



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

- 1) Removing the list of larger parties
- 2) Applying the rules to the BBC

Statement

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About this document

This document sets out Ofcom's decision to amend Section Six (elections and referendums) of the Broadcasting Code ("the Code") and Ofcom's rules on party political and referendum broadcasts ("PPRB Rules") to remove the concept of the list of larger parties.

Broadcasters will have greater editorial freedom to take decisions in the area of elections by reference to evidence of past electoral support and/or current support, whilst candidates and parties will retain the ability to appeal to Ofcom about broadcasters' decisions.

In order to help broadcasters to take editorial decisions during election campaigns, we will publish an annual digest of past electoral and current support in the lead up to each set of May elections. We have also set out factors we take into account when making decisions in the area of elections, including that we put more weight on evidence of past electoral support than evidence of current support (e.g. opinion polls).

In this document we also confirm our proposed approach for regulating BBC editorial content in the areas of due impartiality, due accuracy, elections and referendums. Specifically, we have amended: Section Five (due impartiality) of the Code; Section Six of the Code; and the PPRB Rules.

The revised PPRB Rules (contained in Annex 1) and the revised rules in Section Five and Section Six of the Code (contained in Annex 2) come into effect on 22 March 2017. We will issue them on that date and also publish our updated Guidance to Section Five and Section Six of the Code. In accordance with the transitional arrangements in the BBC Charter and Agreement, Sections Five and Six of the Code and the PPRB Rules, as amended, apply to the BBC from 22 March 2017.

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Section 1

Introduction

- 1.1 On 10 November 2016, we published a consultation document (“the Consultation”) setting out:
- our proposal to remove the concept of larger parties from our rules in the area of elections. We proposed 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”)¹ and BBC UK Public On Demand Programme Services (“BBC ODPS”)²; and
 - minor amendments to Section Five (due impartiality and due accuracy) of the Code so as to incorporate BBC broadcasting services and BBC ODPS.

Background and statutory objectives

- 1.2 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 protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e) of the Act).
- 1.3 Under section 319 of the Act, Ofcom is required to draw up a code for television and radio services, setting such 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 Code. Section Five³ of the Code sets out rules reflecting standards objectives in the area of due impartiality and due accuracy. Section Six⁴ of the Code sets out rules for election and referendum-related editorial content.
- 1.4 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 the PPRB Rules⁵.
- 1.5 The full statutory background is detailed in Annex 3.

¹ The BBC’s UK Public Broadcasting Services are the BBC’s licence-fee funded broadcasting services (other than the World Service).

² Such as the BBC iPlayer and Kids iPlayer (both audiovisual and sound programmes)”

³ Our revised rules in Section Five are contained in Annex 2.

⁴ Our revised rules in Section Six are contained in Annex 2.

⁵ Our revised PPRB Rules are contained in Annex 1.

BBC Charter Renewal

- 1.6 On 15 December 2016, the Government published⁶ a new Royal Charter and Framework Agreement for the BBC. The Charter and Agreement come into effect on 3 April 2017. For the period to 3 April 2017, transitional arrangements apply. In particular, Sections Five (due impartiality) and Six (elections and referendums) of the Code, and Ofcom's PPRB Rules, will apply to the BBC from 22 March 2017.
- 1.7 The Charter and Agreement require that Ofcom must secure content standards for the BBC, and that BBC broadcasting services comply with the requirements of the Code, and BBC ODPS comply with those requirements so far as Ofcom determines them relevant.
- 1.8 Under the 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 considers appropriate, of party political broadcasts (including PEBs) and of RCBs.
- 1.9 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 the BBC, it has been necessary for our Code and PPRB Rules to be updated.

General summary of Consultation responses

- 1.10 We received responses to the Consultation from: the BBC; Dr Sally Broughton Micova; Channel 4; Channel 5 Broadcasting Limited ("Channel 5"); the Conservative Party; the Countryside Alliance; Dr Stephen Cushion⁷; the Electoral Commission; Professor Ivor Gaber; Global Radio; ITN; ITV and STV ("ITV/STV"); the International Broadcasting Trust ("the IBT"); the Labour Party; the Liberal Democrats; S4C; the Scottish Green Party; the Scottish National Party ("SNP"); Sky News; the UK Independence Party ("UKIP"); UK Lawyers for Israel; the Voice of the Listener and Viewer ("VLV"); and Fred Weil.
- 1.11 The responses from the respondents named above have been published on our website⁸.
- 1.12 In Section Three of this document, we summarise the responses we have received and set out our decisions on:
 - a) removing the concept of larger political parties from our rules in the area of elections;
 - b) the amendments we proposed to Section Six of the Code; and

⁶ See <https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>

⁷ This respondent provided a copy of an academic article he had written entitled *From quantitative precision to qualitative judgements: professional perspectives about the impartiality of television news during the 2015 UK General Election*. This article was an analysis of "how impartiality is understood and interpreted" based on interviews and analysis of political reporting during the 2015 UK General Election. We did not consider this response raised any issues specifically by way of response to the questions we laid out in the Consultation.

⁸ See <https://www.ofcom.org.uk/consultations-and-statements/category-2/broadcast-impartiality-accuracy-and-elections-rules-review>

c) the amendments we proposed to Ofcom's PPRB Rules.

1.13 In Section Four, we summarise the responses we have received and set out our decision on the amendments we proposed to Section Five of the Code.

Next steps

1.14 The revised PPRB Rules (contained in Annex 1) and the revised rules in Section Five and Section Six of the Code (contained in Annex 2) come into effect on 22 March 2017, when the first election period for the May 2017 elections commences⁹. We will issue them on that date and also publish our updated Guidance to Section Five and Section Six of the Code. In accordance with the transitional arrangements in the BBC Charter and Agreement, Sections Five and Six of the Code and the PPRB Rules, as amended, apply to the BBC from 22 March 2017.

⁹ In May 2017, the following elections will be taking place:

- local elections in England;
- mayoral elections in England (for the existing mayoralities of Doncaster and North Tyneside, and for the newly created mayoral posts in the following Combined Authorities: Cambridgeshire and Peterborough; Greater Manchester; Liverpool City Region; Tees Valley; the West of England; and the West Midlands);
- local elections in Wales; and
- local elections in Scotland.

Section 2

Ofcom's decision on the list of larger parties and amendments to Section Six of the Code and the PPRB Rules

Introduction

- 2.1 In this section, we summarise the responses we have received and set out our decisions on:
- a) removing the concept of larger parties from our rules in the area of elections;
 - b) the amendments we proposed to Section Six of the Code; and
 - c) the amendments we proposed to the PPRB Rules.
- 2.2 The amendments we proposed to Section Six of the Code and the PPRB Rules reflected: first, our proposal to remove the concept of the list of larger parties from our rules; and second, our proposed approach to regulating BBC broadcasting services and BBC ODPS.
- 2.3 The functions Parliament has given to Ofcom in the area of elections and referendums fall into two broad areas:
- editorial coverage of elections and referendums: we require licensed broadcasters' editorial coverage relevant to elections and referendums to comply with Section Five (due impartiality) and Section Six (elections and referendums) of the Code, including Rules 6.8 onwards which we impose in compliance with section 93 of the Representation of the People Act 1983 ("RPA")¹⁰; and
 - party election broadcasts ("PEBs"), Party Political Broadcasts ("PPBs") and Referendum Campaign Broadcasts ("RCBs"): 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 designed to offset the differential ability of parties to attract campaign funds. Parliament has charged Ofcom with the duty of making rules (i.e. the PPRB Rules) regarding the allocation, length and frequency of PEBs, PPBs and RCBs and identifying the broadcasters required to transmit them.
- 2.4 In relation to elections and referendums, the new BBC Agreement¹¹ requires:
- a) editorial coverage of elections and referendums included in BBC broadcasting services to observe the standards set by Ofcom under section 319 of the Act, and

¹⁰Under section 93, 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.

¹¹ In this respect, the Agreement published on 15 December 2016 was the same as the draft published at the time of our Consultation.

coverage in BBC ODPS to observe those standards so far as Ofcom determine them relevant (paragraph 3 of Schedule 3 to the Agreement); and

- b) Ofcom to impose on the BBC the requirements they consider appropriate in relation to the inclusion of PPBs (including PEBs) and RCBs in the BBC's UK Public Services (paragraph 5 of Schedule 3 to the Agreement).

2.5 In the rest of this section, we consider the responses we have received and set out our decisions in relation to the three matters laid out in paragraph 2.1. A summary of the responses is provided in Annex 4.

Larger parties

- 2.6 To date the PPRB Rules and Section Six of the Code have imposed obligations on broadcasters by reference to a list of larger parties, which has been contained in a self-standing annex to both the PPRB Rules and Section Six of the Code.
- 2.7 The PPRB Rules required certain licensed broadcasters to offer a minimum of two PEBs to each of the defined 'larger parties' (if a party was not on the list it could still qualify for PEBs). Further, in relation to broadcasters' own election programming, Section Six of the Code required broadcasters in their editorial coverage to give "due weight"¹² 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 6.9¹³ required that candidates representing the larger parties must be offered the opportunity to take part.
- 2.8 In the Consultation, we explained that stakeholders had expressed concerns about the list of larger parties over several years and that, given Ofcom was reviewing its election rules to encompass the BBC, we considered it appropriate to review the suitability of the list of larger parties at the same time.
- 2.9 Having reviewed the arguments for and against removing the concept of the list from Ofcom's rules, we considered that there were strong arguments for 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.
- 2.10 We proposed, 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.
- 2.11 To mitigate the possible resource burden, in particular on smaller broadcasters, of regularly reassessing party support, we proposed that Ofcom would produce an

¹² See Rule 6.2 of the Code which at the time of the Consultation stated: "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".

¹³ At the time of the Consultation Rule 6.9 stated: "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.)"

annual digest of evidence of past electoral support and/or current support ahead of each set of elections that take place in May¹⁴.

2.12 We sought stakeholders' views on:

- whether Ofcom should remove the concept of the list of larger parties from Section Six of the Code and the PPRB Rules; and
- whether Ofcom should produce an annual digest of evidence of past electoral support and/or current support.

2.13 A detailed summary of respondents' submissions on the proposals laid out in paragraph 2.12 is set out in in: Annex 4, paragraphs A4.2 to A4.18 (in relation to our proposal to remove the concept of the list of larger parties from our rules); and Annex 4, paragraphs A4.19 to A4.29 (in relation to our proposal to produce an annual digest of evidence of past electoral support and/or current support).

Ofcom's response and decision on the concept of larger parties

2.14 The large majority of stakeholders agreed with our proposal to remove the concept of a list of larger parties from our rules and to replace it with a requirement to base editorial decisions, and PEB and PPB allocations, on evidence of past electoral support and/or current support. This included the Electoral Commission, the specialist regulator whom we have a statutory duty to consult on these matters, which stated that the list of larger parties "creates an unnecessarily inflexible approach to regulating broadcasting at elections".

2.15 Several broadcasters (the BBC, Channel 4, Channel 5, ITN, and Sky News) welcomed the increase in editorial freedom that removing the concept would create and stressed that they had the knowledge and experience to take decisions about election-related editorial content and PEB allocations.

2.16 Two political parties, the SNP and UKIP, also supported the removal of the list of larger parties, with the SNP pointing to the 2016 Scottish Parliamentary elections, in which the Liberal Democrats were designated as a larger party and the Scottish Green Party was not, and the latter "achieved a greater share of the regional vote in May 2016 and had more MSPs elected than the Liberal Democrats". UKIP said the removal of the concept of larger parties "merely reflects how complex the UK's political landscape has become over the last three years".

