

### Annex 3

The Broadcasting Code Review:  
Commercial references in television  
programming Consultation (28 June to 17  
September 2010) (“the 2010  
consultation”)



**Broadcasting Code Review:  
Commercial references in  
television programming**  
Proposals on revising the Broadcasting Code

**Consultation**

**Publication date:** 28 June 2010

**Closing Date for Responses:** 17 September 2010

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## Part 1

# Executive Summary<sup>1</sup>

*To date, Ofcom's Broadcasting Code has prohibited product placement. This prohibition was based on the requirements of European legislation. Changes to EU law, and resulting amendments to UK legislation, now allow for the placing of references to products, services or trade marks in television programmes in return for payment.*

*As a result of these changes, we intend to amend the Code to remove the prohibition on product placement. This consultation therefore sets out proposed new rules reflecting the new UK legislation that enables product placement in television programming.*

*The introduction of product placement impacts on the regulation of other types of commercial references during television programming, such as sponsorship. We are therefore also proposing revisions to those rules we consider are impacted by product placement.*

## Introduction

- 1.1 Under the Communications Act 2003 ("the Act"), Ofcom is required to draw up and, from time to time, revise a code for television and radio services, covering standards in programmes, sponsorship and fairness and privacy. This Code is known as the Ofcom Broadcasting Code ("the Code") and it came into effect in July 2005<sup>2</sup>, following extensive public consultation and research during 2004.
- 1.2 Ofcom made a commitment in the 2008/9 Annual Plan to review the Code and consider whether it still reflected the consumer, industry and regulatory environments in which it operates. In response to these commitments, in June 2009 Ofcom launched its Consultation on the Broadcasting Code Review<sup>3</sup>.
- 1.3 As part of this consultation, Ofcom proposed revised rules relating to: the protection of under-eighteens; harm and offence; and sponsorship and commercial references in programming.
- 1.4 The rules relating to sponsorship and commercial references proposed in 2009 were drafted in light of the UK's longstanding prohibition on product placement (i.e. the inclusion of references to products and services within programmes in return for payment) that was in place at the time of the review.
- 1.5 In September 2009, the Government announced that it was minded, subject to consultation, to permit product placement in specific television programme genres, with certain limitations.
- 1.6 Following this statement, Ofcom announced that it was going to extend its review of Sections Nine and Ten of the Code to allow it to take into account not only the outcome of the Government's consultation on product placement, but also the potential wider implications of any change in this area on other rules relating to commercial references in television programming (e.g. rules relating to sponsorship).

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<sup>1</sup> Please see the Glossary at Annex 5 for the meanings of terms used throughout this document.

<sup>2</sup> The Code was revised subsequently in October 2008 and December 2009.

<sup>3</sup> <http://www.ofcom.org.uk/consult/condocs/bcode09/main.pdf>

- 1.7 In December 2009, Ofcom published an updated Code<sup>4</sup> containing revised rules relating to the protection of under-eighteens and harm and offence.
- 1.8 Following the Government's consultation, it issued a statement<sup>5</sup> setting out its intention to legislate to permit product placement, subject to certain restrictions. The Audiovisual Media Services (Product Placement) Regulations 2010 ("the Regulations"), the statutory instrument that amends the Act to enable product placement on television, came into force on 16 April 2010. The revisions to the Act require Ofcom to set standards in respect of product placement.
- 1.9 The purpose of this consultation is therefore to propose new rules to allow product placement in the permitted programme genres and to make clear when product placement will not be permitted. We are also proposing revisions to existing rules that we consider are impacted, directly or indirectly, by the decision to allow paid-for commercial references within television programmes.
- 1.10 The consultation covers commercial references that feature in television programming only. A separate consultation has been published in relation to commercial references in radio programming<sup>6</sup>.

## Overview of our proposals

- 1.11 The Act (as amended by the Regulations) contains a number of specific requirements in relation to regulation of product placement. Ofcom is now required to amend its Code to implement these requirements.
- 1.12 The Act sets out those programme genres in which product placement is permitted: films; television series; sports programmes; and light entertainment programmes. However, it expressly prohibits product placement in all children's programmes, and in religious; current affairs; and consumer affairs programmes that are produced under UK jurisdiction<sup>7</sup>.
- 1.13 It prohibits the product placement of cigarettes or other tobacco products and prescription-only medicines in all programmes, and further prohibits in programmes produced under UK jurisdiction the paid-for placement of products associated with smoking (such as cigarette lighters and papers), alcoholic drinks, foods or drinks which are high in fat, salt or sugar, gambling services, all medicinal products and infant and follow-on formulae.
- 1.14 It sets general requirements and safeguards in relation to the impact product placement can have on programmes. It also specifies when audiences should be made aware when a programme contains product placement.
- 1.15 The rules we are proposing in this consultation therefore reflect these requirements, providing further guidance where we consider it is appropriate.

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<sup>4</sup> <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

<sup>5</sup> [http://www.culture.gov.uk/reference\\_library/minister\\_speeches/6624.aspx](http://www.culture.gov.uk/reference_library/minister_speeches/6624.aspx)

<sup>6</sup> <http://www.ofcom.org.uk/consult/condocs/bcrradio2010>

<sup>7</sup> "programmes produced under UK jurisdiction" means any programme produced or commissioned by either: a) the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or b) any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the AVMS Directive). For further details on these requirements and their meanings, see Part 4.

1.16 In addition to reflecting the requirements set out above in rules within the Code, we are proposing additional rules that we consider: i) clarify the requirements of the Act; or ii) are appropriate to ensure that audiences are afforded adequate protection; or iii) are appropriate in light of the changes to the regulatory landscape resulting from the introduction of product placement.

1.17 In summary, our proposals are:

### Product Placement

1.18 **Scope of product placement rules:** the Act defines product placement as being “for a commercial purpose”. We are proposing to apply the rules to all instances of paid-for placement, regardless of whether the placement is intended to serve a commercial purpose (see Part 4, Proposal 1).

1.19 **Single dramas:** these are not specifically referred to in the list of programme genres in which product placement is permitted. We are proposing to clarify that such programmes fall within the definition of films and may therefore contain product placement (see Part 4, Proposal 2).

1.20 **News:** the Act does not explicitly prohibit product placement in news but the Government has made it clear in its statement that news does not fall within the programme genres in which product placement is permitted. We are therefore proposing a rule to clarify that product placement is prohibited in news programmes (see Part 4, Proposal 3).

1.21 **Thematic placement:** we are proposing to clarify that thematic placement - that is the creation of scripts/storylines as vehicles for the purpose of featuring the aims, objectives, beliefs or interests of a third party funder - is prohibited (see Part 4, Proposal 4).

1.22 **Specialist factual programmes:** we are seeking views on whether Ofcom should prohibit product placement in specialist factual programmes (e.g. purely factual programmes covering educational, science, medical or arts subjects, or those that are investigative in nature) (see Part 4, Proposal 5).

1.23 **Prohibited restricted products/services:** in addition to those products, services and trade marks that are prohibited under the Act from being included in programmes as a result of product placement arrangements, we are proposing to prohibit the paid-for placement within programmes of any product, service or trade mark that cannot be advertised on television (see Part 4, Proposal 6).

1.24 **Signalling of product placement:** the Act includes a signalling requirement for product placement. We are proposing that audiences are made aware of instances of product placement by means of a universal neutral logo, and a universal audio signal (to ensure that both visually and hearing impaired audience members are made aware when a programme contains product placement). Additionally, we are proposing that broadcasters make available to the audience a list (in a programme’s end credits or on the broadcaster’s website) of products, services or trade marks that have been placed in a programme. We also make a range of proposals in relation to raising audiences’ awareness of the product placement signals and what they mean (see Part 4, Proposal 7).

## Sponsorship

- 1.25 The current rules that apply to television sponsorship are based on the principle that paid-for commercial references are kept separate from editorial. The introduction of product placement changes this position. We are therefore consulting on proposed revisions to those sponsorship rules that are underpinned by the separation principle.
- 1.26 **Sponsor references within sponsored programmes:** we are proposing to remove the rules that prevent sponsorship arrangements resulting in references to the sponsor within a sponsored programme. We also intend to clarify that where a reference to the sponsor's products, services or trade mark are included in a programme, this will be treated as product placement and must therefore comply with the relevant rules (see [Part 5, Proposal 8](#)).
- 1.27 **Identifying sponsorship arrangements (sponsorship credits<sup>8</sup>):** we are proposing revisions on how sponsorship arrangements are announced to ensure that audience members are made appropriately aware when they are viewing commercial messages, and can distinguish between different types of commercial arrangements, such as sponsorship and product placement (see [Part 5, Proposal 9](#)).
- 1.28 **Sponsorship credits during programmes:** we are also proposing to amend the rules on sponsorship credits to allow credits to be broadcast *during* programmes. However, to ensure that such credits do not conflict with the product placement rules and are not unacceptably intrusive, we are proposing a number of restrictions on the content and scheduling of credits shown during programmes (see [Part 5, Proposal 10](#)).

## Other proposed revisions

- 1.29 We are proposing revisions to other Code rules that we consider are no longer applicable following the introduction of product placement. These include:
- 1.30 **Separation of programming and advertising:** current rules are based on an overarching principle that editorial content must be kept separate from advertising. The rules are based on the requirements of European legislation (see relevant legislation below). Changes to EU law mean that advertising no longer has to be separated from editorial but that the two must be *distinct* from one another. We are therefore proposing to amend those rules requiring separation to ones requiring distinction between such content. We also intend to amend the corresponding principle set out in the Code (see [Part 6, Proposals 12 and 13](#)).
- 1.31 **Surreptitious advertising rule:** we are proposing a rule prohibiting surreptitious advertising as we consider that the introduction of product placement, and therefore the inclusion of paid-for references within programmes, poses an increased risk that viewers may be exposed to surreptitious advertising (see [Part 6, Proposal 14](#)).
- 1.32 **Virtual advertising:** this occurs during the broadcast coverage of an event, and involves replacing advertising that is present at a venue with advertising tailored for the television audience. The current Code contains a specific rule about this practice, which provides a limited exemption to the existing prohibition on product placement. The removal of this prohibition renders the rule unnecessary and we are therefore proposing to remove it from the Code (see [Part 6, Proposal 15](#)).

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<sup>8</sup> Sponsorship credits are announcements informing the audience when a programme is sponsored and by whom.

## Relevant areas of legislation

- 1.33 Part 3 of this document outlines Ofcom's statutory duties and other areas of legislation relevant to this consultation. These include, in particular, sections 319(2)(fa), (i) and (j) and 319(4)(a), (c), (e) and (f), section 321(1) and (4) and section 324(3) of the Communications Act 2003; Articles 9, 10, 11, and Chapter VII (Articles 19 to 26) of the Audiovisual Media Services Directive; regulation 3(4)(d) of the Consumer Protection From Unfair Trading Regulations 2008; section 21(1) of the Financial Services and Markets Act 2000; paragraph 3 of the Investment Recommendation (Media) Regulations Act 2005; and Article 10 of the European Convention on Human Rights.

## Approach to Impact Assessment

- 1.34 The consultation document does not contain a separate impact assessment document. Instead the consultation document as a whole assesses the impact of the proposed changes on stakeholders (including citizens and consumers; and television broadcasters). This assessment has been informed by the responses to the 2009 Code Review, our 2010 pre-consultation discussions with stakeholders and the Government's most recent consultation on product placement<sup>9</sup>.
- 1.35 Further, this consultation document does not include assessments of the potential impacts of those proposed product placement rules Ofcom considers to be direct requirements of the Act, which Ofcom has a statutory duty to implement in the Code. Where Ofcom has scope to decide between different ways of implementing policy, considerations in relation to consumer, regulatory and economic impacts are addressed within Parts 4 to 6 of this document.
- 1.36 In relation to equality, Ofcom is required by statute to have due regard to any potential impacts its proposals may have on race, disability and gender equality, as well as the other groups protected by legislation in Northern Ireland<sup>10</sup>. To fulfil this obligation, we have completed an Equality Impact Assessment (EIA) screening form (attached at Annex 11), which takes the form of an initial analysis of whether the proposals we are making raise equality issues, and if so, what their potential impacts might be. In particular, this focuses on the signalling of product placement and sponsorship.
- 1.37 Following completion of the consultation and consideration of stakeholder responses, we will review whether, on the basis of stakeholder responses received, there are, in fact, equality impacts and/or considerations that we have not, to date, accounted for. Should we find evidence to support this we will proceed to a full Equality Impact Assessment. Our published statement representing the conclusion of this consultation process will detail whether Ofcom did progress with a full Equality Impact Assessment and if so the conclusions drawn from this assessment. Such considerations will also inform our final revisions to the Code.

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<sup>9</sup> A summary of the responses to the Government's consultation on product placement is at: [http://webarchive.nationalarchives.gov.uk/+/http://www.culture.gov.uk/images/consultation\\_responses/Consultation\\_Report\\_final.pdf](http://webarchive.nationalarchives.gov.uk/+/http://www.culture.gov.uk/images/consultation_responses/Consultation_Report_final.pdf)

<sup>10</sup> In addition to race, disability and gender, equality legislation in Northern Ireland also covers age, sexual orientation, carers, marital status, religious belief and political opinion.



## Guidance

- 1.38 Because product placement will be a new practice in programmes produced or commissioned by Ofcom licensees, we intend to issue additional guidance to assist broadcasters. This will accompany the revised Code and be issued alongside it, as an update to the existing guidance<sup>11</sup>. In view of these circumstances, we request stakeholders' views on specific areas or issues on which they would welcome Ofcom guidance. As the product placement market becomes established, this guidance will be kept under regular review.

## Next steps

- 1.39 The following parts of this document set out our proposals and invite stakeholders' views on them. In responding to the questions for stakeholders, please see Part 3 which sets out Ofcom's regulatory objectives and statutory duties. The consultation responses will enable us to consider our proposals in light of stakeholder comments. We will publish a summary of responses and statement in response when the revised Code is published at the end of 2010.
- 1.40 Stakeholders should note that, until Ofcom has issued its statement and the revised Code, following the closure of this consultation, the current Code rules remain in force.

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<sup>11</sup> <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/>

## Part 2

# Introduction

*To date, Ofcom's Broadcasting Code has prohibited product placement. This prohibition was based on the requirements of European legislation. Changes to EU law, and resulting amendments to UK legislation, now allow for the placing of references to products, services or trade marks in television programmes in return for payment.*

*As a result of these changes, we intend to amend the Code to remove the prohibition on product placement. This consultation therefore sets out proposed new rules reflecting the new UK legislation that enables product placement in television programming.*

*The introduction of product placement impacts on the regulation of other types of commercial references during television programming, such as sponsorship. We are therefore also proposing revisions to those rules we consider are impacted by product placement.*

*This consultation is an extension of Ofcom's 2009 review of the Broadcasting Code. It addresses only those rules we consider are impacted by the introduction of product placement. Following this consultation, Ofcom will reach a decision on those other rules relating to commercial references in television programming that were consulted on in the 2009 review (e.g. rules on Public Information Programming). This will allow Ofcom to take into account all responses to the 2009 review and any other pertinent issues that may arise as a result of this consultation. **Readers should note that it is not necessary to re-submit comments made in response to the 2009 review.***

## Background<sup>12</sup>

- 2.1 As part of its duties and functions in relation to broadcasting under the Communications Act 2003 ("the Act"), Ofcom is required to draw up and, from time to time, revise a code for television and radio services, covering standards in programmes (which include the protection of people under the age of 18 and the application of generally accepted standards to protect the public from the broadcast of offensive and harmful material), sponsorship and fairness and privacy. The Ofcom Broadcasting Code ("the Code") came into effect on 25 July 2005 following extensive public consultation and research during 2004. It was revised subsequently in October 2008.
- 2.2 Since the Code was first introduced, the consumer, industry and regulatory environments in which it operates have undergone many changes. Ofcom made a commitment in the 2008/9 Annual Plan to further develop the Code according to these changes. This was to ensure that it remains fit for purpose: providing both adequate protection for the audience, and a consistent and robust regulatory framework for broadcasters. In addition, by 19 December 2009, Ofcom was required to give effect to a number of requirements relating to the Audiovisual Media Services (AVMS) Directive.
- 2.3 In response to these commitments, on 15 June 2009 Ofcom launched its Consultation on the Broadcasting Code Review<sup>13</sup>. As part of this consultation, Ofcom

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<sup>12</sup> Please see the Glossary at Annex 5 for the meanings of terms used throughout this document.

