

Election 2001 Review Programme

**Party Political Broadcasting
Review, 2001-02**

DISCUSSION PAPER

December 2001

How to respond

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The Electoral Commission may wish to publish or make available for inspection responses to this discussion paper. Please ensure that your response is marked clearly if you wish your response or your name to remain confidential.

The Electoral Commission

The Electoral Commission was established as an independent statutory authority on 30 November 2000, following the commencement of the Political Parties, Elections and Referendums Act 2000. The Commission is headed by a Chairman with five other Commissioners. The Chairman and Commissioners do not have connections to any political party, nor is the Commission accountable to the Government. It reports directly to Parliament through a Committee chaired by the Speaker of the House of Commons.

The Commission is responsible for overseeing a number of aspects of electoral law – the registration of political parties and third parties, monitoring and publication of significant donations to registered political parties and the regulation of national party spending on election campaigns. The Commission has a role in promoting voter awareness and in advising those involved in elections on practice and procedure, and is also required to report on the administration of every major election.

The Commission aims to:

- promote openness in the financial affairs of the UK's political parties;
- increase public confidence in the democratic process;
- promote public awareness of electoral matters;
- increase the proportion of people who vote in elections;
- make an important contribution to the development of electoral processes in the UK;
- become a recognised centre of excellence on electoral issues.

Party Political Broadcasting Review Discussion Paper

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1. INTRODUCTION

Purpose

- 1.1 The Electoral Commission is inviting submissions to inform its review of party political broadcasting arrangements in the UK. This discussion paper provides background information, highlights particular considerations that we feel are of relevance, and is intended to generate discussion and feedback.
- 1.2 We will use the comments received in response to this paper to develop options for the future of party political broadcasting arrangements. We will issue a consultation paper containing these options in spring 2002.

Background

- 1.3 The Electoral Commission is a public body established on 30 November 2000 under the Political Parties, Elections and Referendums Act 2000. The Commission is independent of Government and political parties, and is directly accountable to Parliament. Among the Commission's general statutory functions is a duty to keep under review a range of electoral and political matters, including political advertising in the broadcast and other electronic media.¹
- 1.4 In our statutory report on the 2001 general election, we identified as a priority the need to review the role of party election broadcasts, including the criteria governing their allocation². We acknowledged continuing concern among political parties regarding the determination of broadcast allocations, together with the need to take account of the increasing diversification of broadcast channels, including those satellite and cable channels not currently bound to provide broadcasts. While we have a statutory duty to keep these matters under review, we have no direct responsibility in respect of broadcasting arrangements and no powers to ensure implementation of any recommendations we might make.
- 1.5 This review is intended to build upon other recent studies and consultation processes. In considering the wider media environment, we will build upon a recommendation of the Committee on Standards in Public Life (the Neill Committee), whose report on the funding of political parties in the UK, published in October 1998, noted that the

¹ Section 6 of the Political Parties, Elections and Referendums Act 2000. Broadcasters also have an obligation under section 11 of the Act to have regard to the Commission's views when determining policy and rules in respect of party political broadcasts.

² Electoral Commission (2001) *Election 2001 – The Official Results*, London: Politicos, p75.

advent of satellite and cable television and of digital broadcasting meant the current arrangements governing political broadcasting “may soon no longer be relevant” and recommended that these arrangements be reviewed on a continuing basis³. In January 1998 the broadcasting authorities (BBC, Independent Television Commission (ITC), Radio Authority and S4C Authority) published a joint consultation paper on the reform of party political broadcasting⁴ as part of a review that led to modifications to allocation arrangements. Although we will consider again any specific aspects of the current allocation arrangements that continue to prove controversial, our principal intention is to consider more fundamental aspects of the framework governing party political broadcasting in the UK.

1.6 The broad frameworks that we intend to consider as options for the future of party political broadcasting arrangements are as follows:

- the retention of a system of allocations of free time to political parties, whether upon the basis of the formulae devised by the broadcasting authorities in 1998 or otherwise;
- the discontinuation of free allocations and the introduction of paid political advertising;
- the introduction of a mixed system, whereby some paid political advertising is permitted but some free allocations are also retained;
- the discontinuation of free allocations with no alternative provision.

We recognise that within each of the first three of these broad frameworks, there is scope for a wide range of specific allocation and regulatory considerations.

Discussion Paper

1.7 This discussion paper provides information that we believe is relevant to considerations of the broad framework for party political broadcasting in the UK. This includes information about the most recent arrangements, discussion about the changing media environment and about public attitudes to broadcasts and what their impact might be, and a brief consideration of the systems used in other countries.

1.8 Each of the sections concludes with an ‘issues’ section, intended to initiate discussion and feedback. These issues are summarised in the final section. The questions we raise do not reflect views of the Commission and some are intended to be provocative. We also recognise that there may be relevant issues that have not been covered in this paper. It is not intended to be comprehensive or

³ Committee on Standards in Public Life (1998) *The Funding of Political Parties in the United Kingdom*, London: The Stationery Office, p183, section 13.34.

⁴ BBC, ITC, Radio Authority, S4C (1998) *Consultation Paper on the Reform of Party Political Broadcasting*.

exhaustive and we shall welcome submissions on issues that may not be covered here.

Review process

- 1.9 This review is part of a wider programme of review being conducted by the Commission following its statutory report on the 2001 general election.
- 1.10 The review will have full regard to the views of political parties, broadcasting authorities, broadcasters and other stakeholders. This discussion paper is the first of two consultation stages. On the basis of comments received at this stage, we will develop options for the future of party political broadcasting arrangements in the UK. We will then issue a public consultation document containing these options and invite further submissions, prior to issuing our final report and recommendations in summer 2002.
- 1.11 The report will be published and will be submitted to the Secretaries of State for Transport, Local Government and the Regions, and Culture, Media and Sport. The Commission has no powers to impose any recommendations its report makes.
- 1.12 Comments at this stage must be received by 15 February 2002. Instructions for respondents are at the front of this paper.

Policy

- 1.13 It should be noted that no part of this discussion paper represents Commission policy or recommendation. The paper is intended to provide information and to generate discussion. The Commission's recommendations will be stated in the final review report.
- 1.14 This paper has been produced by Commission staff under the supervision of Professor Graham Zellick (Electoral Commissioner and Vice-Chancellor of London University) and Dr Margaret Scammell (Senior Lecturer in Media and Communications, LSE).

2. HISTORY OF PARTY POLITICAL BROADCASTING

Principles

- 2.1 It was as part of the BBC's perceived public service role, as envisaged by the Corporation's founder, Sir John (later Lord) Reith, that broadcasting time was initially offered to political parties. The offer of broadcasting time also formed part of a broadcaster initiative to encourage politicians to use the new broadcast media. The principle that political parties should be able to freely publicise their platforms and policies to voters, and that voters should be able to receive such information, was extended to the broadcast media as their audience and influence developed. Just as parties and candidates are offered the opportunity to have a printed election address sent to electors, those which meet certain criteria (discussed below and in Section 3) are offered airtime for party political broadcasts by the BBC and certain commercial broadcasters.
- 2.2 The allocation of broadcasting time to qualifying parties may also, it has been argued, help contribute to the fairness of the election campaign more generally, by to some extent compensating for the parties' differential ability to attract campaign funds. Party election broadcasts represent a considerable subsidy based on clear qualifying criteria, which contributes substantially to offsetting the ability of one party to heavily outspend its rivals in press advertising. This argument is seen in the Houghton Committee Report on Financial Aid to Parties (1977), and recurred throughout the 1980s whenever debates on party finance and campaign spending were raised in Parliament.
- 2.3 A further underlying feature of the present system is the ban on paid political advertising. Any body whose objects are wholly or mainly of a political nature is not permitted to advertise on radio or television⁵. The Neill Committee's 1998 report included detailed discussion regarding the extent to which this ban constitutes a restriction on the right of free expression guaranteed by Article 10 of the European Convention on Human Rights⁶. While the Neill Committee recommended that the ban should be maintained, it acknowledged that the legal position had not been properly tested in the European Court of Human Rights and that the introduction of the Human Rights Act would open up the possibility for direct challenge in the UK courts.
- 2.4 In the recent case of *Vgt Verein gegen Tierfabriken v. Switzerland*⁷ (the applicant being an animal rights pressure group), the European Court

⁵ Broadcasting Act 1990, s8(2)(a) and s92(2)(a).

