



Ofcom's rules on due impartiality, due accuracy, elections and referendums:

- 1) A proposal to remove the list of larger parties
- 2) Proposed changes to apply the rules to the BBC

Consultation

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About this document

Ofcom is carrying out a review of the suitability of the list of larger parties for the purposes of Ofcom's Broadcasting Code and rules on party political and referendum broadcasts (PPRB Rules). We are proposing to amend Section Six (elections and referendums) of the Code and Ofcom's PPRB Rules to remove the concept of the list of larger parties. Broadcasters and political parties will need to plan ahead for the various elections taking place in May 2017.

Ofcom is also currently preparing for its new responsibilities of regulating the BBC. This follows the publication on 15 September 2016 by the UK Government of the new draft Royal Charter and Framework Agreement for the BBC. In this document we also set out our proposed approach for regulating BBC editorial content in the areas of due impartiality, due accuracy, elections and referendums. Specifically, this will require amendments to: Section Five (due impartiality) of the Code; Section Six (elections and referendums) of the Code; and Ofcom's rules on party political and referendum broadcasts.

This document is the first of a series of consultation documents that Ofcom is publishing as it prepares for its new BBC duties. However, we consider it is appropriate to carry out our review of the suitability of the list of larger parties at the same time. This is an issue that will affect all Ofcom licensees as well as the BBC.

We invite representations from interested stakeholders on the matters set out in this consultation by no later than **5pm on 16 January 2017**. We intend to publish a statement setting out our decision by late February/early March 2017 at the latest.

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Section 1

Executive Summary

Background

- 1.1 In this document we review the suitability of the concept of larger parties¹ for the purposes of Ofcom's Broadcasting Code ("the Code") and rules on party political and referendum broadcasts ("PPRB Rules"). This is an issue that will affect all Ofcom licensees. We are proposing to amend Section Six (elections and referendums) of the Code and the PPRB Rules to remove the list of larger parties.
- 1.2 This document is also the first of a series of consultation documents that Ofcom is publishing as it prepares for its new responsibilities of regulating the BBC.
- 1.3 On 15 September 2016, the UK Government published a new draft Royal Charter and Framework Agreement for the BBC. Once finalised, this will form the constitutional basis for the BBC for the next 11 years, guaranteeing the BBC's independence and providing a framework for how the BBC is governed, regulated and funded. The current Royal Charter is due to expire at the end of 2016.
- 1.4 The new Charter will introduce full external regulation of the BBC by Ofcom. This means that Ofcom will be required to regulate all areas of content standards for the BBC to ensure it meets requirements. These requirements will be set out in the Code which, for the first time, will apply in full to the BBC.
- 1.5 Mindful of the fact that broadcasters and political parties will need to plan ahead for the various elections² taking place in May 2017, in this document we are setting out our proposed approach for regulating BBC editorial content in the areas of due impartiality, due accuracy, elections and referendums. Specifically, this will require amendments to: Section Five (due impartiality) of the Code; Section Six (elections and referendums) of the Code; and Ofcom's rules on party political and referendum broadcasts.
- 1.6 We propose that the new Section Six and PPRB rules come into effect on the publication of the statement in late February/ early March 2017. As part of the transitional arrangements for Ofcom to take on its responsibilities in relation to the BBC, it is envisaged that Sections Five (due impartiality) and Six (elections and referendums) of the revised Broadcasting Code, and Ofcom's rules on party political and referendum broadcasts, will apply to the BBC from 22 March 2017, the date when the first election period for the May 2017 elections commences.

Summary of proposals

- 1.7 In this document, we are proposing:

¹ As explained in Section 3 of this document, the list of larger parties is an important feature of Ofcom's rules in the area of elections.

² In May 2017, the following elections will be taking place:

- local (and mayoral) elections in England;
- local elections in Wales; and
- local elections in Scotland

- in Section 3 of this document, the removal of the concept of larger parties from both Section Six of the Code and the PPRB Rules. We propose giving greater editorial freedom to broadcasters to take decisions in the area of elections by reference to evidence of past electoral support and/or current support, whilst retaining the ability of candidates and parties to appeal to Ofcom about broadcasters' decisions. This change will impact on all Ofcom licensees as well as the BBC.
- also in Section 3 of this document, amendments to Section Six (elections and referendums) of the Code and the PPRB Rules so as to incorporate BBC UK Public Broadcasting Services ("BBC broadcasting services") and BBC UK Public On Demand Programme Services ("BBC ODPS"); and
- in Section 4 of this document, minor amendments to Section Five (due impartiality and due accuracy) of the Code so as to incorporate BBC broadcasting services and BBC ODPS.

Next steps

- 1.8 We invite representations from interested stakeholders on the matters set out in this consultation by no later than **5pm on 16 January 2017**. We intend to publish a statement setting out our decision by late February/early March 2017 at the latest. This will permit the broadcasters and political parties to plan ahead for the May 2017 elections.

Section 2

Introduction

What is the purpose of this consultation?

- 2.1 This document is the first of a series of consultation documents that Ofcom is publishing as it prepares for its new responsibilities of regulating the BBC. Specifically, in what follows, we lay out and ask for stakeholders' views upon:
- our proposal to remove the concept of larger parties from our rules in the area of elections³. We propose giving greater editorial freedom to broadcasters to take decisions in the area of elections by reference to evidence of past electoral support and/or current support, whilst retaining the ability of candidates and parties to appeal to Ofcom about broadcasters' decisions;
 - amendments to Section Six (elections and referendums) of the Code and the PPRB Rules so as to incorporate BBC UK Public Broadcasting Services ("BBC broadcasting services") and BBC UK Public On Demand Programme Services ("BBC ODPS"); and
 - minor amendments to Section Five (due impartiality and due accuracy) of the Code so as to incorporate BBC broadcasting services and BBC ODPS.
- 2.2 Ofcom is publishing its proposals in relation to the matters set out in paragraph 2.1, ahead of our proposals in other areas for the BBC, mindful of the fact that broadcasters and political parties will need to plan ahead for the various elections⁴ taking place in May 2017. We intend to publish our Statement in relation to these matters by late February/early March 2017 at the latest.
- 2.3 In the coming weeks, we intend to publish further consultation documents in the area of content standards as we prepare for our new BBC responsibilities, including:
- a review of the Broadcasting Code (other than in the areas of due impartiality, due accuracy, elections and referendums); and
 - a consultation on proposed procedures for investigating potential breaches by the BBC of the Broadcasting Code and for the consideration of sanctions.

Background and statutory objectives

- 2.4 It is Ofcom's principal duty, in carrying out its functions, to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition (section 3(1) of the Communications Act 2003 ("the Act")). In particular, and among other things, in carrying out its functions Ofcom is required to secure the application, in the case of all television and radio services, of standards that provide adequate

³ As explained in Section 3, the list of larger parties is an important feature of Ofcom's rules in the area of elections.

⁴ In May 2017, the following elections will be taking place:

- local (and mayoral) elections in England;
- local elections in Wales; and
- local elections in Scotland

protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e) of the Act).

- 2.5 Further, under section 319 of the Act, Ofcom is required to draw up a code for television and radio services, setting standards as appear to it best calculated to secure a number of standards objectives for the content of programmes. The standards Ofcom has set are contained in the Ofcom Broadcasting Code ("the Code").
- 2.6 Specifically, Section Five⁵ of the Code sets out rules reflecting standards objectives in the area of due impartiality and due accuracy. Section Six⁶ of the Code sets out rules for election and referendum-related editorial content.
- 2.7 In addition, section 333 of the Act gives Ofcom a specific duty with regard to regulating the inclusion of party political broadcasts (including party election broadcasts ("PEBs")) and referendum campaign broadcasts ("RCBs"). We have discharged this duty by including the necessary conditions in the relevant television and radio broadcast licences and by Ofcom's rules on Party Political and Referendum Broadcasts ("the PPRB Rules")⁷.
- 2.8 The full statutory background to Ofcom's specific duties in relation to this consultation is detailed in Annex 6.