<sup>13</sup> <http://www.ofcom.org.uk/consult/condocs/bcode09/main.pdf>

proposed revised rules relating to sponsorship and commercial references in television and radio programming (Sections Nine and Ten of the Code).

- 2.4 Section Nine of the Code currently applies to broadcast sponsorship arrangements for television and radio (defined in paragraph 2.18, below). It seeks to ensure that broadcasters maintain editorial control over sponsored content so that programmes are not distorted for commercial purposes; sponsorship arrangements are transparent; and that sponsorship announcements are separated from editorial content and distinct from advertising. Section Ten of the Code currently applies to other instances where references to a product or service may appear in television or radio programming, whether as a result of a commercial arrangement or not.
- 2.5 The rules in both sections were drafted on the basis of the UK's longstanding prohibition on product placement (defined in paragraph 2.18, below). The rules proposed in the 2009 Code Review were drafted in light of the Government's stated intention, at the time, to maintain this prohibition.
- 2.6 On 16 September 2009, the Government announced<sup>14</sup> that it was minded, subject to a consultation<sup>15</sup>, to permit product placement in specific television programme genres, with certain limitations.
- 2.7 Following this announcement, Ofcom evaluated its 2009 Code Review proposals to revise Sections Nine and Ten. On 9 October 2009, Ofcom announced<sup>16</sup> its decision to extend the review. This extension was to enable Ofcom to take into account not only the outcome of the Government's consultation on product placement, but also the potential wider implications of any change in this area on other rules relating to commercial references in television and radio programming (e.g. rules relating to sponsorship). The statement explained that Ofcom would reach a final decision on rules in this area, taking account of responses to the 2009 Code Review (in relation to those rules unaffected by the Government's decision), and also responses to a further consultation.
- 2.8 In December 2009 Ofcom published its revised 2009 Code<sup>17</sup>, including revised rules on sexual material and competitions and voting.
- 2.9 On 9 February 2010 the Government announced its decision in relation to product placement<sup>18</sup>. It explained that the AVMS Directive requires that Member States prohibit product placement, but that they may decide to permit it in the four separate genres of cinematographic works, films and series made for television or audiovisual media services, sports programmes, and light entertainment programmes (but not in children's programmes).
- 2.10 It said its legislation would therefore follow this approach of imposing an overall ban on product placement except in these four genres. It also stated that while the AVMS Directive prohibits the placement of particular products such as tobacco products and prescription medicines, its legislation would also prohibit further categories in UK-produced programmes: alcoholic drinks; foods and drinks high in fat, salt or sugar ("HFSS products"); gambling; smoking accessories; over-the-counter medicines; and infant formula and follow-on formula.

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<sup>14</sup> [http://www.culture.gov.uk/reference\\_library/minister\\_speeches/6194.aspx](http://www.culture.gov.uk/reference_library/minister_speeches/6194.aspx)

<sup>15</sup> [http://www.culture.gov.uk/reference\\_library/consultations/6421.aspx](http://www.culture.gov.uk/reference_library/consultations/6421.aspx)

<sup>16</sup> <http://www.ofcom.org.uk/consult/condocs/bcode09/extension/>

<sup>17</sup> <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

<sup>18</sup> [http://www.culture.gov.uk/reference\\_library/minister\\_speeches/6624.aspx](http://www.culture.gov.uk/reference_library/minister_speeches/6624.aspx)

- 2.11 It also confirmed that product placement in UK-produced programmes would be prohibited from current affairs, consumer and religious programming (to the extent that such programming could be defined as falling within the permitted genres specified by the Directive). Further, legislation would specify that product placement should not affect editorial independence, be unduly prominent, or directly encourage the purchase of products or services.
- 2.12 The Audiovisual Media Services (Product Placement) Regulations 2010 (“the Regulations”) amended the Act to enable such product placement on television and to require Ofcom to set standards in respect of product placement. The Regulations came into force on 16 April 2010 (see Annex 10). However the Government made clear that television product placement would not become permissible until Ofcom had consulted on detailed changes to the Code. This is the key purpose of this Consultation and is further developed immediately below.

## Purpose of this consultation

- 2.13 The Code is currently separated into ten sections, each designed to secure the relevant objectives in relation to standards, sponsorship and fairness and privacy, as set out in the Act. The sections that contain the rules covering sponsorship and commercial references within programming currently apply to both television and radio services (sections Nine and Ten).
- 2.14 In this consultation on the Code, we have had regard to Ofcom’s regulatory objectives and statutory duties set out in Part 3 of this document. In particular Ofcom has a duty to ensure that its regulation does not impose unnecessary burdens, and that it does not maintain regulatory burdens which have become unnecessary. This consultation document has been drafted in this context.
- 2.15 Ofcom recognises that the statutory framework within which television operates differs from radio. In particular, radio broadcasts are not subject to the requirements of the AVMS Directive (since this applies only to audiovisual media services). As a result there are, for example, no limits on advertising minutage on radio.
- 2.16 Ofcom’s 2009 Code Review therefore set out our intention to revise Sections Nine and Ten of the Code, replacing these with a revised Section Nine to deal exclusively with television and a revised Section Ten to deal with radio. We remain of the view that the proposed revised structure would better reflect the differing statutory frameworks relating to the regulation of commercial references in television and radio programming. This approach received stakeholder approval in the 2009 Consultation.
- 2.17 This 2010 Consultation sets out additional proposals on revisions to the proposed new Section Nine of the Code in relation to commercial references in television programming. A separate consultation<sup>19</sup> sets out proposals in relation to a new Code Section on commercial communications in radio programming.
- 2.18 **The proposals we are now putting forward are limited to those rules for commercial references in television programming that we consider are impacted, directly or indirectly, by the Government’s decision to permit product placement.** This Consultation therefore puts forward proposed new rules for

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<sup>19</sup> <http://www.ofcom.org.uk/consult/condocs/bcrradio2010>

**product placement**<sup>20</sup> and proposed revisions to the rules relating to **sponsorship**<sup>21</sup>. The key proposals under each area are as follows:

2.19 **Proposed new rules on product placement (please also see Part 4):** In accordance with the amended Act, Ofcom must now remove the Code's current prohibition of product placement and replace it with rules that mirror the requirements of the Act. This legislation sets out in extensive detail those programmes that may contain product placement. The Act also include prohibitions on the types of products that can be placed (e.g. medicines, tobacco), as well as additional product restrictions for programmes produced under UK jurisdiction<sup>22</sup> (e.g. alcohol, gambling and HFSS products). In light of the detail within the Act, Ofcom's scope to propose rules in this area is relatively limited. However, we have given particular consideration to proposing clarification and/or supplementary rules, as follows:

- **Scope of the rules:** the Act defines product placement as being “for a commercial purpose”. We propose to apply product placement rules to all instances of paid-for placement, regardless of whether the placement is intended to serve a commercial purpose;
- **Single dramas:** clarification that the genre of films includes single dramas;
- **News:** a rule clarifying that product placement is prohibited in news;
- **Thematic placement:** clarification that thematic placement is incompatible with the requirements of the Act;
- **Specialist factual programming:** consideration of whether product placement should be prohibited in this type of programming;
- **Prohibited categories:** we propose a rule to prohibit the product placement of products and services that cannot be advertised on television; and
- **Signalling:** we make proposals on how broadcasters must tell the audience about product placement arrangements (please also see under ‘Approach to impact assessment’ below). This includes a proposal for broadcasters to transmit an awareness campaign to explain the signalling of product placement to audiences.

2.20 **Proposed revisions to sponsorship rules (please also see Part 5):** Current rules prevent sponsorship arrangements resulting in references to the sponsor within the programme it is sponsoring. These rules support the general prohibition on product

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<sup>20</sup> Product placement is the inclusion in a programme of, or a reference to, a product, service or trade mark, for a commercial purpose, in return for payment or other valuable consideration. This is a summary of the definition of product placement set out in the amended Act. The definition can be found at Schedule 11A, paragraph 1(1) of the Act (see Annex 10).

<sup>21</sup> Sponsorship involves an entity funding a programme with a view to promoting itself through its association with the programme. This is achieved by means of sponsorship credits, broadcast before and after the programme that announce the sponsorship arrangement. The AVMS Directive's definition of sponsorship can be found at Article 1(k) (see Annex 9).

<sup>22</sup> “programmes produced under UK jurisdiction” means any programme produced or commissioned by either: a) the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or b) any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the AVMS Directive). For further details on these requirements and their meanings, see Part 4.

placement by preventing sponsors from paying for references to themselves or their products within programmes. The rules prohibit both the placement of sponsors' products and services and the appearance of sponsorship credits during programmes. In light of the Government's decision to lift the ban on product placement, subject to limitations, we consider the rules that apply to both sponsorship credits and sponsor references within programmes should be amended. The key changes we are therefore proposing are:

- allowing sponsors to product place in the programmes they are sponsoring; and
- allowing limited sponsor credits to be shown *during* programmes.

2.21 **Other proposed revisions to the Code (please also see Part 6):** In addition to the key proposals stated above, there are also a number of other changes we consider it is appropriate to make. These relate to:

- minor wording changes to the principles that underpin the proposed Section Nine of the Code, to better reflect the wording of the AVMS Directive;
- relevant changes to rules that require editorial to be separated from advertising to reflect that the AVMS Directive now requires such content to be distinct rather than separate;
- a proposed rule to prohibit surreptitious advertising; and
- a proposal to remove the current Code rule relating to virtual advertising, because we consider this to be obsolete in light of new product placement rules.

## Other revisions proposed in 2009

2.22 The 2009 Code Review put forward a number of proposals and potential new rules for consideration, these are detailed at Annex 7 of this document. However, as discussed above, the 2010 Consultation is intended to be a targeted review to cover only those rules affected by the decision to permit product placement.

2.23 We will not therefore now be re-consulting on rules that we consider to be unaffected by the introduction of product placement (but were subject to the 2009 Code Review). Instead, following the closure of this Consultation in September 2010, we will take account of responses to the 2009 Consultation and respond to them, implementing any appropriate revisions to the rules, when we publish our Statement and new Code.

2.24 A proposed revised Section Nine of the Code is provided at Annex 8. This sets out the proposed new and revised rules we are now consulting on, combined with those proposed rules which were put forward for consultation in 2009 (*but which have not yet been finalised*). **Respondents should note that this is provided for illustrative purposes only.**

## Approach to impact assessment

### General impact issues

2.25 The consultation document does not contain a separate impact assessment. Instead the consultation document as a whole assesses the impact of the proposed changes

on stakeholders (including citizens and consumers; and television broadcasters). This assessment has been informed by the responses to the 2009 Code Review, our 2010 pre-consultation discussions with stakeholders and the Government's most recent consultation on product placement<sup>23</sup> discussed below.

- 2.26 Ofcom now has a statutory duty to introduce new rules for product placement and so we take the impact assessment set out in the Government's most recent consultation on product placement as starting point for this consultation, i.e. that allowing product placement would deliver modest economic benefits to broadcasters in the region of £25-30m p.a. once established.
- 2.27 Further, this consultation document does not include assessments of the potential impacts of those proposed product placement rules Ofcom considers to be direct requirements of the Act, which Ofcom has a statutory duty to implement in the Code. Where Ofcom has scope to decide between different ways of implementing policy, considerations in relation to consumer, regulatory and economic impacts are addressed within Parts 4 to 6 of this document.

### **Equality impact issues**

- 2.28 Ofcom is required by statute to have due regard to any potential impacts its proposals may have on race, disability and gender equality, as well as the other groups protected by legislation in Northern Ireland<sup>24</sup>. To fulfil this obligation, we will be conducting an Equality Impact Assessment (EIA). We have completed the first part of this EIA, which takes the form of an initial analysis of whether the proposals we are making raise equality issues, and if so, what their potential impacts might be.
- 2.29 In relation to this consultation, we have considered the need for paid-for commercial references to be readily recognisable to all audience groups, including both visually and hearing impaired audience members. In particular we have considered the signalling of product placement and sponsorship. This matter is detailed in Parts 4 and 5 of this document. It is set out further in our initial EIA at Annex 11.
- 2.30 In relation to equality issues more generally, we consider that our proposals would be unlikely to involve any adverse effect with regard to gender or ethnicity, or the other groups protected by legislation in Northern Ireland. However, where appropriate, the consultation document will ask stakeholders to submit responses on any potential impacts they consider should be taken into account, including in relation to matters of equality. This will ensure we have not failed inadvertently to consider any possible equality impacts resulting either from this Code Review or our specific proposals, particularly in relation to the signalling of product placement and sponsorship to visually and hearing impaired audience members.
- 2.31 Following the closure of the consultation and consideration of stakeholder responses, we will complete our EIA. In this full assessment, we will review whether, on the basis of stakeholder responses received, there are in fact, equality impacts and/or considerations which we had not, to date, accounted for, and will give due consideration to these in our Statement and revisions to the Code.

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<sup>23</sup> A summary of the responses to the Government's consultation on product placement is at: [http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/images/consultation\\_responses/Consultation\\_Report\\_final.pdf](http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/images/consultation_responses/Consultation_Report_final.pdf)

<sup>24</sup> In addition to race, disability and gender, equality legislation in Northern Ireland also covers age, sexual orientation, carers, marital status, religious belief and political opinion.

## Guidance

- 2.32 In accordance with our proposed approach to Section Nine in the 2009 Consultation, we have again set out clarification and guidance text, where appropriate, alongside the proposed new and proposed revised rules.
- 2.33 It should be noted that, because product placement will be a new practice in programmes produced or commissioned by Ofcom licensees, we intend to issue additional guidance to assist broadcasters. This will accompany the revised Code and be issued alongside it, as an update to the existing guidance<sup>25</sup>. In view of these circumstances, we request stakeholders' views on specific areas or issues on which they would welcome Ofcom guidance. As the product placement market becomes established, this guidance will be kept under regular review.

## Next steps

- 2.34 The following parts of this document set out our proposals and invite stakeholders' views on them. In responding to the questions for stakeholders, please see Part 3 which sets out Ofcom's regulatory objectives and statutory duties. The consultation responses will enable us to consider our proposals in light of stakeholder comments. We will publish a summary of responses and Statement in response when the revised Code is published at the end of 2010.
- 2.35 Stakeholders should note that, until Ofcom has issued its statement and the revised Code, following the closure of this consultation, the current Code rules remain in force.