2.17 The VLV, as well as the individual respondents Dr Sally Broughton Micova and Professor Ivor Gaber, supported the proposed change, with the latter two respondents arguing that such a move would remove any influence the designation of 'larger party' might have with voters and recognise the list was originally introduced at time of "far less electoral volatility" and variation across the UK.

2.18 ITV/STV and S4C both supported the removal of the concept of larger parties as long as Ofcom also published an annual digest of evidence of past electoral support and current support. As set out below, we have decided to publish such a digest, not least

¹⁴ This would be in addition to Ofcom's published guidance for broadcasters 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. The updated Guidance to Section Six will be available on the Ofcom website.

to meet the concern expressed by S4C about the resource implications that smaller broadcasters may face in making editorial decisions during elections.

- 2.19 Several respondents, including some who opposed removing the list, such as Global, as well as some who supported its removal, such as S4C and Sky News, argued that such a move would be likely to result in more complaints by parties to Ofcom about broadcasters' editorial decisions or PEB and PPB allocations. Respondents said that Ofcom should ensure it is able to cope with any increase in election-related complaints. Ofcom notes this argument and it is one of the reasons why we consider it appropriate to produce an annual digest of evidence of past electoral support and current support. As we discuss further below, we consider that such a digest will help broadcasters to reach robust and fully informed editorial decisions and therefore help to reduce appeals to Ofcom. Ofcom has experience in dealing with high-profile election complaints and considers that it would continue to be able to deal with such complaints in a timely and proportionate manner if the list of larger parties were removed.
- 2.20 The Liberal Democrats argued that the ability to appeal to Ofcom about editorial decisions is "flawed" because such appeals take place after broadcast. We do not agree that it is flawed. If a complaint is made which raises a substantive issue concerning due impartiality during an election period, and in Ofcom's opinion the complaint, if upheld, might require redress before the election, it will be considered by Ofcom's Election Committee¹⁵. This Committee considers complaints in very short timescales and has the power to direct a broadcaster to take remedial action before polling day.
- 2.21 The Scottish Green Party, whilst agreeing with the removal of the list of larger parties, said this should not happen if there was a reduction in "the range of voices". The Liberal Democrats similarly said that the logistical challenges faced by broadcasters in producing constituency reports is a "product of voters" and "should not be ignored for production purposes". Further, the Labour Party argued that the concept of larger parties had ensured "balanced debate and that viewers have access to debates across the country". Whilst we consider it appropriate to give greater editorial freedom to broadcasters, we would expect broadcasters to give appropriate coverage to a broad range of parties and candidates. In our view, shared by a number of respondents,¹⁶ the UK has a more fragmented political landscape than in the past and we would expect broadcasters to reflect this. We agree with ITN's comment that, whilst it welcomed the increased editorial freedom that would result from removing the concept of larger parties, there would be occasions "where a significant number of candidates will need to be interviewed" in a constituency report in order to preserve due impartiality.
- 2.22 Global made several arguments in favour of retaining the concept of larger parties. For example, it said that the list enabled its news staff to "make prompt, informed" news decisions, and that without a list "[d]iscussions in the area of constituency reporting... could become lengthy and complicated". However, we also note that ITN referred to the "practical difficulties" in contacting all relevant larger parties and arranging interviews. On a separate point, we noted that Global was "open to the removal" of the list for the purposes of PEB allocation because decisions in that area "can be made easily in advance".

¹⁵ See Ofcom Election Committee's Terms of Reference: <https://www.ofcom.org.uk/about-ofcom/how-ofcom-is-run/committees/election-committee>

¹⁶ But not the Conservative Party and the Labour Party, see below.

- 2.23 The strongest opposition to our proposal to remove the list of larger parties came from two political parties, the Conservative Party and the Labour Party. These respondents made a number of arguments.
- 2.24 First, these two parties argued against the suggestion in the Consultation that there is a “fragmented political landscape” in the UK, pointing to the fact that: there is a majority Conservative Party Government at UK level and the Labour Party is the Official Opposition in Westminster; UK Prime Ministers have been drawn from these two parties since 1922; and their combined share of the vote at the last two General Elections in Great Britain has been 66.6% (2005) and 68.8% (2015). However, in Ofcom's view, recent years have seen an increase in support for a range of political parties, as evidenced by the increased support for UKIP and the Green Party and growing support for different parties in the nations of the UK.
- 2.25 Second, the Conservative Party said that the concept of larger parties is a “long-standing provision, which recognises that the manner in which the UK Parliament is constituted, both its operation of First Past the Post in the House of Commons, but also the greater prominence and status given to the largest opposition parties”. Whilst we acknowledge the importance of the UK Parliament, as we have made clear in our previous Statements in this area, the list of larger parties reflects the fact that some political parties have a significant level of electoral support, and number of elected representatives, across a range of elections within the UK or devolved nations. Therefore, the concept of larger parties has not related only to parties' performance in UK Parliamentary elections.
- 2.26 Third, the Conservative Party said that all parties are not the same and a party with a few elected representatives should not be given the same status in terms of election coverage as a party with 50 or 100 elected representatives¹⁷. We agree and consider that removing the list of larger parties will give broadcasters the editorial freedom to better reflect the variations in support for different political parties.
- 2.27 Fourth, the Labour Party argued that national broadcasters “should always cover the two main political parties – even if the focus is on an area where Labour or the Conservatives are unlikely to win, they will still be contending the most seats nationally”. This respondent added that: “To deny people a Labour or Conservative voice on a political story is not reflective of the choice of who will ultimately lead the country”. In response to these points, given the evidence of past and current support for both the Conservative Party and Labour Party across Great Britain in elections at all levels, we would expect broadcasters to continue to give significant amounts of coverage to these two parties during elections.
- 2.28 Fifth, the Conservative Party said that the removal of the list of larger parties would have the effect of granting more PEBs and PPBs to “fringe minority parties that do not have established and substantive democratic representation”. We disagree. The PPRB Rules include minimum criteria a party must meet before it can qualify for a PEB (such as the requirement for a party to field candidates in at least one sixth of seats in First Past the Post elections, such as General Elections). This will continue to be the case in the absence of a list of larger parties.
- 2.29 Finally, the Conservative Party said that the Consultation had not laid out sufficient rationale for the proposed removal of the list of larger parties apart from a reference

¹⁷ The Liberal Democrats made a similar point by arguing that levels of broadcast coverage “should not mean parity in UK wide broadcasts for parties that explicitly do not seek to govern the whole UK”.

to the views of the Electoral Commission. The respondent added that the Electoral Commission “has not consulted on this issue; it has not raised it with the Parliamentary Parties Panel and has no mandate to promote significant regulatory change”. Our proposal to remove the list of larger parties was not based solely on the views of the Electoral Commission, however we consider its view a relevant factor given that it is the specialist regulator whom we have a statutory duty to consult on these matters. We set out our rationale for proposing the removal of the list in paragraphs 3.23 to 3.31 of the Consultation.

- 2.30 Having considered all the responses, we consider it appropriate to remove the concept of larger parties from our rules and to replace it with a requirement on broadcasters to take election-related editorial decisions and decisions about allocations of PEBs and PPBs by reference to evidence of past electoral support and/or current support.
- 2.31 The Liberal Democrats argued that there need to be “clear, objective criteria” as to what constitutes past electoral support and current support; and Ofcom should define ahead of an election period “what performance is necessary for a party [to] receive a certain level of coverage and parity with other parties”. We do not consider it would be appropriate, nor would it be a straight-forward exercise, for Ofcom to set specific levels of coverage that should be given to different parties. Our Guidance on Section Six and our published decisions in relation to elections provide clear guidance as to what we consider constitutes past electoral support and current support.

Factors Ofcom will take into account when weighing different types of electoral evidence

2.32 However, in making our decision to remove the concept of larger parties from Section Six of the Code and the PPRB Rules, we consider it would be helpful to set out factors Ofcom takes into account in weighing different types of evidence when taking decisions in the area of elections. These factors reflect the approach we have taken to complaints and in our previous reviews of the list of larger parties:

- we place greater weight on the actual performance of a political party in elections over opinion poll data. This reflects the fact that electoral performance is a measure of how voters have actually exercised their democratic choice. This compares with the greater uncertainty associated with support in opinion polls, which may not translate into votes or seats at an election;
- in considering past electoral support, we take into account factors such as the electoral performance of parties (including the numbers of elected candidates and overall percentage of vote received) in the previous set of corresponding elections¹⁸ over at least two electoral cycles;
- we also take into account performance in other relevant past elections being contested at the same time, as well as performance in past elections not being contested at a given time;
- we take into account the electoral performance of parties over at least two electoral cycles, when considering performance in any given type of elections. However, we place less weight on the evidence of electoral

¹⁸ including Westminster Parliamentary by-elections.

performance two or more electoral cycles ago given the historical nature of this evidence;

- where relevant we consider evidence in relation to the different devolved nations of the UK;
- whilst putting less weight on levels of current support as opposed to actual performance, we put weight on evidence of current support that is objective and measurable. One type of objective and measurable evidence of current support is opinion poll data, where it is available. There may be other types of evidence of current support but in considering such evidence we would take into account the consistency and objectivity of each type of evidence; and
- our intention is always to undertake a balanced assessment having regard to the totality of relevant evidence.

2.33 The factors listed in paragraph 2.32 will be included in Ofcom's published Guidance to Section Six¹⁹, as well as our annual digest of evidence of past electoral support and/or current support (see below).

Ofcom's response and decision on the annual digest of evidence of past electoral support and/or current support

2.34 The large majority of stakeholders agreed with our proposal to publish such a digest. This included: the Electoral Commission; broadcasters such as the BBC, Channel 4, Channel 5, ITV and Global; parties such as the SNP and UKIP; and other respondents such as the VLV and two individual respondents. Reasons given for supporting the proposal included: the fact that not all broadcasters have the resources to collate relevant data; and more transparency would be given as to the background to broadcasters' decisions in this area, to both parties and the public.

2.35 However, some respondents disagreed with the proposal. ITN said a digest "could simply be a means of implementing a similarly inflexible device" as the list of larger parties. We disagree. The purpose of a statistical digest would be to provide a comprehensive set of electoral data as an information resource for broadcasters. Ofcom would provide no commentary, analysis or assessment of that data and it would be for broadcasters to interpret it as they see fit. In a related point, the Liberal Democrats asked, if a digest is to assist smaller broadcasters with editorial decisions, "why can this not extend to [Ofcom] making a decision on parties' standings more generally" by means of "explicit judgement" against objective criteria? Ofcom underlines that the digest is to be an information resource only and, given our decision to remove the list of larger parties from our rules, it would not be appropriate for us, when publishing a digest of relevant electoral data, to publish an analysis and assessment of that data.

2.36 Two political parties (the Conservative Party and the Labour Party) disagreed with our proposal to produce an annual digest, making the following arguments:

- the Conservative Party said the production of a digest would be "part of a retrograde move of downgrading the status of UK [G]eneral [E]lections". We

¹⁹ The updated Guidance to Section Six will be available on the Ofcom website.

disagree. Our intention is for a digest to include the results of all significant elections that take place across the UK;

- the Labour Party argued that it is “already a complicated and difficult feat to compare past election results with a range of variables” and that there is “no clear guidance on how ‘current polling’ will be judged [and which] polls will be included/excluded”. In response to these points, in paragraph 2.32 above we have set out the factors we would take into account when weighing the different types of electoral evidence; and
- the Labour Party added that “[w]ith boundary changes also forthcoming, this is set to be even more complex and as a result, increasingly inaccurate”. We acknowledge that boundary changes might create difficulties in measuring support at the constituency or electoral area level. However, in assessing electoral support when constituency boundaries have changed, we would consider it appropriate for broadcasters to take into account performance of parties (e.g. in terms of share of vote) at particular elections across a given nation when considering evidence of past electoral support.