⁶ Committee on Standards in Public Life (1998) *The Funding of Political Parties in the United Kingdom*, London: The Stationery Office, pp174-6, sections 13.8-13.11.

⁷ European Court of Human Rights, *Application no. 24699/94: Final Judgment 28/09/01*, Strasbourg.

of Human Rights held that a blanket prohibition on political advertising does constitute an interference with the right to freedom of expression guaranteed by Article 10 of the Convention. While the Court stated that it “cannot exclude that a prohibition of political advertising may be compatible with the requirements of Article 10 of the Convention in certain situations”, any interference has to be “necessary in a democratic society” which means that there has to be a “pressing social need”. Significantly, the Court did not see how that test could be applied only to one form of media and not to others. However, the full implications of this judgment for the current prohibition on paid political advertising in the UK broadcast media are not yet clear. The Electoral Commission intends to seek further legal advice on these implications.

The beginnings: BBC and Reith

- 2.5 Under the terms of its original licence, granted in 1922, programme material broadcast by the BBC was required to meet “the reasonable satisfaction of the Postmaster-General”. The Postmaster-General had turned down Reith’s invitation to broadcast speeches by the three main party leaders in 1923, but lifted his prohibition a year later. During the general election campaign of 1924, the three main party leaders, Asquith, Baldwin and MacDonald, were offered and gave unedited radio broadcasts lasting 20 minutes each.
- 2.6 Following the reconstitution of the BBC in 1926 under a Royal Charter, arrangements for the future allocation of broadcasting time between the parties were left solely to the BBC. The BBC’s approach was to put forward initial proposals to the political parties for consideration, and then to seek a general consensus among the parties on allocation arrangements. At the 1929 general election the parties were unable to come to any such agreement between themselves, and Reith himself allocated broadcasting time on behalf of the BBC. The government was given the same number of broadcasts as the opposition parties combined and was given the first broadcast, while an opposition party was given the final broadcast. Minor parties were given access dependent on the number of candidates they fielded at the election.
- 2.7 In May 1926, Stanley Baldwin made the first prime ministerial broadcast outside a general election, addressing the nation during the general strike, and this was followed in 1928 by the first broadcast by a Chancellor after announcing his budget. In 1934 the Opposition party was given the opportunity to respond to the Chancellor’s budget broadcast, marking the beginning of regular budget broadcasts. Broadcasts by Prime Ministers in exceptional circumstances and budget speeches by Chancellors continued throughout the first half of the century, but were not subject to any formal allocation arrangements and did not assume any significance until after the Second World War.

Committee on Party Political Broadcasting

- 2.8 It was only from 1947 that the process of allocating party political broadcasts was structured in any way. A Committee on Party Political Broadcasting was established as an informal body to facilitate discussion between the BBC and the political parties, and to help secure agreement on allocation arrangements. The Committee was originally composed of representatives of the major political parties (Conservative, Labour and Liberal) while the broadcasters were represented by the BBC. When commercial television companies started broadcasting in 1956, the Independent Broadcasting Authority (later the ITC) also joined the Committee. The Scottish National Party (SNP) and Plaid Cymru were also later given representation.
- 2.9 Under the Committee's normal practice, proposals for allocation arrangements from the broadcasters' representatives would be delivered either to the Leader of the House of Commons or to the government Chief Whip, who would then liaise with the whips of the other parties. After consultation within their own parties and negotiations between the whips, an agreed response would be returned to the broadcasters. The Committee had no legal status, its proceedings were never published, and it was often referred to simply as the 'usual channels'.
- 2.10 Following the establishment of the Committee, a number of conventions on the allocation of party political broadcasts (PPBs) were agreed. Factual ministerial broadcasts, such as those explaining legislation or administrative policies or appealing to the nation for cooperation in national policies, would be as impartial as possible, and there would normally be no Opposition right of reply. However, a limited number of 'controversial' PPBs, aimed at explaining parties' policy positions, would be allocated each year according to the share of the vote at the previous General election. The allocation of party election broadcasts (PEBs) by the Committee continued to be made on an ad hoc basis prior to each general election.
- 2.11 In October 1951, the first televised PEBs were transmitted. The BBC had invited the three main parties to make one television broadcast each in 1950, but it was not until the General election campaign a year later that this offer was accepted. The Conservative, Labour and Liberal parties each made a 15 minute broadcast, which was transmitted in addition to their radio broadcasts. These were followed in 1953 by the first televised PPB, made by Harold Macmillan, then Secretary of State for Housing.
- 2.12 ITV came on air in 1955, and in 1956 began simultaneous transmission of party political broadcasts. Broadcasts on commercial television were, and have since been, scheduled within programming time rather than advertising time. In 1982 Channel 4 joined the BBC and ITV.

Channel 4 carries party election broadcasts at general elections and provides time to parties at other times through its political slot rather than through a formal party political broadcast system.

- 2.13 During the years following the establishment of commercial television in the UK, the informal rules providing for the allocation of party political broadcasting time underwent a number of revisions. Following a proposal from the Liberal Party in 1962, the Committee agreed to take into account by-election results in addition to the parties' share of the vote at the previous general election. In a further amendment, the party in opposition was guaranteed the same amount of broadcast time as the party in government. The SNP and Plaid Cymru were allocated 5 minutes of television and radio airtime in 1965, the first parties to make PPBs before winning seats in Parliament.
- 2.14 These allocation arrangements were revised by the Committee again in 1974, and a more rigid formula for determining the allocation of PPBs was introduced. Under the new arrangements, broadcasts were allocated on the basis of 10 minutes for every two million votes cast at the previous general election. In Scotland, the SNP was given 10 minutes broadcasting time for every 200,000 votes cast, and in Wales Plaid Cymru was given 10 minutes for every 100,000 votes.
- 2.15 While arrangements for the allocation of PEBs continued to be agreed by the Committee prior to each individual election, a number of conventions became clear over the years, which were applied until very recently. The government party and main opposition party would be allocated the same number of broadcasts, and no party was to be offered more than five broadcasts in total. The number of broadcasts offered to parties was related both to 'proven electoral support' (the level of support for the party in previous elections) and the number of candidates fielded at the election. Only once, in 1983, were members of the Committee unable to agree an allocation for party election broadcasts, when the Liberal/SDP Alliance would not agree any allocation which did not give them parity with the Labour Party. The response of the broadcasters was to impose the allocation they believed fair, offering the Alliance four broadcasts, and five each to the Conservative and Labour parties.
- 2.16 Normally, any minor party fielding more than 50 candidates in a general election would be allocated a 5 minute broadcast on television and radio. However, following legal advice taken in May 1996, the BBC decided to drop the concept of 'proven electoral support' for minor parties and stick to the test of a minimum of 50 candidates. Separate allocation arrangements were devised for broadcasts restricted to Scotland and Wales, for SNP and Plaid Cymru respectively. An informal system of campaign broadcasts was provided in Northern Ireland, and the allocation of broadcasting time to the parties was made by the Committee on the basis of both the numbers of candidates fielding at the election and strength of the vote at the previous election.

Broadcasting Act 1990

- 2.17 The 1990 Broadcasting Act put party political broadcasting on a statutory footing for the first time. Section 36 of the Act requires that holders of any Channel 3, 4 or 5 television licence must include party political broadcasting in the service, and must observe the rules devised by the ITC in relation to the allocation of PPBs and PEBs. The 1990 ITC programme code (revised in 1998 and 1999) provided that airtime on ITV would be made available each year to UK parties represented in the House of Commons and to the SNP in Scotland and Plaid Cymru in Wales. The unofficial formula for the allocation of party political broadcasts agreed by the Committee on Party Political Broadcasting was formalised in the ITC code. When Channel 5 came on air in March 1997, it was required by the ITC code to carry general election and European election broadcasts.
- 2.18 Similarly, section 107 of the Act requires national radio licence holders to observe rules determined by the Radio Authority in relation to party political and party election broadcasts. Licences for the national commercial radio stations, Classic FM, Talk Radio (now TalkSport) and Virgin Radio, were awarded in 1997, and all three stations carried PPBs and PEBs from September 1997. The Radio Authority's programme code provided similar rules for the allocation of PPBs and PEBs to those set out in the ITC programme code.
- 2.19 These requirements of the 1990 Act did not affect the BBC, which continues to operate under its own Charter and License. The BBC provides time for party political broadcasting although is under no legal obligation to do so.

