, this could mean a large number of broadcasts being broadcast to an audience many of whom would not be part of the electorate at which a particular PEB was aimed. There would therefore be a risk of fuelling irritation amongst many members of a local television service's audience, rather than encouraging democratic participation.
- 3.54.3 Given the above problems, an alternative to obliging local television services to offer PEBs to all candidates standing in the various constituencies/electoral areas within a local television service's broadcast area would be to oblige such broadcasters to offer 'area-wide' local television PEBs to relevant political parties.
- 3.54.4 If local television services were to offer 'area-wide' local television PEBs to parties, such broadcasts would need to comply with Rule 5⁷¹ of the PPRB Rules, which makes clear that PEBs are required to comply with the relevant provisions of the Code. Therefore, if candidates in elections in particular constituencies or electoral areas were to appear in 'area-wide' local television PEBs⁷², then (depending on the candidate's contribution to the PEB – for example, if they are articulating or referring to details of their policy platform) under the Code, the PEB would become a constituency or electoral area report or discussion and Rules 6.8 to 6.13 of the Code would apply.

⁷¹ See paragraph A1.5, Annex 1 of this consultation.

⁷² Ofcom considers that this would be quite likely if this option were implemented, since the obvious way to make an 'area-wide' local television PEB relevant to the audience would be to include local area candidates.

- 3.54.5 Given paragraph 3.54.4, under the Code, the local television broadcasters would need to ensure that all candidates representing the major parties, and other candidates with previous significant electoral support or significant current support, would need to be offered the chance to appear on the service within PEBs for the other relevant parties, by virtue of Rules 6.9 and 6.10 of the Code⁷³.
- 3.54.6 Given the nature of PEBs, it would be wholly unrealistic for political parties who included their candidates in 'area-wide' PEBs to include the candidates of 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.
- 3.54.7 Given what we say above, we consider that local television broadcasters would be placed under an unreasonable burden to ensure that their output complies with the Code. This is because 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.
- 3.54.8 Following on from this, if a given 'area-wide' local television PEB included any particular electoral candidates, other relevant parties would need to be offered 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, to ensure fairness. This would be irrespective of whether these other parties had already broadcast an 'area-wide' local television PEB. This could also lead to the broadcaster being required to offer an extremely large number of candidates PEBs, in order to ensure impartiality.
- 3.55 We have considered whether a solution to the practical difficulties identified immediately above, as regards including candidates in locally-focussed PEBs, might be the following approach ("the All Candidate Offer Proposal"). Under this proposal a local television broadcaster whose broadcast footprint covers several constituencies might offer all political parties which qualified for a PEB (for example, for a General Election). By doing so the broadcaster could be deemed to be effectively offering all those parties' candidates contesting constituencies in the broadcaster's broadcast area a chance to take part in the relevant constituency or electoral area report (i.e. the PEB). Therefore, the broadcaster could be argued to have complied with Rules 6.9 and 6.10 of the Code by offering all candidates representing the major parties, and candidates from other registered parties with previous significant electoral support or significant current support, the opportunity to take part in a constituency

⁷³ 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)".

item (i.e. the PEB). Under the All Candidate Offer Proposal, it would then be up to the parties to determine which if any candidates appeared in their PEB(s).

- 3.56 However, we are not persuaded that the All Candidate Offer Proposal is a fair and workable option. The constituency/electoral area reporting rules under Rules 6.9 and 6.10 are designed to ensure that when one candidate appears in an item about their specific constituency/electoral area, other candidates, as appropriate, are offered the opportunity to participate. This aims to prevent potential unfairness by preventing broadcasters from unduly favouring particular candidates in the coverage given through PEBs. Under the All Candidate Offer Proposal, because only some of the candidates could be selected to take part, inevitably some candidates in some constituencies would be favoured over others. This could lead to unfairness with respect to other candidates in the same constituency who were either not selected by their party to appear, or whose party were not offered a PEB at all, as they did not meet the minimum requirements over the coverage area as a whole. Also under the All Candidate Offer Proposal, it would be the parties' decision as to whether particular candidates appear in PEBs, and not the individual candidates' decision. We consider this would be potentially unfair to those candidates who might want the opportunity to appear in a constituency/electoral area report or discussion for a particular constituency/electoral area but are not chosen to do so by their party.
- 3.57 A further problem with the All Candidate Offer Proposal would be that if parties included only some candidates for a limited number of constituencies in their PEBs, this could mean, as mentioned in paragraph 3.54.2, that the PEBs would be less or not relevant to some sections of the local television broadcaster's audience.
- 3.58 Given the difficulties we have identified above in relation to introducing area-wide local television PEBs, Ofcom is proposing – after extensive pre-consultation discussions with all relevant stakeholders – two options which we consider to be fair, proportionate and workable.
- Option (A): Obliging local digital television programme service licensees to retransmit national PEBs
- 3.59 Recognising the practical problems discussed in paragraph 3.54, Option (A) 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. We consider that this would be a minimal obligation but be straight-forward and practicable for both local television broadcasters and parties to administer.
- 3.60 Under this option, we recognise that there are certain elections, identified in paragraphs 3.44, in which there is only one individual being elected to a post representing one electoral area i.e. Mayoral Elections and PCC Elections. As such, we consider in these specific cases, the practical issues identified in paragraph 3.54 do 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 (or independent candidate, as we discuss in paragraphs 3.20 to 3.31 above) a PEB, or PEBs, 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 discussion⁷⁴, in line with Rule 6.9 and 6.10 of the Code).