2.37 ITN and the Labour Party raised the concern that an annual digest would risk becoming out of date. Ofcom acknowledges this argument but underlines that the digest is primarily intended as a resource for broadcasters in preparing for the various elections that take place in the UK in May each year. It would be open to broadcasters to make reference to the digest in helping to frame their decisions in relation to what we anticipate to be the relatively few elections that might occur later in a given year, but it might be necessary for broadcasters to assess any more recent evidence that may be relevant.

2.38 S4C, referring to use of the digest by broadcasters who have to allocate seasonal PPBs²⁰, asked for assurances that the information contained in one annual digest “can be relied upon until the publication date of Ofcom’s next summary”. It also suggested that Ofcom should consider producing a “supplementary summary following an election for the purpose of assessing” the allocation of PPBs. We interpret this as suggesting that Ofcom produce additional digests ahead of Autumn, Winter and/or Spring each year as a resource for those broadcasters who allocate seasonal PPBs. However, we consider that such a move would be disproportionate. We deal further with S4C’s points about allocation of PPBs in paragraphs 2.62 and 2.63 below.

2.39 Taking into account the responses we have received on this matter, we consider that it would be appropriate, ahead of each set of elections that take place across the UK in May each year, to publish a digest of past electoral support (in the form of election results) and current support (in the form of opinion polls). Such a digest would:

- be published in late February or early March each year, so that it can include the most up to date trends in opinion poll data. We do not agree with S4C’s suggestion that a digest should be published at least 12 weeks before the start of an election period (i.e. in the December of the year preceding the

²⁰ Amended Rule 21 of the PPRB Rules states: “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 assembly[.]; 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”.

elections) given the possible movements in opinion poll data in the period leading up to any given May elections; and

- present data in broadly the same format as in our reviews of the list of larger parties in recent years. The data would include both shares of the popular vote and numbers of elected representatives and would list data separately for the four nations of the UK.

2.40 Therefore, to assist broadcasters in preparing for the May 2017 elections²¹, we have published, in parallel with this Statement, a digest of evidence of past electoral and current support²².

Section Six of the Code

2.41 In the Consultation we said that, having reviewed our new regulatory obligations in relation to BBC services in the area of elections and referendums, we considered that the rules in Section Six should also apply to BBC broadcasting services. We also proposed the following amendments to Section Six:

- Larger parties: we proposed replacing the specific requirements in relation to larger parties²³ with a general requirement on all broadcasters to base editorial decisions in relation to election coverage on evidence of past electoral support and/or evidence of current support;
- Scope of services: consistent with the requirement in the BBC Agreement, referred to in paragraph 2.4(a) above, concerning the application of the Code to BBC ODPS, we considered that Section Six should also apply to such services. We proposed that: Rule 6.4²⁴ (Discussion of election and referendum issues on polling day); Rule 6.6²⁵ (Prohibition on candidates appearing as news interviewers, interviewers or presenters during election and referendum periods); and Rule 6.7²⁶ (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; and
- Code of practice on electoral area and constituency reporting: 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

²¹ See footnote 9.

²² See https://www.ofcom.org.uk/_data/assets/pdf_file/0031/98149/Election-Digest.pdf.

²³ Under Section Six, broadcasters were required to give due weight to the larger parties during the election period (Rule 6.2) and offer the opportunity to larger party candidates to take part in broadcast items about their constituencies or electoral areas featuring candidates (Rule 6.9).

²⁴ At the time of the Consultation Rule 6.4 stated: "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.)"

²⁵ At the time of the Consultation Rule 6.6 stated: "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".

²⁶ At the time of the Consultation Rule 6.7 stated: "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".

proposed amending Section Six to provide that Rules 6.8 to 6.12²⁷ 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.

- 2.42 We also said that we intended to publish updated Guidance to Section Six of the Code. We noted that the Guidance provided background information to Rule 6.10²⁸ and factors broadcasters should take into account when considering evidence of past electoral support and/or current support. We proposed retaining this in our Guidance to new Rule 6.9²⁹. We also stated that the updated Guidance would include more recent published decisions in the area of elections and referendums, in particular in relation to Rule 6.3³⁰.
- 2.43 We sought stakeholders' views on our proposed amendments to Section Six a) in relation to larger parties; and b) to include BBC broadcasting services and BBC ODPS. A detailed summary of respondents' submissions on our proposed amendments to Section Six is set out in in: Annex 4, paragraphs A4.30 to A4.38.

Ofcom's response and decision on the proposed amendments to Section Six

- 2.44 The large majority of stakeholders agreed with our proposals in this area. This included: the BBC, Channel 4, Channel 5, ITN, UKIP, VLV and some individual respondents. Although some respondents, such as Global, disagreed with our removal of references to larger parties for the reasons discussed above, they did agree with our other proposed amendments to Section Six.
- 2.45 We note ITV/STV's suggestion to remove the references to BBC ODPS in Rules 6.4, 6.6 and 6.7 and place them in a footnote. However, we consider it preferable to retain the wording of these rules as set out in the Consultation to ensure clarity about the form and scope of these rules.
- 2.46 ITN suggested replacing the word "must" with "should usually" in Rule 6.9³¹ because, in its view, the obligation in Rule 6.9 "prohibits editorial choice and there should be scope in exceptional cases not to offer each candidate an opportunity to take part", whilst maintaining due impartiality. For example, "rather than the local candidate it may be more appropriate and editorially justified to use a national spokesperson / leader or a Government Minister in a constituency electoral report focused on a

²⁷ Taking into account the amendments we proposed to Section Six (at that time Rules 6.8 to 6.13).

²⁸ At the time of the Consultation, Rule 6.10 stated: "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.)".

²⁹ Our proposed new rule 6.9 stated: "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.)"

³⁰ 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".

³¹ See footnote 29.

specific issue... to talk about the issue". We disagree. In our view, when broadcasters feature candidates in items about the constituency or electoral area they are contesting, in the interest of fairness and in order to provide relevant information to audiences, any candidate who has evidence of significant past electoral or current support must be offered the opportunity to take part. We recognise that this imposes a restriction on broadcasters' editorial freedom. However, we consider the restriction proportionate and reasonable to ensure that, in the important area of election broadcasting, all candidates with evidence of significant past electoral support or current support receive appropriate levels of broadcast coverage.

- 2.47 We note the SNP's suggestion to remove the reference to PPERA within the definition of "referendum" in Section Six, and instead define a referendum as a "statutory UK-wide, national or regional referendum...". The SNP said this was because the 2014 Referendum on Scottish Independence was provided for by an Act of the Scottish Parliament. We acknowledge this point and have decided that whilst it is necessary to keep the reference to PPERA in the definition, we are going to amend the definition to include referendums made under the provisions of an Act of the UK Parliament or the Scottish Parliament as follows:

"For the purpose of this section a referendum **is a statutory referendum** (to which the Political Parties, Elections and Referendums Act 2000 ("**PPERA**") applies **or to which section 127 of PPERA is applied**) which includes a UK-wide, national or regional referendum **held under the provisions of an Act of the UK Parliament or the Scottish Parliament**, but does not extend to a local referendum".

- 2.48 An individual respondent, Dr Sally Broughton Micova, referred to Rule 6.2³² saying that "BBC services have a specific obligation to seek out and cover minority parties and independent candidates, and to adequately represent the country's diversity in its coverage of candidates". We consider this is an editorial matter for the BBC and not something which requires Ofcom to amend its election rules.
- 2.49 In the only other response in this area, the Liberal Democrats expressed concern about the "ambiguous definition of 'evidence of past electoral support and/or current support'", which in its view should be "better defined with proper objective measures". We explain how Ofcom weighs different factors in relation to past electoral and current support in paragraph 2.32 above.
- 2.50 Given all the above, we consider the amendments we proposed in the Consultation are appropriate. A finalised version of Section Six, including the amendment outlined in paragraph 2.47 above, is in Annex 2. These rules come into effect on 22 March 2017 and will be available on the Ofcom website, as will the updated Guidance to Section Six that we refer to in paragraphs 2.32 and 2.42 above.

PPRB Rules

- 2.51 In the Consultation we said that having reviewed our new regulatory obligations in relation to BBC services in the area of PEBs, PPBs and RCBs, we considered that

³² Our proposed new Rule 6.2 stated: "Due weight must be given to the coverage of 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 parties and independent candidates with significant views and perspectives".

the PPRB Rules should also apply to the BBC's broadcasting output. We proposed the following amendments to the PPRB Rules:

- Scope of services: We proposed that the PPRB Rules be amended to include those BBC broadcasting services which currently transmit PEB, PPBs and RCBs as we considered the current range and reach of services to be appropriate;
- Qualification for PEBs: We proposed replacing the requirement that larger parties should be offered at least two PEBs during an election campaign with a rule stating that all parties that fulfil basic criteria 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;
- Qualification for PPBs: We proposed replacing the provision that only those parties that are designated as larger parties in particular countries of the UK can qualify for seasonal PPBs outside election periods with provision that: in each nation, a party will qualify for PPBs if it 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; and
- Scheduling: Given that we were proposing the removal of the concept of larger parties from the PPRB Rules, and the PPRB Rules would be applying to a large number of services across television and radio, we proposed simplifying the scheduling rules so that all PEBs, PPBs and RCBs must be scheduled between 5.30pm and 11.30pm on television, and 6.00am and 10.00pm on radio services.

2.52 We sought stakeholders' views on our proposed amendments to the PPRB Rules a) in relation to larger parties; and b) to include BBC broadcasting services. A detailed summary of respondents' submissions on our proposed amendments to the PPRB Rules is set out in in: Annex 4, paragraphs A4.39 to A4.47.

Ofcom's response and decision on the proposed amendments to the PPRB Rules

2.53 The large majority of stakeholders agreed with our proposals in this area. This included: the BBC, ITN, UKIP, the VLV and some individual respondents.

2.54 Channel 4, Channel 5 and ITV/STV objected to the proposed retention of the obligation in Rule 14 of the PPRB Rules for Channel 4 and Channel 5 to carry PEBs for the SNP and Plaid Cymru. These respondents argued that it: limited editorial freedom; gave preferential treatment to the SNP and Plaid Cymru; may militate against other parties who might demonstrate significant support in Scotland and Wales; and ran counter to Ofcom's general approach of removing references to named parties from its rules. We note Channel 5's statement that it would continue to "recognise [the SNP and Plaid Cymru] appropriately" in its PEB allocations. Channel 4 suggested amending the PPRB Rules to require Channel 4 and Channel 5 to offer PEBs to registered parties in the nations of Wales and Scotland having regard to past electoral support and/or current support.