Broadcasters' Liaison Group

- 2.20 In May 1996, the BBC sought legal advice on the role of the Committee on Party Political Broadcasting. While it was established practice for the broadcasters to send proposals for party election broadcasts to the Committee for consideration by the political parties, the advice given to the BBC noted that the business of the Committee was conducted by the Secretary to the Chief Whip. This was considered incompatible with the BBC's obligation to be fair and consistent in dealing with political matters. Subsequently, in June 1997, the BBC and ITV wrote to the Secretary of the Committee, explaining that it would be more appropriate for the broadcasters to receive representations regarding party political broadcasting directly from the political parties rather than through the Committee.
- 2.21 The Broadcasters' Liaison Group was formed in June 1997 to act as a forum for the broadcasting authorities to receive information and

representations from interested parties on the future of party political broadcasting. The Group comprised the BBC and S4C (both broadcasters and regulatory authorities), together with the ITC and the Radio Authority. In January 1998, the Group published a *Consultation Paper on the Reform of Party Political Broadcasting*, which outlined a number of proposals for reform of the allocation process. The Consultation Paper proposed moving the focus of party political broadcasting away from PPBs and towards PEBs in order to reflect the growth in the number of elected bodies in the UK.

- 2.22 A number of amendments were made following the Broadcasters' Liaison Group's consultation exercise. A higher threshold of one-sixth of the total seats contested was introduced for PEBs, to be modified as necessary for the various proportional representation systems for elections to the devolved legislatures and the European Parliament, while the informal system of broadcasts in Northern Ireland was replaced by a series of PEBs. Qualifying parties were also offered a range of different lengths for their broadcasts, ranging from 2 minutes 40 seconds, to 4 minutes 40 seconds, rather than the traditional 5 or 10 minute slots. In place of the allocation of party political broadcasts on the basis of a rigid formula of electoral support, the major parties in Great Britain (including the SNP in Scotland and Plaid Cymru in Wales) would be offered further party political broadcasts during the year "in relation to other key political events", such as the Queen's Speech, the budget and party conferences. The ITC and Radio Authority programme codes were amended in 1998 to reflect these changes.

General election 2001

- 2.23 A further revision to the broadcasters' allocation arrangements was made for the 2001 general election PEBs. Wherever it was possible to split broadcasts, PEBs were allocated to parties in each of the four nations on the basis of those parties fielding candidates in one-sixth of the seats in each nation, rather than applying the threshold across the UK as a whole. In addition to the main political parties with Parliamentary representation, eight minor parties were allocated one or more broadcasts on television or radio in England, Scotland or Wales, while a further two parties were allocated broadcasts in Northern Ireland. The major parties were allocated separate series of broadcasts in each nation. The numbers of broadcasts allocated to the major parties were determined, for England, in line with the allocations made at the previous general and local elections, and for Wales and Scotland, in line with allocations made in those nations for devolved elections and the previous European Parliamentary elections.
- 2.24 Prior to the general election, the Pro-Life Alliance, which had qualified for a PEB in Wales, launched a High Court action against the BBC. The BBC had declined to show the party's election broadcast in full on the grounds that it would breach its own codes on taste and decency.

The High Court ruled that there was no duty to allow parties to transmit any images in their broadcasts, however offensive, and a revised version of the broadcast, without images, was transmitted. Following the election, however, the Alliance was granted permission to appeal against the decision, and the case is expected to be heard in January 2002.

OFCOM

2.25 Following the publication of the Communications White Paper in December 2000, the government introduced an Office of Communications Bill in July 2001. The Bill provides for a unified regulator for the communications sector, bringing together the functions of the five regulatory offices or bodies (ITC, Radio Authority, Broadcasting Standards Commission, Office of Telecommunications and Radiocommunications Agency) under a single Office of Communications (OFCOM). The Bill provides for this new body, over time, to assume responsibility for the programme codes currently produced by the ITC and the Radio Authority. The BBC and S4C Authority will remain outside the remit of OFCOM, as currently envisaged by the Bill.

Issues

- 2.26 **In the light of the recent judgment of the European Court of Human Rights in the case of *Vgt Verein gegen Tierfabriken v. Switzerland*, does the current prohibition on paid political advertising in the UK broadcast media remain lawful under the Human Rights Act? The Electoral Commission will be seeking its own legal advice on the implications of this judgment, but would welcome comments from others at this stage.**
- 2.27 **Regardless of the ECHR judgment, is it desirable or necessary to maintain the current prohibition on paid political advertising in the broadcast media?**
- 2.28 Issues relating to the allocation arrangements for party political and party election broadcasts are raised in the next section.

Sources:

BBC, ITC, Radio Authority, S4C (1998) *Consultation Paper on the Reform of Party Political Broadcasting*.

Robert Blackburn (1995) *The Electoral System in Britain*, New York: St Martin's Press.

G W Goldie (1977) *Facing the Nation*, London: Bodley Head.

Independent Television Commission (1990 and revisions) *Programme Code*.

Committee on Standards in Public Life (1998) *The Funding of Political Parties in the United Kingdom*, London: The Stationery Office.

Radio Authority (1994) *Programme Code and News and Current Affairs Code*.

3. CURRENT ARRANGEMENTS AND THE ELECTORAL CONTEXT

Introduction

- 3.1 Under the terms of the Broadcasting Act 1990, TV Channels 3, 4 and 5, and holders of national commercial radio licences are required to include party political broadcasts in their services. While under no legal obligation, the BBC also provides broadcasting time to political parties.
- 3.2 Under the current system, the precise allocation of PEBs is determined by the broadcasting authorities (BBC, ITC, Radio Authority and S4C) in consultation with political parties prior to each election. The range of elections for which broadcasts are allocated in the UK is discussed below, together with more brief consideration of political broadcasts outside specific election campaigns.
- 3.3 It should also be noted that, while political parties are free to present their messages as they see fit, the transmission of party political broadcasts has remained the responsibility of the broadcasters alone and is subject to their ultimate control. Broadcasters must comply with the codes of practice and other guidelines developed by the broadcasting authorities, for example with regard to matters of offence to good taste and decency.
- 3.4 Since the Broadcasters' Liaison Group consultation and review in 1998, the focus of allocation arrangements for PEBs has moved to reflect more accurately the conduct of elections in the constituent nations of the UK, with the four main parties active in Scotland and Wales and the multi-party system in Northern Ireland. While the following summary of allocation arrangements in the context of the range of elections in the UK reflects the broadcasters' most recent position, it should be remembered that arrangements for election broadcasts continue to be made on an ad hoc basis before each election.

General elections

- 3.5 Prior to the 2001 general election, a series of PEBs was provided by the broadcasters to political parties represented in Parliament, while other parties fielding candidates in 50 seats throughout the UK were also entitled to one broadcast each. For the 2001 general election, the allocation of PEBs was made on a national, rather than UK-wide, basis. Major parties were allocated a separate series in each nation, the numbers of broadcasts in each nation being determined in line with allocations for the previous general and local elections for England and the previous devolved and European Parliamentary elections for Wales and Scotland. Other parties fielding candidates in one-sixth of the

seats in one of the four nations in the UK were entitled to a broadcast in that nation. On this basis, the Green Party qualified for one PEB in each of England and Wales, while the Pro-Life Alliance qualified for one PEB in Wales. In Northern Ireland, the Alliance Party qualified for two broadcasts, and the Workers Party one broadcast. If UK-wide parties contested fewer than one-sixth of the total seats in any nation, their PEB was not shown in that nation.

- 3.6 Those broadcasters which do not fully split their signals between nations (Channel 4, Channel 5, BBC Radio 4, BBC Radio 2 and the three national commercial radio stations) offered UK-wide broadcasts to Labour, Conservatives, Liberal Democrats, SNP and Plaid Cymru. The Socialist Labour Party, United Kingdom Independence Party and Socialist Alliance (including the Scottish Socialist Party), which each fielded candidates in more than one-sixth of the total seats in the UK as a whole, were also offered one UK-wide broadcast each by these broadcasters.