- 3.61 We recognise that political parties may not wish, or have the resources, to produce locally-focused PEBs for Mayoral and/or PPC Elections. In such 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, should not focus on individual candidates discussing their electoral areas.
- 3.62 Under Option (A), it is very important to note that, as the PPRB Rules lay out minimum obligations on local television licensees, it would always be open for these broadcasters in their editorial content to provide their own appropriate broadcast coverage of elections and candidates in their locality, as long as such coverage complied with the Code.
- 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
- 3.63 Option (B) is the same as Option (A) but with the difference that for those elections⁷⁵ which do not involve one individual being elected to a post representing one electoral area, local television services can, if they want to, offer the option to the parties of transmitting locally-focused PEBs which do not feature candidates.
- 3.64 Under Option (B), therefore, there would be the same minimum obligations on local television broadcasters as for Option (A). However, we expect that 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 (unlike national PEBs which we envisage would generally have been complied by established national or regional broadcasters⁷⁶). Therefore, Option (B) sets out that parties can broadcast locally-focused PEBs for the types of election listed in footnote 75 (i.e. other than PEBs for Mayoral or PCC Elections), if the relevant local digital television service licensee is willing to offer to do so. If the local digital television service licensee is not willing to do so, then it must retransmit a party's national PEB.
- 3.65 Importantly, if a party wants (subject to the agreement of the local digital television programme service licensee) to transmit locally-focused PEBs in the case of the elections listed in footnote 75, such broadcasts cannot focus on individual candidates discussing their constituencies or electoral areas.
- 3.66 We consider that Option (A) and Option (B) reflect the fact that the PPRB Rules are minimum obligations and we would emphasise that local television broadcasters would remain free to cover elections in a local television area 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,

⁷⁴ We consider that taken together all the relevant parties' PEBs broadcast by the local television licensee would constitute a linked electoral area report or discussion, as covered by Rules 6.8 to 6.13 of the Code.

⁷⁵ 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.

⁷⁶ Although we note that it is ultimately up to each individual Licensee to ensure compliance with the Code.

including: hosting candidates' debates featuring all the relevant candidates standing in a particular constituency or electoral area; or, granting all such candidates the opportunity to communicate their message to voters in brief broadcast 'soapbox' slots.

3.67 We recognise that the obligation on local television services to carry PEBs, PPBs and RCBs might create potential challenges to local television services in order that such services can comply with both the PPRB Rules and the Code. We further recognise that changes in this area will require political parties, for the first time, to deal with a whole new constituency of broadcasters in relation to PEBs and PPBs. Therefore, in order to forestall any potential problems in this area, we intend to:

- hold compliance workshops with local digital television programme service licensees in early 2013⁷⁷ to explain the PPRB Rules and the Code; and
- hold discussions with the BLG⁷⁸ to discuss the possibility of local television involvement in the BLG⁷⁹. 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.

3.68 Given the above, we propose under either Option (A) or Option (B) inserting new Rule 17A and B, 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:

⁷⁷ Ofcom expects that the process of awarding the first tranche of local digital television programme service licences will be completed by early 2013.

⁷⁸ The BLG (Broadcasters' Liaison Group) comprises the broadcasters who make airtime available for PPBs/PEBs/RCBs. The BLG meets from time to time to co-ordinate the criteria which each broadcaster applies in determining the amount of airtime to be made available.

⁷⁹ In this context, regulation 10 of the the Local Digital Television Programme Services Order inserts new section 3A into the Act, which states:

"A local digital television programme service licence must also include such conditions as appear to OFCOM to be appropriate for securing that—...

(g) the licence holder co-operates with holders of local digital television programme service licences and holders of local multiplex licences to facilitate the provision of local digital television programme services in the United Kingdom,

(h) the licence holder, if notified to do so by OFCOM, participates in the formation of a legal entity which is intended to facilitate the provision of local digital television programme services" (See http://www.legislation.gov.uk/ukxi/2012/292/pdfs/ukxi_20120292_en.pdf).

***(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”.

Question 5:

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

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 considered various amendments to the allocation rules and in particular to 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.

We consider that, on balance, the ‘one sixth’ threshold remains fit for purpose. However, we are inviting stakeholders’ views as to whether the ‘one sixth’ threshold remains appropriate or whether a different threshold would be appropriate. In addition, we are proposing several minor amendments to the allocation rules.

3.69 Rules 12 to 17⁸⁰ 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.

3.70 During our pre-consultation meetings, there was a broad consensus that the current allocation rules have worked well. However, some amendments were suggested to the current PPRB Rules.

The ‘one sixth rule’

3.71 Stakeholders said that the ‘one sixth rule’ laid out in Rule 13⁸¹ of the PPRB Rules has worked satisfactorily. This rule 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. However, a few broadcasters argued that some smaller political parties have, on at least one

⁸⁰ See paragraphs A1.12 to A1.17, Annex 1 of this consultation.

⁸¹ See paragraph A1.13, Annex 1 of this consultation.

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 have 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. These concerns mirror those expressed in the 2010 Summary of Responses⁸².

- 3.72 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 have suggested increasing the threshold set out in Rule 13 to: in Northern Ireland, one third or more of seats being contested; and in Wales, one quarter or more of seats being contested, during Westminster FPTP elections.
- 3.73 In response to these concerns, we have analysed what the effect would be were the 'one sixth' threshold amended. Figure 1 below lays out 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.

Figure 1 (Ofcom analysis of data obtained from Electoral Commission)

[SEE NEXT PAGE]

⁸² See <http://stakeholders.ofcom.org.uk/binaries/consultations/pprb/Statement.pdf>, paragraph 2.24.

