



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
AUTHORITY
OF IRELAND

**Broadcasting Authority of Ireland
Guidelines in Respect of
Coverage of Referenda**

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1. Introduction

Rule 27 of the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* requires broadcasters to comply with Guidelines in respect of coverage of referenda.¹ These Guidelines set out a number of requirements for broadcasters² in respect of their coverage of referenda and apply in addition to the rules of the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. The Guidelines also provide guidance to broadcasters on the manner in which fairness, objectivity and impartiality may be achieved in their coverage.

2. Legal Requirements

The Broadcasting Act 2009 details the legal requirements placed on broadcasters in respect of their coverage of news and current affairs issues, including referenda.

In this regard:-

General requirements for broadcasters in terms of news and current affairs coverage are set out in Section 39(1) of the Broadcasting Act, which states:

"Every broadcaster shall ensure that:-

- a) *all news broadcast by the broadcaster is reported and presented in an objective and impartial manner and without any expression of the broadcaster's 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 or her own views, except 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."*

¹ Rule 27 of the BAI's Code states: "Coverage of an election or a referendum shall comply with Guidelines and codes of practice issued from time to time by the BAI."

² For the avoidance of doubt, the term 'broadcaster' as used in section 39 of the Broadcasting Act does not refer to individual presenters or programme staff but rather to the company, co-operative etc., that owns and operates the broadcast service. This should not be taken to mean that individual presenters or programme staff are exempt from the obligations of these guidelines.

Requirements in respect of the broadcast of **party political broadcasts** are set out in Section 39 (2) of the Broadcasting Act, which states:-

“(2) Nothing in subsection (1) (a) or (1) (b) shall prevent a broadcaster from transmitting political party broadcasts provided that a broadcaster does not, in the allocation of time for such broadcasts, give an unfair preference to any political party. “

Requirements in respect of **advertising** are set out in Section 41(3) of the Broadcasting Act which states:-

“A broadcaster shall not broadcast an advertisement which is directed towards a political end...”

The requirement for the BAI to develop the **Code of Fairness, Objectivity and Impartiality in News and Current Affairs** is set out in sections 42(1), 42(2)(a) and 42(2)(b) & (e) of the Broadcasting Act, which states:-

- (1) *The Authority shall prepare, and from time to time as occasion requires, revise, in accordance with this section, a code or codes governing standards and practice (“broadcasting code”) to be observed by broadcasters.*
- (2) *Broadcasting codes shall provide –*
 - (a) *that all news broadcast by a broadcaster is reported and presented in an objective and impartial manner and without any expression of the broadcaster’s own views,*
 - (b) *that 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 the broadcaster’s own views,*
 - (e) *that a broadcaster does not, in the allocation of time for transmitting party political broadcasts, give an unfair preference to any political party.*

3. Scope & Jurisdiction

The Guidelines apply to broadcasters within the jurisdiction of the Republic of Ireland and shall not apply to other services commonly received in this State but licensed in the United Kingdom or in other jurisdictions. The BAI encourages broadcasters outside of the jurisdiction, whose services are receivable in the Republic of Ireland and who cover Irish news and current affairs, to be mindful of the Guidelines, where appropriate, when deciding on their approach to coverage of referenda.

The Guidelines apply only in the case of broadcast content that makes reference to a referendum or referenda e.g. news and current affairs content or other content, for example a light entertainment programme covering the topic or an advertisement making reference to the topic.

The inclusion in a broadcast of an individual involved in a referendum campaign will not automatically mean that the broadcast must comply with these Guidelines simply on account of their appearance. Their inclusion will only be of relevance where a link is established between their participation in the broadcast and the referendum, for example, where the individual or another contributor makes reference to a referendum.

The Guidelines do not apply to print, social media or online print/audiovisual content.

4. Effective Date

The effective date for the Guidelines will be published by the BAI in advance of each referendum or referenda to be held. The Guidelines will remain in effect until the closing of polling stations on the day of the poll.

5. Achieving Fairness, Objectivity and Impartiality

Broadcasters play an important and valuable role in the manner in which information about referenda is communicated to, and discussed by, the Irish public. For this reason, broadcasters are advised to cover referenda campaigns in as comprehensive a manner as possible, taking into account the resources available to them, their target audience and the type of programming that the broadcaster provides to the audience. Fairness, objectivity and impartiality can be achieved by a variety of means, for example, through the selection of contributors, the airtime afforded, the scope of the debate, the structure of the programme, the presenter's handling of the topic, the make-up of audiences or through other suitable means.