BBC Charter Renewal

- 2.9 The Royal Charter is the constitutional basis for the BBC. It sets out the public purposes of the BBC, guarantees its independence, and provides a framework for its funding, governance and regulation. The current Royal Charter⁸ was granted in 2006 and is due to expire at the end of 2016.
- 2.10 The Agreement between the Secretary of State and the BBC sits alongside the Charter. It provides detail on many of the topics outlined in the Charter. The current Agreement⁹ was also made in 2006.
- 2.11 Under the current Charter and Agreement, regulatory oversight of the BBC's output is shared by the BBC Trust and Ofcom. There is an overlap of responsibilities in most areas of content standards, such as: protecting the under-eighteens; harm and offence; and crime. However, the enforcement of content standards in the areas of due impartiality and due accuracy; and elections and referendums are the responsibility solely of the BBC Trust.
- 2.12 A new draft Charter and Framework Agreement were published by the UK Government on 15 September 2016¹⁰. The Charter and Agreement will be finalised in Autumn 2016, and it is expected that they will come into effect on 3 April 2017. For the period to 3 April 2017, transitional arrangements will apply. It is envisaged that Sections Five (due impartiality) and Six (elections and referendums) of the

⁵ See https://www.ofcom.org.uk/data/assets/pdf_file/0024/86307/bc2015-07-section_5_due_impartiality.pdf

⁶ See https://www.ofcom.org.uk/data/assets/pdf_file/0026/86309/bc2015-08-section_6_elections_and_referendums.pdf

⁷ See https://www.ofcom.org.uk/data/assets/pdf_file/0015/36114/pprb_rules_march_2016.pdf

⁸ See https://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf

⁹ See http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/agreement.pdf

¹⁰ See <https://www.gov.uk/government/publications/draft-bbc-charter-and-draft-framework-agreement>

revised Broadcasting Code, and Ofcom's rules on party political and referendum broadcasts, will apply to the BBC from 22 March 2017.

- 2.13 The new Charter and Agreement will introduce full external regulation of the BBC by Ofcom. This means that Ofcom will be required to regulate all areas of content standards for the BBC to ensure it meets requirements.
- 2.14 Schedule 3, paragraph 3 of the draft Agreement requires that: BBC UK broadcasting services¹¹ comply with the requirements of the Code; and BBC ODPS also comply with the requirements of the Code so far as Ofcom determines them relevant.
- 2.15 Under the draft Agreement Ofcom must also impose on the BBC the requirements that Ofcom considers appropriate for requiring the inclusion, in such of the UK Public Services as Ofcom consider appropriate, of party political broadcasts (including PEBs) and of RCBs.
- 2.16 Ofcom has a duty to review and revise the Code from time to time when we consider it necessary. In light of Ofcom's new responsibilities for full external regulation of content standards for the BBC, it is necessary for our Code and PPRB rules to be updated. This document sets out the proposed changes to these rules.

Impact assessment and Equality Impact Assessment

- 2.17 This document does not contain a separate impact assessment. Instead the document as a whole assesses the impact of our proposals.
- 2.18 Ofcom is required by statute to have due regard to any potential impacts our proposals may have on particular "equality groups" i.e. persons sharing a protected characteristic, such as: sex, disability or race¹². In relation to equality (whether in Northern Ireland or the rest of the UK), we consider that the proposals in this document are likely to affect all citizens and consumers in the same way, and would not have any particular implications for the different equality groups. Our equality duties in Northern Ireland, under section 75 of the Northern Ireland Act 1998, require us to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. We consider that our proposals are consistent with these duties.

Next steps

- 2.19 We invite representations from interested stakeholders on the matters set out in this consultation by no later than **5pm on 16 January 2017**. We intend to publish a statement setting out our decision by late February/early March 2017 at the latest. This will allow broadcasters and political parties to plan ahead for the May 2017 elections.
- 2.20 We propose that the new Section Six and PPRB rules come into effect on the publication of the statement in late February/early March 2017. As part of the transitional arrangements for Ofcom to take on its responsibilities in relation to the BBC, it is envisaged that Sections Five (due impartiality) and Six (elections and referendums) of the revised Broadcasting Code, and Ofcom's rules on party political

¹¹ UK Public Services are the BBC services funded by the licence fee (excluding the World Service).

¹² See the Equality Act 2010.

and referendum broadcasts will apply to the BBC from 22 March 2017, the date when the first election period for the May 2017 elections commences.

Section 3

Proposed removal of the list of larger parties and amendments to Section Six of the Code and the PPRB Rules

- 3.1 Ofcom is asking stakeholders for their views on whether it should retain the concept of larger political parties for the purposes of carrying out its duties in the area of elections.
- 3.2 Ofcom's Broadcasting Code ("the Code") does not currently apply to BBC UK public services funded by the licence fee in the areas of elections and referendums and its PPRB Rules do not currently apply to the BBC. In this Section, we also lay out our proposed approach to regulating BBC UK Public Broadcasting Services ("BBC broadcasting services") and BBC UK Public On Demand Programme Services ("BBC ODPS") in these two areas under the new Charter and Agreement.

Statutory background

- 3.3 Ofcom has a number of statutory duties set by Parliament in the area of elections and referendums.

Broadcasters' editorial coverage of elections and referendums

- 3.4 Reflecting our duties to set broadcast standards in the area of due accuracy and due impartiality, we require licensed broadcasters' editorial coverage relevant to elections and referendums – e.g. news and current affairs programming – to comply with Section Five (due impartiality) and Section Six (elections and referendums) of the Code.
- 3.5 In addition, under section 93 of the Representation of the People Act 1983 ("the RPA"), Ofcom is required to adopt and secure that Ofcom-licensed broadcasters observe 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.
- 3.6 In other words, we are required to put in place rules with which the broadcasters must comply when they broadcast items which feature candidates, for example, discussing or raising issues about the constituencies or electoral areas they are contesting. This obligation is reflected in a number of statutory instruments with respect to broadcast items covering elections to the Scottish Parliament, the Welsh Assembly, the Northern Ireland Assembly, the European Parliament and the post of Police and Crime Commissioner¹³. In each case, before drawing up such a code of practice, we must have regard to any views expressed by the Electoral Commission. We have discharged this duty by means of rules in Sections Five and Six of the

¹³ 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.

Code, and in particular by imposing Rules 6.8 to 6.13 on constituency coverage and electoral area coverage in elections, and associated Guidance.

- 3.7 By virtue of section 93 of the RPA, the BBC has to adopt and must observe a code of practice with respect to the participation of candidates at a parliamentary or local government election in items broadcast by the BBC about the constituency or electoral area in question. The code of practice adopted by the BBC can either be: (a) a code of practice drawn up by the BBC, whether on its own or jointly with S4C and/or Ofcom; or (b) a code of practice drawn up by S4C and/or Ofcom. To date the BBC has published its code of practice on an annual basis ahead of the various elections that take place on an annual basis in May, across the UK. As with Ofcom, before drawing up a code of practice, the BBC must have regard to any views expressed by the Electoral Commission.

Party election broadcasts (“PEBs”), Party Political Broadcasts (“PPBs”) and Referendum Campaign Broadcasts (“RCBs”)

- 3.8 There is a long-standing ban on advertisements of a political nature on television or radio in the UK. It has been argued that allowing political advertising in the broadcast media would give an advantage to the best financed candidates, parties or organisations during elections and referendums. PEBs, PPBs and RCBs are, therefore, designed to offset the differential ability of parties to attract campaign funds. This free airtime is provided in the period prior to elections, in the case of PEBs (and also on a seasonal basis outside election campaigns, in the case of PPBs), and prior to referendums in the case of RCBs. These various types of broadcast allow qualifying parties (or designated organisations¹⁴ in the case of referendums) an opportunity to deliver their messages directly to the electorate through the broadcast media.
- 3.9 To help maintain the effectiveness of this system, Parliament has charged Ofcom with the duty of making rules regarding the allocation, length and frequency of PEBs, PPBs and RCBs and identifying the broadcasters that are required to transmit them. Specifically, section 333 of the Act provides that the regulatory regime for every licensed public service television channel, national radio service and local television service is to include conditions requiring the inclusion on that channel or service of party political broadcasts (including PEBs) and RCBs, and conditions requiring the adherence to rules made by Ofcom with respect to those broadcasts. We have discharged this duty by including the necessary conditions in the relevant television and radio broadcast licences and by Ofcom's rules on Party Political and Referendum Broadcasts (“the PPRB Rules”)¹⁵. In putting in place its rules in this area, Ofcom must have regard to the views of the Electoral Commission¹⁶.
- 3.10 Ofcom's PPRB Rules and Section Six of the Code impose certain obligations on broadcasters in relation to ‘larger parties’ which are defined in an Ofcom-produced list¹⁷. Stakeholders have questioned whether imposing requirements by reference to

¹⁴ Designated organisations are the lead campaigning groups designated by the Electoral Commission for each outcome of a referendum.