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<sup>25</sup> <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/>



## Part 3

# Regulatory objectives and statutory duties

## Ofcom's statutory duties

3.1 As part of its duties in relation to broadcasting, Ofcom is responsible for setting broadcast standards for the content of programmes. The objectives to be secured by these standards under section 319(2) of the Act that are relevant to this Code Review of rules for commercial references in television programming are:

- that persons under the age of eighteen are protected;
- that news included in television services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;
- that news included in television services is reported with due accuracy;
- that generally accepted standards are applied to the contents of television services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;
- that the product placement requirements<sup>26</sup> are met in relation to programmes included in a television programme service;
- that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television services;
- that the inclusion of advertising which may be misleading, harmful or offensive in television services is prevented;
- that the international obligations of the United Kingdom with respect to advertising included in television services are complied with; and
- that the unsuitable sponsorship of programmes included in television services is prevented.

3.2 In setting, or revising, these standards Ofcom must have regard to the following matters under section 319(4) of the Act:

- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
- the likely size and composition of the potential audience for programmes included in television services generally, or in television services of a particular description;
- the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;

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<sup>26</sup> The requirements are detailed in Schedule 11A of the Act (Annex 10).

- the likelihood of persons who are unaware of the nature of a programme’s content being unintentionally exposed, by their own actions, to that content;
  - the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
  - the desirability of maintaining the independence of editorial control over programme content.
- 3.3 In relation to the standard objectives about sponsorship and product placement section 321 of the Act provides that Ofcom:
- must include general provision governing standards and practice in sponsorship and product placement; and
  - may include provision prohibiting forms and methods of sponsorship and product placement.
- 3.4 Broadcast standards are maintained by means of codes. The Code identifies the standards that apply to editorial content (i.e. programming) and sponsorship arrangements. Content is assessed on a case-by-case basis to determine whether it complies with the Code. The Code itself must comply with European legislation.

## European legislation

- 3.5 The Audiovisual Media Services (“AVMS”) Directive sets out the European Union framework for the regulation of television services. This Directive was adopted by the European Union on 19 December 2007, and was required to be implemented into UK legislation by 19 December 2009.
- 3.6 The AVMS Directive amended the Television without Frontiers Directive (“the TWF Directive”) which had been adopted by the then European Economic Community in 1989. The TWF Directive introduced minimum common standards of advertising and sponsorship regulation in order to facilitate a single market in broadcasting services in accordance with the Treaty of Rome. It sets minimum standards in relation to the protection of minors, to the prohibiting of incitement to hatred, as well as providing for a right of reply.
- 3.7 The relevant sections of the AVMS Directive are attached at Annex 9.

## Other relevant areas of legislation

- 3.8 Ofcom has powers under Part 8 of the Enterprise Act to enforce relevant provisions of the Consumer Protection From Unfair Trading Regulations 2008.
- 3.9 Regulation 3 prohibits unfair commercial practices and sets out the circumstances in which a commercial practice is unfair. Amongst other things, under 3(4)(d), a commercial practice is unfair if it is one that is listed in Schedule 1. In particular, paragraph 11 of Schedule 1 is clear that the use of editorial content in the media to:

*“promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial)”*

would constitute a commercial practice which is unfair and therefore prohibited.

## Relevant consultation considerations

- 3.10 In consulting upon the review of the Code in relation to commercial references in television programming, we must take into account our responsibilities under the Act and other relevant legislation.
- 3.11 Section 3(1) of the Act says that Ofcom's principal duty in carrying out its functions shall be to further the interests of:
- citizens in relation to communications matters; and
  - consumers in relevant markets, where appropriate by promoting competition.
- 3.12 Section 3(2) specifies matters which Ofcom must secure in carrying out its functions. These include:
- the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
  - the maintenance of a sufficient plurality of providers of different television and radio services; and
  - the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services.
- 3.13 Section 3(3) and section 3(4) say that in performing the duties set out in section 3(1), Ofcom must have regard to a variety of other factors, including:
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
  - the desirability of promoting competition in relevant markets;
  - the need to secure the application of standards in the manner which best guarantees an appropriate level of freedom of expression;
  - the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection;
  - the needs of persons with disabilities, of the elderly and of those on low incomes;
  - the opinions of consumers in relevant markets and of members of the public generally; and
  - the different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and urban areas.
- 3.14 Where it appears to Ofcom that any of its general duties conflict with one another, it must secure that the conflict is resolved in the manner it thinks best in the circumstances (section 3(7)).

- 3.15 In performing its duties under section 3(1)(b) to further the interests of consumers, Ofcom must also have regard to the interests of those consumers in respect of choice, price, quality of service and value for money.
- 3.16 Ofcom has a general responsibility in relation to television programme services, with respect to standards and practice governing advertising, sponsorship and product placement (section 321(1)(a)), as well as provision to prohibit forms and methods of each (section 321(1)(b)). Ofcom also has a related power to include conditions in any licence granted by Ofcom that go beyond the provisions of its standards code (section 321(4)).
- 3.17 Ofcom also has duties that relate to how to carry out our work under the Act, including requirements:
- ii) to secure that regulation by Ofcom does not involve the imposition of burdens that are unnecessary, or the maintenance of burdens which have become unnecessary (section 6(1)); and
  - iii) to carry out an assessment of the impact of a change in the way we carry out our activities where this would have a significant impact on persons carrying on businesses in markets that we regulate (section 7).
- 3.18 In addition to our responsibilities under the Act, as a public authority we have a duty under the Human Rights Act 1998 to ensure that we do not act in a way which is incompatible with the European Convention of Human Rights ('the Convention').
- 3.19 Article 8 of the Convention provides for the right to respect for private and family life, home and correspondence. It states that there shall be no interference by a public authority with the exercise of this right, except "as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".
- 3.20 Article 10 of the Convention provides for the right to freedom of expression. It encompasses the broadcaster's right to "impart information and ideas" and also the audience's "right to receive information and ideas without interference by public authority". Such rights may only be restricted if the restrictions are: "prescribed in law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary" (Article 10(2) of the Convention).
- 3.21 Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these rights in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.
- 3.22 The case law of the European Court of Human Rights on Article 10(2) of the Convention shows that national authorities have a discretion in deciding whether there is a pressing social need capable of justifying a restriction on freedom of expression. According to that case law, such a discretion is particularly essential in

commercial matters and especially in a field as complex and fluctuating as advertising<sup>27</sup>.

## Regulatory objectives and principles of this consultation

3.23 Taking into account the legislation referred to above, the regulatory objectives of this consultation in relation to the rules for commercial references in television programming are as follows:

- i) To further the interests of citizens and consumers, in particular, in relation to:
  - o the range, quality and appeal of television services available throughout the UK;
  - o the importance of securing a sufficient degree of plurality of providers of television services; and
  - o the application of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in television services (addressed in further detail in objective (ii) below).
- ii) To review and revise standards for the content of television services to secure the relevant standards objectives (set out above at paragraph 3.1).
- iii) To consider the need, where appropriate, for setting additional requirements governing standards and practice in product placement, including such prohibitions of forms and methods of product placement, as Ofcom sees fit.
- iv) To ensure compliance with EC legislation, which requires that television advertising be subject to minimum rules to ensure that the interests of consumers as television viewers are fully and properly protected. These rules include limits on the amount of advertising and a requirement for advertising to be readily recognisable and distinct from programme content.
- v) To review the carrying out of its functions to ensure that regulation by Ofcom does not involve:
  - o the imposition of burdens that are unnecessary; or
  - o the maintenance of burdens which have become unnecessary.
- vi) To have regard to the right to freedom of expression, as expressed in Article 10 of the European Convention on Human Rights. Ofcom must have regard to the need to guarantee an appropriate level of freedom of expression in relation to standards in television services.
- vii) That any changes to current regulation should, in furthering the interests of citizens and consumers, so far as possible:
  - o be evidence-based, transparent, proportionate, consistent and limited to the measures needed to achieve the objectives above;

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<sup>27</sup> See *VGT Verein gegen Tierfabriken v Switzerland*, judgment of the ECHR of 28 June 2001, Reports of Judgments and Decisions 2001-VI, paragraphs 66 to 70

- take account of the desirability of promoting competition, and the nature and interests of different consumers, in relevant markets; and
- take account of the desirability of promoting and facilitating effective self-regulation.

## Part 4

# Proposed rules on product placement

## Introduction

- 4.1 Product placement is the inclusion in a programme of a product, service or trade mark, or a reference to it, for a commercial purpose and in return for payment or other valuable consideration<sup>28</sup>.
- 4.2 To date, product placement has been prohibited in programmes produced by, or on behalf of, broadcasters that are licensed by Ofcom.
- 4.3 The introduction of European legislation, the Audiovisual Media Services (AVMS) Directive in 2007 provided EU Member States with scope to allow product placement in specific programme genres subject to certain restrictions.
- 4.4 On 9 February 2010, the UK Government announced<sup>29</sup> that it intended to legislate to allow UK television broadcasters to include product placement in programmes which they produce or commission. The Audiovisual Media Services (Product Placement) Regulations (“the Regulations”), the statutory instrument that amends the Act to permit product placement, came into force on 16 April 2010 (see Annex 10).
- 4.5 The amended Act specifies the circumstances in which product placement is permitted, including restrictions relating to programme genres that may contain product placement and the types of products and services that may be placed. While the new requirements of the Act are now in force, the Government has made clear that Ofcom licensees cannot transmit programmes containing product placement that they have produced or commissioned until new Code rules are in place.
- 4.6 Ofcom is therefore now required to remove the Code’s current prohibition on product placement and replace it with rules that reflect the new requirements of the Act.
- 4.7 This section sets out rules and meanings we are proposing, our reasons for the proposals, and our assessment of their potential impacts.
- 4.8 It should be noted that under the BBC Agreement, the BBC is prevented from entering into most commercial funding arrangements in relation to content for its licence fee funded services. However, it is required to comply with the requirements of the Act in respect of product placement included in acquired programmes or those produced or commissioned by its commercial services (or any connected entities)<sup>30</sup>. Therefore the proposed product placement provisions of the Code that are required by the Act will apply to the BBC in relation to such programmes. Ofcom and The BBC Trust will share common responsibility for the regulation of such product placement, under the Code and the BBC Editorial Guidelines respectively, as is already the case with other relevant programme standards<sup>31</sup>.

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<sup>28</sup> This is a summary of the definition of product placement set out in the Act, by means of the Regulations. The definition can be found at Schedule 11A, paragraph 1(1) of the Act (see Annex 10).

<sup>29</sup> [http://www.culture.gov.uk/reference\\_library/minister\\_speeches/6624.aspx](http://www.culture.gov.uk/reference_library/minister_speeches/6624.aspx)

<sup>30</sup> [http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_govern/agreement\\_amend.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/agreement_amend.pdf)

<sup>31</sup> <http://www.ofcom.org.uk/about/csg/ofcombbc/mou/mou.pdf>

## Current position and overview of our proposals

4.9 Rule 10.5 of the Code prohibits product placement. We are proposing to replace this rule with a set of rules and meanings that:

- reflect the new requirements of the Act;
- provide further clarification where necessary; and
- include additional rules that Ofcom considers may be appropriate (the Act requires Ofcom to set additional requirements in relation to product placement, as it sees fit<sup>32</sup>).

4.10 Our proposals are set out in full below. In summary, those areas in which we are proposing clarification and/or supplementary rules are:

- **Scope of the rules:** the Act defines product placement as being “for a commercial purpose”. We propose to apply product placement rules to all instances of paid-for placement, regardless of whether the placement is intended to serve a commercial purpose.
- **Single dramas:** clarification that the genre of films includes single dramas;
- **News:** a rule clarifying that product placement is prohibited in news;
- **Thematic placement:** clarification that thematic placement is incompatible with the requirements of the Act;
- **Specialist factual programming:** consideration of whether product placement should be prohibited in this type of programming;
- **Prohibited categories:** a proposed rule to prohibit the product placement of products and services that cannot be advertised on television; and
- **Signalling:** proposals on how broadcasters must tell the audience about product placement arrangements.

## Proposed rules

4.11 The product placement rules and clarifications we are proposing to include in the Code are set out in the table below. It shows:

- the specific meanings defined within the requirements of the Act or other relevant legislation (these are shown in quote marks, with cross-references given in footnotes to the relevant sections of the legislation);
- the proposed rules that we consider reflect the new requirements of the Act;
- proposed rules or meanings that are not required explicitly by, or referred to in, the amended Act. These are underlined, for ease of reference; and
- further clarification where we consider it appropriate (in *italicised text*, below the relevant rules).

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<sup>32</sup> Section 321(1)(c) and Schedule 11A, paragraph 6(1)(c) of the Act (see Annex 10).



- 4.12 It should be noted that, because product placement will be a new practice in programmes produced or commissioned by Ofcom licensees, we intend to issue additional guidance in this area to assist broadcasters. This will accompany the revised Code and be issued alongside it. As the product placement market becomes established, this guidance will be kept under regular review.
- 4.13 The proposed rules and clarifications are shown below. Where a meaning is given in quote marks, this indicates that it is a statutory definition set out in legislation.

#### **Product placement (and prop placement)**

**Product placement** means “the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider, and is not prop placement”<sup>33</sup>.

**Prop placement** means “the inclusion in a programme of, or of a reference to, a product, service or trade mark where the provision of the product, service or trade mark has no significant value, and no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including...[it or a reference to it] in the programme”<sup>34</sup>.

Prop placement involving the supply of products or services that are of **significant value** will be treated as product placement and must comply with Rules 9.8 to 9.17.

**Significant value** means “a residual value that is more than trivial”.

**Residual value** means “any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trade mark, or a reference to it, in a programme”.

**Trade mark** in relation to a business “includes any image (such as a logo) or sound commonly associated with that business or its products or services”.

**Relevant provider** means “the provider of the television programme service in which the programme is included or the producer of the programme”<sup>35</sup>.

**Person connected** has the same meaning as it has in section 202 of the Broadcasting Act 1990 (paragraph 3 in Part 1 of Schedule 2). The full definition is reproduced in Appendix 1 of the Code (Relevant legislation<sup>36</sup>). In summary, the following persons are connected with a particular person (‘person’ includes an individual as well as a body corporate and other incorporated and unincorporated legal entities):

- (a) a person who controls that person;
- (b) an associate of that person or of the person in (a); and
- (c) a body which is controlled by that person or an associate of that person.

<sup>33</sup> See Schedule 11A, paragraph 1(1) of the Act (see Annex 10).

<sup>34</sup> See Schedule 11A, paragraph 1(2) of the Act (see Annex 10).

<sup>35</sup> The definitions of significant value, residual value, trade mark and relevant provider are all set out at Schedule 11A, paragraph 9, of the Act (see Annex 10).

<sup>36</sup> See Annex 9.

**Control** and **associate** have the meanings set out in paragraph 1, Part 1, Schedule 2 of the 1990 Act. The full definition is reproduced in Appendix 1 of the Code (Relevant legislation)<sup>37</sup>.

**The BBC** is prohibited from accepting most types of commercial revenue in relation to services funded by the licence fee. However the Act's product placement requirements apply to programmes the BBC acquires or those produced/commissioned by its commercial services or any connected entities. The Code rules required by the Act apply to the BBC in those respects.