- 2.55 We have carefully considered these arguments. However, without this obligation, two significant parties in Scotland and Wales would not otherwise qualify for PEBs on Channel 4 and Channel 5, as GB-wide television broadcasters. We consider it important that voters in Scotland and Wales have the opportunity to view PEBs from these key contenders in important elections in those nations. Further, we note that it is a long-standing feature of the PPRB Rules for these broadcasters to carry broadcasts for both the SNP and Plaid Cymru, and that audiences are well accustomed to being able to view PEBs for those two parties on Channel 4 and Channel 5. We have therefore decided that it is appropriate and proportionate to maintain the obligation on Channel 4 and Channel 5 to carry PEBs for the SNP and Plaid Cymru.
- 2.56 Channel 5 commented that, under Rule 14 drafted as proposed, Channel 4 and Channel 5 would not be obliged to carry PEBs for the SNP and Plaid Cymru, because Rule 14 cross-refers to Rules 15 and 16, and those two parties would not qualify for PEBs on GB-wide broadcasters under Rules 15 and 16. For clarity we have therefore decided to amend Rule 14 as follows (with amendments to the proposed drafting shown in bold):
- “Before a General Election, and in the case of other elections where appropriate, each registered party should be offered (subject to Rules 15 and 16) one or more PEBs, the length of a series offered to a particular party being determined by the Licensee. **In addition, Channel 4 and Channel 5 must each offer one or more PEBs to**~~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)”.
- 2.57 ITV/STV considered some of the proposed amendments “unnecessarily legalistic and complex”. It suggested replacing the term “Relevant Services” with “broadcasters”. However, we prefer to retain the existing wording so as to make clear that not all Ofcom licensees need to carry PEBs, PPBs and RCBs. In addition, it suggested removing references to European Parliamentary elections. However, we consider we consider it appropriate to retain these references until such time that the relevant legislation is changed.
- 2.58 Several respondents referred to the proposed simplification of the scheduling rule (Rule 25). Global argued for a further relaxation of the proposed rule for radio so that broadcasts could be scheduled at any time between 6am and midnight, to “minimise the commercial and financial impact” of PEBs and RCBs and avoid “listeners switching off”. We disagree and consider the proposed scheduling window of 6am to 10pm to be appropriate to give radio broadcasters the flexibility they require whilst not relegating the broadcast of PEBs and RCBs to times when the audience is likely to be significantly lower.
- 2.59 The Labour Party argued that not ensuring that PEBs, PPBs or RCBs “are at peak times limits accessibility to major political parties and their policies”. The Liberal Democrats also opposed the proposal to “expand the airing window [on television] to 11.30pm”. The party considered that there “should be a requirement for slots... to be comparable so there are not instances of one party’s PPB/PEB being allocated at 7pm, and another at 11:25”.
- 2.60 As we are removing the list of larger parties from the PPRB Rules, and these rules will apply to a much larger number of services, we consider it appropriate to simplify the scheduling requirements as set out in Rule 25. However, we expect broadcasters

to make scheduling decisions in a fair and consistent manner having regard to evidence of past electoral and current support. We will therefore expect broadcasters to continue to allocate PEBs and PPBs to parties with higher levels of past electoral and current support at times which are likely to attract higher rather than lower numbers of viewers and listeners. We will also expect broadcasters to ensure that different parties are allocated PEBs at different times in the schedule, in order to ensure the various parties' messages reach the widest possible audience. In particular, if a broadcaster consistently allocated PEBs and PPBs to a particular party at times attracting the lowest audiences, we would view this as potentially raising issues with that broadcaster's preservation of due impartiality during an election period, and would take action accordingly.

- 2.61 As with their representations on the proposed amendments to Section Six, the Liberal Democrats expressed concern about the "ambiguous definition of 'evidence of past electoral support and/or current support'" in the PPRB Rules. We set out how Ofcom weighs different factors in relation to past electoral and current support in paragraph 2.32 above. The Liberal Democrats also said that the PPRB Rules should contain "clear criteria set for how many PEBs a party will receive in line with objective, transparent criteria". We disagree. It is a long-standing feature of the PPRB Rules that they set minimum requirements for parties to qualify for PEBs. Above these minima, broadcasters exercise editorial discretion in determining allocations of additional PEBs by reference to evidence of past electoral support and/or current support. We do not consider it appropriate to restrict broadcasters' editorial freedom in the way suggested by the Liberal Democrats.
- 2.62 S4C requested that Rules 21 and 22 of the proposed PPRB Rules "clearly specify" that broadcasters are required to determine the allocation of PPBs "on the basis of an annual assessment (12 months), and that there is no requirement for the broadcasters to make an assessment for the three periods (autumn, winter and spring) separately". We consider that in any 12 months, there is a possibility of significant changes in levels of support for different parties. Therefore, we do not think it appropriate for broadcasters to base their PPB allocations on a single annual assessment of levels of support. Rather, we consider that those few broadcasters that are required to carry PPBs (the BBC and Channel 3 licensees under the PPRB Rules) should assess the relevant data in a dynamic way taking into account all relevant information.
- 2.63 S4C also requested that the PPRB Rules specify to what extent they relate to S4C. Under Schedule 12, paragraph 18 of the Act, it is the duty of the Welsh Authority to draw up a policy in relation to the inclusion of PPBs (including PEBs) and RCBs on S4C. In drawing up this policy the Welsh Authority must have regard to the views of the Electoral Commission and Ofcom's PPRB Rules³³. For the purposes of clarity, we will insert the following footnote at the beginning of the PPRB Rules:
- "Under Schedule 12, paragraph 18 of the Act, the Welsh Authority must prepare and publish a policy with respect to party political and referendum broadcasts and their inclusion in S4C. In doing so it must have regard to (a) any views expressed by the Electoral Commission, and (b) any rules made by Ofcom with respect to party political and referendum broadcasts".
- 2.64 Global queried why BBC Radio 3 was not being obliged to carry PEBs whereas its "closest competitor" Classic FM was obliged to do so. In making our assessment of which BBC services should carry PEBs, PPBs and RCBs, we have considered the

³³ See Schedule 12, paragraph 18(5) of the Act.

BBC's services as a whole. Given the audience reach and coverage of the services required to carry such broadcasts, we do not consider it appropriate to require the BBC additionally to carry PEBs on BBC Radio Three.

- 2.65 Finally, Global and the Liberal Democrats made some more general points about the PPRB Rules. Global questioned the “continuing worth” of the requirement on national radio services to carry PEBs. Under section 333 of the Act, Ofcom is required to include conditions in every national radio service licence requiring the inclusion in the service of PPBs (including PEBs) and RCBs. In our 2013 Review³⁴ of the PPRB Rules, we stated that the continuing application of those rules to the three national radio services is more properly a matter for the UK Parliament, and we are still of this view. We consider that the requirement on these services to carry PEBs in General Elections only and RCBs in UK-wide referendums is proportionate and reasonable in the context of the underlying statutory provision.
- 2.66 Both Global and the Liberal Democrats made suggestions as to the durations of broadcasts laid down in the PPRB Rules. Global considered that the length of broadcasts should be reduced to 1'30” for all “Relevant Services”, arguing that shorter broadcasts would be “a far more effective way” for parties in the digital age to present their policies on radio. The Liberal Democrats suggested allowing PEBs and PPBs on television of up to 4'40” or shorter slots of 1'40” and 0'40”. We consider that we fully reviewed the various provisions relating to duration of broadcasts in the 2013 Review, and we have not been provided with any compelling evidence requiring us to reconsider the issue at this time.
- 2.67 Given all the above, we consider the amendments we proposed in the Consultation are appropriate, with the addition of the two amendments we refer to in paragraphs 2.56 and 2.63. A finalised version of the PPRB Rules is contained in Annex 1. These rules will come into effect on 22 March 2017 and will be available on the Ofcom website.

³⁴ See https://www.ofcom.org.uk/_data/assets/pdf_file/0019/38116/statement.pdf

Section 3

Ofcom's decision on amendments to Section Five of the Code: due impartiality and due accuracy

Introduction

- 3.1 In this section, we summarise the responses we have received and set out our decisions on the amendments we proposed to Section Five of the Code.
- 3.2 The amendments we proposed to Section Five of the Code reflected: our proposed approach to regulating BBC broadcasting services and BBC ODPS in the area of due impartiality and due accuracy under the new Charter and Agreement.
- 3.3 Under Schedule 3, paragraph 3 of the Agreement, in providing the BBC broadcasting services, the BBC must observe the standards set by Ofcom under section 319 of the Act, and in providing BBC ODPS, the BBC must observe those standards so far as Ofcom determines them relevant.
- 3.4 In the Consultation we said that, having reviewed our new regulatory obligations in relation to BBC services in the area of due impartiality and due accuracy, we considered that the rules in Section Five should also apply to the BBC. Specifically, we proposed 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.
- 3.5 We proposed the following two amendments to Section Five:
- Scope of services: Consistent with the requirement in the Agreement referred to in paragraph 3.3 above, we considered that Section Five of the Code should apply to BBC ODPS as well as to BBC broadcasting services. In particular, we proposed amending Rule 5.2 to make clear how it would apply to BBC ODPS³⁵; and
 - Application of Section Five to non-national³⁶ 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 5.13³⁷ of the Code, which considers

³⁵ Our proposed new Rule 5.2 stated: "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)."

³⁶ i.e. services broadcast for reception in a particular area or locality of the UK.

³⁷ 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 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

“all the programmes included in [a service] taken as a whole”. However, the Agreement provides³⁸ 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 therefore proposed to make clear that Rules 5.5 to 5.12 would apply to all BBC radio services as well as BBC television services and BBC ODPS, and Rule 5.13 of the Code would not apply to any BBC broadcasting service or BBC ODPS.

- 3.6 In the Consultation, we also said that we intended to publish on Ofcom's website updated Guidance to Section Five of the Code reflecting our decisions in relation to the amendments proposed above, as well as more recent published decisions in the area of due impartiality and due accuracy.
- 3.7 A detailed summary of respondents' submissions on our proposed amendments to Section Five is set out in in: Annex 4, paragraphs A4.48 to A4.58.

Ofcom's response and decision on the proposed amendments to Section Five

- 3.8 Our proposals were supported by: ITN, the Labour Party, the SNP, UKIP and an individual respondent, Fred Weil. ITV/STV “largely” supported our proposed amendments but suggested that the proposed amendment referring to BBC ODPS in Rule 5.2 should be placed in a footnote. However, we consider it preferable to retain the wording of this rule as set out in the Consultation to ensure clarity about its form and scope.
- 3.9 Several respondents (the Countryside Alliance, the IBT, the VLV and Lawyers for Israel) expressed concern that Ofcom's new functions in relation to the BBC extended only to regulating due impartiality and due accuracy in news and due impartiality on matters of political or industrial controversy and matters relating to current public policy. These respondents noted that under the BBC Trust, all BBC content had to be duly impartial and duly accurate. They also said that the BBC has a unique position and that audiences, as licence fee payers, have different expectations of BBC content. However, as these respondents acknowledge, the Charter and Agreement prescribe that, in providing the BBC broadcasting services, the BBC must observe the standards set under section 319 of the Act and, in providing BBC ODPS, it must observe those standards so far as Ofcom determines them relevant. The scope of Ofcom's functions is ultimately a matter for Government.
- 3.10 The IBT and VLV said that the World Service should be externally regulated in the areas of impartiality and accuracy. Under clause 33 of the Agreement, the BBC, and not Ofcom, will be responsible for securing editorial standards on the World Service. Similarly, the IBT and VLV argued that all BBC online content should be subject to external regulation. Under clause 60 of the Agreement, Ofcom will be required to “consider and give an opinion, including such recommendations as they consider appropriate, on whether the BBC has observed the relevant editorial guidelines on

services), local digital sound programme services (including community digital sound programme services) and radio licensable content services”.

³⁸ Schedule 3, paragraph 3 of the 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”.

the content of online material in the UK Public Services³⁹ and must enter into an arrangement with the BBC making provision for this.

