



# Party Political Broadcasting Public Consultation

# Introduction

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## Why do we have party political broadcasts?

In a country where access to TV and radio is universal and the most obvious means of communicating with the country as a whole, the broadcast media rightly play a vital role in ensuring that the electorate is informed about the policies of political parties seeking election.

In the UK, we take great pride in the fact that candidates from qualifying parties wishing to become our political leaders are given a fair opportunity to communicate their views *directly* to voters. At present, this opportunity is provided free of charge by those broadcasters whose channels are freely available to the largest numbers of people.

As with other elements of the electoral arrangements at the heart of our democratic system, it is important that we keep our arrangements for party political broadcasting under review. That is what we are consulting on in this document.

The Government acknowledges the excellent work that the Electoral Commission has done to review the role of party political broadcasts. This culminated in its report and recommendations on party political broadcasting published last year and featured in its comprehensive report on recommended changes to electoral practice *Voting for Change*.

The Electoral Commission's recommendations are directed at ensuring that we have a robust and effective means by which political parties can communicate with people across the United Kingdom at times of elections.

The Government fully supports the Electoral Commission in this aim. It is a major element in maintaining an engagement between the public and the political process.

But party political broadcasts (PPBs) reach only a small part of the electorate. At a time of increasing choice of communications channels, and as we move towards digital switchover, it becomes more difficult for political parties to reach and engage with the electorate.

There are no easy solutions. This consultation provides an opportunity for broadcasters, political parties and the public at large to comment on implementation of the Electoral Commission's recommendations, but also a chance to propose alternative ways of establishing a closer dialogue between political parties and voters so that we can achieve the fully participative democracy which is one of the core strengths of our society.

Subject to the outcome of this consultation, the Government will bring forward legislation to implement its proposals as soon as Parliamentary time allows.



TESSA JOWELL

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## Questions for Consultation – a summary

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We are looking for real improvement in the operation of the Broadcasters' Liaison Group. We are seeking views on how best to deliver this objective and bring improved transparency and predictability to the party political broadcasting system. See paragraph 6.8.

We would like to consult on what the structure and role of any statutory committee might be; on who might appoint a Chairman; and on how his or her independence could be maintained. Alternatively, would a voluntary tightening of procedures for the Broadcasters' Liaison Group satisfactorily address the concerns of the political parties? See paragraph 6.9.

Under either option, how might a flexible and adequate procedure for considering representations work? See paragraph 6.10.

With regard to the regulation of the BBC and S4C, we would welcome views on delivering the spirit of the Commission's recommendation – that is, ensuring transparent and predictable regulation across all broadcasters – within the existing framework of regulation, subject of course to the outcome of BBC Charter Review. See paragraph 7.7.

We would like to seek views on how to make more transparent the current criteria for setting rules for qualifying for, and for the length and frequency of, party political broadcasts. See paragraph 8.3.

We would also like to seek views on whether some high-level principles might be written into the legislation without losing the flexibility that we consider is vital to the fair operation of the party political broadcasting system. See paragraph 8.4.

How could we best deliver in practice the closer engagement between the political parties and voters which we seek? See paragraph 9.10.

Is the solution, as recommended by the Electoral Commission, to place a requirement on all TV or radio channels (which achieve prescribed audience reach and share thresholds) to include party political broadcasts in their schedules?

If that option were pursued:

- what parameters and exclusions should be set?
- what should the audience reach and share threshold levels be?
- what allowances should be made for the differences between television and radio?
- how would one best reach those audiences most disengaged from the political process, who might be least likely to watch or listen to the most popular channels?

Are there more effective ways in which to achieve this aim, whether through broadcasting or using the Internet or mobile technologies?

The Government would welcome views on these and other alternatives to an extension of PPBs, including the scope for voluntary measures rather than legislation. See paragraph 9.13.

We would welcome views on alternative approaches to allocation and scheduling (e.g. inside or outside primetime) of party political broadcasts which would allow individual broadcasters to meet their responsibility for a fair allocation on their channels. Also, what scope is there for using any increased provision to accommodate broadcasts by a greater number of political parties? See paragraph 10.3.

We would welcome comments on the Partial Regulatory Impact Assessment. In particular, we are seeking views on the compliance costs for business of the main proposals detailed in paragraph 3.2. See Annex D.

## The case for party political broadcasting

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The Electoral Commission's report<sup>1</sup> contained a useful assessment of the public interest in party political broadcasts. The report's conclusion was that there is widespread support for them, and it is certainly our intention to continue to ensure that qualifying political parties have a platform from which to inform voters of their policies.

We agree with the Commission that party political broadcasts remain the one opportunity for qualifying political parties to present a message directly to the electorate through the broadcast media. The freedom for such parties to communicate directly is highly valued, and we are committed to preserving it.

The Commission's report did present a mixed picture of the extent to which audiences are engaged by party political broadcasts. We are conscious of the need to match the desires of the political parties for wider access to broadcasting opportunities with the actual benefit to the electorate.

We have noted that 63% of respondents to the Independent Television Commission's research following the 2001 election<sup>2</sup> thought that party political broadcasts were either 'very important' or 'quite important'. But this needs to be considered in the context of the finding in the same report that 56% of respondents claimed either to switch channels or to turn off when a party broadcast came on.

There is clearly a balance to be struck between the interests of the public, on one hand as voters and on the other as viewers and listeners.

And, in an era of increasing and competing communications channels, are there alternative ways of improving the dialogue between political parties and voters?

### **Paid political advertising**

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

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<sup>1</sup> The Electoral Commission: *Party Political Broadcasting – Report and Recommendations*, Jan 2003. Available from the Commission's website [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk)

<sup>2</sup> ITC Election 2001: *Viewers' Responses to the Television Coverage*, 2001.

(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<sup>3</sup>, 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<sup>4</sup>, 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.

Paid political advertising may not be the only alternative to PPBs, or to the extension of broadcast PPBs. Section 9 seeks views on other possible alternatives.