Local elections

- 3.7 Elections to various parts of local government in the UK take place in May each year. Members of county councils in England are elected every four years, and elections were last held in 2001, while elections to the various district councils in England take place in the three years between county council elections. Unitary councils in Scotland and Wales are elected once every four years, and members were last elected in 1999. District councils in Northern Ireland are also elected every four years, by the Single Transferable Vote (STV) system of proportional representation, with elections last held in 2001.
- 3.8 The allocation of PEBs at local government elections in Great Britain now reflects the relative positions of the three main parties in England, and the four main parties in each of Scotland and Wales. The main parties are offered two broadcasts each and, as in a general election, any party fielding candidates in one-sixth of the contested seats will be allocated one broadcast. In Northern Ireland, the first local elections to be held since the introduction of a system of formal PEBs took place at the same time as the general election in June 2001; no broadcasts were provided in addition to the general election broadcasts.
- 3.9 Wherever it is possible for broadcasters to split their signal, broadcasts by UK-wide parties will not be aired in Scotland, Wales or Northern Ireland when local elections are not being held in those nations. Furthermore, in the event of local elections coinciding with a general election, no additional local election broadcasts are allocated.

European elections

- 3.10 Since 1999, members of the European Parliament for England, Scotland and Wales have been elected using a regional list system. The three members for the Northern Ireland region are elected using the STV system. At the 1999 election, PEBs were offered to Labour, Conservatives and Liberal Democrats, and also to SNP in Scotland and Plaid Cymru in Wales. Other parties which put forward a full list of candidates in each of the regions in any nation were offered one broadcast in that nation. Six other parties qualified for a single broadcast in England, four in Wales and five in Scotland. Of those broadcasters unable to split their signal between nations, Channel 4 did not carry any PEBs, while Channel 5 allocated UK-wide broadcasts to Labour, Conservatives, Liberal Democrats, Plaid Cymru and SNP.
- 3.11 Under the STV system in the Northern Ireland constituency, no party fielded more than one candidate in the 1999 European election, although a total of three seats were being contested. While the five largest parties were offered two broadcasts, smaller parties, fielding the same number of candidates, could also qualify for a PEB. Under revised allocation arrangements, any party fielding one or more candidates which could point to prior electoral support – defined as either gaining more than 2.5% of first preference votes at the previous European election, or sufficient support at the most recent election (the Assembly elections in 1998) to gain one or more seats – would be offered a broadcast. Two other parties qualified for a single broadcast in Northern Ireland on this basis.

Devolved Legislatures

- 3.12 With the establishment of devolved legislatures in Northern Ireland in 1998 and in Scotland and Wales the following year, arrangements were established for the allocation of PEBs to contesting parties.
- 3.13 Members of both the Scottish Parliament and the Welsh Assembly are elected by the Additional Member System (AMS), with a top-up vote from a regional party list in addition to single-member constituencies. While the larger parties fielded candidates in both the constituency seats and regional top-up lists, smaller parties concentrated their efforts on the regional lists alone, and some parties fielded only the number of candidates realistically electable on each regional list, rather than the maximum possible. At the Scottish Parliament and Welsh Assembly elections in 1999, PEBs were allocated to Labour, Conservatives and Liberal Democrats, and also to SNP in Scotland and Plaid Cymru in Wales. Parties fielding a slate of sufficient candidates to match the number of seats available on half or more of the regional top-up lists were also offered one PEB on this basis. A further five

parties qualified for a broadcast in Scotland, while four qualified in Wales.

- 3.14 Members of the Northern Ireland Assembly are elected by the STV system. The first elections to the Assembly were held in 1998, following the broadcasters' decision formally to allocate a series of PEBs to parties in Northern Ireland. Five parties – the Alliance Party, Democratic Unionist Party, Sinn Fein, Social Democratic and Labour Party and the Ulster Unionists – were each offered two TV and two radio broadcasts. Other parties fielding one or more candidates in at least one-sixth of the constituencies contested (in practice, a minimum total of three candidates across three different constituencies) qualified for a single broadcast. Six other parties qualified on this basis.

London

- 3.15 The first contests for a directly-elected Mayor of London and the Greater London Assembly were held in May 2000. The broadcasting authorities faced some difficulty in allocating PEBs for the mayoral election in which 11 candidates stood for one post. The qualifying criteria determined by the broadcasters stated that candidates must demonstrate both previous electoral support (in the three most recent elections in London: the 1999 European election, 1998 borough elections and the 1997 general election), and current electoral support, taking into account opinion polls or other evidence of widespread support. Of the 11 mayoral candidates, five were offered PEBs: the Labour, Conservative, Liberal Democrat and Green Party candidates, together with one independent candidate. The Mayoral and Assembly contests were held at the same time as local elections elsewhere in England, and no separate broadcasts for the Assembly elections were allocated in addition to the series of local government broadcasts.

Combined elections

- 3.16 As detailed above, elections to various parts of local government in the UK take place each year, and local election PEBs are broadcast only in those parts of the UK where elections are being held. However, where a general election is held at the same time as local elections, no additional PEBs are allocated for the local election. Elections to the European Parliament usually take place in June, and so will not normally conflict with any other series of elections. In Scotland and Wales, the broadcasters have proposed allocating a single series of PEBs to cover both devolved legislature and local authority elections when these coincide. It is unclear, at present, whether separate PEBs would be allocated in the event of elections to the devolved legislatures coinciding with a general election. This is a matter that the broadcasters would agree as and when it occurs.

Referendums

- 3.17 Under the provisions of the Political Parties, Elections and Referendums Act (PPERA) 2000, referendum campaign broadcasts at a UK-wide, national or regional referendum will be allocated to each of the umbrella campaign organisations designated by the Electoral Commission. Detailed allocation arrangements will be made by the broadcasters at the time of any referendum, and the Commission must be formally consulted on any such rules before they are adopted.

Broadcasts at other times

- 3.18 In addition to party election broadcasts, as detailed above, the ITC Programme Code requires ITV to offer broadcasts to the major political parties⁸ in Great Britain at other times during the year. The Programme Code states that broadcasters will carry broadcasts around 'key events in the political calendar', such as the State Opening of Parliament, the budget, and the party conferences. The BBC also transmits party political broadcasts. Prior to the broadcasting authorities' consultation and review in 1998, a wider range of non-electoral party political broadcasts was offered.

Issues

- 3.19 **The current arrangements allow broadcasters to take account of any particular circumstances of the time, including the relative state of the parties and new electoral systems. However, this flexibility comes at the expense of transparency. Should broadcasters continue to make ad hoc arrangements prior to each election, or would more formal and consistently applied allocation criteria be more appropriate?**
- 3.20 **At present the broadcasting authorities determine allocation arrangements following consultation with political parties. Should a more formal and/or more direct role be provided to political parties or other stakeholders in determining allocations?**
- 3.21 **The numbers of broadcasts allocated to the major parties at the 2001 general election were determined, for Wales and Scotland, in line with allocations made in those nations for devolved elections. Is it appropriate that allocations in Wales and Scotland for a general election are made effectively on the basis of party strength at the devolved level, or should allocations for UK-wide elections be determined by levels of support across the UK?**

⁸ The ITC Programme Code defines the major parties as Labour, Conservative, Liberal Democrats, and the Scottish National Party and Plaid Cymru in Scotland and Wales respectively.

- 3.22 **The effective raising of the threshold for small parties to qualify for PEBs, from 50 seats to one-sixth of contested seats, was made partly in order to deter organisations from fielding candidates so as to qualify for a PEB for their own publicity purposes rather than for genuine electoral purposes. It remains the case, however, that the estimated commercial value of the free airtime far exceeds the cost of lost candidate deposits in one sixth of seats. Should we be concerned by the possibility of this scenario? If so, what measures could be taken to provide additional disincentive?**
- 3.23 **Could any greater opportunity for broadcasts realistically be provided to smaller parties within the current framework of free allocations?**
- 3.24 When two elections have coincided (for example general and local), PEBs have only been provided for the higher level election. However, elections for separate bodies are potentially fought on different issues, and to provide broadcasts for only one election campaign (for example general) might be seen to be marginalising the coincident election (for example local) in a way that is unhelpful for the electorate. On the other hand, the provision of further broadcasts would provide an added burden on broadcasters, and the parties themselves might in any case prefer to concentrate their resources on the election to which they attach the greater importance.
- 3.25 **In circumstances where elections coincide, is it appropriate for the broadcasters to allocate only one series of PEBs? Should qualifying parties be given a blanket allocation of broadcasts to cover all elections being contested, or might broadcast allocations more accurately reflect the range of elections being held?**
- 3.26 **Do the current arrangements for the allocation of party political broadcasts offer sufficient opportunity for the political parties to publicise their policies outside any specific election campaign? Should party political broadcasts be offered on a more regular basis through the course of the year?**

Sources:

BBC papers, provided by Anne Sloman, Chief Political Adviser, BBC.
BBC, ITC, Radio Authority, S4C (1998) *Consultation Paper on the Reform of Party Political Broadcasting*.