In their approach to coverage, broadcasters are asked to have regard to the following:-

Diversity of Views

- Broadcasters are advised to seek out the widest range of opinions on the issues raised by proposed constitutional amendment(s). This will include contributions from referenda interests³ who are campaigning for a referendum or referenda to be passed or rejected and whose contributions will potentially provide audiences with valuable information and insights. It may also include those who may not be regular contributors to the station but who may have important things to say in the context of referenda debates and who may or may not have a stated opinion on how the public should vote;

Audience Participation

- In the context of programmes which have an element of audience participation, including contributions by phone or text and live debates, broadcasters should also ensure that an appropriate range of views are adequately represented in the questions, comments and issues raised during such programmes;
- Broadcasters should have regard to any affiliation between programme contributors and referenda interests, for example, where a contribution has a human interest element. In these situations, the affiliation should be made known to audiences in coverage at the time of broadcast;

Issues of 'Balance' and Allocation of Airtime

- Fairness, objectivity and impartiality can be achieved during programming by including referenda interests from both sides of the debate. It may also be achieved effectively by the input from the programme presenter playing the role of '*devil's advocate*'. It may be further achieved via inputs from other contributors who may not be campaigning for a particular outcome in a referendum/referenda but who may articulate the views of one or other side of the campaign in the course of a programme discussion or a debate drawing on their expertise or experience. As such, there is no obligation to automatically 'balance' each contribution on an individual programme with an opposing contribution and fairness may be achieved in a range of ways.

³ '**Referenda Interests**' includes, but is not limited to, political parties, elected representatives, the Government, organisations established specifically for the purpose of campaigning during referenda, individuals (including those holding or formerly holding a public office) campaigning for a particular outcome to a referendum or referenda, as well as existing social and civil society groups engaging in a campaign in respect of referenda.

Further, there is no requirement to allocate an absolute equality of airtime to referenda interests during coverage and while it is important to ensure that coverage provides airtime to referenda interests to set out their views on proposed changes to the Irish Constitution, broadcasters are encouraged to approach coverage with an emphasis on the issues that the public must decide upon rather than taking an approach limited, simply, to a mathematical allocation of airtime. This may facilitate a focus on the issues which may be of greater benefit to the democratic choice to be made by individuals rather than an approach to coverage that is simply adversarial in nature.

As such, the approach taken must be equitable to all interests and undertaken in a transparent manner. Depending on the circumstances, this may require the inclusion of an opposing contributor and/or an equal allocation of airtime to ensure fairness, objectivity or impartiality or it may entail other approaches that may be necessary to ensure that the interests of the audiences are met. In each case, the decision rests with the broadcaster having considered the issues at hand and what is required in order to achieve fairness, objectivity and impartiality in a given programme and across the totality of coverage;

Critical Examination of Views

- The critical examination of the views of referenda interests campaigning for a particular outcome in a referendum or referenda is not, in and of itself, evidence of a lack of fairness, objectivity and impartiality since it is an appropriate role for broadcasters to ensure that time is afforded to examine, challenge (sometimes robustly, where required) the statements and positions of such interests. However, this does not override the requirement to seek the views of referenda interests, to include them in programming and/or to reflect their perspective in broadcast content, in circumstances where it is necessary to achieve fairness, objectivity and impartiality;

Responsibility for Editorial Approach

- It is appropriate that decisions in respect of editorial coverage of referenda rest solely with broadcasters. In doing so, broadcasters should develop mechanisms in respect to their approach to coverage that are open, transparent and fair to all interests and to the public. 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. Broadcasters should be in a position to demonstrate how this was achieved in the context of complaints received directly by the broadcaster or by the BAI.

Broadcasters should note that referenda are dynamic events and they should give active consideration to their approach to coverage over the duration of a campaign and amend this approach if they consider it necessary and appropriate so as to ensure fairness, objectivity and impartiality.

The BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* and guidance notes for this code set out in detail how fairness, objectivity and impartiality can and should be achieved. Broadcasters should ensure that all staff are familiar with this Code and these Guidelines. The BAI will provide advice on request and such requests should be sent in writing to referenda@bai.ie. The BAI can also be contacted by phone on 01 644 1200.

6. Conflicts of Interest

The BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* requires that each broadcaster put in place, and implement, appropriate policies and procedures to address any conflicts of interests that may exist or arise in respect of anyone with an editorial involvement in any news or current affairs content, whether such person works on-air or off-air.⁴ This requirement is of particular importance in the context of coverage of referenda.