¹⁵ See https://www.ofcom.org.uk/data/assets/pdf_file/0015/36114/pprb_rules_march_2016.pdf.

¹⁶ By virtue of the Political Parties, Elections and Referendums Act 2000 (see section 11(3) and paragraph 4(6) of Schedule 12), in determining its policy with respect to party political broadcasts (including PEBs) and RCBs, the BBC must have regard to any views expressed by the Electoral Commission

¹⁷ See https://www.ofcom.org.uk/data/assets/pdf_file/0018/24048/larger-parties.pdf

such a list remains appropriate. In our May 2016 review of the list we said that, in the second half of 2016, we would review its suitability going forwards¹⁸.

The draft BBC Charter and Agreement

3.11 In relation to elections and referendums, the draft Agreement requires the following:

- a) under Schedule 3, paragraph 3¹⁹ of the draft Agreement, editorial coverage of elections and referendums included in BBC UK broadcasting services must observe the standards set by Ofcom under section 319 of the Act, and coverage in BBC ODPS must observe those standards so far as Ofcom determine them relevant; and
- b) under Schedule 3, paragraph 5, Ofcom must impose on the BBC the requirements they consider appropriate in relation to the inclusion of party political broadcasts (including party election broadcasts) and referendum campaign broadcasts in the BBC's UK Public Services.

Our proposals in relation to Section Six and the PPRB Rules

3.12 Ofcom has reviewed its rules in Section Six of the Code and the PPRB Rules to assess whether any amendments are necessary to ensure that they apply appropriately to the BBC in relation to elections and referendums, as set out in the draft Framework Agreement. We have also considered further the suitability of the concept of larger parties. This issue relates to all Ofcom licensees and not just the BBC.

3.13 Our proposals fall into three broad areas:

- larger parties: Ofcom's list of larger parties is currently a feature of both Section Six of the Code and the PPRB Rules. We are inviting stakeholders' views on our proposal to change the rules so that they no longer apply by reference to an Ofcom produced list of larger parties. Instead, we propose giving greater editorial freedom to broadcasters to take decisions in the area of elections by reference to evidence of past electoral support and/or current support, whilst retaining the ability of candidates and parties to appeal to Ofcom about broadcasters' decisions;
- Section Six of the Code: We are proposing various amendments to Section Six of the Code to reflect our proposals in relation to the list of larger parties and BBC ODPS. We propose providing that Ofcom's rules on constituency and electoral area reporting (currently Rules 6.8 to 6.13) should apply to the BBC if the BBC adopts them as its Code of Practice under section 93 of the RPA; and
- PPRB Rules: We are also proposing various amendments to the PPRB Rules to remove references to the list of larger parties and impose requirements on BBC Public Services.

¹⁸ See https://www.ofcom.org.uk/data/assets/pdf_file/0017/83105/larger_party_list_consultation.pdf, paragraph 1.22.

¹⁹ See Annex 6.

- 3.14 In setting out these proposed amendments, we in particular welcome the views of the Electoral Commission.

Larger parties

- 3.15 An important feature to date of Ofcom's various election rules is the list of larger parties²⁰. The PPRB Rules and Section Six of the Code impose obligations on broadcasters by reference to the list, which is contained in a self-standing annex to both the PPRB Rules and Section Six of the Code.
- 3.16 The PPRB Rules require certain licensed broadcasters to offer a minimum of two PEBs to each of the defined 'larger parties' (if a party is not on the list it can still qualify for PEBs). Further, in relation to broadcasters' own election programming, Section Six of the Code requires broadcasters in their editorial coverage to give "due weight"²¹ to the 'larger parties' and, when broadcasting items which feature candidates discussing or raising issues about the constituencies or electoral areas they are contesting, Rule 6.9²² requires that candidates representing the larger parties must be offered the opportunity to take part.
- 3.17 In March 2013, when we last conducted a review of the PPRB Rules and the Guidance to Sections Five and Six of the Code, we concluded²³ that, on balance, the advantages of retaining the concept of larger parties in both the PPRB Rules and Section Six of the Code outweighed the disadvantages. However, in recognition of stakeholder concerns that there had not been sufficient flexibility surrounding the concept of larger parties, we explained that, in future, we would carry out periodic reviews of the list with a view to updating it as appropriate. To date, we have carried out three reviews²⁴ of the list of larger parties ahead of the elections that have taken place in 2014, 2015 and 2016.
- 3.18 We are mindful that, during our various reviews of the list of larger parties, a number of stakeholders have questioned whether a list of political parties remains an appropriate mechanism for Ofcom to fulfil its duties in the area of elections. For example, the Electoral Commission has questioned whether the existence of the list itself creates an unnecessarily inflexible approach to regulating broadcasting at elections. In the May 2016 Review we therefore said that in the second half of 2016, we would review the suitability of the list going forwards and consider what alternative approaches there may be to discharge our regulatory functions. We considered that this would enable us to draw on the experience of having conducted three separate reviews of the list.

²⁰ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/larger-parties.pdf>. We previously termed this the list of 'major' parties.

²¹ See Rule 6.2 of the Code which states: "Due weight must be given to the coverage of larger parties during the election period. Broadcasters must also consider giving appropriate coverage to other parties and independent candidates with significant views and perspectives".

²² 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 larger parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)"

²³ See <http://stakeholders.ofcom.org.uk/binaries/consultations/ppbs/statement/statement.pdf>

²⁴ We undertook: a first review ahead of the May 2014 elections (see <http://stakeholders.ofcom.org.uk/consultations/major-political-parties-2014/>); a second review ahead of the May 2015 elections (see <http://stakeholders.ofcom.org.uk/consultations/major-parties-15/>); and a third review ahead of the May 2016 elections ("the May 2016 Review" – see <http://stakeholders.ofcom.org.uk/consultations/review-larger-parties-elections-5-May-2016/>).

- 3.19 Given that Ofcom is reviewing its election rules to encompass the BBC, we consider it is appropriate to carry out our review of the suitability of the list of larger parties at the same time. In this context, we are conscious that the BBC, in addition to its own Editorial Guidelines, publishes Election Guidelines on an annual basis, following approval by the BBC Trust. Typically, these have set out which parties the BBC considers are “larger” and “smaller” parties across Great Britain and in different devolved nations of the UK. These election guidelines also provide guidance to the various BBC services in relation to how they should approach the coverage of elections.
- 3.20 We have reviewed the various arguments both for and against removing the list of larger parties from Ofcom’s rules. In our view, the most logical criteria for determining editorial decisions in relation to election coverage under Section Six of the Code; and allocations of PEBs, under the PPRB Rules, are evidence of past electoral support (i.e. election results) and/or evidence of current support (e.g. opinion polls).
- 3.21 The criteria of past electoral support and/or current support are already established features of both Section Six of the Code and the PPRB Rules. Specifically, they are used by Ofcom in drawing up its list of larger parties and by broadcasters to make editorial decisions in relation to: including non-larger party candidates in broadcast items about constituencies and electoral areas²⁵; and allocations of PEBs to parties other than the larger parties²⁶. As we explain further below, we are proposing that broadcasters continue to make decisions under Section Six and the PPRB Rules by reference to evidence of past electoral support and/or current support, but do so in relation to all parties and candidates and not just non-larger party candidates and parties as at present.
- 3.22 Our proposal is, therefore, to provide that broadcasters use their own judgement, based on the criteria of past electoral support and/or current support, rather than being required to make some decisions by reference to Ofcom’s list of larger parties. Parties and candidates would retain their right to complain to Ofcom if they were dissatisfied by a broadcaster’s decision in relation to editorial coverage, or the allocation of a PEB.
- 3.23 We consider there are strong arguments for removing the list of larger parties and replacing it with a general requirement to base editorial decisions in relation to election coverage and PEB allocation on evidence of past electoral support and/or current support.
- 3.24 Firstly, the list could be argued to be an unnecessary restriction on broadcasters’ editorial freedom and to force broadcasters to take an overly inflexible approach in terms of PEB/PPB allocations and editorial decisions under the Code. Many broadcasters have the knowledge and expertise to cover elections in a duly impartial manner. The BBC has traditionally reached its own determination as to which are “larger” and “smaller” parties for the purposes of its election guidelines. We consider that it would be appropriate for broadcasters to base editorial decisions on the more

²⁵ Rule 6.10 of the Code states: “In addition to Rule 6.9, broadcasters must offer the opportunity to take part in constituency or electoral area reports and discussions, to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates...”.

