



Party Political Broadcasts

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This note sets out the current arrangements for party political broadcasts including their allocation, frequency, scheduling, length and content. Details are given of the BBC's [final allocation criteria](#) for party election broadcasts (PEBs) in 2015 as well as Ofcom's [rules](#) on PEBs for commercial broadcasters.

Ofcom carried out a [consultation](#) in early 2015 about the composition of its list of major political parties, each of which are entitled to at least two PEBs by the commercial broadcasters. On 16 March 2015 Ofcom published a [statement](#) on the results of the consultation and the revised [list of major parties](#). UKIP is included on the list but not the Green Party.

The term 'party political broadcasts' (PPBs) is used generically here to refer to party election broadcasts (PEBs), referendum campaign broadcasts (RCBs) and the party political broadcasts which have been linked to specific political events such as the Budget and Queen's Speech.

The Note also makes reference to the long-standing ban on political advertising in the UK and the questions this raises in terms of freedom of expression and compatibility with the European Convention on Human Rights.

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1 Background

There is a long-standing ban on advertisements of a political nature on TV or radio in the UK. An Electoral Commission factsheet, published in November 2010, provided the following explanation

It has traditionally been argued that allowing political advertising in the broadcast media would give an advantage to the best financed candidates or parties and could reduce an election campaign to soundbites and slogans. Political advertising in the broadcast media is therefore prohibited in the UK. Party election broadcasts (PEBs) are designed to offset the differential ability of parties to attract campaign funds. This free airtime is provided prior to elections and other significant events (such as the budget) and allows qualifying parties an opportunity to deliver their messages directly to the electorate through the broadcast media.¹

Political broadcasts were first carried by BBC radio prior to the general election of 1924. The BBC took the view that the provision of such broadcasts were a direct consequence of its role as a public service broadcaster.² Early allocation arrangements were informal, with the BBC making proposals and taking soundings from political parties until agreement was reached. The process became more structured with the establishment in 1947 of the Committee on Political Broadcasting which consisted of representatives of the BBC and the political parties. Televised PEBs were first shown in 1951. Five years later, the newly-established commercial television companies began broadcasting PPBs. Nevertheless, until the *Broadcasting Act 1990* became law, there was no legal obligation on any broadcaster to carry PPBs. The BBC has a formal obligation to carry PPBs through its agreement with the Secretary of State for Culture, Media and Sport.³

More detailed accounts of the history of PPBs are given in Robert Blackburn's *The electoral system in Britain* (Macmillan, 1995) and in appendix 1 to the *Consultation Paper on the Reform of Party Political Broadcasting* (BBC, ITC, S4C and Radio Authority, January 1998). A tabular history of allocation arrangements is given as an annex to the Electoral Commission's discussion paper of December 2001.⁴

2 Allocation, length and frequency of PPBs

2.1 Introduction

Section 333 of the *Communications Act 2003* charges the regulator Ofcom with the duty of making rules regarding the allocation, length and frequency of PPBs (including Party Election Broadcasts) and Referendum Campaign Broadcasts for commercial broadcasters with public service obligations. The rules apply to ITV1, Channel 4 and Five, and the national (i.e. UK-wide) commercial radio services Talksport, Classic FM and Absolute Radio. In making such rules, Ofcom must take account of the views of the Electoral Commission.

The BBC is also required to carry PPBs by its Charter and Agreement but, in this respect, it is regulated not by OFCOM but by the BBC Trust. S4C is required to carry PPBs under the

¹ Electoral Commission, *Factsheet: Party election broadcasts and referendum campaign broadcasts*, November 2010

² Fifth report of the Committee on Standards in Public Life: *The Funding of Political Parties in the United Kingdom* Cm 4057 1999, para 13.14

³ *Broadcasting: An agreement between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation*, Cm 6872, July 2006

⁴ *Party political broadcasting review 2001-02: discussion paper*, Electoral Commission, December 2001

2003 Act, but is regulated by the Welsh Fourth Channel Authority. Digital channels are not required to carry such broadcasts, but Sky has carried them voluntarily.