- 3.11 The IBT noted that Rule 2.2 of the Code provides that factual content must not materially mislead the audience but that it “does not regulate for impartiality in such content”. The Countryside Alliance considered that changes to Section Two might be needed to take into account requirements of the new Charter⁴⁰. We consider Rule 2.3⁴¹ may be relevant in circumstances where potentially offensive content could be contextualised by the provision of different viewpoints or viewpoints that challenge or rebut the offensive content. We also note that Ofcom has a duty under article 51 of the Charter periodically to review the extent to which the BBC is promoting its public purposes, such as that cited by the Countryside Alliance, and that where appropriate we must carry out additional reviews addressing any specific issue of concern.
- 3.12 The VLV argued that section 319 of the Act is “far less detailed than the BBC's Editorial Guidelines...[and this] could not only lead to great confusion, but it is likely to lead to less rigorous regulation of the BBC which could be detrimental to licence fee payers”. We disagree. Our published rules, guidance and decisions set out and explain in detail the standards we apply and Ofcom has a track record of robust and rigorous enforcement.
- 3.13 The Countryside Alliance hoped that Ofcom would review the BBC's rural coverage, and the IBT and VLV said they would want Ofcom to conduct due impartiality reviews of BBC content. We refer in paragraph 3.11 to Ofcom's duties to carry out reviews under article 51 of the Charter.
- 3.14 The Countryside Alliance, IBT and VLV were also concerned to understand how Ofcom's regulation of the BBC under Section Five would fit within its Operating Framework for the BBC. As Ofcom prepares for taking on its new regulatory responsibilities in relation to the BBC, we are putting together an 'Operating Framework' for the BBC, covering performance, content standards and competition. In the area of content standards, as well as reviewing the rules in Sections Five and Six of the Code, we have consulted on: amendments to the rest of the Code to include BBC broadcasting services and BBC ODPS; and procedures for handling content standards complaints, investigations and sanctions for BBC programmes. Our Statements in these areas will be published in late March 2017.
- 3.15 The Conservative Party said that “where a correction has been made to BBC ODPS or BBC broadcasting services content, such a correction should...also be flagged and noted on any associated BBC Online website page which hosts or links to that online content”. It added that such corrections should “not be buried on a separate website...[otherwise] the correction will not have due prominence, nor would the correction be ‘appropriately signalled to viewers’”. The content of BBC online material linked to BBC broadcasting services and BBC ODPS output will not be subject to the Code. However, as mentioned in paragraph 3.10 above, BBC online material will be subject to an arrangement between the BBC and Ofcom.

³⁹ Clause 60(3) provides that online material excludes programmes provided in an on-demand programme service.

⁴⁰ The Countryside Alliance noted the Charter states: “The BBC should accurately and authentically represent and portray the lives of the people of the United Kingdom today, and raise awareness of the different cultures and alternative viewpoints that make up its society”.

⁴¹ Rule 2.3 states: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context [...]”

- 3.16 An individual respondent, Dr Sally Broughton Micova, objected to the reference to academic in the definition of “personal view” and “authored”⁴² in the context of Rule 5.10 of the Code, because in this respondent’s view, the reference “undermines the evidence based findings of academic research”. We disagree with this argument, as the reference to “academics” is just one example of a programme contributor who might give a “considered ‘authored’ opinion...with professional expertise or a specialism”.
- 3.17 Several respondents raised different aspects of Ofcom’s published Guidance to Section Five.
- 3.18 The IBT raised a concern about paragraph 1.22⁴³ of Ofcom’s Guidance to Section Five and queried whether this piece of Guidance meant that “UK licensed broadcasters transmitting outside the UK do not need to cover non-UK matters in a duly impartial manner”. Ofcom underlines that the due impartiality requirements apply to all news and to non-news content dealing with matters of political or industrial controversy and matters relating to current public policy. This includes such content on Ofcom licensed services broadcast to countries other than the UK. However, the approach to due impartiality may vary according to contextual factors such the type of programme and channel, and the likely expectations of the audience.
- 3.19 Lawyers for Israel also suggested amendments to Ofcom’s Code or published Guidance to Section Five. However, we were not persuaded that these were necessary for the following reasons:
- in relation to this respondent’s suggestion that the documents should “point out that a high standard is expected of the BBC in view of its public funding through the licence fee and its status as a public broadcasting service”, Ofcom underlines that it will have regard to contextual factors, such as audience expectations, in applying Section Five to the BBC;
 - Lawyers for Israel also suggested that the documents should indicate that “all broadcasters must exercise particular care to achieve due accuracy and due impartiality in relation to subjects where...coverage that is not accurate and impartial may promote racism”. Our published Guidance⁴⁴ to Section Three of the Code specifically warns broadcasters of the care that needs to be taken in news and current affairs programming in the areas of incitement, hate speech and/or abusive and derogatory treatment of individuals or groups; and
 - this respondent also suggested that the documents should indicate that “all broadcasters must exercise particular care to achieve due accuracy and due impartiality in relation to subjects where... sources of information may be

⁴² The Code defines “personal view” and “authored” as follows: “‘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”.

⁴³ Paragraph 1.22 states: “The ‘special impartiality’ rules (Rules 5.4 to 5.13 inclusive) apply to national and international matters, although the impartiality due to a non-national matter may be less. To give an example, broadcasters are expected to apply impartiality rules to a subject such as the American Presidential Elections. For those Ofcom licensees who are not broadcasting to the United Kingdom, the impartiality requirements still apply but the amount due may be less depending on the subject matter and the original country of reception”.

⁴⁴ See https://www.ofcom.org.uk/_data/assets/pdf_file/0021/24258/section_3_2016.pdf

unreliable". However, we consider that our Guidance to Section Five already makes clear the need for broadcasters to take care⁴⁵ in relation to the requirement for news to be duly accurate.

- 3.20 Dr Sally Broughton Micova argued that during the 2016 EU Referendum, the BBC had "failed" to "inform the public sufficiently" and to "adequately contest inaccurate information". She said Ofcom's Guidance on Section Five should clarify that broadcasters should not be "allowing the airing of mistruths and inaccuracies unchallenged" and when "clear overwhelming evidence points to something as being reality, it is not a viewpoint to be debated". We consider this respondent's point raises matters relating to both accuracy and impartiality, and is adequately dealt with by our rules, Guidance and published decisions. For example, news content must be duly accurate (under Rule 5.1 of the Code), and factual content must not materially mislead the audience (so as to cause harm or offence) (under Rule 2.2 of the Code). Further, paragraph 1.10 of Ofcom's published Guidance to Section Five states:

"...There is no requirement on broadcasters to provide an alternative viewpoint in all news stories or all issues in the news. However, all news stories must be reported with due accuracy and presented with due impartiality i.e. impartiality adequate or appropriate to the subject."

In addition, the definition of due impartiality in Section Five makes clear that: "'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".

- 3.21 Dr Sally Broughton Micova also said broadcasters may need further guidance on "when they should consider something to be a controversy in which there may be multiple 'viewpoints' on a debatable issue and when the balance of reliable evidence can be accepted". However, we consider that our rules, Guidance and published decisions already make clear that broadcasters should take account of the range and nature of viewpoints that might exist on a given matter of political or industrial controversy or matter relating to current public policy. For example, our published Guidance to Section Five states at paragraph 1.12:

"In reporting on particular news items, the broadcasters should take account of all relevant facts, including the nature of the coverage and whether there are varying viewpoints on a particular item...";

and at paragraph 1.25:

"In considering whether an issue is one of 'political or industrial controversy' or has been broadly settled, broadcasters should consider relevant factors. These may include, as appropriate, independent reports commissioned by, for example, the UK Parliament and whether the issue has already been scientifically established and does not appear to be challenged by, for example, established political parties or other significant domestic or international scientific institutions...".

- 3.22 Finally, Professor Ivor Gaber, noting "the controversy over claims made by both sides" in the EU Referendum, suggested amendments to paragraphs 1.9 and 1.10 of Ofcom's published Guidance to Section Five. For example, this respondent

⁴⁵ For example, paragraph 1.9 of the Guidance states: "Broadcasters should take care before making any unequivocal interpretations or statements about contentious issues, which may be dependent on nuance and open to different interpretations e.g. statistical findings or ambiguous statements made by politicians".

suggested that the Guidance should: refer to broadcasters using information supplied by “recognised fact-checking organisations”; and also state that broadcasters need not provide alternative viewpoints in news where “authoritatively sourced information is contested by information from untested sources”. However, we do not think it is appropriate for Ofcom to prescribe the sources broadcasters should use, which is a matter of editorial judgment, or that determining which are: “recognised fact-checking organisations”, “authoritatively sourced information” and “untested sources” is an uncontroversial exercise.

- 3.23 Given all the above, we consider the amendments we proposed in the Consultation are appropriate. A finalised version of Section Five is contained in Annex 2. These rules will come into effect on 22 March 2017 and will be available on the Ofcom website, as will the updated Guidance to Section Five that we refer to in paragraph 3.6 above.

Annex 1

Finalised PPRB Rules

Introduction

1. Section 333 of the Communications Act 2003 (“the Act”)⁴⁶ 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 organisations⁴⁷ are included in every licensed public service television channel (regional Channel 3⁴⁸, 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 Gaidheal⁴⁹; BBC ALBA; BBC Radio Wales; BBC Radio Cymru⁵⁰; 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 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 Relevant Services in the first place. When 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 Relevant Service if they choose to dispute any part of the decision.
5. If any dispute remains unresolved between any 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

⁴⁶ Under Schedule 12, paragraph 18 of the Act, the Welsh Authority must prepare and publish a policy with respect to party political and referendum broadcasts and their inclusion in S4C. In doing so it must have regard to (a) any views expressed by the Electoral Commission, and (b) any rules made by Ofcom with respect to party political and referendum broadcasts.

⁴⁷ See section 333(3) of the Act, and sections 37 and 127 of the Political Parties, Elections and Referendums Act 2000.

⁴⁸ Excluding Channel TV; this section of the Act does not apply in the Channel Islands.

⁴⁹ Broadcast in Gaelic.

⁵⁰ Broadcast in Welsh.

or the Relevant Service to Ofcom for determination under these Rules. For this purpose, Relevant Services and political parties/designated organisations should follow Ofcom's Procedures on the referral and determination of disputes under these Rules.

6. Section Six of Ofcom's Broadcasting Code⁵¹ ("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. 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 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, 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 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 referendums.
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 licensee and BBC One will carry PPBs 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

⁵¹ The Broadcasting Code can be found at <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

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.

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.

Allocation of broadcasts

PEBs

14. Before a General Election, and in the case of other elections where appropriate, each registered party should be offered (subject to Rules 15 and 16) one or more PEBs, the length of a series offered to a particular party being determined by the Relevant Service. In addition, Channel 4 and Channel 5 must each offer one or more PEBs to the SNP and Plaid Cymru. 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. 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. Relevant Services should consider making additional allocations of PEBs to 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 relevant nation/electoral area means it would be appropriate to do so.
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.

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.

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 assembly⁵⁶; 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. Parties in Great Britain (subject to Rule 21) will be offered one PPB in each of the following three periods: Autumn; Winter; and Spring. 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

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 must be carried between 5.30pm and 11.30pm.

26. PEBs and RCBs on radio must be carried between 6.00am and 10.00pm.

⁵⁶ Relevant parliaments and assemblies:

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

Annex 2

Finalised Section Five and Section Six of the Code

A2.1 Ofcom has recently consulted on proposed amendments to the rest of the Code. In relation to the BBC, the introductory sections to the Code 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.

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.)

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 air⁵⁷.
- 5.7 Views and facts must not be misrepresented. Views must also be presented with due 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

⁵⁷ For BBC ODPS this should be made clear to the audience by appropriate signalling to the audience.

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.

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

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).)

Rules made under section 333 of the Communications Act 2003 (regarding party election broadcasts, party political broadcasts and referendum campaign broadcasts) and the BBC Agreement, and referred to in paragraph 18 of Schedule 12 to the Communications Act 2003, 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 is a statutory referendum (to which the Political Parties, Elections and Referendums Act 2000 ("PPERA") applies or to which section 127 of PERA is applied) which includes a UK-wide, national or regional referendum held under the provisions of an Act of the UK Parliament or the Scottish Parliament, but does not extend to a local referendum.

6.2 Due weight must be given to the coverage of 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 parties and independent candidates with significant views and perspectives.