²⁶ Rule 15 of the PPRB Rules states: “Licensees should consider making additional allocations of PEBs to other registered parties (which satisfy the criteria at Rule 14) 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...”.

flexible criteria of past electoral support and/or current support as opposed to an Ofcom list of larger parties.

- 3.25 It could be argued that the list does not adequately reflect the current fragmented state of the political landscape and it may militate against smaller political parties who have materially increased their popularity over relatively short time-frames. Without the list, and by using evidence of past electoral support and/or current support, broadcasters could reflect in a timelier way changes occurring in the UK political landscape (e.g. parties gaining or dropping support). Broadcasters would have greater flexibility not to feature candidates of current 'larger' parties with little or no support in some areas of the UK. On a related point, the fact that Ofcom has designated UKIP a larger party in two countries, and the Green Party only in certain elections in London, suggests the list may be becoming too complex and unable to cope with the diversity of the current political landscape.
- 3.26 Several broadcasters have argued that the requirement in Rule 6.9 of the Code to offer all candidates of the larger parties the opportunity to take part in constituency/electoral area broadcast items is unwieldy and unworkable, especially in short news items. For example, in 2016, there were five larger parties standing in the elections for: The London Assembly; Mayor of London; and the Welsh Assembly. By using evidence of past electoral support and/or current support, broadcasters could take account of evidence in different constituencies and electoral areas.
- 3.27 We consider that a 'one size fits all' list does not necessarily fit all situations. Some broadcasters broadcast to small broadcast footprints, and a national list of larger parties may not reflect the political complexion within those local broadcast areas. With greater flexibility, broadcasters could more easily reflect their local political landscape and comply with the principles of the rules without the need for a prescriptive one size fits all approach.
- 3.28 We recognise there are arguments for retaining the concept of larger parties within Ofcom's election rules. It provides a degree of certainty for broadcasters in making PEB/PPB allocations and editorial decisions and its removal may lead to less consistency in the treatment of parties. It might be argued that the limits set by the constituency reporting rules are proportionate to ensure that, in the sensitive area of election broadcasting, candidates receive appropriate coverage. However, the growing complexity of the political landscape across the UK nations is making it increasingly difficult to produce a list that is suitable for all broadcasters. We therefore consider that it is appropriate to give broadcasters the editorial freedom to come to decisions based on their own knowledge and expertise without enforcing a one size fits all approach. Parties and candidates would retain the assurance provided by their ability to appeal broadcasters' decisions to Ofcom.
- 3.29 It could also be argued that certain parties have a 'national' status (for example, across Great Britain, or in any of the devolved nations) across a range of elections, and therefore merit an automatic but limited right to articulate their views in all broadcast areas – however small – at all elections. However, in our view, this has to be balanced against the rate of change in UK politics, and recent growing political fragmentation, which poses risks that the list may not accurately reflect the varying levels of support for different political parties across the nations of the UK. The current political fragmentation also creates a logistical challenge for broadcasters, who are required to include candidates and/or viewpoints from a greater number of larger parties (and candidates) in their election coverage. Removing the list may assist as broadcasters would only be obliged to include parties and candidates with

past electoral support and/or evidence of current support in particular constituencies or electoral areas.

- 3.30 We recognise that there are a large number of elections across the UK on an annual basis and that, without a list, broadcasters would have to regularly reassess party support, which might be costly in terms of resources. Smaller broadcasters may not have the resources to do this, and so might be less inclined to provide election programming. Therefore, to mitigate the possible resource burden on smaller broadcasters, we are proposing that Ofcom would produce an annual digest of evidence of past electoral support and/or current support ahead of each set of elections that take place in May. Ofcom has published guidance for broadcasters²⁷ on factors to take into account when considering evidence of past electoral support and/or current support for the purposes of Section Six of the Code.
- 3.31 Taking into account all the arguments set out above and the mitigating step proposed, we consider that the advantages of removing the list now outweigh the disadvantages. We are seeking stakeholders' views.

Section Six of the Code and the PPRB Rules

- 3.32 If the list of larger parties is removed from Ofcom's election rules, this will require amendments to both Section Six of the Code and the PPRB Rules. As noted in paragraph 3.21 above, we are proposing to replace the specific requirements in relation to larger parties with a general requirement on all broadcasters to base: editorial decisions in relation to election coverage under Section Six of the Code; and allocations of PEBs and PPBs under the PPRB Rules, on evidence of past electoral support and/or evidence of current support. We would envisage this working as follows:
- editorial decisions under Section Six of the Code: Under Section Six of the Code, at present, broadcasters must: give due weight to the larger parties during the election period²⁸; and offer the opportunity to larger party candidates to take part in broadcast items about their constituencies or electoral areas featuring candidates²⁹. We are proposing instead that in taking such editorial decisions, broadcasters will take into account evidence of past electoral support and/or evidence of current support; and
 - allocations of PEBs: Under the present PPRB Rules, larger parties must be offered at least two PEBs during relevant election campaigns. We are proposing removing this rule and stating that all parties that fulfil basic criteria (such as³⁰ contesting one sixth or more of the seats up for election in the case of first-past-the-post, multi-constituency elections) should qualify for one PEB. Above these minima, broadcasters would consider whether it was

²⁷ https://www.ofcom.org.uk/data/assets/pdf_file/0020/25643/section6.pdf

²⁸ See Rule 6.2, which states: "Due weight must be given to the coverage of larger parties during the election period. Broadcasters must also consider giving appropriate coverage to other parties and independent candidates with significant views and perspectives".

²⁹ See Rule 6.9, which states: "If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the larger parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)".

³⁰ See Rule 15 of the PPRB Rules set out in Annex 4 for further details.

appropriate to offer parties additional PEBs based on evidence of their past electoral support and/or current support at a particular election.

- 3.33 We welcome views from stakeholders on the suitability of the list of larger parties going forwards, including our proposal set out in paragraph 3.30. Ofcom particularly encourages responses from smaller broadcasters who could be most affected by the proposed change.
- 3.34 We have set out our proposed amendments to the PPRB Rules in Annex 4 and to Section Six in Annex 5 to take account of the proposed removal of the list of larger parties from our rules.

Question 1: Do you agree with Ofcom's proposal to remove the list of larger parties from Section Six of the Code and the PPRB Rules? Give reasons for your answer.

Question 2: Do you agree with the proposal laid out in paragraph 3.30 that Ofcom produce an annual digest of electoral support? Give reasons for your answer.

Proposed Section Six amendments

- 3.35 Having reviewed our new regulatory obligations in relation to BBC services in the area of elections and referendums, we consider that the rules in Section Six should also apply to the BBC's broadcasting services. We are proposing, in addition to removing the references to larger parties, that Section Six should be amended³¹ as follows:
- 3.36 Scope of services: Consistent with the requirement in the draft Framework Agreement, referred to in paragraph 3.11 above, concerning the application of the Code to BBC ODPS, we consider that Section Six of the Code should also apply to such services. On a related point, we are proposing that: Rule 6.4³² (Discussion of election and referendum issues on polling day); Rule 6.6³³ (Prohibition on candidates appearing as news interviewers, interviewers or presenters during election and referendum periods); and Rule 6.7³⁴ (Appearances by candidates in non-political programmes) should make clear that the BBC would not be required to remove archive content on BBC ODPS during the relevant periods.
- 3.37 Code of practice on electoral area and constituency reporting: As explained in paragraph 3.7, under section 93 of the RPA the BBC has 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. We

³¹ These amendments are reflected in Annex 6 below

³² Rule 6.4 states: "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.)"

³³ Rule 6.6 states: "Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period".

³⁴ Rule 6.7 states: "Appearances by candidates (in UK elections) or representatives (of permitted participants in UK referendums) in non-political programmes that were planned or scheduled before the election or referendum period may continue, but no new appearances should be arranged and broadcast during the period".

propose amending Section Six of the Code to provide that Rules 6.8 to 6.12³⁵ will apply to the BBC if the BBC has adopted them under the RPA as its code of practice. This is in line with the provision for S4C, which has the same obligations as the BBC under section 93.

Guidance

- 3.38 When this review is complete we will publish on Ofcom's website updated Guidance to Section Six of the Code. In the present Guidance, we provide background information to Rule 6.10³⁶ and in particular factors broadcasters should take into account when considering evidence of past electoral support and/or current support. We propose retaining this information in our Guidance to new Rule 6.9³⁷. The updated Guidance to Section Six of the Code will also include more recent published decisions in the area of elections and referendums. In particular, we intend to amend the Guidance to Rule 6.3³⁸ to reflect paragraphs 38 to 41 of our decision in the single case³⁹ considered by Ofcom's Election Committee during the recent referendum on the UK's membership of the European Union.

