

Section Six

Election and Referendum Reporting

I General Summary of Responses

We have received substantive responses from the BBC, S4C, ITV, ITN, Channel 4 and Five, ITN, SMG, Chrysalis the Commercial Radio Companies Association, the de Borda Institute, Public Voice, MediaWise, mediawatch-uk, two confidential respondents and some individuals.

United Christian Broadcasting believes this section is clear and straightforward.

II Preamble

(Sections 319(2)(c) and 320 of the Communications Act 2003 (“the Act”). Broadcasters should also have regard to the Political Parties, Elections and Referendums Act 2000 and relevant sections of the Representation of the People Act 1983 - see particularly sections 92, 93 and 66A)

This section of the Code does not apply to the BBC which is regulated on matters of due impartiality and accuracy in news by the BBC Board of Governors.

Rules made under section 333 of the Act (regarding party election broadcasts, party political broadcasts and referendum campaign broadcasts) and paragraph 18 of schedule 12 are contained in Ofcom's rules for party political, party election and referendum campaign broadcasting on ITV, Channel 4, Five and National Commercial Radio. Such broadcasts are expected to comply with the provisions of this Code e.g. the provisions regarding harm and offence - although editorial control normally rests with the relevant political parties.

Responses to the Consultation

The BBC suggests that “this section of the Code does not apply to the BBC” should instead read “this section of the Code does not apply to BBC services funded by the licence fee or grant in aid or to programmes supplied by the BBC to S4C as part of the statutory provision.”

S4C would like to remind Ofcom that they were previously regulated by the S4C Authority on these matters and understood that they would not be regulated by Ofcom on political broadcasts in the future.

ITN (and ITV) note that the Code makes no mention of the proposed rules regarding party election broadcasts, party political broadcasts and referendum campaign broadcasts and they believe that they should cross-refer. Channel 4 and Five also suggest that these two ought to be cross referenced.

Scottish TV and Grampian TV have concerns about the non-specification of the guidelines over compliance of election broadcasting. Full compliance requires editorial control.

Ofcom response

The amendment as proposed by the BBC concerning its services has been adopted.

In response to S4C's comment, the section does not deal with political broadcasts – but election and referendum reporting.

ITN, ITV, Channel 4 and Five say that there is no mention of the rules regarding party election broadcasts, party political broadcasts and referendum campaign broadcasts. However there is a reference at the start of the section.

We note the concerns regarding complying such broadcasts raised by SMG. A broadcaster retains compliance responsibility for these broadcasts and can require changes or refuse to broadcast material that has not been changed to meet the broadcaster's interpretation of the Broadcasting Code.

III Principles

To ensure that the provisions of Section Five: Due Impartiality, Due Accuracy and Undue Prominence of Views and Opinions of this Code, and legislation relating to broadcasting on elections and referendums, are applied at the time of elections and referendums.

Responses to the Consultation

No comments received.

Ofcom Response

For clarity we have amended the reference to the requirement to comply with Section 5 of this Code to a requirement to comply with the Act's "special impartiality requirements".

IV Rules

Programmes at the time of elections and referendums

Draft Rule 6.1 (now Rule 6.1)

The rules in Section Five: Due Impartiality, Due Accuracy and Undue Prominence of Views and Opinions, 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.

Programmes at the time of elections and referendums in the UK

The remainder of this section only applies during the actual election or referendum period which is defined below.

Meaning of 'elections'.

This includes parliamentary general elections, parliamentary by-elections, local government elections, mayoral elections, Scottish Parliament, and Welsh, Northern Ireland and London Assembly elections, [Regional Assembly elections] and European parliamentary elections.

Meaning of 'referendums'.

Referendums includes UK-wide, national, and regional referendums but does not extend to local referendums.

Responses to the Consultation

Political organisation de Borda Institute says that “referenda should always be multi option, not just two option”.

An individual feels that it is unclear that the rules apply to local elections.

Ofcom response

We have deleted the reference to regional assemblies following the referendum result in the North East in the autumn of 2004 which rejected a regional assembly. However, as is made clear in the “meaning of elections” this is not a definitive list.

The de Borda Institute says that “referenda should always be multi-option, not just two option.” However there is no reference in the section to referendums having only two options.

These rules do apply to local elections and that is made clear in the “Meaning of ‘elections’”.

Draft Rule 6.2 (now 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 smaller parties and independent candidates with significant views and perspectives.

Meaning of ‘major party’.

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

Meaning of ‘election period’:

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

Meaning of ‘referendum period’:

For referendums different periods apply. A referendum held under the Northern Ireland Act 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.

Responses to the Consultation

S4C ask for a meaning to be given for the word ‘candidate’.

SMG, Public Voice and two individuals question the list of major parties. SMG believe that Ofcom should adopt a three tier approach to the question of party significance starting with major parties, then parties with representation in the Scottish Parliament and minor parties. Further to this there should be a different approach to Scottish Parliament elections where the likes of the SSP and the Scottish Greens have gained seats.