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 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 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.
- 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 3

Statutory background

- A3.1 Under section 3(1) of the Communications Act 2003 (“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”.
- A3.2 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”.
- A3.3 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”).
- A3.4 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)).
- A3.5 The “impartiality requirements” set out in section 320 of the Act, and referred to in paragraph A3.4(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)).
- A3.6 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".

- A3.7 The various requirements relating to due impartiality and due accuracy set out in paragraphs A3.4 to A3.6 above are reflected in Section Five of the Code.
- A3.8 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.
- A3.9 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 Commissioner⁵⁸. 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 onwards on constituency coverage and electoral area coverage in elections, and associated Guidance.
- A3.10 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")⁵⁹.

BBC Charter Renewal

- A3.11 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.⁶⁰
- A3.12 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 its funding, governance and regulation. The Agreement between the Secretary of

⁵⁸ 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.

⁵⁹ The updated PPRB Rules will be available on the Ofcom website.

⁶⁰ 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".

State and the BBC sits alongside the Charter. It provides detail on many of the topics outlined in the Charter.

- A3.13 On 15 December 2016, the Government published⁶¹ a new Royal Charter and Framework Agreement for the BBC. The Charter and Agreement come into effect on 3 April 2017. For the period to 3 April 2017, transitional arrangements apply. In particular, Sections Five (due impartiality) and Six (elections and referendums) of the Code, and Ofcom's rules on party political and referendum broadcasts, will apply to the BBC from 22 March 2017.
- A3.14 The new Charter and Agreement 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.
- A3.15 By virtue of article 46(7) of the Royal Charter, 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.
- A3.16 The general requirement to comply with content standards set by Ofcom is set out in Schedule 3, paragraph 3 of the 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".

- A3.17 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").
- A3.18 Under Schedule 3, paragraph 5 of the 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 Agreement replicate the duties already placed upon Ofcom under section 333 of the Act, as discussed in paragraph A3.10 above.

⁶¹ See <https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>

Annex 4

Respondents' views on our Consultation proposals

A4.1 In this Annex, we summarise respondents' views on the proposals made in our Consultation. Our views on these submissions are set out in Sections 2 and 3.

The concept of a list of larger parties

A4.2 We received 18 responses on this aspect of the Consultation.

A4.3 The large majority of respondents agreed with Ofcom's proposal to remove the concept of larger parties from Section Six of the Code and the PPRB Rules. The Electoral Commission said that the list of larger parties "creates an unnecessarily inflexible approach to regulating broadcasting at elections...the political landscape is increasingly complex for producing a list that is suitable for all broadcasters". This respondent considered it appropriate to allow decisions to be made by broadcasters by reference to past and/or current levels of electoral support. It also welcomed that "a clear route of appeal to Ofcom will remain in place for parties and campaigners that wish to raise complaints about any decision that are made".

A4.4 The BBC supported Ofcom's proposal to remove the concept of larger parties, noting that the BBC has "made these judgements on an annual basis with reference to past and current electoral support" and that this allows "greater flexibility with regard to the diversity of the current political landscape".

A4.5 Channel 4 welcomed the proposals to give greater editorial freedom to broadcasters. It said that it has "the requisite knowledge and expertise" to assess past electoral and current support and does so in relation to allocations of PEBs and its *Political Slot* programmes. It acknowledged, nevertheless, that "candidates and parties would derive additional comfort" from the fact they could appeal broadcasters' decisions to Ofcom.

A4.6 Channel 5, like Channel 4, argued that major broadcasters are "more than capable of making their own judgements" about PEB allocations and election coverage. It also welcomed the recognition in the Consultation that the list may not adequately reflect the current fragmented state of the political landscape.

A4.7 ITV/STV supported the removal of the list of larger parties as long as Ofcom produces an annual digest of evidence of past electoral support and/or current support. "for the foreseeable future". However, it said that the removal of the list would be "very likely" to create an increase in appeals to Ofcom about broadcasters' editorial decisions and PEB allocation. It added that: "We...trust that Ofcom has made a suitable assessment of the additional resources that it may require during election periods to deal with an increased volume of such complaints".

A4.8 Similar to ITV/STV, S4C said it did not oppose removal of the list of larger parties as long as Ofcom produces an annual digest of electoral support. This was because, it said, S4C, like a number of smaller broadcasters, does not have the internal resources to conduct a detailed analysis of support before each election and political broadcast period. S4C also said that, in the absence of a list that is

consistent between broadcasters, "it is possible that broadcasters will be more vulnerable to complaints from parties due to any variation in the way they are treated".

- A4.9 Sky News, like other broadcasters, agreed with the proposal to remove the list of larger parties, describing the rules as a "rather unsubtle instrument", and adding that in recent by-elections it had been "forced by the rules to include interviews with candidates who went on to lose their deposit". It added that: "As a large news organisation we feel properly equipped to... make the right judgements" but, like other respondents, envisaged that there might be more appeals by parties to Ofcom. Sky News encouraged Ofcom "to ensure that it has the capacity for rapid response to disputes" during election campaigns.
- A4.10 ITN cited various reasons why the concept of larger parties should be removed from Ofcom's rules. First, the increase in the number of larger parties for some elections⁶² had meant that in short news reports "it can be extremely difficult to fit in four or five interviews" with all the larger party candidates; second, Rule 6.9⁶³ is an "unreasonable restriction on editorial freedom" and makes election reporting "formulaic", whereas in "all other forms of reporting an interviewee is included only if their contribution is editorially justified"; third, ITN said there can be "genuine practical difficulties" in contacting and meeting all larger party candidates; and finally, there are occasions when "disproportionate time is given to candidates who will not win", however, ITN acknowledged there would be some occasions "where a significant number of candidates will need to be interviewed". ITN added that broadcasters would still have to be duly impartial but no longer by means of a "one size fits all" approach.
- A4.11 Amongst political parties, the SNP supported the removal of the concept of larger parties and pointed to the 2016 Scottish Parliamentary elections, in which the Liberal Democrats were designated as a larger party and the Scottish Green Party was not, and the latter "achieved a greater share of the regional vote in May 2016 and had more MSPs elected than the Liberal Democrats". UKIP said the removal of the concept of larger parties "merely reflects how complex the UK's political landscape has become over the last three years".
- A4.12 The Scottish Green Party also agreed with the proposal to remove the concept of larger parties from Ofcom's rules, saying that the distinction "does not reflect an increasingly complex political landscape, especially in Scotland". It considered giving broadcasters greater editorial freedom by reference to past electoral support and current support was "broadly supportable", as long as there was not a reduction in "the range of voices" in broadcast coverage. This respondent said that in Scotland "we have parliament of minorities in which all parties have an opportunity to influence debates...so drawing the line between the 3rd and 4th largest parties, for example, would not provide the public with the relevant range of viewpoints". It also said in considering national coverage "local variations are important"⁶⁴.

⁶² ITN cited the London Assembly and Mayoral elections and Welsh Assembly elections in 2016.

⁶³ Rule 6.9 stated: "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.)"

⁶⁴ In this context, the Scottish Green Party said: "across Scotland the Conservatives are now viewed as Scotland's 2nd party, due to the Holyrood 2016 election result, and the Greens 4th, yet on Glasgow City Council the Greens are the 3rd largest party and the Conservatives are 4th with only one councillor".

- A4.13 The Liberal Democrats said that removing the concept of larger parties “could be made to work”. However, it raised some points of concern, including that:
- any new framework should respond to the complex multi-party system in the UK in which “there are more than two parties credibly in a position of securing support and potentially forming part of a future government”. This respondent added that the logistical challenges faced by broadcasters under Rule 6.9⁶⁵ are a “product of voters...and should not be ignored for production conveniences”;
 - there need to be “clear, objective criteria” as to what constitutes past electoral support and current support, and that “real elections where people are voting should be included as part of the measure of current support”;
 - the ability to appeal to Ofcom about editorial decisions is “flawed” because such appeals take place after broadcast. Allowing broadcasters discretion “suits the best resourced parties” because “representation will have to be made to more than one broadcaster” and those parties will also “have better resources to monitor all output” as well as more staff at the local level to monitor and challenge editorial decisions;
 - decisions about election coverage “are... themselves part of the electoral process” such as, for example, the decision and format of the leaders’ debates in the 2015 General Election. In this context, the Liberal Democrats argued that Ofcom should define ahead of an election period “what performance is necessary for a party [to] receive a certain level of coverage and parity with other parties”, and
 - levels of broadcast coverage “should not mean parity in UK wide broadcasts for parties that explicitly do not seek to govern the whole UK”.
- A4.14 Several other respondents also agreed with the proposal to remove the concept of larger parties. The VLV said that making editorial decisions and PEB allocations by reference to evidence of past electoral support and current support would allow broadcasters “greater editorial freedom to reflect the more fragmented and complex state of the political landscape” in the UK. It would also allow broadcasters with “a smaller broadcast footprint to reflect more accurately the political situation in their local area”.
- A4.15 Dr Sally Broughton Micova said that Ofcom’s decision ahead of the 2015 General Election to designate UKIP as a major party and not the Green Party had proved “highly controversial”. She added that removing the concept of larger parties from Ofcom’s rules would “remove any influence the very designation of being [a larger party] or not might carry with voters”. Professor Ivor Gaber said that the list of larger parties was introduced at a time when there was “far less electoral volatility” and variation in electoral support across the nations of the UK. He added that there is therefore a need to give broadcasters greater flexibility, but coupled with the right of parties to appeal broadcasters’ decisions to Ofcom.
- A4.16 Three respondents, one broadcaster and two political parties, did not agree with the proposal to remove the concept of the larger parties from Ofcom’s rules. The broadcaster, Global, said that it favoured retaining the list of larger parties because:

⁶⁵ See footnote 63.

- the list had enabled Global's news staff to "make prompt, informed" news decisions, noting that "[d]iscussions [with parties] in the area of constituency reporting...could become lengthy and complicated";
- the list "is useful in reducing the number of unfounded complaints" about perceived bias on the part of the broadcaster; and
- without a list there could be a "significant" rise in election-related complaints, which would have resource implications for both Ofcom and smaller broadcasters.

However, Global said that in relation to allocation of PEBs (in the context of Global's national radio station, Classic FM), it was "open to the removal" of the list of larger parties. This was because: "[d]ecisions in these cases can be made easily in advance, with the help of the Broadcaster's Liaison Group, and need only be made once".

A4.17 The Conservative Party said that it "strongly" disagreed with the proposal to remove the concept of larger parties which it considered a "highly contentious and political regulatory move...[which] raise[d] questions about making major changes to electoral processes without recourse to Parliament". It set out several reasons for this view:

- Ofcom had not laid out sufficient rationale for the proposed change apart from a reference to the views of the Electoral Commission. However, the Conservative Party said that the Electoral Commission "has not consulted on this issue; it has not raised it with the Parliamentary Parties Panel and has no mandate to promote significant regulatory change";
- the concept of larger parties is a "long-standing provision, which recognises that the manner in which the UK Parliament is constituted, both its operation of First Past the Post in the House of Commons, but also the greater prominence and status given to the largest opposition parties";
- the suggestion that there is a "fragmented political landscape" is misleading: since the 2015 General Election there has been a majority Conservative Party Government, with the Labour Party "comfortably having the status as Her Majesty's Opposition and the SNP having "displaced the Liberal Democrats as the third party". The Conservative Party also said that in the 2015 General Election, "Conservative and Labour collectively won 67.2% of the UK vote and 68.9% of the GB vote - higher than the 2010 [G]eneral [E]lection and on a par with the 2005 [G]eneral [E]lection";
- all parties are not the same and a party with "one or two national representatives should not be given the same status as a political party elected with 50, or even 100";
- paragraph 3.29⁶⁶ of the Consultation "dismissing the 'national' status of political parties fails to recognise the status of the UK Parliament as the

⁶⁶ Paragraph 3.29 stated: "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

United Kingdom's principal representative and sovereign democratic body";
and

- the removal of the list of larger parties would have the effect of granting more PEBs and PPBs to "fringe minority parties that do not have established and substantive democratic representation".