4. MEDIA CONTEXT

The industry today

- 4.1 The broadcasting industry is now larger, more fragmented and more competitive than ever before. After a long period of industrial stability grounded in the regulatory response to spectrum scarcity, the UK broadcasting industry is now in the midst of an extraordinarily intense period of change⁹. The Neill Committee's 1998 report noted that "the advent of satellite and cable television and of digital broadcasting means that the current arrangements governing political broadcasting may soon no longer be relevant".
- 4.2 The number of television channels in the UK has risen from three, 20 years ago, to more than 250 today¹⁰. In the same period the number of radio broadcasters has risen from around 35 to around 450¹¹. The number of broadcasters required to carry party political broadcasts has not risen correspondingly. Under the terms of the Broadcasting Act 1990, those media obliged to carry party political broadcasting are the holders of Channel 3, 4 and 5 television licences together with those radio services with national licences (currently Classic FM, TalkSport and Virgin Radio). The BBC also carries party political broadcasts.
- 4.3 While there has been a great proliferation in broadcast channels, however, the terrestrial TV channels with strong public service broadcasting commitments have so far maintained a large share of the market. Viewing figures produced by the ITC show that the audience share for those TV channels obliged or committed to carrying party political broadcasts, having been 100% in 1979, remains above 80% in 2001¹². This continuing strength is in part due to the huge growth in available channels being limited to a minority of homes, although this minority is expanding. Despite a proliferation of satellite and cable channels, therefore, viewers so far have remained largely faithful to the terrestrial TV channels.
- 4.4 There is even greater choice and diversity in radio. The BBC, with its UK network, national/regional and local radio output, achieves a listening share of just over 50%. National commercial radio achieves an 8% share and local commercial radio just under 40%. The radio industry is characterised by a much greater degree of local broadcasting than television, and is said to engender a greater degree of intimacy and loyalty.

⁹ Report for DCMS by David Graham & Associates (2000) *Out of the Box: The Programme Supply Market in the Digital Age*.

¹⁰ DTI/DCMS (2000) White Paper *A New Future for Communications*.

¹¹ Radio Joint Audience Research (RAJAR/RSL) *Quarterly Summary for period ending September 2001*.

¹² ITC audience share figures, 1979 and 2001.

- 4.5 At present those radio stations carrying party political broadcasts include the three national commercial licence holders together with BBC Radio 2, Radio 4, Radio Scotland, Radio Ulster, Radio Wales and Radio Cymru. According to the RAJAR/RSL quarterly figures for the period ending September 2001, these stations achieve a listening share of just under 35%¹³.

Future trends

- 4.6 While the last few years have seen huge changes in the broadcast industry, the digitalisation agenda will ensure that the process of change continues. The switchover from analogue to digital television broadcasting is under way, with current penetration through the three media (terrestrial, satellite and cable) of around 30% of homes, putting the UK as a market leader in digitalisation¹⁴. The Government's original target for the completion of the analogue/digital switchover was 2010¹⁵ and it is currently working with industry and viewer groups on a strategy for completing this switchover.
- 4.7 The switchover from analogue to digital broadcasting involves BBC as well as commercial stations. At present, the BBC has six digital television channels and ITV Digital carries basic and premium channels as well as all free-to-air channels.
- 4.8 The impact of continued digitalisation will be to extend consumer choice greatly, and provide a whole new range of broadcast media and interactive services. Transmission of main public service channels will continue on the existing national basis with some regional broadcasting. ITV will continue to have the same regional boundaries, although ITV satellite broadcasting will use special 'postcode sensitive' software to transmit regionally. BBC, C4 and C5 have already started developing a number of specialist digital terrestrial channels, which have been encouraged by the Government and regulatory bodies.
- 4.9 While the effect of increased digitalisation on viewing patterns cannot be predicted with any certainty, it can be assumed that as access to digital services increases and as the number and range of services increase, audiences will become more dispersed. Although there is proven loyalty to the traditional national networks, the competition they face looks certain to increase significantly.
- 4.10 For advertisers, increased digitalisation will lead to increased segmentation of audiences. Although a large proportion of current digital broadcasting output is the same as is carried on analogue

¹³ Radio Joint Audience Research (RAJAR/RSL) *Quarterly Summary for period ending September 2001*.

¹⁴ Interview with Mark Wheeler, London Guildhall University.

¹⁵ DTI/DCMS (2000) White Paper *A New Future for Communications*.

services, there is likely to be far greater flexibility in output in the future, enabling advertisers to target more closely.

Regulation

- 4.11 The BBC operates under a Royal Charter and its Licence and Agreement. The Charter gives it legal existence and the Licence, granted by the Secretary of State for Culture, Media and Sport, lays down the terms and conditions of broadcasting. The BBC is regulated by an appointed board of 12 governors.
- 4.12 All commercial TV operators in the UK require a licence from the ITC, and a condition of every license is compliance with the ITC Programme Code. The Code applies to all licensed programme services, not just free-to-air channels. It also covers certain foreign satellite programmes included in local delivery services¹⁶. The Broadcasting Act 1990 requires the ITC to ensure that PPBs are included in Channel 3, 4 and 5 services, in accordance with rules that the ITC may determine.
- 4.13 Similarly, all independent radio services must be licensed by the Radio Authority, including national, local, restricted, satellite, cable, national FM carrier services and terrestrial digital audio broadcasting services. All licensees are subject to the Radio Authority's Programme, Advertising and Sponsorship Codes. The Broadcasting Act 1990 requires the national licence holders to carry PPBs in accordance with rules that the Radio Authority may determine.
- 4.14 The Government White Paper *A New Future for Communications* sets out a new framework for regulation. It aims to bring together the five existing regulatory bodies, including the ITC and Radio Authority, into one new body, OFCOM. In the meantime, the authorities have been asked to develop greater co-operation with the aim of gaining a convergent policy on a variety of areas, including digital roll out and Codes of Practice. The ITC and Radio Authority already liaise closely in developing their rules for party political broadcasting, together with the BBC and S4C.
- 4.15 Any changes to the system of party political broadcasting allocations would therefore be for the regulators to determine through their codes; and any changes to the range of commercial broadcasters required to carry party political broadcasting would require legislative change.

Issues

- 4.16 **Because of the increased fragmentation of the broadcast industry, current arrangements which require only a small number of**

¹⁶ ITC Programme Code (2001), Foreword.

broadcasters to carry party political broadcasting are likely to lead to broadcasts reaching fewer viewers and listeners. Are changes to arrangements therefore needed to ensure more extensive reach of the broadcasts?

- 4.17 **However, figures suggest that the traditional TV channels enjoy considerable loyalty, and that their high viewing share may be maintained during the continuing switch from analogue to digital. Should the current restricted range of broadcasters required to carry party political broadcasting therefore be maintained?**
- 4.18 **At present, those broadcasters required to carry party political broadcasting are the specific licence holders set out in the Broadcasting Act. Could alternative, more flexible criteria be established? For example, could the obligation be linked to audience share, one of the criteria used for regulation of media ownership under the Broadcasting Act 1996?**
- 4.19 **Where signals can be split or where transmissions are more localised, there are potential benefits for party political broadcasting. These benefits might be seen in terms of enabling parties with particular regional strength to have broadcasts just in those areas, and in terms of enabling parties to tailor their broadcasts to particular sectors of the electorate. Could such advantages be exploited through extending the obligation to show party political broadcasting or by permitting some paid political advertising?**

5. PUBLIC ATTITUDES AND THE IMPACT OF BROADCASTS

- 5.1 One of the most important issues arising from the June 2001 general election is the need to address the decline in public participation, which has fallen to below 60%. While the Commission acknowledges that modernisation of electoral processes and increased voter education will be important in addressing falling turnout, it is widely recognised that politicians and the political parties have a major role to play. A MORI survey conducted for the Commission¹⁷ suggested that the 2001 election campaign failed to connect with the electorate: it did little to persuade people that the election was relevant to them and the campaign may even have put some people off voting.
- 5.2 The broadcast media play an important role in election campaigns, through their news coverage and other political programming and also in providing time for party election broadcasts. A general decline in public interest in election coverage in the broadcast media at the 2001 election has been shown to extend to party election broadcasts. ITC research¹⁸ found that 57% of respondents claimed either to switch channels or to turn off when a PEB was broadcast. It is important to consider attitudes towards PEBs and the impact they have in informing voting intention.
- 5.3 A small number of opinion poll or other research surveys have included questions on PEBs, principally on television, and there is limited analysis available from relevant academic studies on political communications.