The following rules also apply to paid-for references that are not included in a programme for a commercial purpose. For example, some cases in which a charity pays for the inclusion in a programme of a reference to its name or trade mark.

**Rules 9.8 to 9.13 apply to all programmes:**

9.8 Product placement is prohibited except in the following programme genres:

- a) films
- b) series made for television (or other audiovisual media services)
- c) sports programmes
- d) light entertainment programmes.

For the purposes of product placement, "films" includes films made for cinema and films (including single dramas) made for television or other audiovisual media services.

9.9 Programmes that fall within the permitted genres must not contain product placement if they are:

- a) news programmes
- b) children's programmes.

*A children's programme in this context is "a programme made for a television programme service or an on-demand programme service, and for viewing primarily by persons under the age of sixteen"<sup>38</sup>.*

*If any programme produced after 19 December 2009 that includes product placement either:*

- a) *does not fall within the permitted genres described at Rule 9.8; or*
- b) *falls within the permitted genres but is a news or children's programme, it must be edited to cut out or obscure the placed products, services or trade marks before the programme is transmitted on a television service under UK jurisdiction.*

9.10 Product placement must not influence the content and scheduling of a programme in a way that affects the responsibility and editorial independence of the broadcaster.

In particular, product placement arrangements must not involve thematic placement, i.e. the payment by a third party for the creation of storylines/scripts as vehicles for the purpose of featuring particular issues or references (including generic references) to the third party funder's aims, objectives, beliefs or interests.

<sup>37</sup> See Annex 9.

<sup>38</sup> Schedule 11A, paragraph 3(2) of the Act (see Annex 10).

9.11 References to placed products, services and trade marks must not be promotional.

*In the context of product placement, the factors that are likely to be considered promotional include, but are not limited to, the following:*

- *encouragements to purchase (whether direct or indirect);*
- *advertising claims;*
- *price information;*
- *any reference (either explicit or implicit) to the positive attributes or benefits of the placed product, service or trade mark;*
- *endorsements (either explicit or implicit); and/or*
- *slogans associated with the placed product, service or trade mark.*

9.12 References to placed products, services and trade marks must not be unduly prominent.

*Undue prominence may result from the manner in which a placed product or service features within a programme, including, but not limited to:*

- *the emphasis placed on a placed product/service/trade mark within a programme;*
- *the frequency of references to a placed product/service/trade mark (taken across a scene, programme or series);*
- *the editorial justification for references to a placed product/service/trade mark.*

9.13 The placement of the following products, services or trade marks is prohibited:

- a) cigarettes or other tobacco products;
- b) placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products; or
- c) prescription-only medicines.

**In addition to Rules 9.8 to 9.13, Rules 9.14 to 9.15 also apply to product placement included in all programmes produced under UK jurisdiction:**

*“programmes produced under UK jurisdiction” means any programme produced or commissioned by either:*

- a) *the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or*
- b) *any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the AVMS Directive).*

9.14 Product placement is not permitted in the following:

- a) religious programmes
- b) consumer advice programmes
- c) current affairs programmes
- d) specialist factual programming.

*For the purposes of product placement, “specialist factual programming” means purely factual programmes covering educational, science, medical or arts subjects, or those that are investigative in nature.*

- 9.15 The placement of the following is prohibited:
- a) alcohol
  - b) products high in fat, salt and sugar (“HFSS products”)
  - c) gambling
  - d) infant formula (baby milk), including follow-on formula
  - e) all medicinal products
  - f) any product, service or trade mark that is not allowed to be advertised on television.

*HFSS products are defined by the nutrient profiling scheme which was devised by the UK’s Food Standards Agency for use by Ofcom. This can be found at: <http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod>*

**In addition to Rules 9.8 to 9.15, Rules 9.16 and 9.17 also apply to programmes produced or commissioned by the provider of the television programme service or any person connected with that provider:**

- 9.16 Product placement must be signalled clearly, by means of a universal neutral logo and universal audio signal, as follows:
- a) at the beginning of the programme in which the placement appears;
  - b) when the programme recommences after commercial breaks; and
  - c) at the end of the programme.
- 9.17 Broadcasters must make available to the audience a list of those products, services or trade marks that have featured in a programme as a result of a product placement arrangement. This must be provided in a brief, non-promotional manner, either:
- a) in the programme’s end credits; or
  - b) on the broadcaster’s website, with a reference to this given at the end of the programme.

*Product placement information included in the programme’s end credits should not include any trade marks, logos or other distinctive signs. If the programme’s end credits are likely to be minimised or scaled down, the product placement information should be positioned before this occurs to ensure that it is clear to the audience.*

#### **Acquired programmes and signalling**

*When a broadcaster acquires a programme containing product placement, (i.e. the broadcaster has not produced or commissioned the programme, and it has not been produced or commissioned by a connected person), there is no signalling requirement. However, please note that such programmes must comply with any other relevant Code rules.*

*Nevertheless, if a broadcaster acquires a programme from a third party **on the condition that product placement within the programme will be broadcast** (subject to compliance with relevant rules), the requirements of Rule 9.3 (“surreptitious advertising”) should be noted. In such circumstances, Ofcom expects broadcasters to ensure that audiences are made aware that the programme includes product placement.*

## Overview of the impact of these proposals

- 4.14 As discussed in Part 2, this consultation document does not contain a separate impact assessment document. Instead the consultation document as a whole assesses in general terms the impact of the proposed changes on stakeholders (including audiences and television broadcasters).
- 4.15 As the Government has legislated to allow product placement, we are not assessing the impact of its introduction. Readers may wish to note however that the potential impact of permitting product placement was considered as part of the Government's 2009/2010 consultation on product placement. This impact assessment can be viewed at:  
[http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/images/consultations/PP\\_IA\\_Nov09.pdf](http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/images/consultations/PP_IA_Nov09.pdf)
- 4.16 Because Ofcom has a statutory duty to amend the Code to reflect the new requirements of the Act, we are also not assessing the impact of those product placement rules we consider to be explicit requirements of the legislation. However, respondents are invited to comment on the relevant proposed rules (see question 16.1 in Part 7 of this consultation).
- 4.17 Where we are proposing additional rules or clarifying rules or meanings, our reasons for doing so and the potential impacts of our proposals are set out in the following section. Our assessments cover the potential audience, regulatory and economic impacts. However, as product placement will be a new source of funding for Ofcom licensed broadcasters, there is limited financial data currently available. Therefore our assessment of the impact of different ways of implementing product placement has to be qualitative in nature, particularly when considering any effects these may have on the revenues available to broadcasters.
- 4.18 When considering the impact of our proposals, we have noted views expressed in informal pre-consultation discussions with industry and consumer stakeholders in 2010 and also the responses to the Government's consultation on product placement<sup>39</sup>. Responses to this consultation document, including responses to specific questions on impact, will further inform our considerations.
- 4.19 We have also conducted an initial Equality Impact Assessment (EIA) which is attached at Annex 11. This is because we consider that the proposed rules on the signalling of product placement must be considered in relation to both visually and hearing impaired audiences, to ensure that paid-for commercial references are readily recognisable to these audience groups. We are seeking respondents' views on these matters to further inform our consideration.

## Reasons for our proposals and their potential impacts

- 4.20 The following section sets out the reasons for our proposals and our assessment of their potential impacts. The proposals are presented below in the order the relevant rules/meanings appear in the rule table at paragraph 4.13 above.

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<sup>39</sup> A summary of the responses to the Government's consultation on product placement is at:  
[http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/images/consultation\\_responses/Consultation\\_Report\\_final.pdf](http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/images/consultation_responses/Consultation_Report_final.pdf)

### **Proposal 1: Applying the rules to placement for a non-commercial purpose**

- 4.21 The Act defines product placement by reference to its inclusion in a programme being “for a commercial purpose”. However, we recognise that there may be circumstances in which third party funders wish to pay for the inclusion of references that are not for a commercial purpose. For example, some cases in which a charity pays to place a reference to its name or trade mark in a programme. We propose that in such circumstances, the new rules for product placement should apply.
- 4.22 We consider that there is likely to be an appetite for this type of placement on the basis that, for example, non-commercial organisations commonly advertise on television and sponsor programmes. However, we recognise that placement that is not for a commercial purpose poses potential risks to both editorial independence and the audience’s exposure to surreptitious or harmful advertising, in much the same way as product placement for a commercial purpose. Therefore broadening the scope of the rules to apply to such placement would ensure that viewers are afforded the same regulatory protections as those that will apply to commercial placements.
- 4.23 Broadening the scope of the product placement rules in this way would also ensure regulatory consistency, given that non-commercial organisations can currently pay for advertising and programme sponsorship, which are treated as commercial references for the purposes of the Code. We believe broadcasters would benefit from such a pragmatic and consistent approach when making compliance decisions about placement arrangements.
- 4.24 Extending the range of product placement opportunities to non-commercial placement also offers increased potential revenue sources for broadcasters, although it is impossible to estimate at this stage what the potential value of such a proposal would be in terms of increased revenue.
- 4.25 Stakeholders are invited to respond to the following questions:

- 1.1 *Do you agree that it is appropriate to apply product placement rules to paid-for references in programmes that are not included for a commercial purpose? If not, please explain why.*
- 1.2 *Please identify any potential impacts of Ofcom’s proposal that you consider should be taken into account, and provide evidence, wherever possible.*
- 1.3 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

### **Proposal 2: Clarification that product placement is permitted in single dramas**

- 4.26 In light of Article 11 of the AVMS Directive (Annex 9), the Act sets out the programme genres in which product placement is permitted. These include ‘cinematographic works’ (films made for cinema) and films and series made for audiovisual media services (including television programme and on-demand programme services).
- 4.27 Article 20 of the AVMS Directive also refers to ‘cinematographic works’ and ‘films made for television’ for the purpose of restricting permitted break frequencies.
- 4.28 The term ‘film made for television’ is not defined in either the Directive or the Act and no mention is made of single television dramas.

- 4.29 We consider that the intention of both the Directive and the Act is to permit product placement in single televised dramas. This is because the legislation permits product placement in television series, and so in those dramas that form part of a series. In Ofcom's view, it would be anomalous for product placement to be allowed in a drama series, but not within a single drama.
- 4.30 Further, if it were the case that single dramas could not include product placement, not only could broadcasters not produce or commission single dramas containing product placement, but they would also have to edit out or obscure any product placement in single dramas they had acquired before transmitting them.
- 4.31 We are therefore proposing to clarify that single dramas fall within the permitted genre of 'films made for television' and may contain product placement. For consistency, the same definition would apply to the rules on break frequencies derived from the AVMS Directive, and set out in Ofcom's Code on the Scheduling of Television Advertising<sup>40</sup>. Therefore our proposal would have the effect of clarifying that film break patterns also apply to single dramas which, in Ofcom's view, is also the intention of Article 20 of the Directive.
- 4.32 In assessing the possible impact on broadcasters of this clarification, Ofcom examined the break patterns of public service broadcasters, which schedule both locally-produced and imported programmes<sup>41</sup>. We also looked at channels relying heavily on imported TV and cinematic films. With few exceptions, we found that, in transmitting programmes that would fall within the definition described above, these channels had scheduled the number of breaks appropriate for films. On this basis, we believe that the clarification of the application of break frequency rules in the way proposed is unlikely to have a significant impact on most broadcasters.
- 4.33 We also consider that there is a likely beneficial impact of the additional clarification that film break patterns also apply to single dramas. This is because Ofcom considers it will minimise any risk of regulatory uncertainty about how such content should be treated in relation to advertising breaks. This would also minimise the risk of non-compliance by broadcasters with what Ofcom considers to be the intention of Article 20 of the Directive.
- 4.34 Ofcom is also of the view that, unless this clarification is included in the Code, there would be a risk of regulatory uncertainty in relation to the treatment of product placement in single dramas. If the Code does not make clear that single dramas fall within the permitted genres, Ofcom licensees would be uncertain as to whether such content can contain product placement.
- 4.35 Ofcom has also taken into account that there are currently no data available to quantify or estimate the likely revenue benefits to broadcasters of including product placement in single dramas they produce or commission. However, we have concluded that the clarification that single dramas can include product placement is likely to result in some revenue benefit. Likewise, there are no data available to quantify the possible costs to broadcasters of having to edit out or obscure any product placement in acquired single dramas, but there are likely to be costs involved. Therefore, we consider there is a benefit to including the clarification within the Code that a single drama is a form of 'film made for television'

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<sup>40</sup> [http://www.ofcom.org.uk/tv/ifi/codes/code\\_adv/tacode.pdf](http://www.ofcom.org.uk/tv/ifi/codes/code_adv/tacode.pdf)

<sup>41</sup> Using BARB data, we looked at all programmes defined as 'dramas', 'films' or 'films made for television' for the first six months of 2009.

4.36 We welcome views and information from stakeholders on the proposed inclusion of the clarification.

4.37 Stakeholders are invited to respond to the following questions:

2.1 *Are there any impacts we have not identified above that you think would result from our proposal to clarify that single dramas are a form of film made for television? (See proposed Rule 9.8). If so, please provide evidence wherever possible.*

2.2 *Please identify any areas of this clarification which you consider Ofcom should issue guidance on.*

### **Proposal 3: Clarification of the prohibition of product placement in news**

4.38 The AVMS Directive, on which the new requirements of the Act are based, places a general prohibition on product placement but provides a derogation for certain programme genres, i.e. films, series, sports and light entertainment programmes. The Government's statement<sup>42</sup> on product placement clarified that its legislation will "...have the effect of preventing product placement in any TV news programming, as the Directive requires". However, neither the Directive nor the Act refer explicitly to product placement in relation to news programmes.

4.39 Therefore we are proposing to include a rule in the Code prohibiting product placement in news to make clear this position (see proposed Rule 9.9(a)).

4.40 As we have no discretion in this area, we are not seeking stakeholder views on the inclusion of this rule. However, we wish to alert stakeholders to the potential impact, and stakeholders may wish to provide additional information on potential impacts, as well as any requests for relevant guidance.

4.41 The prohibition on the inclusion of product placement in news is unlikely to have a significant impact on the production of UK-produced news because the prohibition maintains the current regulatory position.

4.42 However, under the current Code, broadcasters are not required to remove all instances of product placement in acquired programmes provided the broadcaster does not directly benefit from the product placement arrangement. Instead, broadcasters must edit acquired programmes to ensure references to products and services are not promotional, are editorially justified and not unduly prominent.

4.43 The change in European and UK law now makes this exemption for acquired programmes untenable as the general prohibition on product placement in the AVMS Directive and the Act applies to all programmes regardless of their origin. Therefore an absolute ban on product placement in news is likely to impact on the UK broadcast of news produced outside the UK, in territories in which product placement is permitted (e.g. the USA and Asia). It means that where a product, service or trade mark is included in a non-UK news programme as a result of a paid placement arrangement, Ofcom licensees will need to ensure that they have systems in place to identify such instances of product placement and remove the placement prior to transmission.