A4.18 The Labour Party also disagreed with the proposal to remove the concept of larger parties arguing that:

- since 1922 "there have only been Labour or Conservative PMs";
- the "share of votes for Labour and Conservatives in GB rose from 66.6% in 2010 to 68.8% in 2015";
- national broadcasters "should always cover the two main political parties – even if the focus is on an area where Labour or the Conservatives are unlikely to win, they will still be contending the most seats nationally". This respondent added that: "To deny people a Labour or Conservative voice on a political story is not reflective of the choice of who will ultimately lead the country";
- the concept of larger parties has ensured "balanced debate and that viewers have access to debates across the country"; and
- broadcasters will have to "decide their own rules to replicate what Ofcom are no longer deciding for them which could prove chaotic in terms of monitoring appeals".

Annual digest of evidence of past electoral support and/or current support

A4.19 We received 16 responses on this aspect of the Consultation.

A4.20 The large majority of respondents agreed with Ofcom's proposal to produce an annual digest of evidence of past electoral support and/or current support. The Electoral Commission said that a digest would "support smaller broadcasters in reaching their decisions".

A4.21 Among broadcasters, the BBC supported the proposal to create a digest noting that this is "in line with the BBC's existing practice". Channel 4 said that, as other broadcasters, it has relied on "Ofcom's previous digests in making editorial decisions in the area of elections". Similarly, Channel 5 said a digest would assist both broadcasters and political parties as it would be "clear on what sources broadcasters are drawing to make their decisions". ITV said "many if not most broadcasters do not have the necessary research resources to produce for themselves this very authoritative and useful digest of electoral support".

A4.22 S4C suggested that a digest should: "include clear data with regards to support to parties and independent candidates" and list data separately for the four nations of the UK. In this context, S4C said it was "comfortable" with the level of detail and

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...".

layout of data that was included in Ofcom's consultation⁶⁷ on the list of major political parties for the elections taking place on 7 May 2015. This respondent also said that Ofcom should:

- publish a digest at least 12 weeks before the start of the election period “to ensure that the broadcasters have sufficient time to draw conclusions, to inform the relevant parties that are entitled to electoral broadcasts and, in the case of S4C, time to secure the approval of S4C's Authority on S4C's policy”; and
- give assurances that the information contained in one annual digest “can be relied upon until the publication date of Ofcom's next summary”.

S4C also said that Ofcom should produce a digest even in years where an election is not held to help broadcasters' allocations of PPBs. The respondent also made reference to proposed new Rule 21⁶⁸ in the revised PPRB Rules, and queried whether broadcasters should carry out an “an assessment of [PPB] allocation following the latest election result”. In this context, S4C also suggested that Ofcom should consider producing a “supplementary summary following an election for the purpose of assessing” the allocation of PPBs.

A4.23 Amongst political parties, the SNP said an annual digest “would be useful in informing debate and decisions on political party coverage”, whilst UKIP said it would “provide evidence-based underpinning” for the removal of the concept of larger parties from Ofcom's rules.

A4.24 Several other respondents also agreed with the proposal to produce an annual digest. The VLV noted the benefit of such a digest to smaller broadcasters which may lack the resources to regularly reassess party support. Dr Sally Broughton Micova said the digest should focus on parties rather than candidates “to avoid contributing to the trend towards personality politics”. She also said a digest:

- should include “both previous popular votes and seat acquisition”;
- should also include a list of “any new parties that have emerged since the previous election”; and
- could include a “digest of electoral issues”, perhaps based on the British Social Attitudes Survey and other sources. The respondent said that this might “highlight some of the issues shown to be of most concern to the electorate and help broadcasters more effectively interrogate parties”.

A4.25 Professor Ivor Gaber said that a digest would provide both political parties and the public with “a better understanding as to why decision had been taken in the past and enable them to anticipate how broadcasts might be allocated in the immediate future”.

⁶⁷ See https://www.ofcom.org.uk/_data/assets/pdf_file/0030/59169/major_parties.pdf

⁶⁸ This rule set out in the Consultation states: “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 assembly; 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”.

- A4.26 Global said that a digest would be “greatly helpful” in making editorial decisions. However, it added if the digest is annual and “only concerned with electoral support...it seems unlikely it will be able to provide the flexibility that forms part of the justifications for removal of the larger parties list”.
- A4.27 Several respondents raised concerns with the proposal to produce a digest. ITN said that an annual digest “could simply be a means of implementing a similarly inflexible device” as the list of larger parties and that an annual document would be “at risk of very swiftly becoming out of date and therefore inaccurate”. It added that opinion polls are “not necessarily reliable” and can change dramatically “over the course of an election let alone a 12 month period”. ITN argued that “editorial news departments should be left to focus on the specifics and to do their own research, rather than become over-focused on a digest produced by Ofcom”.
- A4.28 The Liberal Democrats asked, if Ofcom is to produce a digest to assist smaller broadcasters with editorial decisions, “why can this not extend to [Ofcom] making a decision on parties’ standings more generally” by means of “explicit judgement” against objective criteria.
- A4.29 The Conservative Party considered the proposal to produce an annual digest to be “part of a retrograde move of downgrading the status of UK [G]eneral [E]lections”. The Labour Party also disagreed with the proposal to produce an annual digest, arguing that:
- it is “already a complicated and difficult feat to compare past election results with a range of variables, such as comparing the results to the last election, or the last similar election”. This respondent added that “With boundary changes also forthcoming, this is set to be even more complex and as a result, increasingly inaccurate”;
 - there is “no clear guidance on how ‘current polling’ will be judged [and which] polls will be included/excluded”. The respondent added that: “Given the recent accuracy of polls in elections, we question whether the emphasis put on their results be allowed to influence elections in such a substantive way”; and
 - an annual digest could mean that “data and judgements are nearly a year out of date and potentially not reflecting major debates or recent changes in support”.

The proposed amendments to Section Six

- A4.30 We received 13 responses on this aspect of the Consultation.
- A4.31 The large majority of respondents agreed with Ofcom's proposed amendments. Amongst broadcasters, support for Ofcom's proposed amendments was received from: the BBC; Channel 4; Channel 5; and ITN. Further, S4C did not object to the removal of references to larger parties.
- A4.32 ITV “broadly” agreed with the proposed amendments and welcomed the proposed requirement in Rule 6.2⁶⁹ that broadcasters give “due weight” to coverage of

⁶⁹ Our proposed new Rule 6.2 stated: “Due weight must be given to the coverage of 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

independent candidates. However, this respondent considered the amendments in relation to BBC ODPS to be “unnecessarily repetitive” and suggested that the amendments⁷⁰ to Rules 6.4, 6.6 and 6.7 could be dealt with in a single footnote to all of those rules as follows: “In relation to Rules 6.4, 6.6 and 6.7, BBC ODPS are not required to remove archive content for the election or referendum period”.

- A4.33 UKIP supported all the proposed amendments to Section Six whereas the Labour Party agreed with the proposed amendments in relation to the BBC but not with the removal of references to the concept of larger parties for the reasons given in paragraph A4.18 above. Similarly, Global did not agree with removal of references to larger parties but agreed with the other proposed amendments, saying that it advocated a “consistent approach across commercial radio and the BBC in this area”.
- A4.34 A number of other respondents agreed with Ofcom's proposed amendments to Section Six, namely: the VLV; an individual respondent, Fred Weil; and Professor Ivor Gaber who said that it is “crucial that all PSB news providers are seen to be operating to a common standard, both in terms of equity and to secure and retain confidence in PSB news services”.
- A4.35 In its response, ITN suggested replacing the word “must” with “should usually” in Rule 6.9⁷¹ because, in its view, the obligation in Rule 6.9 “prohibits editorial choice and there should be scope in exceptional cases not to offer each candidate an opportunity to take part”, whilst maintaining due impartiality. ITN cited by way of example that “rather than the local candidate it may be more appropriate and editorially justified to use a national spokesperson / leader or a Government Minister in a constituency electoral report focused on a specific issue (such as education or health or Brexit) to talk about the issue”.
- A4.36 The SNP suggested removing the reference to the Political Parties, Elections and Referendums Act 2000 (“PPERA”) within the definition of “referendum” in Section Six, and defining a referendum as a “statutory UK-wide, national or regional referendum...”. This was because the 2014 Referendum on Scottish Independence was provided for by an Act of the Scottish Parliament and a draft Bill for a future referendum has been published by the Scottish Government.
- A4.37 Dr Sally Broughton Micova agreed with the removal of references to the concept of larger parties from Section Six. However, she said that the BBC has “a special duty

electoral support and/or current support. Broadcasters must also consider giving appropriate coverage to parties and independent candidates with significant views and perspectives”.

⁷⁰ Our proposed new Rules 6.4, 6.6 and 6.7 stated:

“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”.

“6.6 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”.

⁷¹ See footnote 29.

to give space to minority groups that otherwise might struggle to find a platform for expression and that might be marginalized by other mainstream media". This respondent therefore referred to Rule 6.2⁷² saying that "BBC services have a specific obligation to seek out and cover minority parties and independent candidates, and to adequately represent the country's diversity in its coverage of candidates".

- A4.38 In the only other response in this area, the Liberal Democrats expressed concern about the "ambiguous definition of 'evidence of past electoral support and/or current support'" which in its view should be "better defined with proper objective measures".

The proposed amendments to the PPRB Rules

- A4.39 We received 14 responses on this aspect of the Consultation.

- A4.40 A majority of respondents agreed with Ofcom's proposed amendments. These were: the BBC; ITN; UKIP; the VLV; Dr Sally Broughton Micova; an individual respondent, Fred Weil; and Professor Ivor Gaber who said that it is was crucial to ensure "equity" between the BBC and other public service broadcasters.

- A4.41 Several broadcasters raised concerns with aspects of the proposed amendments. Channel 4 and Channel 5 both expressed broad support for the amendments to the PPRB Rules. However, both these respondents objected to the retention of the requirement in Rule 14⁷³ of the PPRB Rules that Channel 4 and Channel 5 offer PEBs to the SNP and Plaid Cymru. Channel 4 said that, given Ofcom's proposal to remove the concept of larger parties (and thereby references to specific parties) from its rules, the continued reference to the SNP and Plaid Cymru seemed "counterintuitive" and diminished the editorial freedom of Channel 4 and Channel 5. Channel 4 also said that that Ofcom was giving "preferential treatment" to the SNP and Plaid Cymru and Rule 14 "may also militate against any other parties who operate in [Scotland and Wales] and who significantly increase their current electoral support". Channel 4 therefore suggested amending the PPRB Rules to require Channel 4 and Channel 5 to offer "PEBs to registered parties in the nations of Wales and Scotland having regard to past electoral support and/or current support".

- A4.42 Channel 5 made similar points, saying that it had always allocated PEBs to the SNP and Plaid Cymru at both General Elections and European Elections, in part "because those parties clearly play a significant role in the political life of the United Kingdom". Channel 5 added that the revised PPRB Rules aim "to give more responsibility to broadcasters; and we will discharge that responsibility by continuing to recognise [the SNP and Plaid Cymru] appropriately in our PEB allocations". Channel 5 also questioned the drafting of Rule 14. It commented that "[w]e believe Ofcom wishes to maintain [the current] position" but that, as drafted: "Channel 5 (like Channel 4) will need to consider offering PEBs to all registered

⁷² See footnote 69.