Are PEBs noticed?

- 5.4 The MORI survey conducted for the Commission and an NOP poll for the British Election Survey¹⁹ found that 55% and 62% respectively of respondents reported having seen at least one PEB at the June 2001 election. There were no significant differences in recall across the main age and other demographic groups. While the MORI survey showed this to be considerably lower than at previous elections (down from 73% in 1997 and 71% in 1992), the rate is still considerable – a significant number do watch PEBs.
- 5.5 The MORI survey found that 16% of respondents had heard at least one radio PEB. While radio PEBs have a much smaller audience, the

¹⁷ MORI/Electoral Commission (2001) *Attitudes to Voting and the Political Process (Phase 1, May 2001 and Phase 2, June 2001)*.

¹⁸ ITC (2001) *Election 2001: Viewers' Response to the Television Coverage*.

¹⁹ NOP/British Election Survey (2001) *Post-Election Questionnaire*.

proportion of respondents hearing PEBs has remained more constant, in fact showing a slight increase in 2001 from 1997.

- 5.6 Previous ITC research²⁰ suggests that the timing of broadcasts is a significant determinant of viewing figures. At the 1997 general election, PEBs shown after the early evening news programmes (those of the main parties on ITV and the smaller parties on BBC1) attracted higher viewing figures than those shown after the late news programmes (the main parties on BBC1).

Are PEBs engaging?

- 5.7 The MORI findings suggest that of those who watch PEBs, 51% find them 'interesting'. However, a separate MORI campaign tracking survey for *The Times*²¹ suggests that just 35% of respondents claim to be at all interested in PEBs, a figure which has remained fairly constant over recent years (32% in 1997 and 36% in 1992).
- 5.8 While the ITC study suggests similarly low levels of interest in PEBs, it found a high level of support for PEBs in principle. 63% of respondents thought it was either 'very important' or 'quite important' for PEBs to be shown on TV and 56% agreed with the statement that 'although I do not watch them myself, I think it is important that PEBs are shown'.
- 5.9 The political parties are wholly responsible for the content of their broadcasts and in recent years have been increasingly innovative in their production of PEBs. This included opting for shorter broadcasts at the 2001 election, most PEBs being 2 minutes 40 seconds, the shortest time offered by the broadcasters. However, while the ITC study showed that 55% of respondents thought that the length of broadcasts was about right, 44% still considered them too long.

Are PEBs influential?

- 5.10 Evidence regarding the influence of PEBs is inconclusive. A MORI pre-election survey²² found that only 14% of respondents considered that PEBs had influenced the way they intended to vote, while their post-election survey²³ found 22% of respondents considered that PEBs had influenced their decision about what they would do on election day. The ITC research found that 61% of respondents considered that PEBs 'have no effect on people's party allegiance' and only 2% found them persuasive.

²⁰ ITC (1997) *Election '97: Viewers' Response to the Television Coverage*.

²¹ MORI/The Times *Campaign Poll, Week 4, May 2001*.

²² MORI (CAPI Omnibus Survey) *Campaign Survey, May 2001*.

²³ MORI/Electoral Commission (2001) *Attitudes to Voting and the Political Process (Phase 2, June 2001)*.

- 5.11 It has been noted that PEBs do provide a reasonably accurate guide to the parties' main campaign issues and that if voters saw only PEBs and received no other campaign information, they would be able to gain a reasonably clear knowledge of the main differences between the parties²⁴. However, the preliminary findings of *The Campaign Learning Experimental Study*, conducted by Pippa Norris and David Sanders²⁵, indicate that PEBs have virtually no effect in increasing voters' knowledge of party policies.
- 5.12 Although these figures suggest that PEBs have little influence on voters, comparisons show PEBs to be more influential than other campaign tools. The MORI pre-election survey showed more people considered PEBs (14%) influential than the views of local candidates (13%), campaign leaflets (6%), opinion polls (4%) and billboard posters (2%). In the post-election survey, PEBs (22%) compared with opinion polls (13%), billboard posters (10%), personal calls (8%) and internet coverage (4%). Only television and newspaper coverage were rated significantly more highly. While television and press news are the main sources of information for voters, these findings suggest that PEBs are the most effective direct campaigning tool.
- 5.13 There is some evidence to suggest that benefits differ according to party. For example, Blumler and McQuail²⁶ have found and confirmed no influence on voting intention for Conservative and Labour but a small but significant increase in Liberal Democrat support from viewers of their broadcasts. Their conclusion that PEBs are of more significant importance to smaller parties corresponds with general research on the effects of political advertising in the USA: the greatest impact being associated with parties or candidates who have relatively low levels of background news media coverage.
- 5.14 The influence of particular PEBs can, of course, be negative as well as positive. A 'dial group' study conducted for *The Daily Telegraph* by Opinion Research Business (ORB)²⁷ demonstrated how PEBs can elicit unfavourable reactions, and that reactions can vary by gender, for example. These techniques may increasingly be used by political parties to pre-test their broadcasts.

Issues

- 5.15 **If PEBs fail to engage or inform the electorate, do they serve the interests of the political parties or the democratic process at all or should they be discontinued?**

²⁴ Scammell and Semetko in Kaid & Holtz-Bacha eds (1995) *Political Advertising in Western Democracies*, Thousand Oaks, CA: Sage.

²⁵ Norris and Sanders (2001) *Knows Little, Learns Less?* Paper for the Annual Meeting of the American Political Science Association, San Francisco.

²⁶ Blumler and McQuail (1968) *Television in Politics*, London: Faber.

²⁷ Opinion Research Business/Daily Telegraph *DART Group, May 2001*.

- 5.16 **Following the broadcasters' 1998 review, the shortest length of TV broadcast that the parties can opt for is 2 minutes 40 seconds. However, the broadcasts are still considered too long by many. Should there be further flexibility with regard to the length of broadcasts offered to political parties, with the possibility of shorter broadcasts?**
- 5.17 **While it is generally accepted that party broadcasts should be clearly labelled as such (in the same way that political advertising material must contain the relevant details of the promoter and publisher), might it be that the length and format of announcements at the start of broadcasts provide the point at which disengagement occurs and should some alternative form of labelling be devised?**
- 5.18 **It has been noted that the 2001 election saw an increase in the use of negative broadcasts, particularly by the main parties²⁸. Despite considerable innovation on the part of the political parties, the ORB study suggests that there is scope for more effective use of communications techniques by parties in making their PEBs. Does the onus for increasing interest in PEBs lie wholly with the political parties responsible for their content?**

²⁸ Robert Pipkin (2001) *The Party Election Broadcasts: A sleeping giant or an old pair of shoes?* Paper for the Annual Meeting of the PSA Elections, Public Opinion and Parties specialist group, Sussex.

6. INTERNATIONAL PRACTICE

- 6.1 The range of broad options identified for future arrangements for political broadcasting in the UK includes the retention, in some form, of a system of free time allocation to political parties, the discontinuation of free allocations and the introduction of paid political advertising, or the adoption of a mixed system whereby paid political advertising is permitted but some free allocations are also retained. It is instructive to consider political broadcasting arrangements in other western democracies where these differ from current UK arrangements. We consider below the examples of the Republic of Ireland (free allocations), USA (paid political advertising), Germany (mixed system) and Australia (mixed system).