<sup>42</sup> [http://www.culture.gov.uk/reference\\_library/minister\\_speeches/6624.aspx](http://www.culture.gov.uk/reference_library/minister_speeches/6624.aspx)



4.44 Stakeholders are invited to respond to the following questions:

- 3.1 *Please identify any potential impacts of the rule prohibiting product placement in news, and provide evidence, wherever possible. (See proposed Rule 9.9(a))*
- 3.2 *Please identify any areas of this rule which you consider Ofcom should issue guidance on.*

#### **Proposal 4: Thematic placement**

- 4.45 One of the requirements of the Act is that product placement does not influence the content or scheduling of a programme in a way that affects the editorial independence of the broadcaster<sup>43</sup>. While not set out as a specific requirement of the Act or the Directive, one of the Recitals of the Directive makes clear that “thematic placement” is unacceptable because of its impact on the responsibility and editorial independence of the broadcaster (see Recital 63, Annex 9).
- 4.46 The Directive does not however provide a definition of “thematic placement”. It is our understanding that this term refers to placement arrangements which involve a third party funder paying for a specific plot line or theme to be included within a programme, but not necessarily the inclusion of an identifiable product or service. The intention of such placement is the positive portrayal of the third party funder’s business or interests. For example, an insurance trade association pays for a storyline in a soap that shows the consequences of not having home insurance when a character loses all their possessions in a house fire; or an energy company funding a storyline about a character switching to energy-saving lightbulbs.
- 4.47 In Ofcom’s view, such placement presents a risk of undermining the broadcaster’s editorial independence. Further, given that thematic placement may not involve a reference to a specific, identifiable product or service, there is a risk that viewers may be less able to differentiate between storylines that have been impacted by commercial arrangements and those that have not.
- 4.48 We therefore propose to include clarification, alongside the proposed rule relating to the editorial independence of broadcasters, that thematic placement is incompatible with the rule.
- 4.49 The proposed position is not intended to extend to the legitimate coverage of issues in a programme. For example, when a scriptwriter chooses for editorial reasons to feature an issue, such as a public health message, in a soap. We understand that such storylines are sometimes created through liaison with relevant public services. However, the key difference in such cases is that no programme funding is involved.
- 4.50 We consider that the clarification would provide audiences with important additional protection from surreptitious advertising. It also reflects the intention of the AVMS Directive. As the proposal does not impact on existing programme production practices, we consider it is unlikely to have a negative economic impact on broadcasters or producers.

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<sup>43</sup> Schedule 11A, Condition 7(3) of the Act (see Annex 10).

4.51 Stakeholders are invited to respond to the following questions:

- 4.1 *Do you agree that clarification that thematic placement is prohibited is appropriate? (See proposed Rule 9.10). If not, please explain why.*
- 4.2 *Do you agree with Ofcom's proposed description of thematic placement? (See proposed Rule 9.10). If not, please explain why, and suggest drafting changes, if appropriate.*
- 4.3 *Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.*
- 4.4 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

### **Proposal 5: Specialist factual programming**

- 4.52 Documentaries and other factual programmes are not specified in the Act's list of programme genres in which product placement is permitted. However, it is arguable that such placement may be permitted, for example when a documentary or factual programme is a film or forms part of a series.
- 4.53 We recognise that stakeholders may have some concerns about the potential impact on editorial integrity of permitting product placement within programmes that cover purely factual stories or issues.
- 4.54 Such concerns are reflected by the Act's specific prohibition (in programmes produced under UK jurisdiction<sup>44</sup>) of product placement in consumer affairs and current affairs programmes. However, for other factual programmes, the level of concern may be dependent on the nature of the programming. The term "factual programming" covers a broad spectrum of programmes from "factual entertainment", to more serious educational programmes. Viewers may be more relaxed about product placement in a programme that is perceived primarily to be for entertainment, but more concerned about the potential impact product placement may have on editorial integrity in a programme that seeks to explore serious issues.
- 4.55 We are considering whether it is appropriate to introduce a rule prohibiting product placement in "specialist factual programming" produced under UK jurisdiction. For illustrative purposes, we have set out in the proposed rules a meaning of the term "specialist factual programming" to include purely factual programmes covering educational, science, medical or arts subjects, or those that are investigative in nature.
- 4.56 We believe that such a rule could help maintain audience trust in serious factual programming. However, we recognise many factual programmes are made both to educate and entertain audiences. The subjective nature of the term "specialist factual programming" may present practical difficulties for broadcasters and programme-makers in determining what programmes are open to product placement.

<sup>44</sup> For an explanation of the phrase "produced under UK jurisdiction", see the note that precedes proposed Rule 9.14 (at paragraph 4.13, above). The relevant conditions reflect directly the requirements of the Act (see Schedule 11A, paragraph 6(3)(b) at Annex 10).

- 4.57 Further, a prohibition on product placement in certain factual programmes could result in increased commissions for “lighter” factual entertainment-type programmes (in which product placement may be permitted). This could potentially reduce the number of “serious” factual programmes made, and the funding available for them.
- 4.58 In considering this issue, stakeholders are reminded that there is a prohibition on product placement in current affairs programmes produced under UK jurisdiction. Therefore, those factual programmes containing analysis or explanation of current events and issues (including material dealing with political or industrial controversy or with current public policy) cannot feature paid-for references to products or services.
- 4.59 We welcome stakeholders’ views on whether it is appropriate to prohibit product placement in certain types of factual programmes and, if so, what those programmes are and how they should be defined.
- 4.60 Stakeholders are invited to respond to the following questions:

- 5.1 *Do you consider that it is appropriate to prohibit product placement in specialist factual programmes produced under UK jurisdiction? If not, please explain why.*
- 5.2 *Do you agree with the meaning for “specialist factual programmes”? (See proposed Rule 9.14). If not, please explain why, and suggest drafting changes, if appropriate.*
- 5.3 *Please identify any potential impacts of either permitting or prohibiting product placement in specialist factual programmes that you consider should be taken into account, and provide evidence, wherever possible.*
- 5.4 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

### **Proposal 6: Additional prohibited categories**

- 4.61 The BCAP Code of Broadcast Advertising<sup>45</sup> details those products and services that cannot be advertised on television. Many of these prohibited categories are also subject to a ban on product placement, as a result of new requirements set out in the Act, for example cigarettes and prescription-only medicines.
- 4.62 We are proposing to include a rule in the Code prohibiting the placement of any product, service or trade mark that is not allowed to be advertised on television.
- 4.63 The prohibitions on advertising certain products/services are in place to protect the audience from harmful or offensive material. The nature and promotional impact of advertising clearly differs from that of product placement. However, we consider that it would be inappropriate for a product that cannot be advertised on television to be able to appear in a programme as a result of a commercial arrangement. We therefore propose to apply the advertising prohibitions to product placement for programmes produced under UK jurisdiction<sup>46</sup>. Examples of the types of placements

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<sup>45</sup> A new advertising code, The Broadcast Committee of Advertising Practice (BCAP) UK Code of Broadcast Advertising, comes into force on 1 September 2010. It can be found at <http://bcap.org.uk/The-Codes/New-Advertising-Codes.aspx>

<sup>46</sup> For an explanation of the phrase “produced under UK jurisdiction”, see the note that precedes proposed Rule 9.14 (at paragraph 4.13, above). The relevant conditions reflect directly the requirements of the Act (see Schedule 11A, paragraph 6(3)(b) at Annex 10).

that would be subject to the prohibitions are those by political bodies, or for guns, breath testing devices and obscene material.

- 4.64 In addition to providing consumer protection, this proposal offers regulatory consistency. Under current rules, programmes cannot be sponsored by prohibited advertisers or by products and services that fall within prohibited advertising categories.
- 4.65 As the proposal does not represent a tightening of existing regulation, we consider that it is unlikely to impact negatively on existing commercial arrangements and, as a result, programme funding.

#### Advertising scheduling restrictions

- 4.66 In addition to prohibiting certain advertisers and the advertising of specific products, the BCAP Code restricts the *scheduling* of advertisements for specific products around certain programmes. These restrictions are in place to protect particular sectors of the audience from the promotion of products that may be harmful to them. Examples of the type of products subject to advertising scheduling restrictions include HFSS foods and drinks, alcoholic drinks, gambling, slimming products and some computer games. In the main, the scheduling restrictions aim to prevent the advertising of such products to television audiences under a specified age.
- 4.67 The vast majority of products and services that are subject to the advertising scheduling restrictions fall into prohibited product placement categories – for example: alcohol, gambling and medicines. In addition, many of the programmes that trigger advertising scheduling restrictions are likely to fall into the product placement prohibited genre of children’s programmes.
- 4.68 As a consequence, we consider there are extremely limited remaining circumstances in which it would be possible to place a product in a programme around which it could not be advertised. For example: the placement of a 15+ rated video game in a programme that, while not made primarily for viewing by audiences below the age of 16, may nevertheless attract such audiences.
- 4.69 We are not proposing a rule extending the advertising scheduling restrictions to product placement arrangements for the following reasons:
- As previously stated, the nature and promotional impact of advertising differs to that of product placement. The Code will prohibit promotional references to placed products. Therefore product placement cannot encourage viewers to buy or try products or services, in contrast to the ability of advertising to do so.
  - Further, Sections One and Two of the Code contain a broad and robust range of rules that seek to ensure that all viewers are protected from broadcast material likely to cause harm. These rules will apply to all programmes that contain product placement, further ensuring appropriate protection from harmful material.
- 4.70 While we are not proposing that advertising scheduling restrictions apply to product placement, we welcome respondents’ views on this position, and on any possible impacts.

4.71 Stakeholders are invited to respond to the following questions:

- 6.1 *Do you agree that it is appropriate to prohibit the placement of those products and services that are not allowed to be advertised on television? (See proposed Rule 9.15). If not, please explain why.*
- 6.2 *Do you consider that the wording of proposed Rule 9.15(f) is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.*
- 6.3 *Do you agree that it is unnecessary to apply advertising scheduling restrictions to product placement? If not, please explain why.*
- 6.4 *Please identify any potential impacts of the proposals that you consider should be taken into account, and provide evidence, wherever possible.*
- 6.5 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

### **Proposal 7: Signalling**

4.72 The Act stipulates that product placement must be signalled where it is included in a programme produced or commissioned by the provider of a television service (or by a person connected to that provider) on which the programme appears. The Act sets out the junctures during the programme where this must be done. The purpose of this signalling requirement is to ensure that audiences are aware when such programmes contain product placement.

4.73 Because product placement in UK-produced programmes will be new to audiences, we believe that it is essential that any signalling used to identify instances of product placement is easily understood by all members of the audience across all channels. We are therefore proposing that product placement is signalled to the audience by means of a universal neutral logo and a universal audio signal (both to be agreed by Ofcom). In accordance with the Act, there will be a requirement that this signalling is broadcast when a programme starts and also at the end of the programme. If the programme contains a commercial break, the signalling should be repeated at the recommencement of the programme after the break.

4.74 In reaching this view, key considerations which we have taken into account include:

- the need for signalling to ensure that audiences are alerted sufficiently to the existence of product placement within programmes;
- the possibility that product placement signalling may be overly intrusive to the television viewing experience; and
- the need to prevent product placers using the signalling requirement as a promotional opportunity.

4.75 We have considered the requirements and practice for product placement signalling in international markets, in particular in the USA and in other European Member States. We note that methods of signalling vary considerably, ranging from the inclusion of product placers' trade marks/branding in programme credits, to a neutral product placement logo, to a full-screen product placement announcement.

4.76 We have also taken into account the responses to the Government consultation on product placement on this issue<sup>47</sup>.

#### Visual signal

4.77 We consider that specifying the use of a universal neutral logo would provide not only an appropriate level of consumer protection, but would also help prevent excessive commercial clutter around programmes. It would help avoid excessive signalling around programmes which may impact on the scheduling time available to broadcasters for other content.

4.78 For the purposes of this consultation, we are proposing a range of criteria from within which the minimum requirements for the universal neutral logo would be determined, including that:

- the letter P, or letters PP, would be shown in a circular shape with some form of colouring;
- the logo would be between 0.5% and 2% of the total screen size (or equivalent pixel size) (i.e. a similar size to many on-screen channel identification graphics/logos);
- it would appear in one of the corners of the screen (for example, opposite any channel or programme on-screen graphic/logo or other message); and
- it would appear on screen for between 3 and 7 seconds in duration.

4.79 We are seeking respondents' views on these proposals, and on their preferred specific criteria from within these ranges. We are also seeking views on whether this information should be included in the Code or in guidance.

4.80 For illustrative purposes only, some examples of possible universal neutral logos are included below, with an illustrative example of how such a logo might look on screen:



<sup>47</sup> A summary of the responses to the Government's consultation on product placement is at: [http://webarchive.nationalarchives.gov.uk/+/http://www.culture.gov.uk/images/consultation\\_responses/Consultation\\_Report\\_final.pdf](http://webarchive.nationalarchives.gov.uk/+/http://www.culture.gov.uk/images/consultation_responses/Consultation_Report_final.pdf)

### Audio signal

- 4.81 We are proposing that product placement should be signalled in sound as well as vision to ensure that all members of the audience - including those who are visually impaired - are made aware when programmes contain product placement. Again, we are proposing that the audio signal used is the same across all channels to ensure that it is widely recognised, therefore minimising the risk of audience confusion (see EIA screening at Annex 11 for further details of our initial assessment of equality impacts).
- 4.82 For the purposes of this consultation, we are proposing two alternative types of audio signal, either:
- the use of a specified sound to be broadcast for a few seconds, and at the same time as the visual signal is shown; or
  - the broadcast of a verbal announcement at the same time as the visual signal is shown, for example: “This programme contains product placement”.
- 4.83 We are seeking respondents’ views on these proposals, and the specific criteria that could be used to determine how the audio signal sounds. We are also seeking views on whether this information should be included in the Code or in guidance.
- 4.84 We are also seeking any additional equality-related information respondents consider we should take into account, for example any alternative means by which hearing or visually impaired audience members could be made aware of product placement.

### List of products

- 4.85 While the Act makes clear that product placement must be signalled, it does not specify whether the audience should be told what products, services or trade marks are placed in which programmes. We believe that such information may be in the audience’s interest and would enable them to distinguish between those products, services or trade marks that feature in a programme because of a commercial arrangement and those that feature purely for editorial reasons (e.g. props). However, depending on how any such information about placed products, services or trade marks was presented on screen, we are mindful that it could in itself be viewed as promotional.
- 4.86 We are therefore proposing that broadcasters make available a list of placed products, services or trade marks and that this information be provided in a brief, non-promotional manner either in the programme’s end credits or on the broadcaster’s website, with a reference to this given at the end of the programme.
- 4.87 Requiring broadcasters to provide information in such a manner would provide transparency of commercial arrangements. However, it would place an added burden on broadcasters to ensure that such information is accurate and up to date.

### Audience awareness

- 4.88 We consider that, for product placement signalling of the type we are proposing above to achieve its purpose, the introduction of the signalling requirements should go hand in hand with a proposal for broadcasters to provide the audience with a range of information about the meaning of the signals.