Party Name	Number of candidates fielded (% of total possible candidates)	Would party receive PEB under one sixth threshold (i.e. 16.6% of seats) (2010 PEBs received in brackets)	Would party receive PEB under one quarter threshold (i.e. 25% of seats)	Would party receive PEB under one third threshold (i.e. 33.3% of seats)
ENGLAND (533 Constituencies)				
BNP	306 (57.4%)	YES (1)	YES	YES
Christian Party	62 (11.6%)	NO	NO	NO
Christian People's Alliance	17 (3.2%)	NO	NO	NO
English Democrats	107 (20%)	YES (1)	NO	NO
Green Party	297 (55.7%)	YES (1)	YES	YES
Monster Raving Loony Party	25 (3.9%)	NO	NO	NO
National Front	16 (3%)	NO	NO	NO
Respect Party	11 (2%)	NO	NO	NO
Socialist Labour Party	14 (2.6%)	NO	NO	NO
Trades Unionist and Socialist Coalition	24 (4.7%)	NO	NO	NO
UKIP	490 (92%)	YES (1)	YES	YES
SCOTLAND (59 Constituencies)				
BNP	13 (22%)	YES (1)	NO	NO
Christian Party	1 (1.7%)	NO	NO	NO
Green Party	21 (35.6%)	YES (1)	YES	YES
Socialist Labour Party	5 (8.5%)	NO	NO	NO
Scottish Socialist Party	10 (16.9%)	YES (1)	NO	NO
Trades Unionist and Socialist Coalition	10 (16.9%)	YES (1)	NO	NO
UKIP	28 (47.5%)	YES (1)	YES	YES
WALES (40 Constituencies)				
BNP	19 (47.5%)	YES (1)	YES	YES
Christian Party	8 (20%)	YES (1)	NO	NO
Green Party	13 (32.5%)	YES (1)	YES	NO
Monster Raving Loony Party	2 (5%)	NO	NO	NO
National Front	1 (2.5%)	NO	NO	NO
Socialist Labour Party	4 (10%)	NO	NO	NO
Trades Unionist and Socialist Coalition	2 (5%)	NO	NO	NO
UKIP	40 (100%)	YES (1)	YES	YES
NORTHERN IRELAND (18 Constituencies)				
Alliance Party	18 (100%)	YES (2)	YES	YES
Green Party	4 (22.2%)	YES (1)	NO	NO
Traditional Unionist Voice	10 (55.6%)	YES (2)	YES	YES

3.74 The following points arise 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);
- 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.

3.75 At present, we consider 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 also consider 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 are of the view that the ‘one sixth’ threshold is a long established and 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. At this stage, we therefore consider that, on balance, the ‘one sixth’ threshold remains fit for purpose, and do not currently propose to change it.

3.76 However, we are inviting 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

3.77 In relation to Rule 12 (see paragraph A1.12, Annex 1), one broadcaster suggested a small amendment to the requirement for the major parties to be allocated “two or more” PEBs, during a General Election campaign. This stakeholder suggested this wording should be amended to “at least two” to counter the expectation from some political parties that would automatically be allocated three PEBs during, for example, a General Election campaign.

3.78 Although this was not a major issue for stakeholders, we consider there is merit in asking stakeholders for their views on this point.

Link between FPTP and PR allocation rules

3.79 Some broadcaster stakeholders also 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 stakeholders’ view, confusingly links the allocation criteria for FPTP elections with those for proportional representation elections.

3.80 We therefore ask stakeholders for their views on removing this link.

PEBs during referendum campaigns

- 3.81 A further concern expressed by one stakeholder was 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 note that when referendums occur, they often take place at the same time as different set of elections⁸³. 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 are proposing 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 note that this reflects section 127(2)⁸⁴ of the PPERA.

Allocation of PEBs to independent candidates

- 3.82 As mentioned in paragraph 3.20, independent candidates, and smaller political parties, have strongly argued to us that any candidate contesting any election should automatically be allocated PEBs. As we have already discussed, we do not consider that this proposal would be feasible. However, discussed in paragraphs 3.23 to 3.24, we are proposing 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 consider 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. The requirement to offer independent candidates PEBs on this basis would only arise in relatively few cases, namely: in relation to London Mayoral Elections with respect to the relevant Channel 3 licensee; and in relation to Mayoral Elections and PCC Elections, where such elections arise, on local digital television programme services.
- 3.83 Given the above, we propose: amending Rules 12, 14⁸⁵ and 17 of the PPRB Rules (see paragraphs A1.12, A1.14 and A1.17 Annex 1); and inserting new Rule 13A after Rule 13 (see paragraph A1.13, Annex 1), as follows (amendments 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..."*

New Rule 13A. "For Mayoral and Police and Crime Commissioner Elections, candidates representing registered parties which are not participating in any

⁸³ 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.

⁸⁴ 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.

⁸⁵ We are proposing a small clarificatory change to Rule 14 in relation to the relevant evidence for making additional allocations of PEBs. We are proposing changing the current wording "...evidence of their past and/or current electoral support..." to "...evidence of their **electoral support** and/or current support..." (amendments shown in bold). This change mirrors the wording in Rules 6.9 and 6.10 of the Code – see footnote 74.

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), Five (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”.***

Question 6:

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

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

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

The PPRB Rules set 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.

We have received several representations that these rules should be amended, and are proposing various options in this area.