Question 3: Do you agree with the proposed amendments to Section Six set out in Annex 5 a) in relation to larger parties and b) to include BBC broadcasting services and BBC ODPS? Give reasons for your answer.

Proposed PPRB Rules amendments

- 3.39 As already mentioned in paragraph 3.11, under Schedule 3, paragraph 5 of the draft Agreement Ofcom must also impose on the BBC the requirements that Ofcom considers appropriate for requiring the inclusion, in such of the UK Public Services as Ofcom consider appropriate, of party political broadcasts (including PEBs) and of RCBs. The provisions laid out in Schedule 3, paragraph 5 replicate the duties already placed upon Ofcom in relation to certain licensed broadcasters under section 333 of the Act, as discussed in paragraph 3.9 above.
- 3.40 Having reviewed our new regulatory obligations in relation to BBC services in the area of PEBs, PPBs and RCBs, we consider that the current PPRB Rules should also apply to the BBC's broadcast output.
- 3.41 However, we are proposing, in addition to removing the references to larger parties, that the PPRB Rules should be amended⁴⁰ as follows:

³⁵ Taking into account our proposed amendments (currently Rules 6.8 to 6.13).

³⁶ See footnote 25.

³⁷ Our proposed new rule 6.9 states: "If a candidate takes part in an item about his/her particular constituency, or electoral area, then broadcasters must offer the opportunity to take part in such items 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.)"

³⁸ Rule 6.3 states: "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".

³⁹ *Decision of the Election Committee on a due impartiality and due weight complaint brought by Vote Leave Limited in relation to ITV's coverage of the EU Referendum*, published 10 June 2016 (See https://www.ofcom.org.uk/data/assets/pdf_file/0022/64840/decision-election-eu-referendum.pdf).

⁴⁰ These amendments are reflected in Annex 5 below

- 3.42 **Scope of services:** We have considered the current range of BBC services that carry PPBs, PEBs and RCBs under the BBC's own rules. We are not proposing any changes to which services should be required to carry PPBs, PEBs and RCBs when the BBC becomes subject to regulation by Ofcom in this area as we consider the current range and reach of services to be appropriate. We are therefore proposing that the PPRB Rules are amended to include those BBC broadcasting services which currently transmit PEB, PPBs and RCBs.
- 3.43 **Qualification for PEBs:** As mentioned in paragraph 3.16 above, under the present PPRB Rules, larger parties must be offered at least two PEBs during relevant election campaigns. We are proposing removing this rule and stating that all parties that fulfil basic criteria (such as contesting one sixth or more of the seats up for election in the case of first-past-the-post, multi-constituency elections or, for proportional representation systems of election, criteria set by the broadcasters 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) should qualify for one PEB. Above these minima, parties would continue to be considered for additional PEBs based on evidence of their past electoral support and/or current support at a particular election.
- 3.44 **Qualification for PPBs:** Under the current PPRB Rules, only those parties that are designated as larger parties in particular countries of the UK can qualify for seasonal PPBs outside election periods. Given our proposal to remove the concept of larger parties from the PPRB Rules, we have considered what would be an appropriate mechanism for the allocation of PPBs. In this context, we note that the BBC has recently⁴¹ established a mechanism for allocating PPBs whereby, in each nation, a party will qualify for such broadcasts if: the party holds one seat or more in that nation in any relevant parliament or assembly; and evidence of its past electoral support and/or current support at a particular election or in that nation means it would be appropriate for it to do so. We have considered the BBC's approach to the allocation of PPBs and, in our view, it is a reasonable and practical method for the allocation of PPBs on all relevant services (such as regional Channel 3 services). We are therefore proposing to provide for this approach in the PPRB Rules.
- 3.45 **Scheduling:** At present under the PPRB Rules, different scheduling rules apply for different types of broadcast and entity. For example, PEBs for the larger parties must be carried in peak time on television and radio. Given that we are proposing the removal of the concept of larger parties from the PPRB Rules, and the PPRB Rules will be applying to a large number of services (including BBC broadcasting services) across television and radio, we are proposing to simplify the scheduling rules so that all types of broadcast (i.e. PEBs, PPBs and RCBs) must be scheduled between 5.30pm and 11.30pm on television, and 6.00am and 10.00pm on radio services.

Question 4: Do you agree with the proposed amendments to the PPRB Rules set out in Annex 4 a) in relation to larger parties and b) to include BBC broadcasting services? Give reasons for your answer.

⁴¹ See http://www.bbc.co.uk/bbctrust/our_work/editorial_standards/ppb_2015.

Section 4

Proposed amendments to Section Five of the Code: due impartiality and due accuracy

Introduction

- 4.1 In this Section, we lay out Ofcom's proposed approach to regulating BBC services in the area of due impartiality and due accuracy.
- 4.2 To date, not all of Ofcom's Broadcasting Code ("the Code") has applied to BBC services funded by the licence fee. Two areas in particular where to date the BBC Trust has retained sole regulatory competence are: first, in the area of due impartiality and due accuracy; and second, in the related area of elections and referendums.

Statutory Framework

- 4.3 The full statutory background to Ofcom's specific duties in relation to this consultation is detailed in Annex 6.
- 4.4 In summary, the new draft Charter and Agreement requires that BBC broadcasting services comply with the Code and BBC ODPS comply so far as Ofcom determines the Code relevant to those services.
- 4.5 Section Five of the Code contains standards required to secure objectives set out in section 319 of the Communications Act ("the Act") which relate to due accuracy and due impartiality, which are that:
 - a) "news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with" (section 319(2)(c)); and
 - b) "news included in television and radio services is reported with due accuracy" (section 319(2)(d)).
- 4.6 The "impartiality requirements" set out in section 320 of the Act, and referred to in paragraph 3.4(a), in summary require:
 - a) the exclusion of "all expressions of the views or opinions of the person providing the service" on matters of political or industrial controversy and matters relating to current public policy (section 320(1)(a));
 - b) the preservation of due impartiality on matters of political or industrial controversy and matters relating to current public policy (section 320(1)(b)); and
 - c) the prevention, in the case of non-national radio services of the "giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies" on matters of political or

industrial controversy and matters relating to current public policy (section 320(1)(c)).

Our proposals in relation to Section Five

- 4.7 Ofcom has reviewed its rules in Section Five of the Code to assess whether any amendments are necessary to ensure that Section Five applies appropriately to BBC UK Public Broadcasting Services (“BBC broadcasting services”) and BBC UK Public On Demand Programme Services (“BBC ODPS”).
- 4.8 Taking into account that the draft Agreement requires the BBC to observe the standards set under section 319 of the Act, we consider that, subject to two amendments outlined in paragraphs 4.13 and 4.14 below, the current rules in Section Five should also apply to the BBC.
- 4.9 Therefore, we propose that the rules applied to Ofcom-licensed services requiring that: television and radio news should be duly accurate and duly impartial; and non-news content dealing with matters of political or industrial controversy and matters relating to current public policy should be presented with due impartiality, should also apply to the BBC.
- 4.10 Central to the application of the rules is the concept of “due impartiality”. Section Five explains that “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. The approach to due impartiality may vary according to contextual factors such as the type of programme and channel, and the likely expectations of the audience. In applying the rules, the BBC and Ofcom will be required to take such factors into account and exercise their expertise and judgement.
- 4.11 Ofcom has published guidance on the interpretation and application of the rules in Section Five. The guidance is available at: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/programme-guidance>.
- 4.12 The two amendments, which we consider necessary for compliance with paragraph 3 of Schedule 3 to the draft Agreement, are as follows:
- 4.13 Scope of services: Consistent with the requirement referred to in paragraph 3.11 above, we consider that Section Five of the Code should apply to BBC ODPS as well as to BBC broadcasting services. In particular, we are proposing to amend Rule 5.2 to make clear how it applies to BBC ODPS.⁴²
- 4.14 Application of Section Five to non-national⁴³ BBC radio services: Section 320(1)(c) of the Act requires that non-national radio services licensed by Ofcom do not give undue prominence, in the programmes included in the service, to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy. This provision is reflected in Rule 5.13⁴⁴ of the Code, which considers “all the programmes included in [a service]

⁴² We are proposing amending Rule 5.2 as follows (with amendments shown in bold and underlined: “Significant mistakes in news should normally be acknowledged and corrected on air quickly **(or, in the case of BBC ODPS, corrected quickly)**). Corrections should be appropriately scheduled **(or, in the case of BBC ODPS, appropriately signalled to viewers)**”.