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<sup>3</sup>The decisions of the House of Lords in *R (on the application of ProLife Alliance) v British Broadcasting Corporation* [2003] UKHL 23 and the Strasbourg Court in *Murphy v Ireland* (Applic. No. 44179/98), while not conclusive, lend further weight to the belief that the ban would survive a challenge.

<sup>4</sup>Hansard - House of Commons: Col 787-789, 3 December 2002; House of Lords: Col 658-659, 25 March 2003.

# The Government's response to the Electoral Commission's recommendations

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This section responds to all of the Electoral Commission's recommendations from its 2003 report. The recommendations are set out below, and we have posed specific questions on those issues where we are seeking views.

## The Electoral Commission's conclusions and recommendations

**1. Although evidence regarding the influence of party political broadcasts (PPBs) is inconclusive, the Electoral Commission considers that they remain one of the most effective and therefore most important direct campaigning tools available to qualifying political parties. The Commission's view is that the principle that qualifying political parties should be able freely to publicise their platforms and policies to voters, and that voters should be able to receive such information, remains compelling.**

1.1. The Government agrees with this conclusion. Both we and the Commission are aware that the evidence for the influence of party political broadcasts on the electorate is mixed. But, like the Commission, we believe that the principles underlying party political broadcasts are sound and important ones.

**2. The Electoral Commission urges parties to be innovative in their design and production of PPBs. It also urges parties to ensure 'strict and timely compliance with technical specifications required by the broadcasters'<sup>5</sup>.**

2.1. The Government agrees that design and production can, and do, have a significant effect on the reaction of audiences to party political broadcasts. The more engaging a party political broadcast, the less likely viewers and listeners are to switch off. The Commission's report acknowledges that political parties have recognised their responsibility to be innovative in their production of party political broadcasts, and the Government welcomes that recognition.

2.2. The Government is keen that arrangements between broadcasters and political parties run smoothly. We believe that the best way for ensuring that smooth operation is for the arrangements to be equitable. In other words, we would want any system to balance the imperatives of the political parties and the need for the broadcasters to serve the interests of the public, both as citizens and as viewers and listeners.

2.3. The qualifying political parties have a right to be offered broadcast time for party political broadcasts. The Government wishes to note that they also have responsibilities in exercising this right, and supports the Commission's view that parties should ensure 'strict and timely compliance with technical specifications'<sup>5a</sup>.

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<sup>5</sup> Electoral Commission: *Op cit.*, p36.

<sup>5a</sup> *Ibid.*

**3. The Commission recommends that a full review of PPB arrangements be undertaken closer to the time of digital switchover.**

- 3.1. The Government is committed to reviewing policies to ensure that they are still meeting their objectives. This is particularly important in the fast-moving world of broadcast media. We are aware that the broadcasting landscape is changing and regulation needs to change with it.
- 3.2. Digital switchover will have a significant effect on the way we watch television in this country – and we anticipate switchover beginning as early as 2006. Such changes will certainly demand that close attention is paid to how party political broadcasts fit within the changing communications environment.
- 3.3. The Communications Act 2003 gives powers to the new Office of Communications (Ofcom) to regulate the communications sector. We are aware that Ofcom will be reviewing many aspects of the sector for which it has taken on responsibility. When the time comes, we would certainly support any review of party political broadcasting to take account both of digital switchover and of other changes in communications (such as the growth of Internet use), as well as the impact of any changes made to the party political broadcasting system following this consultation.

**4. The Commission considers that the case for retaining the ban on paid political advertising in the broadcast media 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.**

- 4.1. The Government welcomes the Commission's support for its ban on paid political advertising in the broadcast media. We are convinced that the continuing ban is in the best interests of democracy, and have therefore re-enacted it in the Communications Act 2003<sup>6</sup>.

**5. It seems to the Commission that the UK system would survive scrutiny under the Human Rights Act, at least if the regime of free and unmediated broadcasts is robust.**

- 5.1. It is a matter of record that the Government was unable to make a statement under section 19(1)(a) of the Human Rights Act that the Communications Bill was compatible with Convention rights on its introduction into Parliament. However, this was solely because the Bill re-enacted the existing ban on political advertising. The Government notes the link made by the Electoral Commission between the ban on paid political advertising and the arrangements for party political broadcasts, in that they suggest that the ban would survive scrutiny at least if the system for party political broadcasts is robust<sup>7</sup>. We do not accept this line of reasoning, which could be taken to imply that the arrangements for party political broadcasts are flawed in themselves. We want to make it clear that we believe that the current arrangements are compatible with Convention rights; and that, even without changes to those arrangements, there are strong legal arguments that the ban on political advertising should be upheld in the domestic courts and in Strasbourg.
- 5.2. That is not to say, of course, that we do not accept the case made by the Electoral Commission for seeking to improve and update those arrangements.

<sup>6</sup> See sections 319 and 321.

<sup>7</sup> The Electoral Commission: *Op cit.*, p 17, penultimate paragraph.