- 4.89 We therefore propose to send a formal request to broadcasters to transmit two types of information about the product placement signal. We are making these proposals to ensure that the audience understands from the outset what the signals mean and can therefore identify those programmes that feature product placement.
- 4.90 Firstly, we propose to specify that for the **first month that a broadcaster transmits programmes including the signal**, an additional description is included in text on screen alongside the visual signal. This text would state: “This programme contains product placement”. If, following the outcome of this consultation, the audio product placement signal takes the form of a sound (rather than an announcement), we propose that this additional description text is also voiced at the same time.
- 4.91 Secondly, we are making an additional proposal to apply to any broadcasters who transmit programmes that must be signalled within the **first six months of the introduction of the product placement rules**. Our proposal is that these broadcasters must transmit a specific audience awareness message during this implementation period.
- 4.92 Ofcom acknowledges that an audience awareness message of this nature would have cost implications for broadcasters, both in terms of the cost of its production, and also the use of airtime. However, pre-consultation discussions we have held with stakeholders show broad support for this approach.
- 4.93 We recognise that it may be appropriate for different broadcasters to communicate this message in different ways. For instance, some broadcasters may prefer to create an information campaign to be broadcast during promotional airtime. Others may find it more appropriate to use a full screen slate/caption. Ofcom does not therefore intend to be prescriptive about the way in which this information is presented.
- 4.94 While accepting broadcasters may wish to communicate this message in a way that they consider most appropriate, we are proposing to set out in a formal request the key messages that broadcasters must include when providing this information. Ofcom will provide guidance wording for broadcasters, if required. The key messages are likely to include:
- an explanation that the signal will now be appearing on programmes;
  - an example of the signal (both audio and visual);
  - an explanation of what “product placement” means; and
  - details of where the audience can find more information (possibly a dedicated Ofcom webpage).
- 4.95 We also propose to specify in our formal request:
- a) the minimum number of occasions on which the message must be broadcast;
  - b) the minimum time period across which the message must be broadcast; and
  - c) that broadcasters provide subsequently to Ofcom an off-air recording of their audience awareness message and information about the dates and times it was broadcast.



4.96 It is Ofcom's intention that, should a broadcaster fail to demonstrate that it has transmitted the message (by providing Ofcom with an off-air recording and transmission details); or it does not contain the key messages, further regulatory action would be taken by Ofcom. This would be likely to involve Ofcom issuing a Direction under the broadcaster's licence, to remedy the issue in question.

4.97 Stakeholders are invited to respond to the following questions:

- 7.1 *Do you consider it is appropriate to require broadcasters to identify product placement by means of a universal neutral logo and universal audio signal? (See proposed Rule 9.16). If not, please explain why, suggesting alternative approaches where appropriate.*
- 7.2 *Please provide comments on the proposed criteria for determining how any universal neutral logo looks, and any additional or alternative criteria which you consider should define the visual signal, including views on the nature, size and duration of the signal.*
- 7.3 *Please provide comments on the proposed criteria for determining how any universal audio signal sounds, and any additional or alternative criteria which you consider should define the audio signal, including views on the nature and duration of the signal.*
- 7.4 *Please provide comments on whether you consider that such criteria should be specified in the Code or in Ofcom's guidance. If you consider that the criteria should not be specified in either, please explain why.*
- 7.5 *Do you consider it is appropriate to require broadcasters to provide the audience with a list of products/services that appear in a programme as a result of product placement arrangements, either in the end credits or on the broadcaster's website? (See Rule 9.17(a) and (b)). If not, please explain why.*
- 7.6 *Do you consider that the wording of proposed Rule 9.17(a) and (b) is appropriate? If not, please explain why, and suggest drafting changes, if appropriate.*
- 7.7 *Do you agree that broadcasters should include additional description text alongside the visual and audio signal for the first month that they are transmitted? If not, please explain why.*
- 7.8 *Do you agree that broadcasters should transmit an audience awareness message if they show programmes that must be signalled during the first six months of the rules being in force? If not, please explain why.*
- 7.9 *Please provide your comments on the proposals we have set out on the key messages, timing and duration of the audience awareness campaign.*
- 7.10 *Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence, wherever possible.*
- 7.11 *Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on.*

## **Alternative approaches**

- 4.98 We have set out above Ofcom's proposed approach to the regulation of product placement. We invite stakeholders to offer any alternative approaches to the regulation of product placement in television programmes. Please see Part 7 of this consultation for further information.

## Part 5

# Proposed revisions to sponsorship rules

## Introduction

- 5.1 Television sponsorship involves an individual or organisation funding content (e.g. a programme or a channel) with a view to promoting itself through its association with that content.
- 5.2 While a sponsor gains promotional benefits from being associated with the content it is funding, current Code rules prevent sponsorship arrangements resulting in references to a sponsor within the programme it is sponsoring. This position is based on the UK's longstanding prohibition on product placement.
- 5.3 The Government's decision to lift the ban on product placement (subject to limitations) provides Ofcom with scope to review the sponsorship rules that are underpinned by this prohibition.
- 5.4 We have therefore assessed the Code rules in this area and set out below our proposed amendments to those rules. As stated in Part 2 of this consultation document, our 2010 Review includes only those rules that we consider are impacted by the change in position on product placement.

## Current position and overview of our proposals

- 5.5 The Code requires that viewers are told when content is sponsored. This is achieved by announcements broadcast around the sponsored content ("**sponsorship credits**"). Current rules require sponsorship credits to be "clearly separated from programmes by temporal or spatial means". Further, credits must be broadcast at the beginning and/or end of a sponsored programme.
- 5.6 As stated above, sponsorship arrangements cannot circumvent the Code's prohibition on product placement by resulting in references to the sponsor (including its products/services) within a sponsored programme ("**sponsor references**").
- 5.7 In light of the Government's decision to permit product placement, we consider that the current rule governing where sponsorship credits can be broadcast and also the rule governing the inclusion of sponsor references within programmes should be amended. The key changes we are therefore proposing are:
  - allowing sponsors to product place in the programmes they are sponsoring; and
  - allowing limited sponsor credits to be shown *during* programmes.

## Proposed rules

- 5.8 The following table sets out the current rules (column A) alongside those that we are now proposing (column B).
- 5.9 Column B shows the new rules we are proposing (shown in **grey shaded text** for ease of reference), amalgamated with those rules we proposed in our 2009 Review.

5.10 As referred to in Part 2, Ofcom has not yet reached a decision on those rules that we consulted on in the 2009 Review, but are not now subject to new proposals (i.e. any rules in the right hand column of the table below which are not shown in grey shaded text). They are included here for illustrative purposes.

5.11 Our reasons for the new proposals and our assessment of their potential impacts are detailed further below.

<p style="text-align: center;"><b>A</b> (current rules)</p>	<p style="text-align: center;"><b>B</b> (proposed rules)</p>
<p><b>Sponsorship on television</b></p> <p><b>Meaning of “sponsored programme”, “sponsored channel” and “sponsor”:</b> A sponsored programme, which includes an advertiser-funded programme, is a programme that has had some or all of its costs met by a sponsor with a view to promoting its own or another’s name, trade mark, image, activities, services, products or any other direct or indirect interest.</p> <p>A channel is a television or radio service. A sponsored channel is a channel that has had some or all of its costs met by a sponsor with a view to promoting its own or another’s name, trade mark, image, activities, services, products or any other direct or indirect interest.</p> <p>Costs include any part of the costs connected to the production or broadcast of the programme or channel.</p> <p>A sponsor is any public or private undertaking (other than the broadcaster or programme producer), who is sponsoring the programme, programming or channel in question with a view to promoting their or another’s name, trade mark, image, activities, services, products or any other direct or indirect interest. This meaning extends to those who are otherwise supplying or funding the programme or channel.</p>	<p><b>Sponsorship on television</b></p> <ul style="list-style-type: none"> <li>• <i>Sponsored programming (which may include a programme, channel, or block of programmes) is programming that has had some or all of its costs met by a sponsor.</i></li> <li>• <i>A sponsor is any public or private undertaking or natural person (other than the broadcaster or programme producer) who is funding the programming with a view to promoting its products, services, logos, images, name, trade marks and/or its activities.</i></li> <li>• <i>A sponsor reference means any reference to the sponsor’s products, services, logos, images, names, trade marks and/or its activities.</i></li> <li>• <i>“Costs” means any part of the costs connected to the production or broadcast of the programming.</i></li> <li>• <i>An advertiser-funded programme is sponsored programming and therefore subject to the following rules.</i></li> </ul> <p><i>The rules seek to ensure editorial integrity independence is preserved and a distinction is maintained between programming and advertising. They also aim to protect against unsuitable sponsorship, and to ensure that sponsorship arrangements adhere to the principle of transparency.</i></p>

<p style="text-align: center;"><b><u>A continued</u></b> <b>(current rules)</b></p>	<p style="text-align: center;"><b><u>B continued</u></b> <b>(proposed rules)</b></p>
<p><b>Content that may not be sponsored</b></p> <p>9.1 The following may not be sponsored:</p> <ul style="list-style-type: none"> <li>• news and current affairs on television.</li> </ul> <p>Meaning of “current affairs programme(s)”: A current affairs programme is one that contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.</p> <p><b>Prohibited and restricted sponsors</b></p> <p>9.2 No channel or programme may be sponsored by a sponsor that is not allowed to advertise on the relevant medium.</p> <p>9.3 Sponsorship on radio and television must comply with both the advertising content and scheduling rules that apply to that medium.</p> <p><b>The content of sponsored output</b></p> <p>9.4 A sponsor must not influence the content and/or scheduling of a channel or programme in such a way as to impair the responsibility and editorial independence of the broadcaster.</p> <p>9.5 There must be no promotional reference to the sponsor, its name, trade mark, image, activities, services or products or to any of its other direct or indirect interests. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental.</p> <p>Meaning of “promotional reference”: This includes, but is not limited to, references that encourage, or are intended to encourage, the purchase or rental of a product or service.</p>	<p><b>Content that may not be sponsored</b></p> <p>9.18 News and current affairs programmes must not be sponsored.</p> <p><i>A current affairs programme is one that contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.</i></p> <p><b>Prohibited and restricted sponsors</b></p> <p>9.19 Programming (including a channel) may not be sponsored by any sponsor that is prohibited from advertising on television.</p> <p>9.20 Sponsorship must comply with both the content and scheduling rules that apply to television advertising.</p> <p><b>Content of sponsored output</b></p> <p>9.21 A sponsor must not influence the content and/or scheduling of a channel or programming in such a way as to impair the responsibility and editorial independence of the broadcaster.</p> <p><i>With the exception of the sponsorship credits, any reference to a sponsor that appears in a sponsored programme as a result of a commercial arrangement will be treated as product placement and must comply with Rules 9.8 to 9.17.</i></p>

<p style="text-align: center;"><b><u>A continued</u></b> <b>(current rules)</b></p>	<p style="text-align: center;"><b><u>B continued</u></b> <b>(proposed rules)</b></p>
<p><b>Sponsorship credits</b></p> <p>9.6 Sponsorship must be clearly identified as such by reference to the name and/or logo of the sponsor. For programmes, credits must be broadcast at the beginning and/or end of the programme.</p> <p>9.7 The relationship between the sponsor and the sponsored channel or programme must be transparent.</p> <p>9.12 Sponsorship credits must be clearly separated from programmes by temporal or spatial means.</p> <p>9.13 Sponsorship must be clearly separated from advertising. Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.</p>	<p><b>Sponsorship credits</b></p> <p>9.22 Sponsorship must be clearly identified by reference to the name and/or logo of the sponsor, accompanied by a statement informing the audience of the sponsorship arrangement (the sponsorship credit).</p> <p>9.23 Sponsorship credits must be distinct from editorial.</p> <p>9.24 Sponsorship credits must be distinct from advertising.</p> <p>9.25 For sponsored programmes, credits must be broadcast at the beginning and/or during and/or end of the programme.</p> <p><i>Credits may also be broadcast entering and/or leaving a commercial break during the sponsored programme.</i></p> <p><i>For other sponsored content (e.g. channels) sponsorship credits should be broadcast at appropriate points during the schedule to ensure audiences understand that the content is sponsored.</i></p>

<p style="text-align: center;"><b><u>A continued</u></b> <b>(current rules)</b></p>	<p style="text-align: center;"><b><u>B continued</u></b> <b>(proposed rules)</b></p>
	<p>9.26 Sponsorship credits <b>broadcast around sponsored programmes</b> can include reference to the sponsor’s products and services for the purpose of helping to identify the sponsor and the sponsorship arrangement. However, any such references must not be given undue prominence. Credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.</p> <p>9.27 Sponsorship credits <b>broadcast during programmes</b> must not be unduly prominent. They must consist of a brief, neutral visual or verbal statement identifying the sponsorship arrangement. This can be accompanied by only a static graphic of the name, logo, or any other distinctive symbol of the sponsor. There must be no advertising messages, calls to action or any other information about the sponsor, its products or services.</p> <p>9.28 Where a sponsor is prohibited from product placing in the programme it is sponsoring, sponsorship credits may not be shown during the sponsored programme.</p> <p>9.29 Where a sponsor has placed products/services in the programme it is sponsoring, sponsorship credits broadcast during the programme must not coincide with the appearance of the placed products/services.</p>

<b><u>A continued</u></b> <b>(current rules)</b>	<b><u>B continued</u></b> <b>(proposed rules)</b>
<p>9.14 Where a programme trail contains a reference to the sponsor of the programme, the sponsor reference must remain brief and secondary.</p> <p>10.8 Programme-related material may be sponsored and the sponsor may be credited when details of how to obtain the material are given. Any credit must be brief and secondary, and must be separate from any credit for the programme sponsor.</p>	<p>9.30 Where a sponsorship credit is included in a programme trail, the credit must remain brief and secondary.</p> <p>9.31 Programme-related material may be sponsored and the sponsor may be credited when details of how to obtain the material are given. Any credit must be brief and secondary, and must be separate from any credit for the programme sponsor.</p>

## Overview of the impact of these proposals

- 5.12 As discussed in Part 2, this consultation does not contain a separate impact assessment document. Instead the consultation document as a whole assesses in general terms the impact of the proposed changes on stakeholders (including viewers and television broadcasters).
- 5.13 Where we set out the reasons for our proposals in the following section, we also discuss the potential impacts of these proposals. Our assessments cover the potential audience, regulatory and economic impacts and have taken into account views expressed in informal pre-consultation discussions with industry and consumer stakeholders in 2010.
- 5.14 Responses to this consultation, including responses to specific questions on impact, will further inform our considerations.
- 5.15 We have also conducted an initial Equality Impact Assessment (EIA) which is attached at Annex 11. This is because, in line with our proposals for the signalling of product placement, we have also considered the proposed rules on the signalling of sponsorship in relation to both visually and hearing impaired audiences. On the basis of our initial assessment of equality impacts, we are making no specific proposals in relation to the signalling of sponsorship. Further detail is set out in the EIA at Annex 11. However, we welcome respondents' views on these matters to further inform our consideration.

## Reasons for our proposals and their potential impacts

- 5.16 The following section sets out the reasons for our proposals and our assessment of their potential impacts. For ease of reference, the proposals are presented in the order in which the relevant rules are included in the above table.