The broadcasters seek to co-ordinate their allocation policies via the Broadcasters' Liaison Group. Recent practice was summarised in the Electoral Commission's 2010 factsheet as follows:

The process of allocating PEBs has developed over time and is based heavily on convention. Usually the governing party and main opposition party are allocated the same number of broadcasts, and no party is offered more than five broadcasts in total. The number of PEBs offered to major parties (Labour, Conservative and Liberal Democrats, plus SNP in Scotland and Plaid Cymru in Wales) is related to previous electoral support and the number of candidates standing at the election. In addition a minor party standing candidates in one-sixth of the total seats contested qualifies for a PEB. This is modified as necessary for the proportional representation systems for elections to the devolved legislatures and the European Parliament.⁵

2.2 Ofcom rules

The *Ofcom rules on party political and referendum broadcasts* were last published in March 2013. They reflect minimum requirements which the licensees are required to follow and are not intended to "fetter the discretion" of licensees to exceed these requirements. Each broadcaster is responsible for deciding the allocations made available to a political party or campaign group. However, the broadcasters work together with the Electoral Commission under the auspices of the Broadcasters' Liaison Group in order to try to ensure a consistent approach. Ofcom's rules include the following:

Services carrying broadcasts

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

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

9. The regional Channel 3 licensee will additionally carry: local election broadcasts in those UK nations/regions where such elections are taking place; broadcasts in the relevant nations/regions for Scottish Parliament, Welsh Assembly, Northern Ireland Assembly elections; broadcasts for the elections for the London Assembly and Mayor of London and PPBs for the "major parties" in the United Kingdom (see Rule 12) on a seasonal basis (as set out in Rule 20).

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

Political parties / Designated Referendum Organisations

11. 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.

⁵ Electoral Commission, *Factsheet: Party election broadcasts and referendum campaign broadcasts*, November 2010

12. The "major parties" for each nation in the United Kingdom are defined in the Ofcom list of Major Parties.

Allocation of broadcasts

PEBs

13. Before a General Election, and in the case of other elections where appropriate, each major party (referred to in Rule 12) should be offered at least two PEBs, the length of a series offered to a particular party being determined by the Licensee. This includes the SNP and Plaid Cymru on Channel 4 and Channel 5. In every case, the number of PEBs should be determined having regard to the circumstances of a particular election, the nation in which it is held, and the individual party's past electoral support and/or current support in that nation (see Rule 16).

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

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

16. In determining allocations of PEBs at elections, the four nations of the UK should be considered separately.

17. In accordance with Rules 7 to 10 above, parties which qualify for at least one PEB in one of the nations of England, Scotland, Wales or Northern Ireland will be offered PEBs on the Channel 3 licensee in the appropriate regions of those nations.

18. Parties which qualify for a PEB in all three nations of England, Scotland and Wales will additionally be offered a PEB on Channel 4 (at General Elections), Channel 5 (at General Elections and European Elections) and the UK-wide analogue radio services (at General Elections) (provided these broadcasters are carrying the relevant series of broadcasts; see Rules 7 to 10 above). The purpose of a PEB must not be to promote any particular outcome of a referendum.

19. Where a local digital television programme service licensee is required to broadcast a PEB as a result of Rule 10, local digital television programme service licensees will carry the same PEB as broadcast by the relevant Channel 3 licensee.

PPBs/RCBs

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

21. 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

22. 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".

2.3 Ofcom list of major parties

Ofcom carried out a [consultation](#) about the composition of its list of major political parties in January – February 2015. The consultation closed on 5 February 2015. On 16 March 2015 Ofcom published a [statement](#) on the results of the consultation:

In its consultation, Ofcom considered whether the existing 'major parties' should remain on the list and whether the Green Party (including the Scottish Green Party), Traditional Unionist Voice (TUV) and UKIP should be added to the list of parties entitled to a minimum allocation of two party election broadcasts.

After carefully assessing consultation responses, evidence of electoral performance and trends in opinion polling data up to and including February 2015, Ofcom has added UKIP to the list in England and Wales for the May 2015 elections.

Based on the evidence, the Green Party (including the Scottish Green Party) and TUV have not been added to the list on this occasion.

As a result, those parties entitled to a minimum of two party election broadcasts are:

- In Great Britain, the Conservative Party; the Labour Party; and the Liberal Democrats.
- In Scotland, the Scottish National Party (SNP).
- In Wales, Plaid Cymru.
- In Northern Ireland, the Alliance Party; the Democratic Unionist Party; Sinn Fein; the Social Democratic and Labour Party; and the Ulster Unionist Party.
- In England and Wales, UKIP.

Broadcasters must also offer a minimum of one party election broadcast to other parties standing candidates in at least one sixth of seats at the General Election. Beyond these minimum requirements, broadcasters are required to consider offering further party election broadcasts if evidence of past electoral support or opinion polling data means it would be appropriate to do so.