## The Electoral Commission's proposals for changes to legislation

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- 6. The Commission recommends that the proposed duty on Ofcom to determine rules (see recommendation 8) should also include a requirement to establish a committee composed of the broadcasters and sitting under a chairperson who is independent of broadcasters.**
- 6.1. We have noted that political parties are concerned that, under the current arrangements for the allocation of broadcasts, there is a lack of transparency, too much discretion for broadcasters and a lack of predictability regarding the broadcasters' decisions. We are obviously keen to address these concerns and to balance them with the fact that broadcasters are responsible for ensuring that all their broadcasts comply with the law and that some flexibility for broadcasters is likely to be essential to securing fairness. However, we want to consult on two options, both of which we believe could deliver this important objective.
- 6.2. At present, individual broadcasters have responsibility for the allocation of party political broadcasts, but, in practice, a significant role is played by the Broadcasters' Liaison Group (BLG)<sup>8</sup>. The Commission's report acknowledges the important part that the BLG plays in the system, and recognises the advantages that it brings. We want to be sure that any changes to the existing arrangement make tangible improvements to the system.
- 6.3. While we recognise that there may be deficiencies in the way the current system works, we are committed to finding alternatives to legislation wherever appropriate, and also to avoiding unnecessarily bureaucratic systems. Nor do we believe that a statutory committee is necessary to achieve compliance with the ECHR. We would, therefore, like to seek views on whether the concerns of the political parties should be addressed through the statutory committee recommended by the Electoral Commission, or through other non-statutory means.
- 6.4. Taking the option of a statutory committee first, we would like views on how such a committee would work in practice. At present, the broadcasters are responsible for meeting their obligations when deciding on party political broadcast allocations. The regulators have a role in resolving disputes between the broadcasters and political parties. If Ofcom were to establish the committee, would its responsibility to resolve disputes between the broadcasters and political parties be compromised? What precisely should be the role of an independent Chairman? Should he or she make the final decisions, or should the Chairman focus on facilitating discussions, with unresolved issues being referred perhaps to the Ofcom Board? Who should appoint the Chairman, given the need for absolute public confidence in their independence? With regard to the recommendation discussed in section 9 of this chapter, if any new broadcasters were required to carry party political broadcasts, how would they be represented on the Committee? And, with regard to the recommendation discussed in section 7, what would the implications of a statutory committee be for the BBC? Finally, is there a risk that a statutory committee, if it were set up on an overly prescriptive basis, would be unable to respond as rapidly as necessary during an election campaign?

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<sup>8</sup> The Broadcasters' Liaison Group is a forum for the BBC, S4C and commercial broadcasters to co-ordinate policy and practice on party political broadcasting. The broadcasting regulator Ofcom has observer status, as does the Electoral Commission.

- 6.5. As an alternative to a statutory committee, could the BLG agree to adopt basic procedures to address the parties' concerns? For example, publicly available guidance on how decisions will be reached by the BLG, to what timescale and on what criteria, notifications of decisions and their justification, and opportunities for a wider range of independent observers. This would not be statutorily enforceable, but could meet the objective of delivering greater transparency and predictability and be operated on the principle of self-regulation.
- 6.6. We also note the Commission's recommendation (on page 21 of their report) that an appeals procedure should be specified. We entirely agree with this principle, and note that a route of appeal to the regulator already exists, but **would like respondents to give some consideration to what the precise nature of any alternative appeals procedure should be.**
- 6.7. Ultimately, of course, an aggrieved political party might seek judicial review of a broadcaster's decision, but that would be unlikely to produce a remedy before the relevant election was held. We suggest that any procedure should, therefore, be considered within the context of the time pressures inherent in the run-up to an election. Broadcasters have a short period of time in which to make their decisions, and a prolonged appeals process might be useless unless decisions were reached in good time for changes to schedules to be made before polling day. We think that flexibility will be important here, but of course we want to ensure that adequate opportunities are available for those affected to make representations. However, if the 'appeals' process could result in one party making their case at the expense of another, it would be difficult to avoid circulating representations to all those affected, which would make the system much more cumbersome.
- 6.8. In summary, we are looking for real improvement in the operation of the Broadcasters' Liaison Group. We are seeking views on how best to deliver this objective and bring improved transparency and predictability to the party political broadcasting system.**
- 6.9. Taking each option further, we would like to consult on what the structure and role of a statutory committee might be; on who might appoint a Chairman, and on how his or her independence could be maintained. Alternatively, would a voluntary tightening of procedures for the Broadcasters' Liaison Group satisfactorily address the concerns of the political parties?**
- 6.10. Under either option, how might a flexible and adequate procedure for considering representations work?**
- 7. The Commission recommends that regulation of the obligation to carry PPBs should be the same for all broadcasters, and that the BBC and the Welsh Authority (S4C) be brought within the scope of Ofcom for this purpose.**
- 7.1. We support the principle that the regulation of PPB obligations should be equivalent for all broadcasters. We agree with the Commission's view that the arrangements for party political broadcasting should not hinder transparency and predictability. We are, therefore, seeking views about how to deliver a system of regulation that meets these important principles, within the context of the existing regulatory structure.

- 7.2. We have made clear that the new regulatory system for broadcasting, set out under the Communications Act, will apply to the BBC on a basis which takes account of the BBC's distinctive role and constitution, its relationship with Parliament and the core responsibilities of the Board of Governors.
- 7.3. The Act makes general provision for Ofcom to undertake regulatory functions in respect of the BBC's services. However, the regulatory obligations applying to the BBC derive in the main from the BBC Charter and Agreement, not the legislation. Amendments were made to the Agreement in December 2003 to deliver this policy. For the most part, the amendments mirror the relevant provisions of the Communications Act, subject to modifications necessary to take account of the BBC's distinctive features.
- 7.4. An effect of the amendments is to bring the BBC within the scope of Ofcom's programme standards code (with the exception of standards objectives relating to impartiality and accuracy, which lie at the heart of the Governors' responsibilities, and advertising and sponsorship) and, for the most part, the programme quotas required of commercial public service broadcasters. Infringements of these requirements would render the BBC liable to Ofcom sanctions, including fines.
- 7.5. We have specifically provided in the amended Agreement that the BBC has an obligation to carry party political broadcasts. The Communications Act contains a requirement on S4C to carry party political broadcasts, and provides that their regulation should remain the responsibility of the Welsh Authority. Both the BBC and the Welsh Authority are required to have regard to the views of the Electoral Commission when taking decisions about arrangements for party political broadcasts and this provides a large measure of equivalence between the broadcasters. In addition, the Welsh Authority must also have regard to the rules made by Ofcom which apply to the other relevant licensed broadcasters<sup>9</sup>.
- 7.6. The current system of regulation for the BBC provides a number of different models which could be used to secure the equivalent form of regulation for the BBC as for the commercial public service broadcasters. The allocation of party political broadcasts is closely linked with broadcasters' responsibilities for impartiality, which in the BBC's case remains the Governors' responsibility. There is therefore a case for the Governors to retain this responsibility alongside Ofcom, with each taking account of the views of the Electoral Commission, as they are already required to do under statute.
- 7.7. **At present, we see no reason why the spirit of the Commission's recommendation – the importance of ensuring transparent and predictable regulation across all broadcasters – cannot be delivered within the existing framework of regulation. However, the governance of the BBC, including the role of the Governors and their responsibilities for PPBs, is best considered in the wider context of Charter Review currently under way. Should the Governors' responsibilities for overseeing PPBs change following that Review, the implications for the Welsh Authority would have to be taken into account subsequently.**
8. **The Commission recommends that the legislation be strengthened to include criteria to which the regulator should have regard in making rules regarding qualification for PPBs and length and frequency of PPBs.**