Republic of Ireland²⁹

- 6.2 Paid political advertising is prohibited in the Republic of Ireland. A system of free allocations of party political and party election broadcasts on TV and national radio is in place, determined by Radio Telefís Éireann (RTE), the national statutory broadcasting corporation, in consultation with the political parties. Since the 1997 general election, a licence has been provided to a second national TV broadcaster, TV3. This commercial channel is obliged to carry party political broadcasting and is expected to follow the allocation arrangements determined by RTE.
- 6.3 Broadcasts are allocated for general, Presidential and European Parliamentary elections, but not for local elections. Some allocations are made other than at elections, notably around the annual budget. Following a court ruling in 1995, and so as to ensure political balance, the broadcasters will only provide campaign broadcasts at a referendum when the political parties are evenly divided on the referendum issue.
- 6.4 Two criteria are used for determining allocations for general elections: the outcome of the previous general election and number of candidates being fielded. For European Parliamentary elections, the outcome at the previous European election and general election are considered.
- 6.5 At the 1997 general election, the total time allocation and total number of broadcasts given to the five main parties was in rough proportion to the percentage of the vote received by those parties at the previous election. Thus, for example, Fianna Fail (40% of the vote in 1992) received 20 minutes on TV in six slots, Fine Gael (25%) received 12½

²⁹ Source: information provided by Peter Feeney, Freedom of Information Office, RTE Dublin.

minutes in four slots, and so on. Other political parties fielding at least seven candidates, provided these parties had a coherent set of policies, were also eligible for one slot of between 1 minute and 1 minute 45 seconds, determined by the number of candidates and previous electoral support. Thus, the Christian Solidarity Party received a 1 minute 10 seconds slot and Sinn Fein a 1 minute 35 seconds slot. Radio slots were shorter but allocated on the same basis.

- 6.6 All TV broadcasts were shown in the same prime-time slot, directly after the evening news on TV and after the lunchtime news on radio. Some of the shorter slots were piggy-backed; the slots on the final five days were provided to the five main parties. All allocation and scheduling arrangements were devised by RTE and were accepted by parties with very little amendment.

United States of America³⁰

- 6.7 Political advertising in the United States operates with very little restriction. The result is a style of electioneering in which short paid political advertisements often dominate. These are characterised by some as spin and soundbite over substance and all too often negative, while others claim they contribute to a vigorous, heated and healthy debate.
- 6.8 There is effectively no limit on the funds that may be spent on campaign activity, including advertising. Presidential candidates can opt to receive campaign matching funds from the Federal Election Commission (FEC) in which case spending limits do apply, set by the FEC for each election. However, these limits do not include money spent on behalf of the candidate by their political organisation or other such groups. It has been estimated that at the 1996 Presidential primary and election campaign, Bill Clinton and the Democratic National Committee spent over \$98 million on advertising, while Bob Dole and the Republican National Committee spent over \$78 million³¹.
- 6.9 Regulations require that every campaign advertisement must state who has financed the advertisement and whether it has or has not been authorised by the candidate whose election or defeat it is promoting.
- 6.10 Broadcast stations are required by statute to provide equal access to all candidates and are allowed no censorship of the content of political advertising. A broadcast station is also required to sell time at 'the lowest unit rate', defined as the lowest rate it has charged other

³⁰ Sources: Information provided by Lynda Lee Kaid; Lynda Lee Kaid and Anne Johnston (2001) *Videostyle in Presidential Campaigns: style and Content of Televised Political Advertising*, Westport, CT: Praeger/Greenwood.

³¹ L. Patrick Devlin (1997) *Contrasts in presidential campaign commercials of 1996*, *American Behavioural Scientist*, 40, in Lee Kaid and Johnston (2001).

commercial advertisers during the preceding 45 days (even if part of a discounted package rate).

- 6.11 Although occasional objections have been raised to political advertising content on the grounds that the content itself is objectionable, most concerns have arisen from attack advertising in which it is argued that false or misleading claims have been made. Since so many laws explicitly or implicitly prohibit any regulation of political content, the only recourse that most candidates have against misleading claims is to pursue action under libel laws and it is notoriously difficult for 'public figures' to succeed in actions for defamation.

Germany³²

- 6.12 A system of free-time allocation on public TV and radio together with access to paid advertising applies in Germany. The public broadcasters are required by statute to provide free time to parties during an election period. Access to political advertising on TV and radio applies only during an election period and not at other times, and is subject to certain limitations and conditions.
- 6.13 The Federal Constitutional Court determined in 1957 that all parties running for election should have access to electoral advertising through the mass media. This guiding principle of equal opportunity in determining allocation of free time has continued, although this does not translate into equal time. The Constitutional Court has approved a system of graded allocation with larger parties receiving more time than smaller parties. Thus, during the last federal election campaign, with more than 20 parties running for election, the largest parties (CDU, SPD) each received eight slots on the two public TV stations while the smallest groups were allotted the minimum of two slots. These are generally broadcast during prime time.
- 6.14 In addition to the free allocations, political parties may purchase advertising time on commercial television during an election period (usually the last four weeks of the campaign), to be screened during general advertising blocs. Broadcasters are required by statute to sell advertising time to those political parties requesting it at a reduced rate. This rate, determined by the association of private broadcasters, was 45% of the commercial rate at the 1998 federal elections.
- 6.15 Commercial advertisements as well as free spots must be clearly announced as party broadcasts. There are no other special regulations governing their content. In several recent disputes between extreme right-wing parties and the broadcasters, the courts have ruled in favour of the parties, requiring that their broadcasts be shown.

³² Source: information provided by Christina Holtz-Bacha, Johannes Gutenberg Universitat Mainz.

- 6.16 Analysis has shown that, despite the reduced rates, only the larger parties have the resources to take advantage of commercial advertising time. In the 1998 elections only four of the six parties with existing parliamentary representation, and no smaller parties, purchased advertising time. Thus it is considered that the opportunity to buy time has in fact served to undermine the equal opportunity rule guiding policy on electoral advertising.

Australia³³

- 6.17 A mixed system also operates in Australia. Free allocations are given to parties by the Australian Broadcasting Corporation (ABC) and by the Special Broadcasting Service, the national multi-cultural broadcaster. In addition, political parties are able to buy advertising time on commercial channels. No spending limits apply. Legislation was introduced in 1991 to ban political advertising but was rejected following challenge in the High Court (ACTV v. Commonwealth, 1991).
- 6.18 Free allocations are made by ABC for Federal and State/Territory elections. Free time is provided to all parties contesting 10% of vacant seats which have demonstrated public support. For established parties, demonstrated public support is taken to be the election of at least one member or the polling of at least 5% of valid first-preference votes at the previous election for the Parliament concerned. New parties must demonstrate 5% support in a recognised, independent opinion poll (nationally or in the relevant State/Territory depending on the election).
- 6.19 The ABC provides one hour of free time to the government party and to the main opposition party, given as a 30 minute 'election launch' slot and six five-minute 'policy announcement' slots. Where a coalition is in government or opposition, it is up to the coalition partners to determine how that allocation will be split between partners. All other qualifying parties are allocated one five-minute slot. The time schedules for the free slots are determined and then distributed to the parties by a random draw. A strict code is applied by ABC to ensure that the material provided by the parties is in the form of a political statement only and not in the nature of an advertisement.
- 6.20 There are several regulations governing commercial political advertisements. All advertisements must include the name and location of the authorising party or individual and the names of all persons delivering an address or statement within the advertisement. Broadcasters are required to give 'reasonable opportunity' for broadcasting of electoral matter to all political parties, and are prohibited from broadcasting political advertisements during election day or the preceding 48 hours. Broadcasters must also disclose to the

³³ Sources: information provided by Murray Green, Chairman of the ABC Election Coverage Review Committee; Broadcasting Services Act 1992; Commonwealth Electoral Act 1918.

Australian Electoral Commission details of all political advertisements that they broadcast, including the charges made.