### **Proposal 8: Sponsor references (product placement) within programmes**

- 5.17 As stated, current rules prevent sponsors placing their products/services within editorial content. This position reinforces the existing prohibition on product placement. Now that this prohibition has been lifted, we are proposing to remove the rule relating to sponsor references in programmes (Rule 9.5, column A). We intend to replace it with a note explaining that, with the exception of sponsorship credits, any reference to a sponsor that appears in a sponsored programme as a result of a commercial arrangement will be treated as product placement and must therefore comply with the relevant rules.
- 5.18 We consider it is appropriate to relax the restrictions on sponsor references in this way for the following reasons:
- 5.19 The proposal accords with legislative requirements: neither the Act nor the AVMS Directive prohibit programme sponsors from placing products in the programmes they are sponsoring.
- 5.20 The well-established product placement market in the USA indicates that product placement is likely to be of particular financial benefit to broadcasters, and of particular interest to brands, when it forms part of a combined commercial arrangement that allows a company to be associated with a programme (through sponsorship) and have a presence within it (through product placement).
- 5.21 Retaining the current position would prevent a sponsor placing its products in the programme it is sponsoring. However, it would be open to a competitor of the sponsor to place products in the same programme. We are concerned that failing to relax the rules on sponsor references in programmes may result in companies replacing sponsorship with product placement.
- 5.22 Given the choice of having a presence around or within a programme, it is our view that companies may be more likely to opt to place their products. The attractiveness of sponsorship could therefore decline, along with the revenues associated with it. This presents the risk that the promise of new revenue from product placement would be less than hoped, as apparently new product placement revenue could simply be diverted from sponsorship.
- 5.23 Maintaining the current restrictions on sponsor references within editorial content would, ostensibly, limit the audience's exposure to commercial references when they are watching programmes. However, following the introduction of rules permitting product placement, companies other than the sponsor would be able to place their products in sponsored programmes. Therefore it is questionable whether preventing sponsors from doing the same would reduce the overall level of audience exposure to commercial references within programmes.
- 5.24 We consider that the proposal to treat sponsor references within editorial content as product placement provides important and appropriate protection for viewers. Under the proposal, the audience would be protected from surreptitious advertising and broadcasters would be responsible for exercising editorial independence over the programmes they transmit. The promotion of products and services within programming would be prevented, as would unduly prominent references to products and services. Further, the product placement rules would prevent references to sponsors' products and services deemed potentially harmful (e.g. alcohol and gambling).

5.25 Stakeholders are invited to respond to the following questions:

- 8.1 *Do you consider that it is appropriate to allow sponsors to product place in programmes they are sponsoring? If not, please explain why.*
- 8.2 *Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.*
- 8.3 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

### **Proposal 9: Identifying sponsorship arrangements (sponsorship credits)**

- 5.26 One of the fundamental principles on which the rules within Section Nine of the Code are based is that audiences are protected from surreptitious advertising. The rules help achieve this by requiring that audiences are made aware, by means of appropriate signalling, of commercial arrangements that lead to commercial references within programming.
- 5.27 The introduction of product placement means that, in accordance with the requirements of the legislation, audiences will need to be told when a programme contains product placement as well as when it is sponsored. As the number of commercial messages broadcast within and around programmes increases, we consider the transparency and clarity of these messages becomes even more important. To ensure that the messages used to identify each form of commercial arrangement are distinct, we propose replacing the rule requiring that the relationship between the sponsor and the sponsored content is transparent with an explicit requirement that sponsorship credits include a statement informing the audience of the sponsorship arrangement (e.g. “*sponsored by...*” or “*in association with...*”).
- 5.28 In practice, most sponsorship credits currently broadcast do contain such association statements as a result of the transparency requirement. However, there is no specific requirement to do so and we have noted some instances in which credits have not contained an explicit reference to a sponsorship arrangement, e.g. when a sponsorship campaign consisted of longer credits (with an association message) that were broadcast at the beginning and/or end of the programme and other shorter credits (without the message) that appeared around internal advertising breaks within the programme.
- 5.29 We consider that the introduction of signalling requirements for product placement increases the potential risk that audiences may be confused about the nature of different types of commercial messages. Therefore, we consider that requiring all sponsorship credits to include a clear statement referring to the sponsorship arrangement will help ensure that audiences are able to distinguish sponsorship from other commercial arrangements such as advertising and product placement.
- 5.30 Our proposal may impact on the production of sponsorship credits by requiring that they contain additional information. However, as stated, credits generally include this information as a result of the requirement for sponsorship to be identified clearly and the sponsorship arrangement to be transparent. For those credits that do not include an explicit association message, only a limited amount of additional information would need to be included (e.g. “*sponsored by ...*”). We consider that any financial impact of including this information is likely to be:

- ii) outweighed by the need to ensure the transparency of commercial arrangements; and
- iii) offset by the benefits of our proposal to allow sponsorship credits during programmes (see below) and the introduction of product placement.

5.31 As part of our initial Equality Impact Assessment (EIA), and in line with our proposals that the signalling of product placement should occur in both sound and vision, we have considered the rules on the signalling of sponsorship. On the basis of our initial assessment of equality impacts, we are making no specific proposals in relation to the signalling of sponsorship. Our reasons for this are set out in the EIA (Annex 11), However, we welcome respondents' views on these matters to further inform our consideration.

5.32 We also propose to replace the rules requiring credits to be separated from editorial and advertising with ones requiring distinction, to reflect the wording of the AVMS Directive (see Rule 9.23 and 9.24 in column B and also Part 6 of this consultation document). The revision in relation to editorial content is also necessary to enable the proposed inclusion of sponsorship credits during programmes (see Proposal 10, below).

5.33 Stakeholders are invited to respond to the following questions:

- 9.1 *Do you consider it is appropriate to replace the rule requiring sponsorship arrangements to be transparent with a requirement that all sponsorship credits include a clear statement informing the audience of the sponsorship arrangement? (See proposed Rule 9.22). If not, please explain why.*
- 9.2 *Do you consider it is appropriate to amend those rules requiring sponsorship credits to be separated from editorial and advertising, to rules requiring that credits must be distinct from editorial and advertising? (See proposed Rules 9.23 and 9.24). If not, please explain why.*
- 9.3 *Do you consider the drafting of proposed Rules 9.22, 9.23 and 9.24 is appropriate? If not, please explain why, and suggest drafting changes were appropriate.*
- 9.4 *Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence to support these, wherever possible.*
- 9.5 *Please identify any areas of these proposals which, if it is accepted, you consider Ofcom should issue guidance on.*

### **Proposal 10: Allowing sponsorship credits during programmes**

5.34 We are proposing to allow sponsorship arrangements to be identified in credits broadcast during sponsored programmes. These references to the sponsor would be treated separately from sponsor references (product placement) that occur as part of the editorial of the programme.

5.35 We consider the proposed relaxation to the rules in this area is appropriate because the AVMS Directive permits the broadcast of sponsorship credits during programmes (Article 10(1)(c) of Annex 9). By retaining a position that allows credits to be

broadcast outside of programmes only, Ofcom would be maintaining unnecessary regulation.

- 5.36 Further, we consider that the proposal would provide broadcasters with greater scope to place credits at the most appropriate point during sponsored output. In addition to whole channels and programmes, the Code permits the sponsorship of programme blocks (e.g. a themed group of programmes, such as dramas or comedy) and the sponsorship of distinct programme items or specialist reports (e.g. weather or financial reports). Under current rules, sponsorship credits must be separated from editorial content. This means that, in the case of a sponsored programme item, the item must also be separate from other parts of the programme (usually achieved by means of an advertising break or a channel/programme ident). The proposal that sponsorship credits must be distinct, rather than separate from editorial content, would mean that broadcasters would not be required to separate these distinct programme items from the main programme.
- 5.37 To ensure that audiences are afforded the appropriate level of protection from excessive or unsuitable promotional material during programmes, we are proposing to introduce constraints in relation to the content and scheduling of sponsorship credits shown during programmes.
- 5.38 The proposed content restrictions are set out under Proposal 11 (see below). We are also proposing that credits shown during programme do not coincide with sponsor references (product placement) within the programme. We consider that a sponsorship credit appearing on screen at the same time as the appearance of products/services placed by the sponsor would be likely to give undue prominence to the sponsor. It may also suggest that the broadcaster's independence in determining when credits should appear has been compromised.
- 5.39 Separate to the proposal to allow credits during programmes, we are proposing to clarify that where content other than an individual programme is sponsored (e.g. in the case of a sponsored channel), that credits are placed at an appropriate point to help ensure the audience understands what content is sponsored. This proposal reflects existing practice but we consider that it is helpful to now include this information in the Code in light of the proposal to permit credits within programmes.

- 10.1 *Do you consider that it is appropriate for sponsorship credits to be broadcast during programmes? (See proposed Rule 9.25). If not, please explain why.*
- 10.2 *Do you agree that sponsorship credits shown during programmes should not coincide with sponsor references (product placement) within the programme? (See proposed Rule 9.29). If not, please explain why.*
- 10.3 *Do you consider the drafting of proposed Rules 9.25 and 9.29 is appropriate? If not, please explain why, and suggest drafting changes, where appropriate*
- 10.4 *Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence to support these, wherever possible.*
- 10.5 *Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on.*

### **Proposal 11: Content of sponsorship credits during programmes**

- 5.40 The purpose of a sponsorship credit is to tell the audience when a programme is sponsored and by whom. Currently, credits must be separated from programmes and are usually transmitted around programmes, entering and leaving advertising breaks.
- 5.41 Traditionally, credits consist of five to 15 seconds of material, usually including a story or scene that serves to associate the sponsor's products/services with the sponsored content. We consider that these types of credits are an appropriate form of sponsorship identification when broadcast around programmes, creating a buffer between programmes and advertising.
- 5.42 However, we believe that viewers are likely to find the use of similar credits *during* a sponsored programme to be unacceptably intrusive. Further, such credits are likely to result in undue prominence of the sponsor. We are therefore proposing to limit the information included in a sponsorship credit broadcast during a programme to minimise the potential for sponsorship arrangements to impact negatively on the viewing experience.
- 5.43 We are proposing that during programmes, any sponsorship credits broadcast must consist of a brief neutral visual or verbal statement identifying the sponsorship arrangement. This can be accompanied by only a static graphic of the name, logo, or any other distinctive symbol of the sponsor, but must not include any advertising messages, calls to action or any other information about the sponsor, its products or services.
- 5.44 Because the proposal to allow credits during programmes represents a general liberalisation of rules in this area, we have identified no negative economic impacts of our proposals. As set out above, the proposal may enable broadcasters to raise additional revenue.
- 5.45 Although we are proposing to permit credits within programmes, we recognise that there are certain circumstances where this practice may be inappropriate. We are therefore proposing to prohibit credits:
- ii) during programmes that are prohibited from containing product placement (e.g. children's programmes); and
  - iii) in programmes where the sponsor would be prohibited from placing its products (e.g. when the sponsor is an alcoholic drink).
- 5.46 While sponsorship is distinct from product placement in that it does not involve the embedding of commercial references into editorial content, we consider that it is appropriate for the rules on the appearance of sponsorship credits within programmes to mirror the product placement restrictions.
- 5.47 This would prevent such credits from circumventing the product placement rules, therefore helping to ensure adherence with European and UK legislation. It would also provide audiences with protection from paid-for commercial references to products/services that the Government has indicated, via amendments to the Act, that it considers should involve additional restrictions.

5.48 Stakeholders are invited to respond to the following questions:

- 11.1 *Do you consider that it is appropriate to limit the content of sponsorship credits broadcast during programmes? (See proposed Rule 9.27). If not, please explain why.*
- 11.2 *Do you agree that sponsorship credits broadcast during programmes should not conflict with product placement restrictions? (See proposed Rule 9.28). If not, please explain why.*
- 11.3 *Do you consider the drafting of proposed Rules 9.27 and 9.28 is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.*
- 11.4 *Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence to support these, wherever possible.*
- 11.5 *Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on.*

### **Alternative approaches**

5.49 We have set out above Ofcom's proposed approach to the regulation of sponsorship in light of the introduction of product placement. We invite stakeholders to offer any alternative regulatory approaches (please see Part 7 of this consultation for further information).

## Part 6

# Other proposed revisions

## Introduction

- 6.1 The change in European and UK policy on product placement represents a significant shift in the relationship between editorial content and paid-for commercial references. To date, when a commercial reference has been broadcast on a television service as a result of payment or other valuable consideration, there has been a general requirement that this reference be kept separate from editorial (“the separation principle”). This requirement was derived from the requirements of the Television Without Frontiers Directive, which preceded the AVMS Directive.
- 6.2 The introduction of product placement requires this regulatory principle to be revised. The AVMS Directive has replaced the requirement that advertising be kept separate from editorial with a requirement that advertising be readily recognisable and distinguishable from editorial content (see Article 19, Annex 9).

## Current position and overview of our proposals

- 6.3 The current Sections Nine and Ten of the Code contain rules and principles based on the separation principle. In the proposed new Section Nine of the Code, we propose to, where appropriate:
- make amendments we consider necessary to reflect that editorial must now be distinct, rather than separate, from advertising;
  - ensure audiences are sufficiently protected from surreptitious advertising; and
  - remove those rules we consider are no longer necessary.
- 6.4 We are also proposing to make a minor amendment to the wording of the principle that broadcasters maintain editorial independence over programming to reflect more accurately the wording of the AVMS Directive.

## Proposed revisions

- 6.5 The following table sets out the current relevant principles and rules (column A), alongside those that we are now proposing (column B):

<b><u>A</u></b> <b>(current relevant principles)</b>	<b><u>B</u></b> <b>(proposed principles)</b>
<p><b><u>Principles</u></b> To ensure that broadcasters maintain editorial independence and control over programming (editorial integrity).</p> <p>To ensure that programming and advertising remain distinct (separation).</p>	<p><b><u>Principles</u></b> To ensure that broadcasters maintain editorial independence and control over programming (editorial independence).</p> <p>To ensure that there is distinction between editorial content and advertising (distinction).</p>

<p style="text-align: center;"><b><u>A</u></b> <b>(current relevant rules)</b></p>	<p style="text-align: center;"><b><u>B</u></b> <b>(proposed rules)</b></p>
<p><b><u>Rule 10.2</u></b></p> <p>Broadcasters must ensure that the advertising and programme elements of a service are kept separate.</p>	<p><b><u>Rule 9.2</u></b></p> <p>Broadcasters must ensure that editorial content is distinct from advertising.</p> <p><b><u>Rule 9.3</u></b></p> <p>Surreptitious advertising is prohibited.</p> <p><i>Surreptitious advertising involves a reference to a product or service within a programme, where such a reference is intended by the broadcaster to serve as advertising and this is not made clear to the audience. Such advertising may be included in programmes in return for payment or other valuable consideration.</i></p>
<p><b><u>Rule 10.17 – Virtual advertising</u></b></p> <p>The use of electronic imaging systems during broadcast coverage of an event must comply with the following requirements:</p> <ul style="list-style-type: none"> <li>• broadcasters and viewers must be informed in advance of the presence of virtual images;</li> <li>• virtual advertising may only replace existing on-site advertising – virtual advertising messages must not be more visible or conspicuous than the actual advertising at the venue; and</li> <li>• rules relating to prohibited advertisers also apply to virtual advertising; and the broadcaster may not trade in virtual advertising.</li> </ul> <p><b>Meaning of “virtual advertising”</b> Virtual advertising normally (but not exclusively) takes place at events, for example, sporting events, and involves altering the broadcast signal to replace existing venue advertising with other advertising in the television picture (potentially targeted at a particular geographical audience)</p>	<p><i>no rule proposed</i></p>



## Overview of the impact of these proposals

- 6.6 As discussed in Part 2, this consultation document does not contain a separate impact assessment document. Instead the consultation document as a whole assesses in general terms the impact of the proposed changes on stakeholders (including viewers and television broadcasters).
- 6.7 We consider the proposed amendments set out in the above table represent minor changes to the Code that will not have a significant impact on stakeholders. Our reasons for these proposals and our assessment of their potential impacts are set out in the following section.