<sup>9</sup> See paragraph 18 of Schedule 12 to the Communications Act 2003.

- 8.1. We support the Commission's objective of securing greater transparency and predictability. However, we have concerns that specification of the kind recommended by the Commission could be detrimental in practical and democratic terms. To codify the arrangements, notably for the allocation of broadcasts, in primary legislation risks losing the very flexibility which has allowed the current system to evolve successfully and to respond to changing electoral practices in ways which remain defensible.
- 8.2. Broadcasters have, for example, been able flexibly to apply the criteria for qualification for broadcasts to take account of the way individual parties are structured. In the 2001 Election, a particular organisation that was registered separately in England and Scotland, but effectively formed one single party across the United Kingdom, was granted broadcasts because the broadcasters were able to count together the number of seats being contested in the UK as a whole. Statutory criteria could preclude such flexibility and we should also need to take account of the fact that criteria relevant to Westminster elections may be less relevant to elections to national or regional assemblies. Similar account needs to be taken of the geographical coverage of broadcasters and the audience reach and share they achieve in the area of the particular election. The current flexibility also allows the regulators to take account of other opportunities that broadcasters might offer to political parties to communicate their policies to the electorate, for example Channel 4's *Political Slot*. Having these options can benefit all players. The current flexibility has even allowed for circumstances where elections are cancelled.
- 8.3. However, there is clearly a link to the issues raised in the recommendation discussed in section 6. We acknowledge that there is probably some scope for greater transparency in the operation of the rules, and therefore **we would like to seek views on how to make more transparent the criteria for setting rules for qualifying for, and for the length and frequency of, party political broadcasts.**
- 8.4. **We would also like to seek views on whether some high-level principles might be written into the legislation without losing the flexibility that we consider is vital to the fair operation of the system.** Would any flexibility be lost, for example, by specifying that any criteria set by the regulator should take account of the proportion of seats being contested by each party? Might there be circumstances in the future in which such specification in the legislation would make it difficult for the regulator to operate the system fairly and flexibly? A specific question about the criterion for eligibility for party political broadcasts is in section 10 of this chapter.

**9. The Commission recommends that, in the interests of reaching as wide a spectrum of electors as possible, PPBs should not be restricted to a narrow type of broadcaster. It recommends that any TV or radio channel which achieves prescribed audience reach and share thresholds should be required to include PPBs in their schedules. The criteria should apply to all UK broadcast channels for all major elections.**

- 9.1. We are fully supportive of the Commission's intention to engage a wider audience with the democratic process. We seek views on how this could best be achieved, whether through PPBs or other means. As Annex A makes clear, the current arrangements have largely developed as

a reflection of BBC practice. They have therefore been based on the Public Service concept of broadcasting and have applied to those channels which have special obligations as a result of their access to scarce broadcasting spectrum: that is, the BBC, C3, C4, C5 and Classic FM, Virgin Radio and talkSPORT, and by extension their digital simulcasts.

- 9.2. Does that remain the best way of determining the channels which should have obligations to carry PPBs, at least until we are closer to digital switchover?
- 9.3. It is worth noting that there are currently no obligations imposed on cable and satellite broadcasters to carry particular programming, other than in the most exceptional circumstances such as a state of emergency. But such channels benefit from working in an open democracy and good companies recognise that those benefits carry with them certain social responsibilities. Contributing to the strengthening of our democratic system must be one of the foremost among such responsibilities.
- 9.4. If the obligation were extended to other channels, there are a number of questions about exactly how the system would work and on whom the obligations would fall and we seek views on the best answers to these. The Commission recommends that prescribed UK audience reach and share thresholds should be determined by the broadcasting regulator. How would this be delivered in practice?
- 9.5. Our objective is to continue to reach audiences of voting age with the information carried in party political broadcasts, and in particular to reach new audiences and especially those most disengaged from the political process. We want to ensure that any extension of the party political broadcasting requirements increases the total audience for party political broadcasts, rather than just reaching the present level of audience on new channels. In relation to broadcasting, Ofcom is likely to be best placed, within certain parameters set by statute, to determine how best to achieve that objective.
- 9.6. **We would therefore be grateful for views on what those parameters might be.** For example, we acknowledge and agree with the Commission's conclusion that it would not be appropriate to carry party political broadcasts on children's channels where the principal audience is not eligible to vote, and similarly on channels broadcast principally for non-UK audiences. **We would welcome views on whether other exceptions should be applied, and how they should be defined.**
- 9.7. **Similarly, we are seeking views on whether audience share and reach alone are the right criteria, and what the threshold above which broadcasters are obliged to carry party political broadcasts should be.** At present, only one non-public service broadcast TV channel has above 1% of audience share – Sky One with 1.8%<sup>10</sup>. We would welcome views on what part 'audience profile' should play in determining which new channels should carry political broadcasts, and indeed whether this would in fact be a more important consideration than 'audience share' in delivering our objectives.

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<sup>10</sup> ITC figures 2002.

