

## Note to Broadcasters

### Election programming

On 6 May 2021 there will be elections: for the Scottish Parliament and Welsh Parliament<sup>1</sup>, local (and mayoral<sup>2</sup>) elections taking place in some parts of England; London Assembly and London mayoral elections; and elections for Police and Crime Commissioners for England and Wales.

Ofcom reminds all broadcasters that they must comply with the rules for election-related programming – in particular [Section Five](#) (Due Impartiality)<sup>3</sup> and [Section Six](#) (Elections and Referendums)<sup>4</sup> of the Broadcasting Code (“the Code”), as well as the prohibition on political advertising contained in section 321 of the Communications Act 2003 and reflected in Section 7 of the BCAP Code.

As in previous years, following the removal<sup>5</sup> of the concept of larger parties from our rules and to help broadcasters to take editorial decisions during election campaigns, we have published an [annual digest of past electoral and current support](#). The digest also sets out the factors we consider when making decisions on election-related programming, including putting more weight on evidence of past electoral support than evidence of current support (e.g. opinion polls).

The rules in Section Six of the Code will apply when Ofcom defines the ‘election period(s)’ to have commenced. These periods will commence on different dates depending on the election being contested. Ofcom is aware that legislation has been enacted in Scotland<sup>6</sup> and close to being enacted in Wales which allows for the elections to the Scottish and Welsh Parliaments to be postponed for up to

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<sup>1</sup> While at the time of publication we expect the elections for the Scottish Parliament and Welsh Parliament to take place on 6 May 2021, we note that both Parliaments have recently passed legislation that gives the power to postpone each election by up to six months should it be deemed necessary.

<sup>2</sup> This includes the delayed 2020 mayoral elections for Bristol, Greater Manchester, Liverpool, Liverpool City Region, Salford, Tees Valley and West Midlands and the 2021 mayoral elections for Cambridgeshire and Peterborough; Doncaster; North Tyneside; West of England; and West Yorkshire.

<sup>3</sup> See also Ofcom’s published [Guidance to Section Five](#).

<sup>4</sup> See also Ofcom published [Guidance to Section Six](#).

<sup>5</sup> On 22 March 2017, Ofcom published its [Statement amending its rules](#) in the areas of due impartiality, due accuracy, elections and referendums. In the Statement, we set out our decision to remove the concept of larger parties from Section Six of the Code and Ofcom’s rules on Party Political and Referendum Broadcasts.

<sup>6</sup> The Scottish General Election (Coronavirus) Act 2021.

six months should it be deemed necessary. This may impact on the date the respective Parliaments are dissolved and therefore the commencement date of the election period for the purposes of Section Six<sup>7</sup> of the Code.

We have taken account of all relevant information and discussed this matter with the specialist elections regulator – the Electoral Commission – with which Ofcom is under a statutory duty<sup>8</sup> to consult when setting rules in the area of elections. For the purposes of the Broadcasting Code, we consider the most appropriate date for the election period to start, in the case of the Scottish Parliamentary and Welsh Parliamentary elections for May 2021, is by reference to the announced recess dates for each body which are 25 March 2021 for the Scottish Parliament and 29 March 2021 for the Welsh Parliament. This approach provides for election periods of approximately six weeks in duration, which is aligned with previous election cycles to which broadcasters would be accustomed, and which are only marginally different from the previously announced dates for dissolution of 24 March 2021 for the Scottish Parliament and 29 March 2021 for the Welsh Parliament. Ofcom will provide a further update to broadcasters in the event of any material changes to the arrangements for the Scottish Parliamentary elections and Welsh Parliamentary elections.

Given the above, for the purposes of the May 2021 elections Ofcom has determined that the election periods will be:

- 22 March 2021, in the case of the London Assembly and London mayoral elections;
- 25 March 2021, in the case of the Scottish Parliamentary election; and
- 29 March 2021, in the case of the Welsh Parliamentary election, English local (and mayoral) elections, Police and Crime Commissioner elections (in England and Wales).

Ofcom would also like to draw stakeholders' attention to a separate [note to broadcasters published earlier this year on election related issues](#). This update included further information for broadcasters on:

- the participation of politicians in election programming;
- the definition of what constitutes a "candidate" under the rules relating to elections in Section Six of the Code; and
- the treatment of independent candidates under [Ofcom's rules on Party Political and Referendum Broadcasts](#) ("the PPRB Rules").

If a complaint raises a substantive due impartiality issue during the election periods which Ofcom considers might require redress before the election, it will be considered by Ofcom's Election Committee<sup>9</sup>. In these cases, it will be necessary for Ofcom to act quickly to determine the outcome in

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<sup>7</sup> In Section Six of the Code the election period for the Scottish Parliamentary elections and Welsh Parliamentary elections is defined as follows: "For the Scottish Parliament elections and Welsh Parliament elections, the [election] period begins with the dissolution of the Scottish Parliament or the Welsh Parliament as appropriate".

<sup>8</sup> For example, see section 93 of the Representation of the People Act (as amended).

<sup>9</sup> See Ofcom's Election Committee's [Terms of Reference](#).  
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a proportionate and transparent manner before the election and broadcasters should be prepared to engage with Ofcom on short timescales.

Ofcom will consider any breach arising from election-related programming to be potentially serious and will consider taking appropriate regulatory action, which could include the imposition of a statutory sanction.

### **Programming relating to the Coronavirus**

As we approach the various elections taking place in May 2021, Ofcom acknowledges that, given the ongoing Coronavirus pandemic, there could be situations during the election period for those various elections where politicians, including those who may also be candidates in the forthcoming elections, may be required to provide the public with public health information and information relating to Coronavirus restrictions across the different nations of the UK. Ofcom also acknowledges that, given the public interest involved, broadcasters would wish to include, and audiences would wish to receive, such information in programming. In these circumstances, we would like to remind broadcasters of their responsibility to ensure their programmes comply with the due impartiality provisions of the Code.

For further information about the forthcoming elections in May 2021, broadcasters should visit the Electoral Commission website at [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk).

If broadcasters would find it helpful to discuss the rules in Sections Five and Six of the Code, they can contact Ofcom ([OfcomStandardsTeam@ofcom.org.uk](mailto:OfcomStandardsTeam@ofcom.org.uk)).