- 3.84 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.
- 3.85 During our pre-consultation meetings there was a consensus across stakeholders that, in practice, PEBs, PPBs and RCBs on television have been produced at the shortest length (2’40”) most of the time. There seems to be no one reason why this has happened, but possible explanations include: some parties not having the resources for making longer broadcasts; and the concern amongst some parties that longer broadcasts might be a deterrent to audiences. Many broadcast stakeholders and some political parties suggested that the PPRB Rules should reflect what happens in practice, and should not set out other possible durations for television broadcasts (i.e. 3’40” and 4’40”). The main impetus for setting the length of broadcasts at only 2’40’ on television came from television broadcasters who would like more certainty about the maximum length of broadcasts. However, some political parties welcome retaining the ability to produce longer broadcasts from time to time, and so argued for the retention of the longer durations. We are therefore proposing options below for setting out prescribed lengths for broadcasts on television.
- 3.86 In terms of setting a minimum duration for PEBs, PPBs and RCBs on television, most stakeholders acknowledged the continuing need to ensure that there should be no risk of confusion between PEBs, PPBs and RCBs on the one hand and on the other television spot advertisements. Ofcom concurs with this view, mindful of the continuing UK ban on political advertising⁸⁶. Similarly, we agree with the Electoral Commission, which has stated that: *“We believe it is important that the distinction between PPBs and commercial advertisers and programme trailers remains very clear, because they are different types of broadcast and are subject to different regulatory controls”*.⁸⁷
- 3.87 Given the above, the vast majority of stakeholders among broadcasters and political parties alike, during our pre-consultation meetings, favoured setting a minimum length for television broadcast of two minutes. Further, only one stakeholder called for the PPRB Rules to permit parties to receive shorter but more broadcasts to be shown during an election period. We therefore consider that there is no consensus for the PPRB Rules to make lengths of broadcasts contingent on the number of transmissions each party would get. We consider that such matters should be a matter for the broadcasters, in discussion with the political parties.

⁸⁶ See section 319 and section 321(2) of the Act.

⁸⁷ See the Electoral Commission’s 2003 Report *Party Political Broadcasting*, page 31 (See http://www.electoralcommission.org.uk/_data/assets/electoral_commission_pdf_file/0018/16047/Finalversion_7607-6718_ENS_W_.pdf).

- 3.88 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". This approach would set a minimum length of broadcast to maintain the distinction with television spot advertisements, but give parties and designated organisations greater flexibility in terms of length of PEBs, PPBs and RCBs. We are therefore proposing as an alternative to prescribed set lengths for broadcasts on television, options for broadcasts to be of any duration between 2' and set maxima, which reflect durations in the current PPRB Rules.
- 3.89 Only one political party stakeholder raised an issue about durations for PEBs, PPBs and RCBs on radio. This was to suggest that that to avoid the need to edit PEBs for different formats, the prescribed maximum durations for television and radio should be made the same at 2'40".
- 3.90 The main argument for the status quo is that 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 have no view on whether or not the current rules should be retained or amended.
- 3.91 However, taking into account the views expressed to us for television, we are proposing the possibility of either prescribing details of set lengths for broadcasts, as at present, or less prescriptive rules which offer a minimum and maximum time limit:
- Option (C1): status quo (i.e. 2'40", 3'40" or 4'40"); or
 - Option (C2): set all broadcasts at 2'40" (this is a reflection of what happens at present according to stakeholders);
- or
- Option (D1): any length between 2' and 2'40" (to be determined by the party); or
 - Option (D2): any length between 2' and 4'40" (to be determined by the party).
- 3.92 In relation to radio, we are proposing either retaining the status quo or bringing the maximum duration for radio broadcasts into line with television:
- Option (E1): status quo (i.e. any length up to 2'30"); or
 - Option (E2): any length up to 2'40" (this would bring the maximum duration for radio more into line with the durations for television).
- 3.93 Given the above, we propose amending 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
- 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””

Question 7:

Do you agree with:

- a) Any of Options (C1), (C2), (D1) or (D2) in relation to amending Rule 20 of the PPRB Rules in relation to television, by inserting the proposed wording as set out in paragraph 3.93 above?**
- b) Either Option (E1) or Option (E2) in relation to amending Rule 20 of the PPRB Rules in relation to radio, by inserting the proposed wording as set out in paragraph 3.93 above.**

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

The ‘scheduling’ requirements for PEBs/PPBs/RCBs

The PPRB Rules set out the options for scheduling of PEBs, PPBs and RCBs on television and radio (i.e. the times that broadcasts can be transmitted during the day). During our review, broadcast stakeholders argued for relaxing the scheduling rules for PEBs, PPBs and RCBs, whilst political parties wanted to retain the current rules.

We are not satisfied that there are sufficient arguments and evidence for change either way and we have not drawn up any proposals to amend the PPRB Rules in this area. However, we are asking stakeholders for their views on this point.

- 3.94 Scheduling was an issue which we flagged in the 2010 Summary of Responses⁸⁸ as one to which we would consider returning. Rules 21 and 22 (see paragraphs A1.21 and A1.22, Annex 1) 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.
- 3.95 During our pre-consultation meetings, there was a general preference amongst broadcast stakeholders for relaxing the scheduling rules for PEBs, PPBs and RCBs, whilst political parties want to retain the current rules.
- 3.96 We are not satisfied that there are sufficient arguments to merit any change. Given this and the opposing views expressed by broadcasting and political party stakeholders, we have not drawn up any proposals to amend the PPRB Rules in this area. However, we propose asking stakeholders for their views on this point.

Question 8:

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

⁸⁸ See paragraph 2.34, <http://stakeholders.ofcom.org.uk/binaries/consultations/pprb/Statement.pdf>

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 is now an inconsistency between the PPRB Rules and those of the BBC Trust (which now require that PPBs should be allocated on a seasonal basis).

We are proposing to amend the PPRB Rules to ensure that PPBs are allocated on a seasonal basis.

- 3.97 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”. The BBC Trust recently published the BBC PPB criteria⁸⁹, 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.
- 3.98 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, we consider that it is appropriate to propose this (uncontroversial) change. Furthermore, such a change would bring the PPRB Rules into line with the BBC Trust’s rules in this area. We are therefore proposing revised wording to Rule 9 to base the allocation of PPBs on a seasonal basis.
- 3.99 We also consider 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 consider that this change will 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 are therefore proposing amending Rule 18 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 propose prescribing 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, this change would replicate the BBC approach with regard to allocations of PPBs in Northern Ireland.
- 3.100 In addition, we are proposing 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 avoid the possibility 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 debate⁹⁰. Further, given that relevant

⁸⁹ See

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

parties will be allocated PEBs, in our view it would be disproportionate to require the Channel 3 licensees to also carry PPBs during election campaigns. For example, given that not all relevant parties would necessarily have PPBs scheduled to be shown during an election period, there could be potential unfairness if only some parties eligible for PPBs were able to have PPBs during the election period.