- 9.8. We would also like particular consideration to be given to the place of audience share in relation to radio. This criterion might be suitably applied to television channels that, predominantly, are broadcast across the UK. However, if national audience share were to be applied as a criterion to regional radio stations, one can foresee the anomalous situation where party political broadcasts are carried on, say, a Manchester regional station, but not on its Birmingham equivalent, simply on the basis of their respective national audience share.
- 9.9. So, special consideration needs to be given to what criteria should apply when considering the significant number of local and regional radio stations. Should any extension of the PPB requirement be applied only to those radio channels which achieve a certain reach across the UK? Beyond that, should national audience share then apply to determine which of those stations should carry party political broadcasts? Are there other criteria that might better be applied in order to deliver the objective of reaching new radio audiences with party political broadcasts? Should Ofcom be charged with a general objective and determine which broadcasters should be excluded from a general licence obligation to carry party political broadcasts, following consultation? There is also a specific question of whether national digital (only) radio channels should be required to carry party political broadcasts just as their analogue competitors are?

**9.10. In summary, how could we best deliver in practice the closer engagement between the political parties and voters which we seek?**

**Is the solution, as recommended by the Electoral Commission, to place a requirement on all TV or radio channels (which achieve prescribed audience reach and share thresholds) to include party political broadcasts in their schedules?**

**If that option were pursued:**

- **what parameters and exclusions should be set?**
- **what should the audience reach and share threshold levels be?**
- **what allowances should be made for the differences between television and radio?**
- **how would one best reach those audiences most disengaged from the political process who might be least likely to watch or listen to the most popular channels?**

**Are there more effective ways in which to achieve this aim, whether through broadcasting or using the Internet or mobile technologies?**

- 9.11. It might be more effective, for example, for channels which do not carry PPBs to offer public service announcements reminding electors when an election is taking place and where they might find more information. This might be less disruptive to viewers and listeners, and to broadcasting schedules, than a full PPB on a niche channel; and it would keep down the costs to political parties of potentially having to design and fund different PPBs for different audiences.
- 9.12. Such measures might be supported by a General Election web-site, for example, and by text alerts.
- 9.13. **The Government would welcome views on these and other alternatives to an extension of PPBs, including the scope for voluntary measures rather than legislation.**

## Changes to detailed arrangements

### 10. **The Electoral Commission recommends that qualification for a party political broadcast should continue to be based on the number of candidates being fielded by each party.**

- 10.1. We agree with the Commission's conclusion. We note the concerns raised by smaller parties that 'the present system of qualification based on the number of seats being contested is unfair, reinforcing the gap between the few larger parties and the many smaller parties'<sup>11</sup>.
- 10.2. This is a difficult issue and not one that can be addressed through arrangements for party political broadcasts alone. On balance, we agree with the Commission's conclusion that giving many more parties opportunities for political broadcasts would lead to a huge increase in the overall amount of time given to party political broadcasts, and would be unworkable. We also agree that party political broadcasts should be offered to those parties for which the majority of the audience has the opportunity to vote.
- 10.3. At present, the qualification criterion for party political broadcasts is that the political party should be fielding candidates in at least one sixth of the seats being contested. It is not clear whether the Commission considers that to be the optimal proportion or whether the extension of the party political broadcasting obligation to more channels would suggest a different proportion. Currently, each channel seeks to offer a reasonable allocation of time to each political party that meets the qualifying criteria and this naturally limits the number of parties eligible for party political broadcasts. **We would welcome views on alternative approaches to allocation and scheduling (e.g. inside or outside primetime) of party political broadcasts which would allow individual broadcasters to meet their responsibility for a fair allocation on their channels. Also, what scope is there for using any increased provision to accommodate broadcasts by a greater number of political parties?**

### 11. **The Commission recommends that parties should be able to have shorter broadcasts than at present. It suggests that, in order to maintain the distinction between PPBs and commercial advertising, the minimum PPB length be set at 1 minute 30 seconds.**

- 11.1. This will be a matter for Ofcom and the broadcasters, taking account of the Commission's views. The current legislation gives the regulator the flexibility to deliver shorter or longer broadcasts: the existing code provides for party political broadcasts of 2 minutes 40 seconds, 3 minutes 40 seconds and 4 minutes 40 seconds. We agree with the Commission that the distinction between commercial advertising and party political broadcasts should be maintained, and we support the recommendation that there should be a minimum length for a party political broadcast that reflects this.

<sup>11</sup> The Electoral Commission: *Op cit.*, Jan 2003, p 28.

**12. The Commission believes it would be possible to provide greater flexibility to parties, including the option of having a greater number of shorter broadcasts, without making the system unworkable for broadcasters. It recommends that parties be given the choice between two or more ‘packages’ of PPBs, essentially involving a choice between fewer, longer broadcasts, or more, shorter broadcasts.**

12.1. Again, this is a matter for the regulator and the broadcasters, and there is nothing in the legislation that would prevent Ofcom and the broadcasters from delivering this. We do support the general principle of greater flexibility and ‘packages’ of party political broadcasts. We believe that the variety of ‘types’ of broadcast may help to engage viewers more.

**13. The Commission recommends that clear labelling of PPBs should continue, but that labels should be engaging and informative. The Commission has offered to work with broadcasters and parties to design new labels for PPBs.**

13.1. We agree with this conclusion and welcome the Commission’s offer to contribute their expertise to designing new labels for party political broadcasts.

**14. The Commission is content that the current arrangements for the number and timing of non-election party broadcasts in Great Britain are satisfactory.**

14.1. We agree with the Commission’s conclusion.

**15. The Commission recommends that broadcasters which transmit a separate signal to Northern Ireland should be obliged to offer broadcasts around key political events to qualifying parties in Northern Ireland.**

15.1. In its report, the Commission noted that, unlike the major parties in Great Britain, the Northern Ireland parties are not offered party political broadcasts other than at elections. ITV is required to carry broadcasts around ‘key events in the political calendar’ such as the State Opening of Parliament, the Budget and the party conferences. The Commission considers that Northern Ireland parties should be offered similar opportunities.