It is also important to note that 'major parties' do not automatically receive the same amount of coverage.⁶

Ofcom gave further details about why the Green Party had not been included in the list of major parties:

⁶ [Ofcom statement on party election broadcasts](#), 16 March 2015

The Green Party did not demonstrate significant electoral support in the 2010 General Election, achieving 1% of the vote in England and one Westminster seat. The party has performed more strongly in some other forms of election, such as the 2014 European Parliamentary elections, obtaining 8.0% and 8.1% of the vote in England and Scotland respectively.

In terms of evidence of current support, the Green Party's opinion poll rating has increased over the last two to three years from an average of 3% in May 2012 to an average high of 7% in February 2015 in Great-Britain wide opinion polls.

In terms of evidence of current support for the Scottish Green Party, opinion polls in Scotland indicate average support of under 4%.

Taking together all the relevant evidence and the views of respondents to our consultation, Ofcom has decided that it would not be appropriate to add the Green Party or the Scottish Green Party to the list of major parties on this occasion.⁷

The full text of the [Ofcom list of major parties](#) is given below:

1. This document sets out the definition of "major parties" as applies to Section Six of the Ofcom Broadcasting Code¹ and the Ofcom rules on Party Political and Referendum Broadcast².
2. Ofcom will periodically review the definition of "major parties", taking account of relevant evidence, such as changes in the electoral landscape, across a range of elections.
3. At present in Great Britain, major parties are defined as: the Conservative Party; the Labour Party; and the Liberal Democrats.
4. In addition, major parties in Scotland and Wales respectively are the Scottish National Party and Plaid Cymru.
5. The major parties in Northern Ireland are: the Alliance Party; the Democratic Unionist Party; Sinn Fein; the Social Democratic and Labour Party; and the Ulster Unionist Party.
6. In addition to the above, in England and Wales the major parties for the purposes of the Parliamentary General Election and the English local (and mayoral) elections taking place on 7 May 2015 includes the United Kingdom Independence Party.⁸

2.4 BBC

The BBC Agreement (July 2006) stipulates that:

The BBC must include, in some or all of the UK Public Broadcasting Services, party political broadcasts and referendum campaign broadcasts.⁹

It is for the BBC Trust to determine which services should carry such broadcasts and on what basis; and the allocation, length and frequency of such broadcasts.

⁷ [Ofcom statement on party election broadcasts](#), 16 March 2015

⁸ [Ofcom list of major parties](#), March 2015

⁹ [Broadcasting: An agreement between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation](#), Cm 6872, July 2006, section 48

The BBC Trust's allocation criteria for PPBs, PEBs and Referendum Campaign Broadcasts are set out on the BBC website at [Party Political Broadcasting](#). Following a consultation exercise in 2012, the Trust decided to remove the link between the screening of PPBs and specific political events (Queen's Speech, Budget and party conferences) and to allow the qualifying parties in England, Scotland and Wales to have three 'seasonal' PPBs in Autumn, Winter and Spring. The Trust argued that a move to seasonal PPBs would "...give more flexibility to the political parties in the scheduling of PPBs and would recognise the realities of devolution (where, for instance, the Scottish Parliament has some control over fiscal policy).¹⁰

The Trust saw no reason to change to existing allocation criteria for PPBs which were, in summary:

...that to qualify for a PPB a political party (i) must hold more than one seat in the relevant legislative chamber and (ii) can demonstrate substantial levels of electoral support across a series of elections (in the relevant nation).¹¹

Qualification criteria and broadcast allocations for the various types of election in recent years can be found on the website of the [Broadcasters Liaison Group](#).

3 Party election broadcasts in 2015

The BBC Trust carried out a [consultation](#) from November 2014 to January 2015 about the [draft allocation criteria](#) for Party Election Broadcasts in 2015. Following the consultation the BBC Trust published a summary of the consultation responses and approved the draft allocation criteria with no amendments.

The BBC's [final allocation criteria](#) were published on 11 February 2015 and are reproduced below. The allocation of election broadcasts is subject to final confirmation following the close of nominations in April 2015.

The BBC's final allocation criteria for Party Election Broadcasts 2015

General Election & Local Elections (England)

General Election

BBC Services carrying PEBs:

PEBs will be broadcast in the relevant nation on:

BBC One and BBC Two,

BBC Radio Scotland, BBC Radio Nan Gaidheal (broadcast in Gaelic),

BBC Radio Wales, BBC Radio Cymru (broadcast in Welsh),

BBC Radio Ulster.

Threshold Criterion for PEBs

A registered political party which stands candidates in a minimum of one sixth of the seats up for election in a nation will qualify for one PEB in that nation.