⁷³ Our proposed new Rule 14 stated: "Before a General Election, and in the case of other elections where appropriate, each registered party should be offered (subject to Rules 15 and 16) 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)".

parties, subject to them passing the qualification hurdles set out in Rules 15 and 16...[However] because [the SNP and Plaid Cymru] only stand in Scotland and Wales respectively, they will never qualify under Rule 15 – so writing them into Rule 14 has no material effect whatsoever”.

A4.43 ITV/STV also expressed broad support for the proposed amendments to the PPRB Rules, but said that some of the proposed amendments were “unnecessarily legalistic and complex”. For example, ITV/STV suggested replacing the term “Relevant Services” with the term “broadcasters”. Like Channel 4 and Channel 5, this respondent also said that the reference to the SNP and Plaid Cymru should be removed from Rule 14. This was “not because...these parties should no longer receive PEBs on the channels named in the existing Rules or from other broadcasters, but because the logic of the new Rules is that it should be for broadcasters to determine the allocation of PEBs”. ITV/STV also suggested the removal of references to European Parliamentary elections given that following the 2016 EU Referendum it would be “unlikely that the UK will take part in” any further such elections.

A4.44 S4C requested that Rules 21 and 22⁷⁴ of the proposed PPRB Rules “clearly specify” that broadcasters are required to determine the allocation of PPBs “on the basis of an annual assessment (12 months), and that there is no requirement for the broadcasters to make an assessment for the three periods (autumn, winter and spring) separately”. S4C also said that to “ensure transparency and to avoid confusion for parties, S4C would like to ensure that the [PPRB] Rules specify to what extent they relate to S4C”. This respondent therefore requested that the PPRB Rules make reference to Schedule 12, paragraph 18 of the Communications Act 2003.

A4.45 Global questioned the “continuing worth” of the requirement on national radio services to carry PEBs saying that “it appears no research exists that supports their value on radio”. It added that during the 2015 General Election, national radio services offered 12 PEB slots, which “eliminated the revenue from 12 advertising breaks – as well as generating complaints from listeners and undoubtedly causing them to switch off and switch over”. Global made the following other points:

- the respondent queried why BBC Radio 3 was not being obliged to carry PEBs whereas its “closest competitor” Classic FM was obliged to do so;
- Global said it understood that the BBC has previously broadcast PEBs at a length of 1’30”. It therefore argued that the length of broadcasts should be reduced to 1’30” for all “Relevant Services”, arguing that shorter broadcasts would be a “far more effective way” for parties in the digital age to present their policies on radio; and
- the respondent welcomed the proposed simplification of the scheduling rules, allowing PEBs, PPBs, and RCBs to be scheduled at any time between 6am

⁷⁴ Our proposed new Rules 21 and 22 stated:

“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 assembly[.]; 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. Parties in Great Britain (subject to Rule 21) will be offered one PPB in each of the following three periods: Autumn; Winter; and Spring. 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”.

and 10pm on radio. However, it favoured further relaxation so that broadcasts could be scheduled at any time between 6am and midnight, which would enable radio stations to “minimise the commercial and financial impact” of PEBs and RCBs and avoid “listeners switching off”.

- A4.46 The Liberal Democrats expressed concern about what it described as the “ambiguous definition of ‘evidence of past electoral support and/or current support’”, within the PPRB Rules, which in its view should be “better defined with proper objective measures”. It said that “parties who meet the criteria in terms of the number of seats they stand in and secure a defined level of support should receive more than 1 PEB, in contrast to those standing in the required number of seats but receiving exceptionally low levels of support”. It added that the PPRB Rules should contain “clear criteria set for how many PEBs a party will receive in line with objective, transparent criteria. E.g. ‘X PEBs will be allocated to parties that have demonstrated support through Y’”. This respondent also opposed the proposal to “expand the airing window to 11.30pm, which we believe falls outside what could reasonably be considered ‘peak time’ as previously defined”. It added that there should be a requirement for slots to be comparable so that there were not instances of one party’s PEBs and PPBs being scheduled for broadcast at 7pm and another’s at 11:25. Finally, the Liberal Democrats also suggested there should be more flexibility in the length of PPBs and PEBs on television, allowing up to 4’40” and shorter slots of 1’40” or 0’40”.
- A4.47 The Labour Party said that, in principle, it supported the amendments to the PPRB Rules to ensure that the BBC is regulated in the same manner as other broadcasters. However, this respondent did not agree with removing the references to larger parties from the PPRB Rules. Specifically, it said the proposal not to ensure that PEBs and PPBs “are at peak times limits accessibility to major political parties and their policies”.

The proposed amendments to Section Five

- A4.48 We received 12 responses on this aspect of the Consultation.
- A4.49 ITN, the SNP, UKIP and an individual respondent, Fred Weil, agreed with the proposed amendments to Section Five. ITV/STV said it “largely” supported the amendments but suggested that the proposed amendment referring to BBC ODPS in Rule 5.2 should be placed in a footnote⁷⁵. The Labour Party welcomed the “emphasis on due impartiality and accuracy” and added that “inaccuracies and balance based on fake stories should be addressed”.
- A4.50 The Conservative Party said that “where a correction has been made to BBC ODPS or BBC broadcasting services content, such a correction should...also be flagged and noted on any associated BBC Online website page which hosts or links to that online content”. It added that such corrections should “not be buried on a separate website...[otherwise] the correction will not have due prominence, nor would the correction be ‘appropriately signalled to viewers’”.
- A4.51 Several respondents (the Countryside Alliance, the IBT, the VLV and Lawyers for Israel) expressed concern that Ofcom’s new duties in relation to the BBC extended only to enforcing standards set under section 319 (and section 320) of the Act i.e. due impartiality and due accuracy in news and due impartiality on matters of

⁷⁵ ITV/STV said the footnote to Rule 5.2 should state: “in the case of BBC ODPS, significant mistakes should normally be corrected quickly and corrections appropriately signalled”.

political or industrial controversy and matters relating to current public policy. These respondents noted that under the BBC Trust, all BBC content had to be duly impartial and duly accurate. For example, the Countryside Alliance pointed to the BBC's "unique position", and made reference to a requirement⁷⁶ of the new Charter, which in this respondent's view meant that BBC content has to be "above and beyond the limited statutory obligations of the Code". The Countryside Alliance hoped that Ofcom will take this into account including in its application of the harm and offence rules in Section Two of the Code. This respondent also expressed a hope that Ofcom would undertake reviews into the BBC's rural coverage.

- A4.52 The IBT and VLV both similarly objected to the scope of the due impartiality and due accuracy requirements that would be placed on the BBC, saying that Ofcom's new remit would represent a "significant reduction" in the regulation of the BBC. Both respondents said that the BBC Trust required all BBC content to be duly accurate and duly impartial, and each pointed to the different expectations that audiences, as licence fee payers, have of the BBC compared with other broadcasters. The IBT said that the proposed regulatory scope of Section Five "could run contrary with the Government's intention 'for the BBC to be held to account more robustly for its content standards'". On a related point, the VLV argued that section 319 of the Act is "far less detailed than the BBC's Editorial Guidelines...[and this] could not only lead to great confusion, but it is likely to lead to less rigorous regulation of the BBC which could be detrimental to licence fee payers". In summary, on the scope of Section Five, the IBT and VLV each said that all BBC content, including: content other than news and current affairs; online content; and the World Service, should be externally regulated in the areas of impartiality and accuracy.
- A4.53 The IBT noted Rule 2.2⁷⁷ of the Code, which sets out the requirement for factual content not to be materially misleading. However, it said that this rule does not "regulate for impartiality" in such content. The IBT also raised a concern about paragraph 1.22⁷⁸ of Ofcom's published Guidance to Section Five and queried whether this piece of Guidance meant that "UK licensed broadcasters transmitting outside the UK do not need to cover non-UK matters in a duly impartial manner". Finally, both the IBT and VLV each said they would want Ofcom to conduct due impartiality reviews of BBC content, as had been undertaken by the BBC Trust in the past.
- A4.54 Lawyers for Israel also objected to Ofcom not being able to deal with "complaints of inaccuracy of BBC content other than news, for example documentaries dealing with controversial subjects". It added that it regarded this "as a serious failing and a breach of promises made by the Government in the White Paper and in correspondence". This respondent also suggested that Ofcom's Code or published Guidance to Section Five should: first, "point out that a high standard is expected of the BBC in view of its public funding through the licence fee and its status as a

⁷⁶ The Countryside Alliance noted the Charter states: "The BBC should accurately and authentically represent and portray the lives of the people of the United Kingdom today, and raise awareness of the different cultures and alternative viewpoints that make up its society".

⁷⁷ Rule 2.2 states: "Factual programmes or items or portrayals of factual matters must not materially mislead the audience".

⁷⁸ Paragraph 1.22 states: "The 'special impartiality' rules (Rules 5.4 to 5.13 inclusive) apply to national and international matters, although the impartiality due to a non-national matter may be less. To give an example, broadcasters are expected to apply impartiality rules to a subject such as the American Presidential Elections. For those Ofcom licensees who are not broadcasting to the United Kingdom, the impartiality requirements still apply but the amount due may be less depending on the subject matter and the original country of reception".

public broadcasting service”; and second, “indicate that all broadcasters must exercise particular care to achieve due accuracy and due impartiality in relation to subjects where (a) coverage that is not accurate and impartial may promote racism and/or (b) sources of information may be unreliable”.

- A4.55 The Countryside Alliance, IBT and VLV were also concerned to understand how Ofcom's regulation of the BBC under Section Five would fit within its Operating Framework for the BBC.
- A4.56 The other two responses we received in this area made reference to controversies over news reporting during the 2016 EU Referendum and suggested amendments to Ofcom's published Guidance on Section Five. Dr Sally Broughton Micova argued that during the 2016 EU Referendum campaign, the BBC had “failed” to “inform the public sufficiently” and to “adequately contest inaccurate information”, but rather focused on the individuals leading the campaigns. This respondent said that Ofcom's Guidance to Section Five should clarify that broadcasters should not be “allowing the airing of mistruths and inaccuracies unchallenged” and when “clear overwhelming evidence points to something as being reality, it is not a viewpoint to be debated”; and broadcasters may need further guidance on “when they should consider something to be a controversy in which there may be multiple ‘viewpoints’ on a debatable issue and when the balance of reliable evidence can be accepted”.
- A4.57 This respondent also objected to the reference to academics in the definition of “personal view” and “authored”⁷⁹ in the context of Rule 5.10 of the Code. In this respondent's view, the reference “undermines the evidence based findings of academic research. Academics are frequently not speaking from their personal opinion, but providing expertise based on evidence from research that is often generated collectively in collaboration with others”.
- A4.58 Professor Ivor Gaber, in light of “the controversy over claims made by both sides” in the EU Referendum, suggested the following amendments (in bold) to paragraphs 1.9 and 1.10 of Ofcom's published Guidance to Section Five:
- 1.9 “In accordance with a broadcaster's right to freedom of expression, the broadcaster has the right to interpret news events as it sees fit, as long as it complies with the Code. However, broadcasters should take care before making any unequivocal interpretations or statements about contentious issues, which may be dependent on nuance and open to different interpretations e.g. statistical findings or ambiguous statements made by politicians. **Broadcasters should use information supplied by recognised fact-checking organisations (such as those used by the BBC and Channel Four News) to contextualise the competing claims made**”.
- 1.10 “Rule 5.1 is potentially applicable to any topic included in news programming, and not just matters of political or industrial controversy and matters relating to current public policy. There is no requirement on broadcasters to provide an alternative viewpoint in all news stories or all

⁷⁹ The Code defines “personal view” and “authored” as follows: “‘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”.

issues in the news. **This applies in particular where authoritatively sourced information is contested by information gleaned from untested sources.** However, all news stories must be reported with due accuracy and presented with due impartiality i.e. impartiality adequate or appropriate to the subject”.