15.2. This recommendation is a matter for the broadcasters concerned, and therefore is best left to them and the regulator to consider. The current legislation allows for this if the broadcasters and regulator think it appropriate.

## Arrangements for consultation

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We invite comments on all these options by 14th October 2004. This allows for a 12-week consultation period, which follows previous consultations undertaken on this issue since 2001.

Please provide a summary of the people and organisations represented by your response, and bear in mind that responses will be published at [www.culture.gov.uk](http://www.culture.gov.uk) unless they are marked 'Confidential'.

We would prefer replies to be e-mailed if possible to: [ppbconsultation@culture.gov.uk](mailto:ppbconsultation@culture.gov.uk)

Alternatively they may be sent to:

**Party Political Broadcasting Consultation  
Broadcasting Policy Division  
Department for Culture, Media and Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH**

This document is also available online at [www.culture.gov.uk](http://www.culture.gov.uk)

If you wish to pursue a complaint about the process of consultation on this paper, please contact:

**Simon Cooper  
Department for Culture, Media and Sport  
2-4 Cockspur Street,  
London SW1Y 5DH  
[simon.cooper@culture.gsi.gov.uk](mailto:simon.cooper@culture.gsi.gov.uk)**

## Annex A

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### The current arrangements for party political broadcasting

The current arrangements for party political broadcasting were introduced by the BBC in 1924 and apply only to broadcasters who use terrestrial radio spectrum (though the obligation extends to those same channels on other platforms) the public service broadcasters: BBC, Channel 3, Channel 4 and Channel 5, and national analogue radio services: the BBC, Classic FM, Virgin Radio and TalkSPORT.

### The current legislation and the new regulator – Ofcom

Previously, the Broadcasting Act 1990 provided the legal framework for party political broadcasting. The Communications Act 2003 substantively re-enacts the provisions of the Broadcasting Act 1990, substituting the Office of Communications (Ofcom) for the former authorities (ITC and Radio Authority).

Section 333 of the Communications Act outlines the current legal framework.

Subsection (1) provides that the regulatory regime for every licensed public service channel and every national radio service includes:

- ‘(a) conditions requiring the inclusion in that channel or service of party political broadcasts and of referendum campaign broadcasts; and
- (b) conditions requiring that licence holder to observe such rules with respect to party political broadcasts and referendum campaign broadcasts as may be made by Ofcom.’

The legislation has been updated to specify that Ofcom may require public service broadcasters to carry referendum campaign broadcasts in addition to party political broadcasts.

Furthermore the rules made by Ofcom may include provision for determining:

- ‘(a) the political parties on whose behalf party political broadcasts may be made;
- (b) in relation to each political party on whose behalf such broadcasts may be made, the length and frequency of the broadcasts; and
- (c) in relation to each designated organisation on whose behalf referendum campaign broadcasts are required to be broadcast, the length and frequency of such broadcasts.’

Ofcom is also required under subsection 5 to have regard to any views expressed by the Electoral Commission before making any rules under these provisions.

Occasionally, other licensed broadcasters have carried party political broadcasts voluntarily.

Under transitional arrangements Ofcom has inherited the existing ITC and Radio Authority codes relating to party political broadcasting – but will in due course need to consider developing its own code. The broadcasters are legally obliged to comply with the rules in the codes as a condition of their licences.

## Existing Codes – the Independent Television Commission Code

The Independent Television Commission's Programme Code (Section 4)<sup>12</sup> includes the guidelines for arrangements relating to party political broadcasts. The Code sets out the detailed rules for the system. The Code specifies that there are three options for the length of broadcasts available: 2 minutes 40 seconds, 3 minutes 40 seconds, and 4 minutes 40 seconds.

The Code also specifies those political events for which Channels 3, 4 and 5 are obliged to carry party political broadcasts (the specifications vary for each channel), and which parties are defined as 'major parties', and on what criteria that definition is based.

The Code specifies the times when certain broadcasts will be scheduled, and arrangements for regulating the content of broadcasts. It also covers a number of other issues relating to programming at the time of elections.

## Existing Codes – The Radio Authority Code

On radio, national analogue services are required to carry party political broadcasts, and this is set out in the Radio Authority's News and Current Affairs Code (Section 2.2)<sup>13</sup>. The Code provides guidelines on content and editorial control of broadcasts, but does not specify allocation arrangements.

## The BBC and S4C

The BBC and S4C have carried party political broadcasts voluntarily. The changes made to the BBC Agreement<sup>14</sup> place the BBC under a formal obligation to include party political broadcasts and specify that the regulation of this obligation should be a matter for the Board of Governors.

The Communications Act places an obligation on S4C to carry party political broadcasts and referendum campaign broadcasts.

Section 11(3) of the Political Parties, Elections and Referendums Act 2000 requires that the BBC and the Welsh Authority (S4C) have regard to any views expressed by the Electoral Commission in determining policy with respect to party political broadcasts.

## The Broadcasters' Liaison Group

At present, the Broadcasters' Liaison Group (BLG) provides a forum for broadcasters to liaise on arrangements for party political broadcasts. Political parties are invited to make representations to the BLG about matters of concern and practical arrangements. The broadcasting regulators determine disputes between the parties and the broadcasters.

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<sup>12</sup> These Codes can be viewed at [www.ofcom.org.uk](http://www.ofcom.org.uk)

<sup>13</sup> as footnote 12.