Ofcom response

We have added a meaning for candidate drawn from section 93 of the Representation of the People Act 1983 (as amended) as requested by S4C.

The list of major parties was drawn up in consultation with government, regulators and broadcasters and was based on significant electoral support. We cannot change it unilaterally. However we will keep it under review and would initiate discussions with relevant parties following changes at elections that suggested the list was no longer appropriate. We have, however, changed the wording of draft Rule 6.2 by replacing ‘smaller’ with ‘other’. We would point to draft Rule 6.2 as the way in which other parties can be included in items on elections “Broadcasters must also consider giving appropriate coverage to other parties and independent candidates with significant views and perspectives.”

We have also amended the meaning of ‘election period’ to include a reference to casual vacancies.

Draft Rule 6.3 (now 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.

Meaning of ‘designated organisation’:

These are organisations designated by the Electoral Commission as representing those campaigning for a particular outcome in the referendum.

Meaning of ‘permitted participants’:

Campaigners in a referendum have to register as permitted participants in the same way that political parties do for an election.

Responses to the Consultation

MediaWise asks for a definition of ‘due weight’.

mediawatch-uk agrees with this rule.

Ofcom response

We have changed the meaning of permitted participants to make it clear that they are designated by the Electoral Commission.

MediaWise asks that we add a meaning to ‘due weight’. We consider that a definition of “due weight” is unnecessary. It is the responsibility of broadcasters to ensure that their services maintain due impartiality. This necessarily means that they must consider how they cover such issues such as the time, manner and depth with which they report these matters.

Draft Rule 6.4 (now 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, not to any poll conducted in part, or entirely, by post).

Responses to the Consultation

An individual asked why discussion and analysis of election issues must finish when the polls open as, with the increase in postal voting, this seems inappropriate.

Ofcom response

This rule acknowledges that some elections or referendums can take place solely by post and is adjusted accordingly. However, at present the majority of polls are conducted via the ballot box. This rule was a requirement in the legacy codes and is intended to reflect the difficulty of achieving ‘due impartiality’ in a way that precludes the possibility of a listener or viewer going out to vote having most recently heard the views of one politician alone. Analysis or discussion of the election or referendums (such as turnout) on polling day itself may also alter voting behaviour for other reasons. No change has been made.

Draft Rule 6.5 (now 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).

Responses to the Consultation

No comments received.

Draft Rule 6.6 (now Rule 6.6)

Candidates in UK elections, and representatives of permitted participants in referendums, must not present news, carry out interviews or present any type of programme during the election period.

Responses to the Consultation

Channel 4 and Five propose new wording “Candidates...must not act as news presenters, interviewers or presenters of any type of programme during the election period“ as they point out that the draft wording could suggest a candidate may not be interviewed.

Ofcom response

We have accepted Channel 4 and Five’s change which adds to the clarity of this rule.

Draft Rule 6.7 (now Rule 6.7)

Appearances in non-political programmes that were planned or scheduled before the election period may continue, but no new appearances should be arranged and transmitted during the period.

Responses to the Consultation

Channel 4 and Five would like the words ‘by candidates in UK elections’ be inserted after the word ‘appearances’.

Public Voice believes that it is relatively easy for candidates to anticipate the calling of an election and to make concerted efforts to pre plan their appearances for the anticipated election period.

Ofcom response

We have made the word change requested by Channel 4 and Five to aid clarity.

Public Voice suggests that candidates may anticipate the calling of an election and put themselves forward to participate in programmes. The Broadcasting Code cannot regulate the behaviour of candidates before an election period or referendum period. However draft Rule 6.7 contains the words ‘may continue’. It is open to broadcasters to cancel appearances if they so chose.

Constituency coverage and electoral area coverage in elections

Draft Rule 6.8 (now Rule 6.8)

The rules regarding due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion.

Meaning of ‘electoral area’.

The local government equivalent of the parliamentary terms ‘constituency’ and ‘by-election’ are ‘electoral areas’ and ‘election to fill a casual vacancy’. Rules 6.8-6.12 apply to an electoral division, borough ward or other area in the same way as to a constituency for a parliamentary election.

Responses to the Consultation

ITN (and ITV) believe the rules on constituency reporting need amending, as experience applying the 2000 rules to coverage of recent major elections has shown that editorial control is unduly restricted. When applied, the rules lead to formulaic reports that unreasonably favour the major parties. It is impossible to interview all candidates of major parties in a three minute news report. If the constituency rules were taken away, a report on a constituency would still be subject to due impartiality. ITN (and ITV) recommend either the deletion of Rules 6.9 through 6.12, or the addition of the word ‘normally’ to each of those rules, meaning that there may be exceptional cases where the rules do not apply.