¹⁰ BBC Trust, [Consultation on party political broadcasts: outcome of consultation](#), February 2012

¹¹ *ibid*, p2

Accordingly:

- in England, a political party will qualify for one PEB if it stands candidates in a minimum of 89 seats.
- in Scotland, a political party will qualify for one PEB if it stands candidates in a minimum of 10 seats.
- in Wales, a political party will qualify for one PEB if it stands candidates in a minimum of 7 seats.
- in Northern Ireland, a political party will qualify for one PEB if it stands candidates in a minimum of 3 seats.

Criterion for Additional PEBs

A registered political party which meets the threshold criterion may qualify for one or more additional PEBs in a nation if it can demonstrate substantial levels of past and/or current electoral support in that nation.

Local Elections, 7 May 2015

There will be no separate PEBs for local elections.

4 Content of PPBs

Key guidelines which must be observed are:

- The [Ofcom Broadcasting Code](#); and
- The [BBC Editorial guidelines](#).

The Broadcasters' Liaison Group has published [Production Guidelines](#) which contain the following provisions:

All broadcasts must observe the law - for example, on copyright, libel, privacy, contempt, obscenity, incitement to racial or religious hatred, or violence.

All broadcasts must comply with the Ofcom Broadcasting Code, in particular in relation to harm and offence (Section 2) and to fairness and privacy (Sections 7 & 8), and with the provisions of the [BBC Editorial Guidelines](#) that relate to harm and offence (Chapter 5 of the BBC Editorial Guidelines) and fairness and privacy (Chapters 6 & 7 of the BBC Editorial Guidelines), having regard to the political context of the broadcast.

Subject to the matters set out above, accuracy is the responsibility of the parties making the broadcasts.

Impartiality is achieved over the series of broadcasts as a whole. There is, of course, no obligation on the parties to achieve impartiality within each broadcast.

The party responsible for the broadcast will indemnify the broadcaster in respect of any legal action resulting from the content of the election broadcast.¹²

¹² [Guidelines for the production of party broadcasts](#), Broadcasters' Liaison Group, October 2014

There are separate [Referendum Production Guidelines](#).

5 ECHR and the ban on political advertising

There is a long standing ban on the broadcast media carrying political advertising. The ban affects political parties, candidates and interest groups and has been most recently enacted in the *Communications Act 2003*. A European Commission discussion paper (December 2001)¹³, and subsequent consultation paper (June 2002),¹⁴ had raised concerns that there was a potential threat of challenge to the UK's ban on paid political advertising in the broadcast media in terms of the ECHR. *Groppera*,¹⁵ a Swiss case in 1990, had raised initial doubts as to whether the ban might infringe the rights of free expression in Article 10 and a later Swiss case, *VGT Verien* had reinforced those doubts. This judgment of the ECtHR held that Article 10 (freedom of expression) rights had been violated when the (then) Swiss Commercial Television Company decided to ban an animal protection commercial on the grounds of its clear political character.¹⁶

The Commission published its report and recommendations in January 2003. On this particular issue it concluded:

The case for retaining the ban on paid advertising is persuasive. The ban is in the interests of the electorate and therefore the public interest. It is also in the interests of political parties and broadcasters.¹⁷

The report added:

It seems to us that the UK system would survive scrutiny under the ECHR and the HRA, at least if the regime of free and unmediated broadcasts is robust.¹⁸

Tessa Jowell, then Secretary of State for Culture, Media & Sport, had acknowledged the difficulty of human rights compatibility in relation to political advertising when introducing the *Communications Bill* in December 2002:

For many years, successive Governments have maintained a complete ban on advertising of a political nature on television or radio. The Government's intention in this case is to continue with the current ban—a ban that was supported by the Neill committee in its 1998 report on funding of political parties—and to define more precisely what is meant by "political", so that Ofcom may continue to use the broad reading of the word that existing regulators use. In that regard, I refer hon. Members to clause 309 [now section 321, as amended].

However, a potential complication exists in the form of a judgment by the European Court of Human Rights against Switzerland, which maintained an apparently similar ban. That point was also noted by the Joint Committee on Human Rights in examining the draft Bill, and I should like to place on the record my thanks to it for its helpful comments on the draft Bill in its 19th report. In response to the ECHR's judgment and to the Joint Committee's concerns, we looked hard at the current ban to see whether some minor changes would make it more certain that it was human rights compatible. Unfortunately, any such change would still allow substantial political advertising, and I

¹³ Electoral Commission, [Party political broadcasting review 2001-02: discussion paper](#), December 2001

¹⁴ Electoral Commission, [Party political broadcasting: consultation paper](#), June 2002

¹⁵ *Groppera Radio AG v Switzerland* Series A 173 judgment of 28 March 1990

¹⁶ *CASE OF VGT VEREIN GEGEN TIERFABRIKEN v. SWITZERLAND* (Application no. 24699/94) 28 June 2001

¹⁷ European Commission, *Party political broadcasting: report and recommendations*, January 2003, P16

¹⁸ *Ibid*, p17

hope that there is cross-party agreement that that would not be a desirable outcome. By denying powerful interests the chance to skew political debate, the current ban safeguards the public and democratic debate, and protects the impartiality of broadcasters.

