



Broadcasting Commission of Ireland
Coimisiún Craolacháin na hÉireann

GUIDELINES IN RESPECT OF COVERAGE OF THE REFERENDUM ON THE TREATY OF LISBON AND RELATED CONSTITUTIONAL AMENDMENTS 2009

1. General

These Guidelines, issued further to Section 9 of the Radio and Television Act 1988 (“the 1988 Act”) and Section 18 of the Broadcasting Act, 2001 (“the 2001 Act”), are intended to outline the general approach that should be adopted by broadcasters in their coverage of the forthcoming Referendum on the Treaty of Lisbon. The Guidelines apply to coverage of the Referendum and related constitutional amendments carried on any service licensed further to the provisions of the 1988 Act or the 2001 Act (referred to here as “broadcasters”).

These Guidelines come into effect from 7th August 2009. Prior to this date, general requirements set down in the 1988 Act and the 2001 Act must be adhered to by broadcasters

A referendum is an important public event and clearly falls within the area of news and current affairs. Any coverage of events and issues relating to the Referendum and related constitutional amendments should be fair, objective and impartial and without any expression of the broadcaster’s own views.

Broadcasters choosing to provide coverage of the Referendum and related constitutional amendments must develop mechanisms that are transparent and fair to all interested parties. These mechanisms should be considered and developed at an early stage and information on the approach being adopted should be available to all interested parties in advance.

2. Responsibilities of Broadcasting Personnel

The Chief Executive and Programme Controller (or equivalent) in each broadcaster should become fully familiar with the content of these Guidelines and should ensure that they are brought to the notice of every person responsible for the preparation and broadcast of programmes, in particular those with responsibility for news and current affairs programming.

The Programme Controller (or equivalent) should take direct responsibility for ensuring that coverage of the Referendum and related constitutional amendments is fair, objective and impartial and that all personnel comply fully with the Guidelines.

3. Statutory Requirements

Attention is directed to the following requirements set out for broadcasters in the 1988 Act, the 2001 Act and the Referendum Act, 1998 (as amended by the Referendum Act, 2001).

The Radio and Television Act, 1988 -Section 9(1)

"Every sound broadcasting contractor shall ensure that:-

- a) all news broadcast by him is reported and presented in an objective and impartial manner and without any expression of his own views;
- b) the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of his own views: Provided that should it prove impracticable in relation to a single broadcast to apply this paragraph, two or more related broadcasts may be considered as a whole, if the broadcasts are transmitted within a reasonable period of each other."

Section 9(2)

"(2) Nothing in subsection (1) (a) or (1) (b) shall prevent a sound broadcasting contractor from transmitting political party broadcasts: Provided that a sound broadcasting contractor shall not, in the allocation of time for such broadcasts, give an unfair preference to any political party. "

Section 10(3)

"No advertisement shall be broadcast which is directed towards any political end".

Section 18(1)

"The provisions of Part III of this Act, other than sections 7, 8 and 15....shall apply with respect to the television programme service contract entered into by the Commission and the television programme service provided under this Part of the Act [TV3], and any reference in Part III of this Act to a sound broadcasting contractor shall for the purposes of this Part be construed as a reference to the television programme service contractor."

2001 Act - Section 18

"The following provisions of the Act of 1988, namely –

- a) Paragraphs (a), (b)... of subsection (1)...of section 9, and
- b) Section 10(3)

Shall apply to a broadcasting service which consists of a compilation of programme material supplied pursuant to a contract entered into under this Act..."

The Referendum Act 2001

Section 1

The Referendum Act, 1998, is amended –

- (a) by the substitution of the following subsection for subsection (1) of section 3-

" (1) The Commission shall have, in addition to any functions conferred on it by any other provision of this Act, the following principal functions in relation to the referendum in respect of which it is established:

- (a) to prepare one or more statements containing a general explanation of the subject matter of the proposal and of the text thereof in the relevant Bill and any other information relating to those matters that the Commission considers appropriate;

- (b) to publish and distribute those statements in such manner and by such means, including the use of television, radio and other electronic media as the Commission considers most likely to bring them to the attention of the electorate and to ensure as far as practicable that the means employed enable those with a sight or hearing disability to read or hear the statements concerned;
- (c) to promote public awareness of the referendum and encourage the electorate to vote at the poll."

The Referendum Act 1998

Section 5 (1)

"Section 20 (4) of the Broadcasting Authority Act, 1960, and Section 10 (3) of the Radio and Television Act, 1988, shall not apply to advertisements broadcast at the request of the [Referendum] Commission in relation to a matter referred to in Section 3 concerning the referendum."

Section 5 (3)

"The Minister for Arts, Heritage, Gaeltacht and the Islands¹, if so requested by the [Referendum] Commission following consultation by the [Referendum] Commission with An Coimisiún Um Raidió agus Telefís Neamhspleách - The Independent Radio and Television Commission² ("the Independent Commission") and consideration of any proposals of the Independent Commission for broadcasts in connection with the referendum by sound broadcasting contractors or television programme service contractors that it communicates to the [Referendum] Commission, shall direct the Independent Commission in writing to arrange for the provision for and on behalf of the [Referendum] Commission of services (with or without charge) including the allocation of broadcasting time to facilitate the [Referendum] Commission in performing its functions, and the Independent Commission shall comply with a direction under this subsection."

² The Broadcasting Act 2001 changed the name of the IRTC to the Broadcasting Commission of Ireland.