⁴³ i.e. services broadcast for reception in a particular area or locality of the UK.

⁴⁴ Rule 5.13 states: “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

taken as a whole". However, the draft Agreement has made clear⁴⁵ that all BBC radio services will be treated as national radio services for the purposes of section 320 of the Act. This means that section 320(1)(c) of the Act will not apply to any BBC services. We are therefore proposing to make clear that Rules 5.5 to 5.12 will apply to all BBC radio services as well as BBC television services and BBC ODPS, and Rule 5.13 of the Code will not apply to any BBC broadcasting service or BBC ODPS.

- 4.15 When this review is complete, we will publish on Ofcom's website updated Guidance to Section Five of the Code, reflecting our decisions in relation to the amendments proposed above. This updated Guidance will also include more recent published decisions in the area of due impartiality and due accuracy.

Question 5: Do you have any comments on Ofcom's proposed amendments set out in Annex 5 for the purpose of regulating BBC broadcasting services and BBC ODPS in the area of due impartiality and due accuracy?

current public policy in all the programmes included in any service (listed above) taken as a whole". The Code makes clear that this rule applies to "local radio services (including community radio services), local digital sound programme services (including community digital sound programme services) and radio licensable content services".

⁴⁵ Schedule 3, paragraph 3 of the draft Agreement states: "In providing the UK Public Broadcasting Services, the BBC must observe the standards set under section 319 of the Communications Act 2003 ("Ofcom's Standards Code"). For the purposes of the requirements in the Standards Code which give effect to section 320 of that Act (special impartiality requirements), the UK Public Services which are radio services will be treated as national radio services."

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, **by 5pm on 16 January 2017**.
- A1.2 We strongly prefer to receive responses via the online form at <https://www.ofcom.org.uk/consultations-and-statements/category-2/broadcast-impartiality-accuracy-and-elections-rules-review/>. We also provide a cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>) for responses sent by email or post; please fill this in, as it helps us to maintain your confidentiality, and speeds up our work. You do not need to do this if you respond using the online form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to electionrulesreview@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>).
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- Adam Baxter
Fifth Floor
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.6 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.7 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 3. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.8 If you want to discuss the issues and questions raised in this consultation, please contact Adam Baxter on 020 7981 3236, or by email to adam.baxter@ofcom.org.uk

Confidentiality

- A1.9 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe

it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, www.ofcom.org.uk, as soon as we receive them.

- A1.10 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.11 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.12 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>

Next steps

- A1.13 Following this consultation period, Ofcom plans to publish a statement in late February/early March 2017.
- A1.14 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

Ofcom's consultation processes

- A1.15 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.16 If you have any comments or suggestions on how we manage our consultations, please call our consultation helpdesk on 020 7981 3003 or email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.

If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601
Email steve.gettings@ofcom.org.uk

Annex 2

Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. 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

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 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 for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

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 Name/contact details/job title

Whole response Organisation

Part of the response 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 3

Consultation questions

Question 1: Do you agree with Ofcom's proposal to remove the list of larger parties from Section Six of the Code and the PPRB Rules? Give reasons for your answer.

Question 2: Do you agree with the proposal laid out in paragraph 3.30 that Ofcom produce an annual digest of electoral support? Give reasons for your answer.

Question 3: Do you agree with the proposed amendments to Section Six set out in Annex 5 a) in relation to larger parties and b) to include BBC broadcasting services and BBC ODPS? Give reasons for your answer.

Question 4: Do you agree with the proposed amendments to the PPRB Rules set out in Annex 4 a) in relation to larger parties and b) to include BBC broadcasting services? Give reasons for your answer.

Question 5: Do you have any comments on Ofcom's proposed amendments set out in Annex 5 for the purpose of regulating BBC broadcasting services and BBC ODPS in the area of due impartiality and due accuracy?

Annex 4

Proposed amendments to the PPRB Rules

(Proposed amendments are shown in **bold and underlined**)

Introduction

1. Section 333 of the Communications Act 2003 (“the Act”) requires Ofcom to ensure that Party Political Broadcasts (“PPBs”) (including Party Election Broadcasts (“PEBs”)) and Referendum Campaign Broadcasts (“RCBs”) on behalf of registered political parties and designated referendum organisations⁴⁶ are included in every licensed public service television channel (regional Channel 3⁴⁷, Channel 4, Channel 5), every local digital television programme service, and every national (i.e. UK-wide, commercial) analogue radio service, and their digital simulcast services (Classic FM, Talksport and Absolute Radio AM) (“the Licensees”).
2. **The BBC Agreement requires Ofcom to ensure that PPBs and RCBs are included in such of the BBC’s UK Public Services as Ofcom consider appropriate. These rules also apply to the following BBC services in accordance with the BBC Agreement: BBC One; BBC Two; BBC Radio Two; BBC Radio Four; BBC London Radio; BBC Radio Scotland; BBC Radio Nan Gaidheal⁴⁸; BBC ALBA; BBC Radio Wales; BBC Radio Cymru⁴⁹; BBC Radio Foyle; and BBC Radio Ulster (“the BBC Services”).**
3. This document contains the Rules which Ofcom has made in accordance with section 333 of the Act **and the BBC Agreement**. The Rules reflect minimum requirements which Licensees **and BBC Services (“the Relevant Services”)** 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 Relevant Services** to exceed these minimum requirements.
4. 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 Relevant Services** in the first place. When **Licensees Relevant Services** 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 Relevant Service** if they choose to dispute any part of the decision.

⁴⁶ See section 333(3) of the Act, and sections 37 and 127 of the Political Parties, Elections and Referendums Act 2000

⁴⁷ Excluding Channel TV; this section of the Act does not apply in the Channel Islands

⁴⁸ **Broadcast in Gaelic.**

⁴⁹ **Broadcast in Welsh.**

5. If any dispute remains unresolved between any **licensee Relevant Service** 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 **licensees Relevant Service** to Ofcom for determination under these Rules. For this purpose, **licensees Relevant Services** and political parties/designated organisations should follow Ofcom's Procedures on the referral and determination of disputes under these Rules.
6. Section **6-Six** of Ofcom's Broadcasting Code⁵⁰ ("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.
7. **Licensees Relevant Services** 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

8. General election broadcasts will be carried by all of the **licensees Relevant Services** named above (except local digital television programme service licensees, **BBC Two, BBC Radio Two, BBC Radio Four, BBC Radio London and BBC ALBA**). Broadcasts for European Parliamentary elections will be carried by regional Channel 3 services, **and** Channel 5, **and BBC One**.
9. RCBs will be carried by all of the Licensees named above (except local digital television programme service licensees) **and BBC One, BBC Two, BBC Radio Two, BBC Radio Four** in the case of a UK referendum. **RCBs will be carried or** by the relevant regional Channel 3 licensee, **BBC One, and by BBC Radio Scotland, BBC Radio Nan Gaidheal, BBC ALBA, BBC Radio Wales, BBC Radio Cymru, BBC Radio Foyle and BBC Radio Ulster as relevant** in the case of nations/regions referendums⁵¹.
10. The regional Channel 3 licensee⁵² **and BBC One** will additionally carry: local election broadcasts in those UK nations/regions⁵³ where such elections are taking place; broadcasts in the relevant nations/regions for Scottish Parliament, Welsh Assembly, Northern Ireland Assembly elections; **and** broadcasts for the elections for the London Assembly and Mayor of London⁵⁴. **The regional Channel 3**

⁵⁰ The Broadcasting Code can be found at <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

⁵¹ ~~For the purposes of RCBs to be broadcast in relation to the Scottish independence referendum, the relevant regional Channel 3 licensees are those for the following regions: Central Scotland; the North of Scotland; and Borders.~~

⁵² For the purposes of PEBs to be broadcast in relation to Scottish elections, the relevant regional Channel 3 licensees are those for the following regions: Central Scotland; the North of Scotland; and Borders.

⁵³ **BBC Two will not be obliged to carry PEBs for English local elections.**

⁵⁴ The relevant Channel 3 licensee, **BBC One and BBC Two** will not be obliged to carry PEBs in respect of: Mayoral elections (other than London); Police and Crime Commissioner elections; by-elections of any kind; English Parish Council elections; Scottish Community Council elections; and Welsh Community Council elections.

licensee and BBC One will carry, and PPBs **for the “larger parties”** in **each nation of** the United Kingdom on a seasonal basis (as set out in Rule 21).