Having examined all the facts, and following extensive legal advice, I have concluded that very strong arguments could be advanced in favour of the ban contained in this Bill being compliant with the ECHR....

The Government apply testing standards to the consideration of the compatibility of their legislation with the convention and, given the existence of the Swiss precedent, I must ask the House to consider this Bill with a section 19(l)(b) of the Human Rights Act 1998 statement attached to it. That does not mean that we believe the Bill to be incompatible with the ECHR, and we would mount a robust defence if it were legally challenged. Of course, if that defence subsequently failed before the domestic courts, we would need to reconsider our position. Beyond that, we take our international obligations extremely seriously and we would seek to amend the ban in accordance with any judgment of the European Court of Human Rights in Strasbourg that ruled against the UK legislation. As things stand, however, the Government believe that it is right to ask the House to continue the ban on political advertising.¹⁹

The Department for Culture, Media and Sport (DCMS) launched a consultation exercise on PPBs in July 2004. On the issue of paid political advertising it said:

One alternative to PPBs would be paid political advertising, which plays a significant part in the electoral system in the United States, for example.

The Electoral Commission and the Government reject this as a solution. The experience in the United States of hugely expensive and often simplistic and negative advertising would most likely work against the aim of a well-informed electorate, fairly informed of the range of policies being offered by the various parties standing for election. The Communications Act 2003 re-enacts the existing ban on paid political advertising – where political parties are prohibited from ‘buying’ advertising space from broadcasters. The ban has widespread and continuing support, and provides protection against the political process being skewed by those who are best able to fund advertising.

On the introduction of the Communications Bill, the Government was unable – but only because of the ban on political advertising – to make a statement under section 19(1)(a) of the Human Rights Act 1998 that the Bill was compatible with the European Convention on Human Rights (ECHR). This does not mean that the Government thought that this aspect of the Bill was incompatible with Convention rights. Rather, owing to the state of the law at the time, it could not say that the ban was more likely than not to survive legal challenge in the domestic courts or Strasbourg. As the Government made clear in Parliament, it takes the view that there are strong policy and legal grounds for believing that the ban is compatible with Convention rights, even if the test for making a compatibility statement is not met.²⁰

The House of Lords considered the question of whether the statutory ban on political advertising was compatible with Article 10 of the ECHR in a court case several years ago.²¹ The court found that the ban was compatible, but commentators in a *Public Law* article in

¹⁹ HC Deb 3 December 2002 c787-89

²⁰ DCMS, *Party political broadcasting: public consultation*, July 2004, pp5-6

²¹ *R on the application of Animal Defenders International v Secretary of State for Culture, Media and Sport* [UKHL] 15; [2008] 2W.L.R. 781

2009 have suggested that some of the comments (obiter dicta) in the judgements might open up the possibility of a future challenge.²²

In April 2013 the Grand Chamber of the European Court of Human Rights held, on a majority, that the ban on political advertising did not amount to a disproportionate interference with the right to freedom of expression.²³ The majority was close at 9 to 8. Animal Defenders International had submitted an advertisement to the Broadcast Advertising Clearance Centre for a review of compliance. The Centre had declined to approve the advert on the ground that its transmission would breach the prohibition on political advertising. The case had been heard previously by the High Court and the House of Lords.²⁴

Some comment is available from the following sources:

[“Government will be mightily relieved at decision to uphold political ads ban”](#) 22 April 2013 *Guardian*

[ECHR Blog](#) Animal Defenders International v UK Grand Chamber

[UK Human Rights Blog](#) “Strasbourg ties itself in knots over advertising ban”

[UK Constitutional Law Group](#) Jeff King: Deference, Dialogue and Animal Rights International

²² “Balancing freedom of political expression against equality of political opportunity: the courts and the UK broadcasting ban on political advertising” in *Public Law* January 2009 pp89-112

²³ [Animal Defenders International v United Kingdom](#) (Application no 48876/08) *Times Law Report* 25 April 2013

²⁴ (2007) HRLR 9 (2007) EMLR 158 House of Lords *Times* March 17 2008; See [“Animal rights group fails to overturn ban on political advertising”](#) 22 April 2013 *Guardian*