<sup>14</sup> Available at [www.communicationsbill.gov.uk](http://www.communicationsbill.gov.uk)

## Annex B

### Party political broadcasts shown on television before the 2001 General Election

Political Party	Television channel					
	BBC1	BBC2	ITV	C4	C5	TOTAL
Labour	13	13	13	9	5	53
Conservative	13	13	13	9	5	53
Liberal Democrats	12	12	12	8	4	48
Plaid Cymru	4	4	4	7	3	22
Scottish National Party	4	4	4	3	3	18
Ulster Unionist Party	4	4	4	0	0	12
Social Democratic and Labour Party	4	4	4	0	0	12
Democratic Unionist Party	4	4	4	0	0	12
Sinn Fein	4	4	4	0	0	12
Alliance Party	2	2	2	0	0	6
Workers Party	1	1	1	0	0	3
Socialist Labour	3	3	3	2	1	12
Socialist Alliance	2	2	2	2	1	9
Greens	2	2	2	1	0	7
UK Independence Party	3	3	3	2	1	12
Scottish Socialist Party	1	1	1	0	0	3
ProLife	1	1	1	1	0	4

Notes: **ITV** includes HTV and UTV and **C4** includes S4C.



## Party political broadcasts aired on radio before the 2001 General Election (continued)

Political Party	Radio station									
	R4	R2	Virgin	Classic	Talk	Radio Scotland	Radio Wales	Radio Cymru	Radio Ulster	Total
Sinn Fein	0	0	0	0	0	0	0	0	4	4
Alliance Party	0	0	0	0	0	0	0	0	2	2
Workers Party	0	0	0	0	0	0	0	0	1	1
Socialist Labour	1	1	1	1	1	1	1	1	0	8
Socialist Alliance	1	1	1	1	1	0	1	1	0	7
Greens	0	0	0	0	0	0	1	1	0	2
UK Independence Party	1	1	1	1	1	1	1	1	0	8
Scottish Socialist Party	0	0	0	0	0	1	0	0	0	1
ProLife	0	0	0	0	0	0	1	1	0	2

## Annex D

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### Partial Regulatory Impact Assessment

#### 1. Party Political Broadcasting Consultation

#### 2. Purpose and Intended Effect of Measure

##### 2.1. Objective

2.1.1. This consultation seeks views on a number of measures, aimed at modernising our arrangements for party political broadcasting in the United Kingdom, so that they keep in step with the rapidly changing world of broadcast media and help establish a closer dialogue between political parties and voters.

##### 2.2. Background

2.2.1. The current legislative framework (set out more fully in Annex A above) provides for powers for the broadcasting regulator Ofcom to require Channels 3, 4 and 5 and the national analogue radio services<sup>15</sup> to include party political broadcasts in their services.

2.2.2. The Electoral Commission's report on party political broadcasting (2003) made a number of recommendations for change, set out at pages 7 to 17 above. The purpose of the report was to review the role of party political broadcasts in providing voters with information to support their voting decisions.

##### 2.3. Risk Assessment

2.3.1. In considering the Electoral Commission's recommendations in this consultation paper, we are considering two particular aspects of the system. First, we are considering how best to address concerns raised by political parties regarding the legislation and procedures for the allocation of party political broadcasts. We have noted that political parties have expressed concern that under the current arrangements for the allocation of broadcasts there is a lack of transparency, too much discretion for broadcasters and a lack of predictability regarding the broadcasters' decisions. As discussed in page 7 above, we have made clear our commitment to maintaining a system of party political broadcasting and ensuring that it continues to work in a way which is fair and equitable for all parties; the broadcasters, the political parties and the listening and viewing public.

2.3.2. Secondly, we are looking at the existing system in the context of the increasing diversification of broadcast channels and the potential to develop alternative means of political engagement through other media. There is concern that, with the increased choice of communications channels now on offer, party political broadcasts may become less effective as a tool for

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<sup>15</sup> These are Virgin Radio, Classic FM and TalkSPORT.

political parties to reach and engage with the electorate. Those television channels that are currently required to carry party political broadcasts have an audience share of almost 80%. Although this figure suggests that the bulk of television viewing is still of the main terrestrial channels, the risk we are addressing is that there is, at least in theory, a group of viewers watching other, predominantly satellite and cable, channels, who do not have the same opportunity to view party political broadcasts.

### 3. Options Considered

3.1. In seeking to address the risks set out above, we have considered a number of options.

Option 1: Do nothing – in preparing this consultation document, we have considered whether action at this time is necessary. We agreed with the Electoral Commission’s analysis that, in the light of concerns expressed by the political parties and changes in broadcasting, improvements to the party political broadcasting system would be justified.

Option 2: Voluntary codes/self-regulation – where possible we have considered alternatives to statutory legislation and unnecessarily bureaucratic systems. This consultation specifically examines and seeks views on the extent to which non-statutory measures could achieve improvements. Decisions will be made in the light of responses.

Option 3: Primary legislation – again, where possible we are proposing to avoid primary legislation where alternatives would deliver our objectives.

Option 4: A mix of both voluntary codes/self-regulation and statutory legislation, where necessary, based on consideration of specific risks – such as the potential for non-compliance and the distortion of markets this might cause. Clearly, voluntary codes/self-regulation might not address sufficiently concerns about the current system; however, any move to codify the current arrangements in primary legislation risks losing the very flexibility that has allowed the current system to evolve successfully and be detrimental in practical and democratic terms.

3.2. On the basis of these options, this Regulatory Impact Assessment will consider the following proposals which will have a regulatory impact on businesses, regulators or political parties, if adopted. These are:

- (i) a requirement on Ofcom to establish a committee, composed of the broadcasters and sitting under a chairperson who is independent of broadcasters, to consider the allocation of party political broadcasts;
- (ii) a proposal to strengthen the existing legislation to include criteria which the regulator should take account of when making rules regarding qualification for, and length and frequency of, party political broadcasts;
- (iii) changes to the legislation so that the obligation to carry party political broadcasts should be the same for all broadcasters;

- (iv) a proposal to require any TV or radio channel which achieves prescribed audience reach and share thresholds to include party political broadcasts in their schedules;
- (v) alternative proposals, whether through broadcasting or using the Internet or mobile technologies, to establish a closer dialogue between political parties and voters.

These proposals are not mutually exclusive so that a combination of any of the above will be considered.