- 3.101 Given the above, we propose amending the end of Rule 9 (see paragraph A1.9, Annex 1) and Rule 18 (see paragraph A1.18, Annex 1) 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”.

Question 9:

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

⁹⁰ Furthermore, as mentioned in paragraph 3.81 above, section 127(2) of the PPERA implies that PPBs cannot “further any campaign conducted with a view to promoting or procuring a particular outcome” in a referendum.

Referendums and Scottish elections

The PPRB Rules lays out rules relating to, for example, the numbers of RCBs that should be allocated during a referendum campaign.

We are proposing amending the PPRB Rules in relation to the allocation of RCBs during referendums. We are also proposing to make clear that the Channel 3 licensees for: the Borders and Isle of Man; and North East England regions, which straddle the Scottish-English border, should be required to carry: RCBs during the Scottish independence referendum; and PEBs during Scottish elections⁹¹.

- 3.102 In relation to referendums, Rule 10⁹² of the PPRB Rules states that RCBs “may only be allocated to organisations as designated by the Electoral Commission”. Rule 19⁹³ of the PPRB Rules requires that each “designated referendum organisation will be allocated a series of referendum campaign broadcasts before each referendum...”.
- 3.103 In relation to Scottish elections, we note 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.
- 3.104 During our review, we considered three issues in relation to the above.

Numbers of RCBs

- 3.105 In our pre-consultation meetings, several broadcasters suggested an amendment to Rule 19 of the PPRB Rules (see paragraph A1.19, Annex 1) relating to allocation of RCBs. They considered the present wording⁹⁴ 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. This seems a sensible proposal as there might be referendums of lesser salience where it would be appropriate to allocate only one RCB per side during the referendum.
- 3.106 We are therefore proposing 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 allocated⁹⁵.

⁹¹ We note that, as a matter of custom and practice, these two Channel 3 licensees have, in general, shown PEBs during Scottish elections.

⁹² See paragraph A1.10, Annex 1 of this consultation.

⁹³ See paragraph A1.19, Annex 1 of this consultation.

⁹⁴ Rule 19 states: “Each designated referendum organisation will be allocated a series of referendum campaign broadcasts before each referendum...”.

⁹⁵ We recognise 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>).

Scottish independence referendum

- 3.107 We note that agreement⁹⁶ has been reached between the UK Government and the Scottish Government concerning the framework for a forthcoming Scottish independence referendum. Paragraph 20 of the Agreement⁹⁷ 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, the two governments have published a draft Section 30 Order⁹⁸ setting out the enabling legislation to permit a Scottish independence referendum to be held no later than 31 December 2014. In particular, regulation 4 of the draft Section 30 Order states 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. At this stage therefore, we do not think that any amendment to Rule 10 is necessary to allow RCBs to be broadcast by the relevant designated organisations in the Scottish independence referendum.
- 3.108 On a related matter, given the importance of the Scottish independence referendum, we consider that it is also appropriate to make clear 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.

Scottish elections

- 3.109 As we note in paragraph 3.103 above, we note 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. Given what we say in paragraph 3.108, we are proposing to make clear in the PPRB Rules going forward that the two Channel 3 licensees for the Borders and North East England regions should be required to carry PEBs during Scottish elections.
- 3.110 Given the above, we propose amending: Rule 8, with a footnote after “nations/regions referendums”; Rule 9, with a footnote after “Channel 3 licensee”; and Rule 19 of the PPRB Rules (see paragraphs A1.8, A1.9, and A1.19, Annex 1) 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**

⁹⁶ See <http://www.scotland.gov.uk/About/Government/concordats/Referendum-on-independence>

⁹⁷ “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>).

⁹⁸ 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) See <http://www.scotland.gov.uk/Resource/0040/00404790.pdf>

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...”.*

Question 10:

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

Other issues

Labelling of PEBs, PPBs and RCBs

3.111 During our pre-consultation meetings, one political party suggested that the labelling of PEBs, PPBs and RCBs could be improved⁹⁹. This stakeholder was of the view that the current labelling and introduction of such broadcasts acts as a deterrent to viewers. We consider this point is not an issue to be dealt with in the PPRB Rules. We note the conclusions of the Electoral Commission on the issue of labelling in their 2003 Report *Party Political Broadcasting*¹⁰⁰. The Electoral Commission stated that “there are compelling reasons for labelling to be retained” because of: PEBs, PPBs and RCBs 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 consider that these concerns remain valid, and consider that the issue of labelling is ultimately a matter for the relevant broadcasters. However, we hope that broadcasters would take account of any reasonable concerns expressed by parties on labelling.

Northern Ireland parties and UK PEBs

3.112 The relationship between parties in Northern Ireland and the rest of the UK was an issue we flagged in the 2010 Summary of Responses¹⁰¹. One related point raised during our pre-consultation meetings by a Northern Ireland political party was the position if parties from Great Britain, who receive PEBs on Channel 4 and Five during a General Election, were to 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 note 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.

Question 11:

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

⁹⁹ We flagged the issue of labelling in the 2010 Summary of Responses (<http://stakeholders.ofcom.org.uk/binaries/consultations/pprb/Statement.pdf>, paragraph 1.8).