11. BBC One, BBC Radio Scotland, BBC Radio Nan Gaidheal, BBC Radio Wales, BBC Radio Cymru, BBC Radio Foyle and BBC Radio Ulster will carry broadcasts in the relevant nations/regions for Scottish Parliament, Welsh Assembly and Northern Ireland Assembly elections.

12. Local digital television programme service licensees will carry: local election broadcasts in those UK nations/regions where such elections are taking place. The local digital television programme service licensee for London **and BBC Radio London** will also carry broadcasts for the elections for the London Assembly and Mayor of London⁵⁵.

Political parties / Designated Referendum Organisations

13. PEBs and PPBs may only be allocated to political parties registered by the Electoral Commission. RCBs may only be allocated to organisations as designated by the Electoral Commission.

12. The “larger parties” for each nation in the United Kingdom are defined in the Ofcom list of Larger Parties⁵⁶.

Allocation of broadcasts

PEBs

14. Before a General Election, and in the case of other elections where appropriate, each **larger registered** party (**referred to in Rule 12**) should be offered (**subject to Rules 15 and 16**) **at least two one 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 Channel 5. In every case, the number of PEBs should be determined having regard to the circumstances of a particular election, the nation in which it is held, and the individual party's past electoral support and/or current support in that nation (see Rule 16).

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

16. **Licensees Relevant Services** should consider making additional allocations of PEBs to **other** registered parties (which satisfy the criteria at Rule 15) if evidence of their past electoral support and/or current support at a particular election or in a

⁵⁵ Local digital television programme service licensees will not be obliged to carry PEBs in respect of: General Elections; European Parliamentary Elections; Scottish Parliament, Welsh Assembly and Northern Ireland Assembly elections; Mayoral elections (other than London); Police and Crime Commissioner elections; by-elections of any kind; English Parish Council elections; Scottish Community Council elections; and Welsh Community Council elections.

⁵⁶ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/larger-parties.pdf>

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 larger parties do.~~

17. In determining allocations of PEBs at elections, the four nations of the UK should be considered separately.
18. In accordance with Rules **8** to **12** 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 **and relevant BBC Service(s)** in the appropriate regions of those nations.
19. Parties which qualify for a PEB in all three nations of England, Scotland and Wales will additionally be offered a PEB on Channel 4 (at General Elections), Channel 5 (at General Elections and European Elections) and the UK-wide analogue radio services (at General Elections) (provided these broadcasters are carrying the relevant series of broadcasts; see Rules **8** to **12** above). The purpose of a PEB must not be to promote any particular outcome of a referendum.
20. Where a local digital television programme service licensee is required to broadcast a PEB as a result of Rule **12**, local digital television programme service licensees will carry the same PEB as broadcast by the relevant Channel 3 licensee.

PPBs / RCBs

21. **In each nation of the UK, parties will be offered one or more PPBs over a 12-month period if:**
 - **a party holds one seat or more in that nation in any relevant parliament or assembly⁵⁷; and**
 - **evidence of their past electoral support and/or current support at a particular election or in that nation means it would be appropriate to do so.**
22. **Larger Parties** in Great Britain (**subject to Rule 21**) will be offered one PPB in each of the following three periods: Autumn; Winter; and Spring. **Larger Parties** in Northern Ireland (**subject to Rule 21**) 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.
23. 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

⁵⁷ **Relevant parliaments and assemblies:**

- **The House of Commons;**
- **The Scottish Parliament;**
- **The National Assembly for Wales;**
- **The Northern Ireland Assembly; and**
- **The European Parliament.**

24. 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

25. PEBs, PPBs and RCBs on television ~~on behalf of 'larger 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 larger 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 between~~ 5.30pm ~~and to~~ 11.30pm.
26. ~~UK RCBs and PEBs for larger 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~~ PEBs and RCBs on radio must be carried between 6.00am and 10.00pm.

Annex 5

Proposed amendments to Section Five and Section Six of the Code

- A5.1 This is the first of a series of consultation documents that Ofcom is publishing as it prepares for its new responsibilities of regulating the BBC. Ofcom will shortly be consulting on proposed amendments to the rest of the Code, including to the introductory sections “Legislative Background to the Code” and “How to Use the Code”.
- A5.2 In relation to the BBC, those introductory sections will explain that the Code applies to radio and television content (other than the World Service), and to BBC UK Public On Demand Programme Services (“BBC ODPS”), unless expressly stated otherwise. They will provide that “broadcaster” includes the BBC as provider of BBC ODPS; and “broadcast” and “broadcasting” include making programmes available on BBC ODPS. In applying the Code to BBC ODPS, the on-demand nature of the service should be taken into account.

(Proposed amendments are shown in **bold and underlined**)

Section Five: Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions

(Relevant legislation includes, in particular, sections 319(2)(c) and (d), 319(8) and section 320 of the Communications Act 2003, **the BBC Charter and Agreement** and Article 10 of the European Convention on Human Rights.)

This section of the Code does not apply to BBC services funded by the licence fee, which are regulated on these matters by the BBC Trust.

Principles

To ensure that news, in whatever form, is reported with due accuracy and presented with due impartiality.

To ensure that the special impartiality requirements of the Act are complied with.

Rules

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.

Due impartiality and due accuracy in news

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

impartiality.

- 5.2 Significant mistakes in news should normally be acknowledged and corrected on air quickly (**or, in the case of BBC ODPS, corrected quickly**). Corrections should be appropriately scheduled (**or, in the case of BBC ODPS, appropriately signaled to viewers**).
- 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.

Special impartiality requirements: news and other programmes

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.

The exclusion of views or opinions

(Rule 5.4 applies to television and radio services (except restricted services) **and to BBC ODPS**.)

- 5.4 Programmes in the services (listed above) 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.

The preservation of due impartiality

(Rules 5.5 to 5.12 apply to television programme services, teletext services, national radio and national digital sound programme services, **all BBC radio services and BBC ODPS**.)

- 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 (listed above). This may be achieved within a programme or over a series of programmes taken as a whole.

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.

- 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 air⁵⁸.
- 5.7 Views and facts must not be misrepresented. Views must also be presented with due

⁵⁸ **For BBC ODPS this should be made clear to the audience by appropriate signalling to the audience.**

weight over appropriate timeframes.

- 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.
- 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.
- 5.10A 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.)

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.

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

- 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 (listed above) in each programme or in clearly linked and timely programmes.

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.

- 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.

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

(Rule 5.13 applies to local radio services (including community radio services), local digital sound programme services (including community digital sound programme services) and radio licensable content services. **For the avoidance of doubt, it does not apply to any BBC services.**)

- 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 (listed above) taken as a whole.

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.

Section Six: Elections and Referendums

(Relevant legislation includes, in particular, sections 319(2)(c) and 320 of the Communications Act 2003, **the BBC Charter and Agreement** and Article 10 of the European Convention on Human Rights. Broadcasters should also have regard to relevant sections of the Representation of the People Act 1983 (as amended) (“RPA”) – see in particular sections 66A, 92 and 93 (which is amended by section 144 of the Political Parties, Elections and Referendums Act 2000).)

~~This section of the Code does not apply to BBC services funded by the licence fee, which are regulated on these matters by the BBC Trust.~~

Rules made under section 333 of the Communications Act 2003 (regarding party election broadcasts, party political broadcasts and referendum campaign broadcasts), **and** paragraph 18 of Schedule 12 **and the BBC Agreement** are contained in *Ofcom Rules on Party Political and Referendum Broadcasts* on the Ofcom website. However, such broadcasts are also required to comply with the relevant provisions of this Code, for example the provisions regarding harm and offence – notwithstanding that the content is normally the responsibility of the relevant political parties.

Principle

To ensure that the special impartiality requirements in the Communications Act 2003 and other legislation relating to broadcasting on elections and referendums, are applied at the time of elections and referendums.

Rules

Programmes at the time of elections and referendums

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.

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 “election”:

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

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.

6.2 Due weight must be given to the coverage of **larger parties and independent candidates** during the election period. **In determining the appropriate level of coverage to be given to parties and independent candidates broadcasters must take into account evidence of past electoral support and/or current support.** Broadcasters must also consider giving appropriate coverage to **other** parties and independent candidates with significant views and perspectives.

Meaning of “larger party”:

At present larger parties for each nation in the United Kingdom are defined in the Ofcom list of larger parties (see <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/larger-parties.pdf>).