4. General Requirements

Broadcasters that choose to cover the referendum should ensure fairness, objectivity and impartiality in the exposure given to referendum interests on all its features and programmes.

Please note that there is no requirement to allocate an absolute equality of airtime to opposing sides during coverage of the Referendum. The allocation of airtime must be fair to all interests and undertaken in a transparent manner. This is an editorial matter for broadcasters.

Endorsements of referendum interests and/or the views of such interests by programme presenters are not permitted.

5. News Coverage

All news coverage should be reported and presented in an objective and impartial manner and avoid any expression of the broadcaster's own views.

6. Current Affairs Programmes

Coverage of the Referendum should be fair to all interests and presented in an objective and impartial manner and without any expression of the broadcaster's own views.

If it is intended to focus on Referendum issues in such programmes, each side of the debate should be presented in the same programme. If it is impracticable to do so, two or more related broadcasts may be treated as a whole as long as the broadcasts are transmitted within a reasonable period of each other. There should be a good reason for adopting such an approach. The subsequent use of extracts from such programmes on other programmes must be monitored to ensure continued and overall fairness, objectivity and impartiality in the treatment of the views of different interests.

In the case of programmes which include an element of audience participation, the Programme Controller (or equivalent) should ensure that each side of the debate is fairly presented in the questions/comments/issues raised in the programme.

7. Political Party Broadcasts

Uncontested political party broadcasts featuring political parties that support or oppose the Referendum are permitted. However, broadcasters must ensure that the total time allocated to political parties results in equal airtime being afforded to parties that support the Referendum and those that oppose it.

Broadcasters are not obliged to carry political party broadcasts. If a broadcaster decides to transmit uncontested political party broadcasts they should be transmitted at times that are aimed at achieving a similar audience for all such broadcasts. To ensure that these broadcasts do not rank as an advertisement (which is prohibited by Section 10(3)), a broadcaster may not charge for such broadcasts. Any form of charges, including charges for production, will constitute a breach of Section 10(3).

8. Advertising

Section 10 (3) of the 1988 Act and Section 18(b) of the 2001 Act prohibits services licensed further to the provisions of both acts from broadcasting advertisements directed towards a 'political end'.

Therefore, advertising for and on behalf of referendum interests intended to encourage people to vote in a particular way is strictly prohibited. It should be noted that this restriction also applies in respect of advertising for events, notices regarding meetings etc., held by referendum interests.

Advertisements broadcast at the request of the Referendum Commission are not covered by this prohibition.

9. Moratorium

A moratorium on coverage of the Referendum will operate for the **entire day before the poll** takes place and throughout the day of the poll itself **until polling stations close** i.e. from **12.01am on Thursday October 1st 2009 until 10pm on Friday October 2nd 2009.**

This provision has two objectives which are as follows: -

1. The moratorium is an additional mechanism to ensure that **fairness and balance** are achieved by the broadcast media during this critical period in the polling process. The linear nature of radio and television programming, and the fact that balance cannot always be achieved in a single broadcast, are factors in this regard.
2. Allowing voters **a period for reflection** in the final stages of the Referendum debate.

During the moratorium period, broadcasters should ensure that, other than factual information pertaining to the polling process and related matters, broadcast output does not include any material which relates directly to the content of the Treaty of Lisbon and/or the constitutional amendments associated with the Treaty. This includes material pertaining to the merits or de-merits of the Treaty and/or the constitutional amendments. This restriction applies to all on-air personnel including, but not limited to, presenters and representatives of Referendum interests and groups.

The Commission acknowledges the difficulties involved for programme makers in striking a balance between the requirements to keep the public informed over this period and ensuring that programming does not breach the moratorium. While the Commission will provide guidance if requested; it will only do so on the basis of proposed broadcast copy. Previous polls have highlighted the difficulty in making a determination in the absence of such information.

- The moratorium is not intended to preclude coverage during this period of legitimate news and current affairs stories that are unrelated to the Referendum. However, **content** (including breaking news stories) that the broadcaster believes is **intended to influence or manipulate voter decisions should not be broadcast**.
- Steps should be taken to ensure that **overnight programme repeats** scheduled during the moratorium do not contain material that would breach the moratorium. Broadcasters are advised to either **edit** programmes (if practical) or schedule an **alternative programme** so as to avoid accidental breaches of the moratorium.

- Coverage of news items such as the **opening hours** of polling stations, voter **turn-out**, factual reports on **voting** by political party leaders and other representatives of electoral interests etc., is permissible during the moratorium period once it complies with the content restrictions established for coverage of the Referendum during this period.
- Particular care should be taken around the **opinions expressed by any programme contributors**, during the period covered by the moratorium.
- The moratorium **extends to all areas of programming** including newspaper reviews, coverage of opinion polls, information announcements etc. **Particular care** is necessary when commenting upon or covering **newspaper reviews** as the print media is not subject to a moratorium.

NOTE: These Guidelines refer to the 2009 referendum on the Treaty of Lisbon and have immediate effect. They are not intended to set a precedent for other referenda and do not purport to constitute a comprehensive statement of the law. The Commission reserves the right to amend these Guidelines if it deems it necessary or prudent to do so. The Commission may provide informal guidance, without liability. This will not affect its discretion to decide upon cases/complaints after broadcast nor the exercise of its regulatory duties. Broadcasters should seek their own legal advice on compliance issues.