## 4. Benefits

### 4.1. Economic Benefits

The benefits of modernising the party political broadcasting system are not quantifiable in financial terms.

### 4.2. Business Sectors Affected

#### 4.2.1. Those affected by these proposals are:

The broadcasting regulators	The Office for Communications (Ofcom) is responsible for the regulation of the commercial broadcasting sector. In relation to BBC and S4C services, the BBC Board of Governors and the Welsh Authority also have regulatory responsibilities.
Commercial broadcasters currently required to carry PPBs	TV: Channels 3, 4 and 5. Radio: Virgin, Classic FM, TalkSPORT.
Other broadcasters carrying PPBs	BBC (TV and Radio), S4C.
Other broadcasters	Ofcom currently licenses over 400 television <sup>16</sup> broadcast channels and 300 radio stations <sup>17</sup> .
Political Parties	There are currently 5 major parties that regularly qualify for party political broadcasts in Great Britain (4 parties in Northern Ireland) and a further 20-30 parties which Ofcom will consider against the qualification criteria at each Election.

### 4.3. Social Benefits

Any changes to the party political broadcasting system would be made in the interests of democracy to establish a closer dialogue between political parties and voters and to increase information given to the electorate.

### 4.4. Environmental Benefits

We do not anticipate that our proposals will have specific environmental benefits.

<sup>16</sup>Some of these are foreign language channels; in other cases, licensees share channels; some are not broadcast to the UK; and some are relay transmissions from abroad.

<sup>17</sup>This excludes Restricted Service Licences.

## 5. Costs

### 5.1. Economic Costs – Compliance Costs for Business

#### 5.1.1. Costs for Broadcasters

5.1.2. The costs for individual broadcasters to carry party political broadcasts are difficult to quantify at this stage. **We are seeking views in this consultation paper on how any extension of the requirement for broadcasters to carry party political broadcasts could be delivered in practice.** A further assessment of costs will be carried out in the light of responses to this consultation. We envisage that costs might arise through any impact on audience share if that is reflected in advertising or subscription revenue, but it is not clear that that would be the case.

5.1.3. **We would be particularly interested in any indication of what the likely costs of an extension might be.** We acknowledge that there are a number of unprescribed variables – number, length, frequency and scheduling of broadcasts – that make it difficult to assess costs. **However, we suggest that respondents might give an indication of the costs on a sliding scale starting from a minimum requirement.**

**The balance between costs and benefits of alternative proposals to establish a closer dialogue between political parties and voters should also be considered.**

### 5.2. Costs for Political Parties

5.2.1. There would be costs for political parties if they chose to produce a range of different party political broadcasts. As with broadcasters, the costs and benefits of alternative proposals for closer engagement with the electorate should be considered. However, political parties are not obliged by law to take up extra opportunities for broadcasts and would, for example, be perfectly entitled to continue to produce only their existing range of broadcasts, at the same costs as now.

5.2.2. Costs for producing party political broadcasts vary enormously, and are largely a matter of choice for the parties themselves. As an indication of the current costs of broadcasts, the following gives the amounts that the major parties spent on broadcasts for the 2001 General Election for Great Britain<sup>18</sup>:

Political Party	Total Expenditure on Party Political Broadcasts (£s)
Conservative	567, 286
Labour	272, 849
Liberal Democrats	55,353
Scottish National Party	38,794
Plaid Cymru	7,306

<sup>18</sup> Source: Electoral Commission, *Register of Campaign Expenditure*, [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk)

### 5.3. Costs for Regulators

5.3.1. Ofcom would need to bear any costs relating to the establishment of a committee composed of broadcasters to consider the allocation of party political broadcasts. Based on the current model, we do not think that these costs would be significant, and Ofcom could recover any extra funds required through the system of funding their operations through licence fees levied on licensed broadcasters and charges to the BBC and S4C. It should be noted that broadcasters already give their time to the Broadcasters' Liaison Group, so a commitment to a new statutory committee would be unlikely to add materially to the direct costs to broadcasters of operating the existing system. As such, the proposals should result in only a small increase in costs, notably if an independent chair were financed.

### 5.4. Social Costs

We do not anticipate that our proposals will have specific social costs.

### 5.5. Environmental Costs

We do not anticipate that our proposals will have specific environmental costs.

## 6. Equity and Fairness

We do not anticipate that our proposals will disproportionately affect vulnerable or already disadvantaged groups. The proposals are aimed at developing a closer dialogue between political parties and voters across all groups in society.

## 7. Impact on Small Business

We do not anticipate that our proposals will have an impact on small businesses. It is unlikely that proposals affecting broadcasters reaching a certain national audience share would affect small businesses.

## 8. Competition Assessment

8.1. We do not consider that the proposals would have a significant effect on competition. The market affected is principally in the cable and satellite broadcasting market. The proposal to extend the obligation to carry party political broadcasts to these broadcasters, if agreed, would place requirements on broadcasters with comparable audience shares and would not therefore affect some comparable firms more substantially than others. If party political broadcasts were extended to niche channels in order to reach new audiences, the impact would most likely be on comparable channels, e.g. pop music channels.

8.2. The proposed changes would not affect the market structure, or change the number or size of firms. Neither would they lead to higher set-up costs or ongoing costs for new or potential firms. Any new entrants to the UK broadcast market would have to pay for the same licensing costs as their competitors and these are not likely to be materially increased as a result of any regulation in this area.

## **9. Enforcement and Sanctions**

Any proposals accepted would be enforced through the existing broadcast licensing regime currently operated by Ofcom. Enforcement will be shared between Ofcom and, in relation only to those matters which remain their responsibility, the BBC Governors and the Welsh Authority.

## **10. Monitoring and Review**

The effectiveness of the legislation would be measured by the broadcast regulators (see section 9 above) and the Electoral Commission.

## **11. Consultation**

We welcome comments on all aspects of this Regulatory Impact Assessment. These can be sent to the same addresses as set out on page 17.