¹⁰⁰ See pages 35-37, http://www.electoralcommission.org.uk/_data/assets/electoral_commission_pdf_file/0018/16047/Finalversion_7607-6718_ENSW.pdf

¹⁰¹ See paragraph 2.19, <http://stakeholders.ofcom.org.uk/binaries/consultations/pprb/Statement.pdf>

Section 4

The Proposed Code Guidance

Introduction

- 4.1 The proposed and updated Guidance to Sections Five and Six of the Code is set out in this section below (“the Proposed Code Guidance”). This Proposed Code Guidance aims to develop and amplify the existing Guidance to assist broadcasters in applying the Code because these Sections are quite complex and can be challenging to interpret. It is intended that the proposed Guidance, following consultation, will replace the previous Guidance on Sections Five and Six of the Code and the standalone Guidance on broadcast coverage for the 2012 Police and Crime Commissioner Elections¹⁰².
- 4.2 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)¹⁰³ and Section Six (Elections and Referendums)¹⁰⁴ of the Code) before laying out the guidance itself on those rules.
- 4.3 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 draft Guidance lays 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.
- 4.4 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.

Code of Practice

- 4.5 In consulting on our Proposed Code Guidance, we are 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. In

¹⁰² The Guidance to Section Five is set out at:

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

The Guidance to Section Six is set out at:

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

The Guidance for broadcast coverage of the 2012 Police and Crime Commissioner Elections is set out at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bc-guidance-pcc.pdf>

¹⁰³ See <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/impartiality/>

¹⁰⁴ See <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/elections/>

addition, before drawing up such a code of practice, Ofcom must have regard to any views expressed by the Electoral Commission. This obligation is reflected in a number of statutory instruments covering elections for the European Parliament, the Welsh and Northern Ireland Assemblies, the Scottish Parliament, and elections for the post of Police and Crime Commissioners¹⁰⁵.

- 4.6 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, and issuing special Guidance more recently for the PCC Elections. We are now revising the Guidance to ensure that it remains fit for purpose and that we continue to meet this statutory obligation. The updated Guidance will take account of recent changes in the electoral landscape and, in particular, take account of more recent decisions of the Ofcom Election Committee.

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

General

- 4.7 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.
- 4.8 Where relevant, weblinks are provided to cases (already published by Ofcom) which broadcasters may find helpful when considering how to interpret the Code.
- 4.9 Different rules in Section Five apply to different Ofcom licensed services as follows:

[See next page]

¹⁰⁵ 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.

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

- 4.10 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.
- 4.11 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.
- 4.12 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

- 4.13 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.
- 4.14 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.
- 4.15 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.

- 4.16 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.
- 4.17 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.
- 4.18 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.
- 4.19 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 survey¹⁰⁶ 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.
- 4.20 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.
- 4.21 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.
- 4.22 Broadcasters should take care to report surveys and statistics in context.
- 4.23 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

¹⁰⁶ See <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/uk-audience-attitudes.pdf>, published August 2012.

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.

4.24 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.

4.25 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>

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

4.26 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.

4.27 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

4.28 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

4.29 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.

4.30 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.

4.31 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.

4.32 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.

4.33 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

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

- 4.34 '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.
- 4.35 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.
- 4.36 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.
- 4.37 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.

- 4.38 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.

- 4.39 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.
- 4.40 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.
- 4.41 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.
- 4.42 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.
- 4.43 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.

4.44 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 4.43 above.

4.45 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

4.46 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.

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

4.48 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

4.49 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

4.50 In understanding what is meant by ‘due weight’, it is useful to refer to the discussion of ‘due’ in the meaning of ‘due impartiality’.

4.51 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.

4.52 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.

4.53 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

4.54 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.

4.55 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.

- 4.56 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.
- 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. 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.
- 4.58 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

- 4.59 The signalling of an item or programme as a personal view or authored is a matter for the broadcaster.
- 4.60 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

- 4.61 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.
- 4.62 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.
- 4.63 'Significant views' could include the viewpoint of nation states whose policies are considered to be matters of major or political and industrial controversy or major matters relating to current public policy.
- 4.64 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.
- 4.65 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 4.43 above.
- 4.66 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 Nationalist 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.

- 4.67 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.
- 4.68 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.

4.69 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.

4.70 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

4.71 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.

4.72 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 Broadcasts¹⁰⁷). 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.

4.73 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.

¹⁰⁷ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/ppbrules.pdf>

Guidance

- 4.74 Rule 6.1 applies to the coverage of elections or referendums both inside and outside the UK.
- 4.75 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.
- 4.76 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.
- 4.77 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 support for particular candidates, and the relevant political context, in deciding relative levels of coverage for different candidates in the same election.
- 4.78 It is not acceptable for presenters to use their position to encourage and urge voters to support political parties or candidates.
- 4.79 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.
- 4.80 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

4.81 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, Scottish Parliament election, Welsh, Northern Ireland and London Assembly elections, and European parliamentary election¹⁰⁸.

Guidance

4.82 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"¹⁰⁹:

At present in the UK major parties are the Conservative Party, the Labour Party and the Liberal Democrats. In addition, major parties in Scotland and Wales respectively are the Scottish National Party and Plaid Cymru. The major parties in Northern Ireland are the Democratic Unionist Party, Sinn Fein, Social Democratic and Labour Party, and the Ulster Unionist Party.

Guidance

4.83 The Scottish National Party, Plaid Cymru, Democratic Unionist Party, Sinn Fein, Social Democratic and Labour Party, and the Ulster Unionist Party are not UK major parties.

4.84 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

¹⁰⁸ As mentioned in paragraph 2.29 above, we are proposing that the definition of "elections" in Section Six of the Code should include "Police and Crime Commissioner Elections".