Meaning of “election period”:

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

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.

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” 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.

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.) **BBC ODPS are not required to remove archive content for the period when the polls are open.**

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.)

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. **BBC ODPS are not required to remove archive content for the election or referendum period.**

- 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. **BBC ODPS are not required to remove archive content for the election or referendum period.**

Constituency coverage and electoral area coverage in elections

(Rules 6.8 to 6.12 will only apply to S4C **and/or the BBC** if **S4C the relevant broadcaster** has adopted them under the RPA as its Code of Practice.)

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

Meaning of “electoral area”:

Electoral area (for example electoral division, borough ward or other area) is the local government equivalent to the parliamentary term “constituency”.

- 6.9 If a candidate takes part in an item about his/her particular constituency, or electoral area, then ~~candidates of each of the larger parties~~ **broadcasters must be offered the opportunity to take part in such items 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.)

~~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.)~~

- 6.10 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.

- 6.11 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.

- 6.12 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.

Annex 6

Statutory background

- A6.1 Under section 3(1) of the Communications Act (“the Act”), it is the principal duty of Ofcom, in carrying out its functions to:
- a) “further the interests of citizens in relation to communications matters”; and
 - b) “further the interests of consumers in relevant markets, where appropriate by promoting competition”.
- A6.2 Further, section 3(2)(e) of the Act requires that, in particular and among other things, in carrying out its functions Ofcom must secure the application, “in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services”.
- A6.3 As part of its duties and functions in relation to broadcasting, under section 319 of the Act Ofcom is required to draw up a code for television and radio services, setting standards as appear to it best calculated to secure a number of standards objectives for the content of programmes. The standards Ofcom has set are contained in the Ofcom Broadcasting Code (“the Code”).
- A6.4 Two of the standards objectives set out in section 319 of the Act are that:
- a) “news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with” (section 319(2)(c)); and
 - b) “news included in television and radio services is reported with due accuracy” (section 319(2)(d)).
- A6.5 The “impartiality requirements” set out in section 320 of the Act, and referred to in paragraph A6.2(a), in summary require:
- a) the exclusion of “all expressions of the views or opinions of the person providing the service” on matters of political or industrial controversy and matters relating to current public policy (section 320(1)(a));
 - b) the preservation of due impartiality on matters of political or industrial controversy and matters relating to current public policy (section 320(1)(b)); and
 - c) the prevention, in the case of non-national radio services of the “giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies” on matters of political or industrial controversy and matters relating to current public policy (section 320(1)(c)).
- A6.6 Section 320 of the Act also states that due impartiality can be satisfied in relation to “a series of programmes taken as a whole” and also that Ofcom’s Code must

include rules which take account of the need to ensure due impartiality is preserved on “matters of major political or industrial controversy, and...major matters relating to current public policy” .

- A6.7 The various requirements relating to due impartiality and due accuracy set out in paragraphs A6.2 to A6.4 above are reflected in Section Five of the Code.
- A6.8 In addition, under section 93 of the Representation of the People Act 1983 (“the RPA”), Ofcom is required to adopt and secure that Ofcom-licensed broadcasters observe 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.
- A6.9 In other words, we are required to put in place rules with which the broadcasters must comply when they broadcast items which feature candidates, for example, discussing or raising issues about the constituencies or electoral areas they are contesting. This obligation is reflected in a number of statutory instruments with respect to broadcast items covering elections to the Scottish Parliament, the Welsh Assembly, the Northern Ireland Assembly, the European Parliament and the post of Police and Crime Commissioner⁵⁹. In each case, before drawing up such a code of practice, we must have regard to any views expressed by the Electoral Commission. We have discharged this duty by means of rules in Sections Five and Six of the Code, and in particular by imposing Rules 6.8 to 6.13 on constituency coverage and electoral area coverage in elections, and associated Guidance.
- A6.10 In addition, section 333 of the Act provides that the regulatory regime for every licensed public service television channel, national radio service and local television service is to include conditions requiring the inclusion in that channel or service of party political broadcasts (including party election broadcasts (“PEBs”)) and referendum campaign broadcasts (“RCBs”), and conditions requiring the adherence to rules made by Ofcom with respect to those broadcasts. We have discharged this duty by including the necessary conditions in the relevant television and radio broadcast licences and by Ofcom's rules on Party Political and Referendum Broadcasts (“the PPRB Rules”)⁶⁰.

BBC Charter Renewal

- A6.11 Under section 198 of the Act, it is a function of Ofcom, to the extent that provision for them to do so is contained in the BBC Charter and Agreement, the Act and Part 5 of the Broadcasting Act 1996 to regulate the provision of the BBC's services.⁶¹
- A6.12 The Royal Charter is the constitutional basis for the BBC. It sets out the public purposes of the BBC, guarantees its independence, and provides a framework for

⁵⁹ 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.

⁶⁰ See https://www.ofcom.org.uk/_data/assets/pdf_file/0015/36114/pprb_rules_march_2016.pdf

⁶¹ The Government has, in the Digital Economy Bill currently before Parliament, proposed amendments to section 198. In particular, it has proposed that, rather than referring to the provision of the BBC's services, section 198(1) will state that it is a function of Ofcom ‘to regulate the BBC’.

its funding, governance and regulation. The current Royal Charter⁶² was granted in 2006 and is due to expire at the end of 2016.

- A6.13 The Agreement between the Secretary of State and the BBC sits alongside the Charter. It provides detail on many of the topics outlined in the Charter. The current Agreement⁶³ was also made in 2006.
- A6.14 Under the current Charter and Agreement, regulatory oversight of the BBC's output is shared by the BBC Trust and Ofcom. There is an overlap of responsibilities in most areas of content standards, such as: protecting the under-eighteens; harm and offence; and crime. However, the enforcement of content standards in the areas of due impartiality and due accuracy; and elections and referendums are the responsibility solely of the BBC Trust.

The new draft Charter and Framework Agreement

- A6.15 A new draft Charter and Framework Agreement were published by the UK Government on 15 September 2016⁶⁴. The Charter and Agreement will be finalised in Autumn 2016, and it is expected that they will come into effect on 3 April 2017. For the period to 3 April 2017, transitional arrangements will apply. It is envisaged that Sections Five (due impartiality) and Six (elections and referendums) of the revised Broadcasting Code, and Ofcom's rules on party political and referendum broadcasts, will apply to the BBC from 22 March 2017.
- A6.16 The new Charter and Agreement will introduce full external regulation of the BBC by Ofcom. This means that Ofcom will be required to regulate all areas of content standards for the BBC to ensure it meets requirements.
- A6.17 By virtue of article 46(7) of the draft Royal Charter, it is proposed that Ofcom "must secure the observance of standards in the content in the relevant UK Public Services which must be in accordance with the Standards and Fairness Codes". UK Public Services are the BBC licence-fee funded services (other than the World Service). This does not affect BBC commercial services licensed by Ofcom which are already subject to its content standards regulation.
- A6.18 The general requirement to comply with content standards set by Ofcom is set out in Schedule 3, paragraph 3 of the draft Agreement which states

"3. Content Standards

(1) In providing the UK Public Broadcasting Services, the BBC must observe the standards set under section 319 of the Communications Act 2003 (Ofcom's 'Standards Code'). For the purposes of the requirements in the Standards Code which give effect to section 320 of that Act (special impartiality requirements), the UK Public Services which are radio services will be treated as national radio services.

(2) In providing the UK Public On Demand Programme Services, the BBC must observe the Standards Code so far as Ofcom determine the standards are relevant to the provision of those on-demand programme services".

⁶² See https://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf

⁶³ See http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/agreement.pdf

⁶⁴ See <https://www.gov.uk/government/publications/draft-bbc-charter-and-draft-framework-agreement>

- A6.19 These requirements will be set out in Ofcom's Broadcasting Code which, for the first time, will apply in full to the BBC. In particular, as well as applying to BBC UK Public Broadcasting Services, the Code will also apply, as relevant, to BBC UK Public On Demand Programme Services ("BBC ODPS").
- A6.20 Under Schedule 3, paragraph 5 of the draft Agreement Ofcom must also impose on the BBC the requirements that Ofcom considers appropriate for requiring the inclusion, in such of the UK Public Services as Ofcom consider appropriate, of party political broadcasts (including PEBs) and of RCBs. The provisions laid out in Schedule 3, paragraph 5 of the draft Agreement replicate the duties already placed upon Ofcom under section 333 of the Act, as discussed in paragraph A6.8 above.