Ofcom response

ITN (and ITV) seek the deletion or relaxation of the draft Rules 6.9-6.12 concerning interviews by candidates in constituency reports. However we are unable to meet this request. This is because to do so would breach an understanding with Government, broadcasters and political parties, reached in 1999. The broadcasters successfully prevailed on Government to relax what they believed to be restrictive terms of former section 93 of the Representation of the People Act 1983. A widely agreed set of rules was incorporated in the ITC and RA Codes, as well as the BBC's and others' broadcaster-guidelines. We are required to set a code of practice regarding the participation of candidates in elections in

items in broadcast services by section 144 of PPERA. We do not believe that the sense of the wording can currently be substantially changed.

Draft Rule 6.9 (now Rule 6.9)

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

Responses to the Consultation

ITN (and ITV) refer to their comment on draft Rule 6.8.

Ofcom response

Regarding ITN (and ITV)'s points we refer to our comments under draft 6.8.

Draft Rule 6.10 (now Rule 6.10)

Broadcasters transmitting constituency, or electoral areas, reports and debates must offer the chance to take part to candidates within the constituency or electoral area representing parties with previous significant electoral support or parties with evidence of significant current support. (If they refuse, or are unable to participate, the item may, despite that, go ahead.)

Responses to the Consultation

ITN (and ITV) refer to their comment on draft Rule 6.8.

Channel 4 and Five suggest that the words 'or independent candidates' be inserted after the words 'representing parties' (third line) and the words 'or independent candidates' after the words 'all parties' (fourth line). They would also suggest that the word 'debates' (second line) be replaced by the word 'discussion' for the sake of consistency.

Ofcom response

Regarding ITN (and ITV)'s points we refer to our comments under draft Rule 6.8.

We have changed the wording in draft Rule 6.10 following Channel 4 and Five's comments to aid clarity.

Regarding draft Rule 6.10 we have been asked if it is the broadcaster who decides if a party has 'significant electoral support'? That is the case. It is the responsibility of the broadcaster to ensure that due impartiality is met. Therefore it must be for broadcasters, in the first instance, to decide whether or not parties have significant support.

Draft Rule 6.11 (now 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.

Responses to the Consultation

ITN (and ITV) refer to their comment on draft Rule 6.8.

The Commercial Radio Companies Association believes this demand is onerous and could perhaps be resolved by referring listeners to a website where the list is available.

Chrysalis Radio notes that this is impractical for radio broadcasters who cannot display names while other issues are discussed, as TV broadcasters can.

An individual noted that the candidate list must be of a sufficient size, and left on screen long enough for people to read it.

Ofcom response

Regarding ITN (and ITV)'s points we refer to our comments under 6.8.

Chrysalis and CRCA are concerned that the requirement to list all candidates on every occasion is tighter than the legacy RA Code. We accept this point and have changed the wording at draft Rules 6.11 and 6.13 so that the new rule does not increase the regulatory burden on radio.

An individual asks that a candidate list on screen should be of sufficient size and left on screen for long enough for it to be read. This will be addressed in guidance.

Draft Rule 6.12 (now Rule 6.12)

Where a politician 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, where no other candidates will have a similar opportunity.

Responses to the Consultation

ITN (and ITV) refer to their comment on draft Rule 6.8.

The BBC would like to know if this refers to politicians, candidates, or both. The BBC suggests that clarification is needed on the phrase 'make constituency points.'

The Commercial Radio Companies Association says that a definition is needed of the term constituency or electoral area points.

Ofcom response

Regarding ITN (and ITV)'s points we refer to our comments under draft Rule 6.8.

We have changed the wording from 'politician' to 'candidate' as the BBC suggest to aid clarity.

The Commercial Radio Companies Association and the BBC ask for a meaning for the term 'constituency or electoral area points' used in draft Rule 6.12. This refers to a matter particular to the constituency or electoral area and we will include that in guidance.

Draft Rule 6.13 (now Rule 6.13)

If coverage is given to wider election regions i.e. in elections to the Scottish Parliament, Welsh Assembly, Northern Ireland Assembly, [Regional Assembly], London Assembly, or European Parliament, then draft 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.

Responses to the Consultation

ITN (and ITV) refer to their comment on draft Rule 6.8.

Chrysalis Radio notes that it is impractical for radio to list all the political parties.

Ofcom response

Regarding ITN (and ITV)'s points we refer to our comments under draft Rules 6.8.

Chrysalis and CRCA are concerned that the requirement to list all candidates on every occasion is tighter than the legacy RA Code. We accept this point and have changed the wording at draft Rules 6.11 and 6.13 so that the rule does not increase in the regulatory burden on radio.

V Proposed New Rules

Channel 4 wish to retain a reference to the Parliamentary Broadcasting Unit Limited (PARBUL) rules.

Ofcom response

We do not have a rationale in law to do this in the Broadcasting Code but we will consider adding an explanation in guidance.