¹⁰⁹ As mentioned in paragraph 2.28 we make clear that we are proposing to remove the current set list of major parties in the PPRB Rules (and also Section Six of the Code) and place the list in an annex to the PPRB Rules and the Code, which would be regularly reviewed and refreshed, taking account of relevant evidence, such as changes in the electoral landscape, across a range of elections. The initial list would consist of those parties who are currently listed as a "major party" in the Code, and we propose that the Alliance Party of Northern Ireland should also be added.

begins with the issuing of a writ or on such earlier date as is notified in the London Gazette. For the Scottish Parliament elections, the period begins with the dissolution of the Scottish Parliament or, in the case of a by-election, with the date of the occurrence of a vacancy. For the National Assembly for Wales, 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

- 4.85 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

- 4.86 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.
- 4.87 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.
- 4.88 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.

- 4.89 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”.
- 4.90 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”.
- 4.91 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).
- 4.92 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

- 4.93 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

- 4.94 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.
- 4.95 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

- 4.96 The purpose of Rule 6.4 is to ensure that broadcast coverage on the day of an election does not directly affect voters’ decision.
- 4.97 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

- 4.98 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

4.99 This Guidance should be read in conjunction with the Guidance in paragraphs 4.26 and 4.27 of the Guidance to Section Five: Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions.

4.100 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.

4.101 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

4.102 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. Rule 6.7, however, acknowledges that some programmes may have already been made without the knowledge that an election or referendum is about to be called.

Rules relating to constituency coverage and electoral area coverage in elections

General

4.103 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).

4.104 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

4.105 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.

- 4.106 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.
- 4.107 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.
- 4.108 As mentioned in paragraph 4.106, 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, as appropriate, other candidates were not given a chance to take part in that broadcast item, or in closely linked and timely programmes (see paragraph 4.117 below).
- 4.109 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 4.105 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.
- 4.110 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".
- 4.111 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.

4.112 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 organisation¹¹⁰ 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”)¹¹¹.

4.113 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.

4.114 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.

4.115 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 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

¹¹⁰ 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.

¹¹¹ 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/>).

constituency or electoral area.

- 4.116 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.
- 4.117 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 5.6¹¹², 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.
- 4.118 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.
- 4.119 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.
- 4.120 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>

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

¹¹² 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".

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

- 4.121 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.
- 4.122 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 on a policy issue, 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.
- 4.123 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

- 4.124 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.
- 4.125 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).
- 4.126 A previous Ofcom decision in this area is:

UTV Live Tonight, UTV:

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

Question 12:

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

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

Annex 1

The current PPRB Rules

Introduction

- A1.1 Section 333 of the Communications Act 2003 (“the Act”) requires Ofcom to ensure that Party Political Broadcasts (including Party Election Broadcasts) and Referendum Campaign Broadcasts on behalf of registered political parties and designated referendum organisations¹¹³ are included in every licensed public service television channel (regional Channel 3¹¹⁴, Channel 4, Five) 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 Code¹¹⁵ (“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 against defamation, copyright and similar legal risks. Any use of Parliamentary footage should abide by Parliament’s rules on such use.

¹¹³ See section 333(3) of the Act, and sections 37 and 127 of the Parties, Elections and Referendums Act 2000.

¹¹⁴ Excluding Channel TV; this section of the Act does not apply to the Channel Islands.

¹¹⁵ The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

Services carrying broadcasts

- A1.7 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 and Five.
- A1.8 Referendum campaign broadcasts 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.
- A1.9 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 and Greater London Authority elections; and broadcasts for the “major parties” in Great Britain (see Rule 11) around other key events in the political calendar, such as the Queen’s Speech, the Budget and party conferences.

Political parties / Designated Referendum Organisations

- A1.10 Party political broadcasts may only be allocated to political parties registered by the Electoral Commission. Referendum campaign broadcasts may only be allocated to organisations as designated by the Electoral Commission.
- A1.11 At present, “major parties” in Great Britain are defined as: the Conservative Party, the Labour Party, and the Liberal Democrats and, in Scotland and Wales respectively, the Scottish National Party (“SNP”) and Plaid Cymru. The major parties in Northern Ireland are: the Democratic Unionist Party, Sinn Fein, the Social Democratic & Labour Party, and the Ulster Unionist Party.

Allocation of broadcasts

Party Election 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 a series of two or more 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 Five. 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 and/or current electoral 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 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.
- 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 and/or current electoral 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), Five (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).

Other Events / Referendums

- A1.18 Major parties will be offered one broadcast on each occasion in relation to other key political events (see Rule 9).
- A1.19 Each designated referendum organisation will be allocated a series of referendum campaign broadcasts 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. Referendum campaign broadcasts 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 referendum campaign broadcasts 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

Proposed amendments¹¹⁶ to the current PPRB Rules

Introduction

- A2.1 This Section 333 of the Communications Act 2003 (“the Act”) requires Ofcom to ensure that Party Political Broadcasts (including Party Election Broadcasts) and Referendum Campaign Broadcasts on behalf of registered political parties and designated referendum organisations¹¹⁷ are included in every licensed public service television channel (regional Channel 3¹¹⁸, Channel 4, Five), **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”).
- A2.2 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.
- A2.3 Within the terms of these Rules, decisions as to the precise length, frequency, allocation and/or scheduling of broadcasts offered to **independent candidates**/political parties/designated organisations are the responsibility of Licensees in the first place. When Licensees make such decisions, they should notify the relevant **independent candidate**/political party/designated organisation promptly in writing, setting out the basis of the relevant decision, and enabling that **independent candidate**/party/organisation to make further representations to the Licensee if they choose to dispute any part of the decision.
- A2.4 If any dispute remains unresolved between any Licensee and any **independent candidate**/political party/designated organisation, as to the length, frequency, allocation and/or scheduling of broadcasts it may be referred by the **independent candidate**/political party/designated organisation or the Licensee to Ofcom for determination under these Rules. For this purpose, Licensees and **independent candidates**/political parties/designated organisations should follow Ofcom’s Procedures on the referral and determination of disputes under these Rules.
- A2.5 Section 6 of Ofcom’s Broadcasting Code¹¹⁹ (“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.