Issues

- 6.21 **Under present UK arrangements, eligible parties have some choice of length of broadcast. Would a more strictly time-proportionate system, such as that used in the Republic of Ireland, provide greater fairness and would such a system be viable?**
- 6.22 **The scheduling of broadcasts has often been a source of some complaint, particularly from parties whose broadcasts are scheduled in the late evening rather than at a more prime time. At the same time, broadcasters have understandable constraints on when broadcasts can be shown, not least because of the typical length of the election campaign period. Could the fairness of the system of scheduling broadcasts be improved, either by each broadcaster having just one slot during which broadcasts are shown, as RTE provide in the Republic of Ireland, or by randomising the scheduling process, as ABC provide in Australia?**
- 6.23 **The broadcasters' determination of eligibility for party election broadcasts is based in large part on the number of candidates being put forward. Would there be value in giving greater consideration to demonstrated public support, as used in Australia?**
- 6.24 **Many have noted that the adoption of a US-style system of paid advertising could alter the style of UK election campaigns radically, as well as having implications for party campaign spending and associated fund raising. Might such a change in style invigorate UK election campaigns, or do the low US turnout rates suggest that such campaigning is unlikely to lead to greater voter engagement in the UK?**
- 6.25 **Are the implications for increased campaign spending such that a system of paid political advertising should not be considered? Would a restricted system of advertising lessen these concerns, for example by limiting paid advertising to radio or by imposing a specific cap on advertising spending?**
- 6.26 **If a system of paid political advertising were to be proposed, or a mixed system containing some element of paid advertising, what regulatory arrangements would be appropriate? Might broadcasters be required to offer advertising at certain rates, as in Germany and the USA, and how might potential discrimination when selling advertising time most effectively be precluded?**

What restrictions or obligations might be appropriate for political parties regarding the content or labelling of their advertisements?

7. SUMMARY OF ISSUES

7.1 As outlined in the introduction, the broad frameworks that we intend to consider as options for the future of party political broadcasting arrangements are as follows:

- the retention of a system of allocations of free time to political parties, whether upon the basis of the formulae devised by the broadcasting authorities in 1998 or otherwise;
- the discontinuation of free allocations and the introduction of paid political advertising;
- the introduction of a mixed system, whereby some paid political advertising is permitted but some free allocations are also retained;
- the discontinuation of free allocations with no alternative provision.

7.2 A wide range of issues are of relevance to any consideration of these broad frameworks. The main issues raised in this discussion paper are summarised below. The paragraphs from which these issues are taken are indicated. More detailed discussion is provided in the relevant sections of the paper.

7.3 Many of the issues raised assume and are based upon a particular broad framework being in place. For example, discussion of arrangements for allocation of free time assumes the retention of the system of free allocations or the introduction of a mixed system involving the retention of some free allocations. Discussion of these issues does not preclude the recommendation of an alternative framework under which some issues would no longer be relevant.

7.4 Prohibition on paid advertising

- In the light of the recent judgment of the European Court of Human Rights (ECHR) in the case of *Vgt Verein gegen Tierfabriken v. Switzerland*, does the current prohibition on paid political advertising in the UK broadcast media remain lawful under the Human Rights Act? The Electoral Commission will be seeking its own legal advice on the implications of this judgment, but would welcome comments from others at this stage. (2.26)
- Regardless of the ECHR judgment, is it desirable or necessary to maintain the current prohibition on paid political advertising in the broadcast media? (2.27)

7.5 Determination of allocation criteria

- Should broadcasters continue to make ad hoc arrangements prior to each election, or would more formal and consistently applied allocation criteria be more appropriate? (3.19)
- Should a more formal and/or more direct role be provided to political parties or other stakeholders in determining allocations? (3.20)

7.6 Allocation criteria

- Is it appropriate that allocations in Wales and Scotland for a general election are made effectively on the basis of party strength at the devolved level, or should allocations for UK-wide elections be determined by levels of support across the UK? (3.21)
- Should we be concerned by the possibility that organisations might field candidates so as to qualify for a PEB for their own publicity purposes rather than for genuine electoral purposes? If so, what measures could be taken to provide additional disincentive? (3.22)
- Could any greater opportunity for broadcasts realistically be provided to smaller parties within the current framework of free allocations? (3.23)
- In circumstances where elections coincide, is it appropriate for the broadcasters to allocate only one series of PEBs? Should qualifying parties be given a blanket allocation of broadcasts to cover all elections being contested, or might broadcast allocations more accurately reflect the range of elections being held? (3.25)
- Would a more strictly time-proportionate system, such as that used in the Republic of Ireland, provide greater fairness and would such a system be viable? (6.21)
- Could the fairness of the system of scheduling broadcasts be improved, either by each broadcaster having just one slot during which broadcasts are shown, as RTE provide in the Republic of Ireland, or by randomising the scheduling process, as ABC provide in Australia? (6.22)
- Would there be value in giving greater consideration to demonstrated public support as a criterion for determining eligibility for PEBs, as used in Australia? (6.23)

7.7 Broadcasts other than at elections

- Should party political broadcasts be offered on a more regular basis through the course of the year? (3.26)

7.8 Requirement to carry broadcasts

- Should the current restricted range of broadcasters required to carry party political broadcasting be maintained, or are changes needed to ensure more extensive reach of the broadcasts? (4.17, 4.16)
- Could alternative, more flexible criteria be established? For example, could the obligation be linked to audience share? (4.18)
- Could any advantages of more localised transmissions be exploited through extending the obligation to show party political broadcasting or by permitting some paid political advertising? (4.19)

7.9 Impact of broadcasts

- If PEBs fail to engage or inform the electorate, do they serve the interests of the political parties or the democratic process at all or should they be discontinued? (5.15)

7.10 Format and content of broadcasts

- Should there be further flexibility with regard to the length of broadcasts offered to political parties? (5.16)
- Should some alternative form of labelling of PEBs be devised? (5.17)
- Does the onus for increasing interest in PEBs lie wholly with the political parties responsible for their content? (5.18)

7.11 Implications of paid advertising

- Would paid political advertising bring invigoration to UK election campaigns, or can we conclude from the low US turnout rates that such campaigning is unlikely to lead to greater voter engagement in the UK? (6.24)
- Are the implications for increased campaign spending such that a system of paid political advertising should not be considered? (6.25)

- Would a restricted system of advertising lessen these concerns, for example by limiting paid advertising to radio or by imposing a specific cap on advertising spending? (6.25)
- If a system of paid political advertising were to be proposed, or a mixed system containing some element of paid advertising, what regulatory arrangements would be appropriate for broadcasters and for advertisers? (6.26)

ANNEX A

Table: History of allocation arrangements

Authority	Date	PPBs	PEBs
BBC	1924		BBC give 3 main parties one 20-minute radio broadcast each.
	1926	First prime ministerial broadcast.	
	1928	First Budget broadcast.	
	1929		Government and Opposition given parity in broadcast allocation; minor parties given access dependent on number of candidates.
	1934	Opposition given right to respond to Budget broadcasts.	
Committee on Party Political Broadcasting ³⁴	1947	Committee on Party Political Broadcasting established to facilitate allocation arrangements.	
		Limited number of 'controversial' PPBs to be allocated according to share of vote at previous general election.	
	1951		First televised PEBs; 3 main parties make 15-minute broadcast in addition to radio.
	1953	First televised PPBs.	Conventions on PEBs: number of broadcasts offered related to number of candidates fielding and support in previous elections; parity in allocation between Government and Opposition; no party to be allocated more than 5 broadcasts. Normally any
	1956	ITV carries PPBs.	
	1962	By-election successes taken into account in allocation of PPBs; Opposition given parity of allocation with Government.	
	1965	Plaid Cymru and SNP allocated PPBs.	

	1974	PPBs allocated on basis of 10 minutes for every 2 million votes cast at previous general election (SNP: 10 mins per 200,000; Plaid Cymru: 10 mins per 100,000).	party fielding 50 or more candidates to be given five-minute broadcast.
	1990	Broadcasting Act 1990: holders of national radio licences and Channel 3, 4, and 5 television licences must include party political broadcasts in service.	
	1996		BBC drops 'proven electoral support' criteria for PEB allocations.
Broadcasters' Liaison Group (BLG)³⁴	1997	Following legal advice, BBC and ITV withdraw from Committee on Party Political Broadcasting; Broadcasters' Liaison Group set up to act as forum for broadcasters and parties .	
	1997	Channel 5, Classic FM, Talk Radio and Virgin Radio on air; required to carry PPBs and PEBs.	
	1998	<i>BLG Consultation Paper on the Reform of Party Political Broadcasting</i> proposes reform of allocation process.	
		ITC and Radio Authority Codes revised; parties may qualify for PEBs if fielding candidates in one-sixth of seats; proportional representation systems to be taken into account; range of broadcast lengths available; major parties offered PPBs in relation to a limited range of key political events.	
	2001		Parties fielding candidates in at least one-sixth of seats in each nation offered PEB in those nations.

³⁴ Neither the Committee on Party Political Broadcasting (1947-97) nor the Broadcasters' Liaison Group (1997-present) has legal status.