In view of this, it is the opinion of the BAI that it is not appropriate for persons involved with referenda interests to present programmes during referenda campaign periods. However, it is a matter for broadcasters to decide on a case-by-case basis the appropriate arrangements having regard to their statutory obligations, the type of programme presented, the extent of the presenter's involvement in a campaign and in the context of the contractual, employment or volunteer relationship between the presenter and the broadcaster.

Endorsements on-air by a broadcaster of a particular position in respect of referenda are not permitted. In addition, endorsements on-air by staff (who are employed, contracted or who volunteer with a broadcaster) of a particular position in respect of referenda are also not permitted. Broadcasters should note that comments made in non-broadcast media by programme presenters in respect of referenda, particularly presenters of news and current affairs, may have the potential to undermine the perceived impartiality of their coverage. The BAI may have regard to such comments where there is an evident link with a broadcast. It is a matter for broadcasters to deal with such issues in the context of determining their approach to coverage and in the context of their contractual, employment or volunteer relationship with presenters.

Broadcasters should note that the inherent qualities or personal circumstances of an individual will not, of itself, constitute a conflict of interest e.g. a person's age, gender, marital status, ethnicity, family status, sexual orientation, beliefs etc.

⁴ Rule 25.

7. Opinion Polls

Opinion polls are a useful tool to inform the audience of voting intentions. Where opinion polls are being used as part of the coverage of referenda, coverage must be accompanied by information to assist viewers/listeners to understand the significance of the opinion poll. Information on the details of the date of the poll, by whom it was commissioned and/or paid for, the company/organisation who conducted it, the number of people polled and their location must be provided on-air.

In representing the findings of opinion polls to viewers and listeners, broadcasters are advised to take into account not only the interpretation of the findings provided by those who have commissioned/undertaken the opinion poll but to also have regard to their own critical analysis of the results and the methodology used to undertake the poll.

In addition, while it is legitimate to have due regard to the weight of public opinion as indicated by poll results, broadcasters should also be mindful of the fact that while public opinion may favour a particular position, this does not make the opposing position less legitimate simply on the basis that a majority view persists. In this regard, broadcasters should also have due regard to the merits of any arguments set out by those that favour or oppose referenda proposals that citizens are being asked to consider.

8. Social Media

Broadcasters are reminded that they are required, further to the *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, to have in place appropriate policies and procedures for handling on-air contributions via social media. These policies and practices must be applied where social media is referenced on-air in the context of referenda coverage. Given the importance of referenda, additional steps should be implemented by broadcasters to ensure that on-air references to social media are accurate, fair, objective and impartial.

9. Advertising

Section 41(3) of the Broadcasting Act 2009 provides that a broadcaster shall not broadcast an advertisement which is directed towards a 'political end'. In this context, broadcasters shall ensure that advertising is free of material that could be interpreted as content that addresses referenda issues or which might be reasonably considered as being directed towards a 'political end' in contravention of Section 41(3). This prohibition also applies to advertising for events, notices regarding meetings or other events being organised by referenda interests as part of their campaign.

In determining whether an advertisement may contravene the statutory prohibition, the BAI is of the view that it is reasonable for broadcasters to take into account the following three factors:-

- The content of the advertisement;
- The context in which the advertisement is broadcast;
- The aims and objectives of the advertiser and of the advertising campaign.

It is the BAI's experience to date that one or more of the three factors may play a determining role in deciding whether an advertisement complies with the statutory prohibition.

10. Party Political Broadcasts

Party political broadcasts are permitted during referenda campaigns further to section 39(2) of the Broadcasting Act 2009. While there is no obligation on broadcasters to transmit party political broadcasts during referenda campaign periods, those that do so must ensure that the total time allocated to such broadcasts amounts to **equal airtime** being afforded to the views of those who support or oppose any proposed constitutional changes.

Party political broadcasts shall be transmitted at times that are aimed at achieving a similar audience for all such broadcasts. Similar broadcast treatment shall be provided for all party political broadcasts, both at their introduction and at their conclusion. Such broadcasts may only be availed of by political parties included on the *Register of Political Parties* as provided for under Irish law.

To ensure that a party political broadcast does not rank as an advertisement (which is prohibited by Section 41(3) of the 2009 Act) no payment or similar consideration shall be applied for such broadcasts.

11. Moratorium

Radio and television broadcasters shall observe a moratorium on coverage of referenda. The moratorium shall operate from 2pm on the day before the poll takes place and throughout the day of the poll itself until polling stations close.⁵

⁵ The BAI recognises that on some of the islands of Ireland polling will commence earlier than elsewhere in Ireland. In some instances, polling will also occur earlier via post. However, the moratorium will only apply from 2pm on the day prior to the opening of the majority of polling stations in Ireland until they close on the day of the poll. The moratorium will also apply in the case of **any election, including by-elections and plebiscites** scheduled on the same day as a referendum/referenda.