¹¹⁶ The amendments proposed in this Consultation document are shown in bold in this annex.

¹¹⁷ See section 333(3) of the Act, and sections 37 and 127 of the Parties, Elections and Referendums Act 2000.

¹¹⁸ Excluding Channel TV; this section of the Act does not apply to the Channel Islands.

¹¹⁹ The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

- A2.6 Licensees are advised to issue guidance on the acceptability of content and technical matters. Broadcasters are advised to seek legal indemnities from parties against defamation, copyright and similar legal risks. Any use of Parliamentary footage should abide by Parliament's rules on such use.

Services carrying broadcasts

- A2.7 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 and **Five and local digital television programme service licensees**.
- A2.8 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 relevant local digital television programme service licensees** in the case of nations/regions referendums¹²⁰.
- A2.9 The **relevant** regional Channel 3 licensee¹²¹ **and local digital television programme service licensees** 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**¹²²; and **party political** broadcasts ("**PPBs**") for the "major parties" in the UK (see Rule 11), **on a seasonal basis (as set out in Rule 18)**.

9A: Local digital television programme service licensees will also carry election broadcasts for relevant Mayoral Elections and Police and Crime Commissioner Elections¹²³.

Political parties / Designated Referendum Organisations

- A2.10 **PPBs** may only be allocated to political parties registered by the Electoral Commission. **Party election broadcasts ("PEBs") may only be allocated to: (i) political parties registered by the Electoral Commission, and (ii) independent candidates.** **RCBs** may only be allocated to organisations designated by the Electoral Commission
- A2.11 The "Major parties" **for each nation in the United Kingdom are defined in the Ofcom List of Major Parties.**

¹²⁰ 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.

¹²¹ 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.

¹²² The relevant Channel 3 licensee will not be obliged to carry election broadcasts in respect of: Mayoral Elections (other than London Mayoral Elections 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.

¹²³ Local digital television programme service licensees are not required to carry election broadcasts for: by-elections for any type of election; English Parish Council Elections; Scottish Community Council Elections; and Welsh Community Council Elections.

Allocation of broadcasts

Party Election Broadcasts (“PEBs”)

- A2.12 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 Five. 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 and/or current electoral support in that nation (see Rule 15).
- A2.13 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 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.

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 qualify for a PEB where they can demonstrate that evidence of past electoral support and/or current support means it would be appropriate to do so.

- A2.14 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.
- A2.15 In determining allocations of PEBs at elections, the four nations of the UK should be considered separately.
- A2.16 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.
- A2.17 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), Five (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.**

Option (A)

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

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

Or

Option (B)

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

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.

Seasonal Party Political Broadcasts (“PPBs”) / Referendum Campaign Broadcasts (RCBs”)

A2.18 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 more PPBs in the period 1 September to 30 March (excluding December). No PPBs will be broadcast during election or referendum periods.**

A2.19 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

A2.20 [See paragraphs 3.84 to 3.93 of the consultation document for details of proposed changes]

Scheduling of broadcasts

A2.21 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 **and local digital television programme service licensees** in the relevant nations **and local digital television programme services** 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.

A2.22 UK referendum campaign broadcasts 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 3

Proposed draft 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 Code (“the Code”)¹²⁴ and the Ofcom rules on Party Political and Referendum Broadcast (“the PPRB Rules”)¹²⁵.
- A3.2 Ofcom will regularly review and refresh 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.

¹²⁴ Link to current version of the Code.

¹²⁵ Link to current version of the PPRB Rules.

Annex 4

Responding to this consultation

A4.1 This Annex states out Ofcom's consultation principles and processes, and explains how to respond to this consultation. Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on Monday 21 January 2013**.

Ofcom's consultation principles

A4.2 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A4.3 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A4.4 We will be clear about who we are consulting, why, on what questions and for how long.

A4.5 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A4.6 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A4.7 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A4.8 If we are not able to follow one of these principles, we will explain why.

After the consultation

A4.9 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

A4.10 Ofcom seeks to ensure that responding to a consultation is easy as possible. If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at

consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.

- A4.11 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

How to respond

- A4.12 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on Monday, 21 January 2013**.

- A4.13 We strongly prefer to receive responses via the online web form <https://stakeholders.ofcom.org.uk/consultations/party-political-referendum-rules/howtorespond/form> which incorporates the coversheet shown in Annex 5. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.or.uk/consult/ (see 'How To Respond' under this particular consultation).

- A4.14 We would be very grateful if you could send a coversheet with your response (this is incorporated into the online web form if you respond in this way). This helps us to process the responses quickly and efficiently, and help to maintain confidentiality, as appropriate.

- A4.15 For email responses, please email adam.baxter@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.

- A4.16 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Adam Baxter
Standards Team
5th Floor
Riverside House
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London SE1 9HA

Fax: 020 7981 3807

- A4.17 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A4.18 It would be helpful if your response could include direct answers to the questions asked in this document. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A4.19 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Adam Baxter on 020 7981 3236.

Confidentiality

- A4.20 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.
- A4.21 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A4.22 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Annex 5

Consultation response cover sheet

- A5.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A5.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A5.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A5.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A5.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 6

Consultation questions

Question 1:

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

Question 2:

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

Question 3:

Do you agree with amending Rule 9 of the PPRB Rules by inserting the proposed wording set out in paragraph 3.40 above? If you do not agree with this approach, please explain why, and, if appropriate, suggest alternative wording.

Question 4:

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

Question 5:

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

Question 6:

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

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

Question 7:

Do you agree with:

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

paragraph 3.93 above?

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

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

Question 8:

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

Question 9:

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

Question 10:

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

Question 11:

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

Question 12:

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

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