Referendum Campaign Broadcasts and the impartiality of coverage

This memorandum has been prepared by the BBC Trust Unit to assist the Referendum (Scotland) Bill Committee in its consideration of the draft Scotland Act 1998 (Modification of Schedule 5) Order 2013 (“the Order”). We have no comments on the Order itself, but understand that the Committee would appreciate factual briefing on the processes by which referendum campaign broadcasts (“RCBs”) are allocated by the BBC. The Order makes provision in relation to RCBs in article 4.

The BBC Trust is the sovereign body of the BBC. It is accountable to licence fee payers and upholds the BBC’s independence. It sets the strategic direction of the BBC and also supervises, and holds to account, the Executive Board. It oversees the complaints procedure and hears appeals on a range of matters including editorial issues. The Executive Board has operational responsibility for the BBC’s activities, including for the direction of the BBC’s editorial and creative output.

The Trust Unit consists of officials who assist and advise Members of the BBC Trust. This memorandum has not been approved by the Trust and so should not be taken to express the views of the BBC, the BBC Trust or any of its Trustees.

The role of the Trust and the Executive

Broadly speaking, the Trust sets the overall policy for RCBs, and the Executive applies that policy in deciding when, and how many, RCBs are to be broadcast on behalf of the respective referendum campaign organisations. Likewise, it approves Guidelines drafted by the Executive for ensuring impartiality in the BBC’s coverage of the campaign. The Executive is responsible for delivering accurate and impartial coverage in the BBC’s services. The Trust has a role in hearing appeals about the allocation of RCBs, and BBC coverage generally, including issues of accuracy and impartiality (as to which the Trust, not Ofcom, has power to set and uphold standards).

Referendum Campaign Broadcasts

Clause 48 of the BBC’s Agreement with the Secretary of State for Culture, Media and Sport states that the BBC must carry RCBs and that the Trust must determine which BBC services should include RCBs, and the basis on which, and the terms and conditions subject to which, such broadcasts are to be included in them. The
BBC can award RCBs only to organisations designated\(^1\) by the Electoral Commission:\(^2\) effectively, therefore, it is the Electoral Commission that determines which organisations are entitled to RCBs, not the BBC. Also, the Trust must have regard to any views expressed by of the Electoral Commission in determining its policy with respect to RCBs.\(^3\)

The draft Order is relevant because it would modify certain provisions of the Political Parties, Elections and Referendums Act 2000 (“PPERA”) referred to by clause 48. Our understanding of the effect of the draft Order is that clause 48 will operate in relation to broadcasts relating to a referendum on independence as it would in the case of a UK-wide referendum, but that the designating organisation will be identified under an Act of the Scottish Parliament.

**Practice**

The process within the BBC is set out in the Elections and Referendums section of *BBC Trust Protocol B2 – Editorial Standards*\(^4\) which can be found here:


The BBC Executive produces a draft policy for the allocation of RCBs. The policy consists of any conditions relating to the organisations that are entitled to one or more RCBs, and provisions relating to the allocation and scheduling of those RCBs. It is likely that the Executive will propose a single criterion for deciding which organisations qualify for at least one RCB, namely, those designated by the Electoral Commission under PPERA.\(^5\)

The proposals are submitted to the Trust. After initial consideration - after which the Executive may be asked to modify the proposed rules - the Trust would anticipate conducting a public consultation. In the light of responses the Trust will consider, review and approve its policy, which may involve further modifications to the proposals. The BBC Executive would then be responsible for the allocation and scheduling of RCBs. Following consultation with other broadcasters, through the

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\(^1\) Section 108 of PPERA provides for the Electoral Commission (EC) to designate organisations in a referendum, and such designation confers on that organisation rights relating to Referendum Campaign Broadcasts (RCBs). The EC will either designate one organisation for each side of the referendum question, or it will not designate any organisation at all. In the event of the latter – as in the Welsh Referendum in 2011 – there would be no RCBs under the auspices of the PPERA.

\(^2\) PPERA, section 127.

\(^3\) PPERA Schedule 12, paragraph 4(6).

\(^4\) Protocols are formal documents adopted by the Trust which help set BBC processes and define the relationship between the Trust and the Executive.

\(^5\) As with the AV referendum, therefore, the BBC Executive is likely to recommend to the Trust that the criteria for RCBs would be as follows: *An organisation will be offered at least one Referendum Campaign Broadcast if it has been designated by the Electoral Commission according to the PPERA.*
Broadcasters’ Liaison Group (BLG), the BBC Executive would decide the number and permissible durations of RCBs to be offered to each side in the independence referendum. For the AV referendum, two RCBs were allocated to each side – though it should be borne in mind that the campaign ran simultaneously with other elections, necessitating the scheduling of Party Election Broadcasts during the same period.

The Executive’s decisions in relation to allocation of RCBs are subject to appeal, ultimately to the Trust. The relevant complaints process can be found here: http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2012/complaints_ppb.pdf

The BLG would agree and publish Referendum Production Guidelines to assist the designated organisations with broadcasting compliance, including technical, editorial and legal requirements.

**Editorial Coverage of the Referendum and Impartiality**

The Edinburgh Agreement set out the following:

> **Ensuring impartiality of broadcasters**

> 21. The governments agree that it will be important to ensure that broadcast coverage of the Referendum is impartial. Broadcasters, Ofcom and the Electoral Commission will discuss the best way to achieve this.

Clause 44 of the BBC Agreement provides:

> “The BBC must do all it can to ensure that controversial subjects are treated with due accuracy and impartiality in all relevant output.”

The Agreement places a duty on the BBC Trust to draw up and review a code giving guidance as to what constitutes “due impartiality”. This is contained in the current edition of the BBC’s Editorial Guidelines (revised 2010), which can be found here: http://www.bbc.co.uk/editorialguidelines/

The requirement of impartiality applies at all times, including particular requirements in the BBC’s Editorial Guidelines for controversial matters. However, the need for editorial independence and impartiality is heightened during election and referendum periods. Accordingly, the BBC Executive will draw up draft Referendum Guidelines to assist programme-makers in ensuring impartial and independent coverage of the referendum.

The BBC has an established process which it will follow for the independence referendum. The BBC Trust’s Protocol B2 sets out this process in the Elections and Referendum section: see link above and copy attached. The Executive’s proposals are submitted to the Trust. After initial consideration - after which the Executive may be asked to modify the proposed Guidelines - the Trust would anticipate conducting
a public consultation on guidelines for the referendum during 2013. The Trust will then consider, review and approve the Guidelines, taking into account consultation responses and views of the Electoral Commission before publication.

Any complaints about the BBC's coverage will be considered by the BBC and may ultimately be considered by the BBC Trust as an appeal.

BBC Trust Unit
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