During the period, broadcasters shall ensure compliance with the following:-

Material which relates directly to referenda issues and related constitutional amendment(s) shall not be broadcast while the moratorium is in operation. This includes material pertaining to the merits or otherwise of referenda issues and/or constitutional amendments proposed.

The moratorium applies to all on-air contributors, including, but not limited to, presenters, representatives of referenda interests and groups, including political parties and any other contributor appearing during this period.

Applying the Moratorium

In applying the moratorium, broadcasters will need to strike a balance between requirements to keep the public informed over this period and ensuring that programming does not contravene the moratorium as set out above.

When considering how to apply the moratorium, broadcasters should note the following:

- The moratorium is not intended to preclude coverage during this period of legitimate news and current affairs stories that are unrelated to referenda. However, broadcasters should avoid airing content (including breaking news stories) that the broadcaster believes is intended and/or likely to influence or manipulate voters' decisions during the moratorium period. This is an editorial matter to be considered on a case-by-case basis;

Particular care should be taken around the opinions expressed by any programme contributors during the period covered by the moratorium;

- Steps should be taken to ensure that 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 uncontroversial facts related to the poll are permitted (e.g. the opening hours of polling stations, factual reports on voting by political party leaders and other representatives of referenda interests) once such coverage abides 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, online content or social media as they are not subject to the moratorium;

- Exit polls, which are conducted outside polling stations on voting day and assess what people have actually voted, are to be broadcast only after the closure of the polling booths.

12. Referendum Commission

Further to the Referendum Acts (1998 and 2001) the Government will appoint a Referendum Commission. The role of the Commission is varied and includes the promotion of public awareness of a referendum and the encouragement of the electorate to vote at the poll.

In this context, and further to the Referendum Acts and the Broadcasting Act 2009, the Minister for Communications, Climate Action and Environment may direct RTÉ, TG4 and the BAI to arrange for the allocation of broadcasting time to facilitate the Referendum Commission in its role.

RTÉ, TG4 and the BAI are obliged to comply with this request and all broadcasters, including those licensed by the BAI are required to set aside airtime for announcements by the Referendum Commission if so requested.

Announcements by the Referendum Commission do not constitute advertisements and do not count towards the calculation of advertising airtime or the limits on such airtime in place for Irish radio and television broadcasters.

13. Diversity

It is a strategic objective of the BAI to foster a media landscape that is representative of, and accessible to, the diversity of Irish society. It is also a strategic objective to foster and promote quality programming in the Irish language. In this context, broadcasters are encouraged to include a mix of voices and opinions in their coverage, including a mix of voices representing gender and cultural and social diversity. The BAI also encourages English language services to provide opportunities to cover referenda in the Irish language.

While the BAI Access Rules do not include obligations about providing accessible coverage in respect of news and current affairs, the BAI encourages television broadcasters to provide coverage of referenda that is accessible to those who are hard of hearing or deaf, partially sighted or blind and those who are hard of hearing and partially sighted. This can be achieved via the provision of subtitling, audio description or Irish Sign Language.

14. Complaints

Viewers and listeners who believe programme material has not complied with the Guidelines or with the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs* are entitled to make a complaint. Information on the complaints process can be found on the BAI's website www.bai.ie or by telephone on 01 644 1200.

When making a complaint to the broadcaster, you should identify the relevant programme broadcast and explain what it is about the broadcast that has led you to make a complaint. It is important to set out clearly the grounds of your complaint or why you believe the programme material does not comply with the BAI's Code or Guidelines.

Please note that the BAI will not consider complaints about content or editorial processes **prior to broadcast**, including complaints relating to editorial decisions about debate formats, in general, or those involving leaders of political parties. The BAI will only consider complaints about editorial processes after content is broadcast and only insofar as these processes are relevant to the substance of the complaint. The BAI will also not consider complaints about announcements carried on behalf of the Referendum Commission or party political broadcasts as provided for further to section 39(2) of the Broadcasting Act 2009.

15. Guidance

The BAI can provide guidance on the application of the moratorium, and the Guidelines in general, but will only do so when requests of this nature are accompanied by proposed broadcast copy submitted in accordance with the procedures provided for in the Guidance Notes accompanying the *BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs*. Requests should be emailed to referenda@bai.ie.

NOTE

These Guidelines do not purport to constitute a comprehensive statement of the law. The BAI reserves the right to amend these Guidelines if it deems it necessary or prudent to do so. The BAI 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, where required.