## Reasons for our proposals and their potential impacts

### Proposal 12: Principles

- 6.8 As a result of the introduction of product placement, we are proposing changes to two of the principles that will sit within the revised Section Nine to reflect the regulatory landscape more accurately. We consider the wording of the proposed principles is more closely aligned to the relevant wording of the AVMS Directive.
- 6.9 Wherever these principles are referred to throughout Section Nine of the Code, we also intend to amend the wording to reflect these revisions.
- 6.10 The proposed principles represent two of the fundamental pillars on which the rules in Section Nine are based and act as a guide to help stakeholders understand the rationale behind the rules. The principles are not enforceable requirements and, as such, we consider that the proposed amendments will not impact on stakeholders.
- 6.11 Stakeholders are invited to respond to the following questions:

12.1 *Do you agree with the proposed revisions to the principles? If not, please explain why, and suggest drafting changes, where appropriate.*

12.2 *Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence, wherever possible.*

### Proposal 13: Rule on distinction between editorial content and advertising

- 6.12 We are proposing to change the rule requiring that the editorial and advertising elements of a service are kept separate to one that requires distinction between editorial content and advertising.
- 6.13 The proposed change to this rule reflects the shift of the separation to the distinction principle. The AVMS Directive no longer requires paid-for commercial references to be kept outside of programmes. Instead, where paid-for references meet the definition of advertising, they must be distinct from editorial.
- 6.14 The proposed rule provides broadcasters with greater flexibility in terms of how paid-for commercial references can feature within programming, although we recognise that broadcasters may welcome guidance from Ofcom on what constitutes appropriate distinction in different circumstances.

6.15 The proposed rule retains important protection for viewers from surreptitious advertising and also helps limit the impact of commercial arrangements on editorial content.

6.16 Stakeholders are invited to respond to the following questions:

13.1 *Do you consider that the proposed Rule 9.2 requiring that there is distinction between editorial content and advertising is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.*

13.2 *Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.*

13.3 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

#### **Proposal 14: Rule prohibiting surreptitious advertising**

6.17 While not expressly prohibited by a specific rule, the Code currently protects audiences from surreptitious advertising by preventing paid-for commercial references appearing within editorial content.

6.18 The introduction of product placement will allow such paid-for references to appear within programmes. We consider that the consequent need to remove the rule that requires editorial and advertising content to be kept separate poses an increased risk that viewers may be exposed to commercial references within programmes without being aware that these have been included for commercial and not solely editorial reasons.

6.19 In line with the requirements of the AVMS Directive (Article 9(1)(a)), we are therefore proposing a rule prohibiting surreptitious advertising. We intend this to complement the requirements that: a) advertising and editorial remain distinct; and b) sponsorship and product placement arrangements are signalled appropriately.

6.20 We consider that the proposed rule will provide additional important audience protection. It will also help ensure that Ofcom implements adequately the requirements of the AVMS Directive.

6.21 We believe the proposal will not lead to additional regulatory burdens on broadcasters because, as stated, current rules already effectively prevent surreptitious advertising.

6.22 It should be noted that the proposed rule is not intended to cover legitimate product placement, where the audience is adequately informed of the existence of product placement via the use of signalling.

6.23 Stakeholders are invited to respond to the following questions:

- 14.1 *Do you consider it is appropriate to include a rule prohibiting surreptitious advertising? If not, please explain why.*
- 14.2 *Do you consider that the wording of the proposed rule and meaning is appropriate? (see proposed Rule 9.3). If not, please explain why, and suggest drafting changes, where appropriate.*
- 14.3 *Please identify any potential impacts of the proposed rule that you consider should be taken into account, and provide evidence, wherever possible.*
- 14.4 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

### **Proposal 15: Removal of the virtual advertising rule**

- 6.24 Virtual advertising involves the altering of a broadcast signal to replace existing advertising that is present at events with other advertising aimed at the television audience, e.g. advertising shown on hoardings around a football pitch. To date, this practice has been governed by Rule 10.17 in the Code (see column A in the above table).
- 6.25 This rule provided a limited exemption to the product placement prohibition by allowing advertisers to place virtual advertising in programmes. However, it also provided important safeguards in terms of maintaining the broadcaster's editorial independence over programming and protecting audiences from surreptitious advertising.
- 6.26 On the basis that the prohibition on product placement has now been lifted, we consider the rule is rendered obsolete. Any virtual advertising arrangements would now fall within the definition of product placement and would therefore have to comply with the relevant rules. We are therefore proposing to remove the virtual advertising rule.
- 6.27 We consider any impact on stakeholders of removing this rule is negligible.
- 6.28 Stakeholders are invited to respond to the following questions:

- 15.1 *Do you consider that it is appropriate to remove the virtual advertising rule? If not, please explain why.*
- 15.2 *Please identify any potential impacts of the proposed removal of the virtual advertising rule that you consider should be taken into account, and provide evidence, wherever possible.*

### **Alternative approaches**

- 6.29 We invite stakeholders to offer any alternative regulatory approaches to the issues identified above (please see Part 7 of this consultation for further information).

## Part 7

# Additional Questions

## Introduction

- 7.1 We have set out our proposals in relation to product placement (Part 4), sponsorship (Part 5) and other revisions (Part 6) and asked specific questions in relation to these proposals. Stakeholders are now invited to respond to the following additional questions.

### Relevant requirements of the AVMS Directive and the Act

- 7.2 As set out in Part 4, we consider that the majority of the proposed new product placement rules reflect explicit requirements of both the AVMS Directive and the Act (as amended). The proposed rules in question are those set out at paragraph 4.13, above, which are not underlined.
- 7.3 Stakeholders are invited to respond to the following questions:

16.1 *Do you agree that the explicit requirements of the AVMS Directive and the Act are reflected appropriately in the proposed rules for product placement, as set out in Part 4? If not, please explain why and suggest drafting changes, if appropriate.*

16.2 *Are there any other relevant matters you consider that Ofcom should take into account in this Review? If so, please provide details, with supporting evidence, wherever possible.*

### Alternative approaches

- 7.4 We also invite stakeholders to offer any alternative approaches to the regulation of product placement, and its impact on sponsorship, and other rules in the revised Section Nine of the Code.
- 7.5 Stakeholders should be aware that any alternative approaches must comply with relevant legislation including the Communications Act 2003 (as amended by The Audiovisual Media Services (Product Placement) Regulations 2010), the AVMS Directive, Article 10 of the European Convention on Human Rights and Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008.
- 7.6 Stakeholders are invited to respond to the following question:

16.3 *Do you wish to suggest an alternative approach to the regulation of product placement, and its impact on sponsorship, and other rules in the revised Section Nine of the Code?*

*If so please outline your proposals, which must comply with the Communications Act 2003 (as amended by The Audiovisual Media Services (Product Placement) Regulations 2010), the AVMS Directive, Article 10 of the European Convention on Human Rights and Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008.*

## **New Code rules in force**

- 7.7 The introduction of product placement rules and accompanying proposed revisions to Section Nine of the Code represent a significant change to the regulation of commercial references in television programming. We are therefore inviting stakeholders to give their views on when the revised Section Nine of the Code should come into force.
- 7.8 Stakeholders are invited to respond to the following question:

16.4 *Do you agree that the revised Section Nine of the Code should come into force on the same date it is published by Ofcom? If not, please explain why.*

16.5 *If you would prefer that the revised Section Nine of the Code does not come into force at the time it is published, to allow a period of preparation/implementation, how long would you prefer this period to be? Please give reasoning.*

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on Friday, 17 September 2010**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <https://www.ofcom.org.uk/consult/condocs/bcrtv2010/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [BCR.Television@ofcom.org.uk](mailto:BCR.Television@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below
- Taji Beklik  
BCR: Commercial References in TELEVISION programming  
Ofcom  
Content and Standards  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Daniel Maher on 020 7981 3891.

## Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

## Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement at the end of 2010.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm)

## Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash  
Ofcom  
Sutherland House  
149 St. Vincent Street  
Glasgow G2 5NW

Tel: 0141 229 7401  
Fax: 0141 229 7433

Email [vicki.nash@ofcom.org.uk](mailto:vicki.nash@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

### After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.



## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at [www.ofcom.org.uk/consult/](http://www.ofcom.org.uk/consult/).
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your personal details to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

**Consultation title:** BCR: Commercial References in TELEVISION programming



**To** (Ofcom contact): Taji Beklik

**Name of respondent** (if you are responding as an individual, write your own name. If you are responding on behalf of an organisation, write your organisation's name):

**Address** (only complete if you submitted your response by post):

### CONFIDENTIALITY

Please indicate how you would like Ofcom to treat your response:

A: I am happy for you to publish my response and my name or my organisation's name.

B: I am happy for you to publish my response but I do not want you to publish my name or my organisation's name.

C: I would like you to take account of my response but I do not want you to publish my response or my name or my organisation's name.

D: I have special confidentiality requirements, which I have detailed below:

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If you are happy for Ofcom to publish your response, when can we do this?

A: On receipt

B: After the consultation has closed.

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked above as not to be disclosed, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Name:

Signed (if hard copy):

Date:

## Annex 4

# Consultation questions

### Proposal 1: Applying the rules to placement for a non-commercial purpose

- 1.1 *Do you agree that it is appropriate to apply product placement rules to paid-for references in programmes that are not included for a commercial purpose? If not, please explain why.*
- 1.2 *Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.*
- 1.3 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

### Proposal 2: Clarification that product placement is permitted in single dramas

- 2.1 *Are there any impacts we have not identified above that you think would result from our proposal to clarify that single dramas are a form of film made for television? (See proposed Rule 9.8). If so, please provide evidence wherever possible.*
- 2.2 *Please identify any areas of this clarification which you consider Ofcom should issue guidance on.*

### Proposal 3: Clarification of the prohibition of product placement in news

- 3.1 *Please identify any potential impacts of the rule prohibiting product placement in news, and provide evidence, wherever possible. (See proposed Rule 9.9(a)).*
- 3.2 *Please identify any areas of this rule which you consider Ofcom should issue guidance on.*

### Proposal 4: Thematic placement

- 4.1 *Do you agree that clarification that thematic placement is prohibited is appropriate? (See proposed Rule 9.10). If not, please explain why.*
- 4.2 *Do you agree with Ofcom's proposed description of thematic placement? (See proposed Rule 9.10). If not, please explain why, and suggest drafting changes, if appropriate.*
- 4.3 *Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.*
- 4.4 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

### Proposal 5: Specialist factual programming

- 5.1 *Do you consider that it is appropriate to prohibit product placement in specialist factual programmes produced under UK jurisdiction? If not, please explain why.*

- 5.2 *Do you agree with the meaning for “specialist factual programmes”? (See proposed Rule 9.14). If not, please explain why, and suggest drafting changes, if appropriate.*
- 5.3 *Please identify any potential impacts of either permitting or prohibiting product placement in specialist factual programmes that you consider should be taken into account, and provide evidence, wherever possible.*
- 5.4 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

### **Proposal 6: Additional prohibited categories**

- 6.1 *Do you agree that it is appropriate to prohibit the placement of those products and services that are not allowed to be advertised on television? (See proposed Rule 9.15). If not, please explain why.*
- 6.2 *Do you consider that the wording of proposed Rule 9.15(f) is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.*
- 6.3 *Do you agree that it is unnecessary to apply advertising scheduling restrictions to product placement? If not, please explain why.*
- 6.4 *Please identify any potential impacts of the proposals that you consider should be taken into account, and provide evidence, wherever possible.*
- 6.5 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

### **Proposal 7: Signalling**

- 7.1 *Do you consider it is appropriate to require broadcasters to identify product placement by means of a universal neutral logo and universal audio signal? (See proposed Rule 9.16). If not, please explain why, suggesting alternative approaches where appropriate.*
- 7.2 *Please provide comments on the proposed criteria for determining how any universal neutral logo looks, and any additional or alternative criteria which you consider should define the visual signal, including views on the nature, size and duration of the signal.*
- 7.3 *Please provide comments on the proposed criteria for determining how any universal audio signal sounds, and any additional or alternative criteria which you consider should define the audio signal, including views on the nature and duration of the signal.*
- 7.4 *Please provide comments on whether you consider that such criteria should be specified in the Code or in Ofcom’s guidance. If you consider that the criteria should not be specified in either, please explain why.*
- 7.5 *Do you consider it is appropriate to require broadcasters to provide the audience with a list of products/services that appear in a programme as a result of product placement arrangements, either in the end credits or on the broadcaster’s website? (See Rule 9.17(a) and (b)). If not, please explain why.*
- 7.6 *Do you consider that the wording of proposed Rule 9.17(a) and (b) is appropriate? If not, please explain why, and suggest drafting changes, if appropriate.*

- 7.7 *Do you agree that broadcasters should include additional description text alongside the visual and audio signal for the first month that they are transmitted? If not, please explain why.*
- 7.8 *Do you agree that broadcasters should transmit an audience awareness message if they show programmes that must be signalled during the first six months of the rules being in force? If not, please explain why.*
- 7.9 *Please provide your comments on the proposals we have set out on the key messages, timing and duration of the audience awareness campaign.*
- 7.10 *Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence, wherever possible.*
- 7.11 *Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on.*

### **Proposal 8: Sponsor references (product placement) within programmes**

- 8.1 *Do you consider that it is appropriate to allow sponsors to product place in programmes they are sponsoring? If not, please explain why.*
- 8.2 *Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.*
- 8.3 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

### **Proposal 9: Identifying sponsorship arrangements (sponsorship credits)**

- 9.1 *Do you consider it is appropriate to replace the rule requiring sponsorship arrangements to be transparent with a requirement that all sponsorship credits include a clear statement informing the audience of the sponsorship arrangement? (See proposed Rule 9.22). If not, please explain why.*
- 9.2 *Do you consider it is appropriate to amend those rules requiring sponsorship credits to be separated from editorial and advertising, to rules requiring that credits must be distinct from editorial and advertising? (See proposed Rules 9.23 and 9.24). If not, please explain why.*
- 9.3 *Do you consider the drafting of proposed Rules 9.22, 9.23 and 9.24 is appropriate? If not, please explain why, and suggest drafting changes were appropriate.*
- 9.4 *Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence to support these, wherever possible.*
- 9.5 *Please identify any areas of these proposals which, if it is accepted, you consider Ofcom should issue guidance on.*

### **Proposal 10: Allowing sponsorship credits during programmes**

- 10.1 *Do you consider that it is appropriate for sponsorship credits to be broadcast during programmes? (See proposed Rule 9.25). If not, please explain why.*

- 10.2 *Do you agree that sponsorship credits shown during programmes should not coincide with sponsor references (product placement) within the programme? (See proposed Rule 9.29). If not, please explain why.*
- 10.3 *Do you consider the drafting of proposed Rules 9.25 and 9.29 is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.*
- 10.4 *Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence to support these, wherever possible.*
- 10.5 *Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on.*

### **Proposal 11: Content of sponsorship credits during programmes**

- 11.1 *Do you consider that it is appropriate to limit the content of sponsorship credits broadcast during programmes? (See proposed Rule 9.27). If not, please explain why.*
- 11.2 *Do you agree that sponsorship credits broadcast during programmes should not conflict with product placement restrictions? (See proposed Rule 9.28). If not, please explain why.*
- 11.3 *Do you consider the drafting of proposed Rules 9.27 and 9.28 is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.*
- 11.4 *Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence to support these, wherever possible.*
- 11.5 *Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on.*

### **Proposal 12: Principles**

- 12.1 *Do you agree with the proposed revisions to the principles? If not, please explain why, and suggest drafting changes, where appropriate.*
- 12.2 *Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence, wherever possible.*

### **Proposal 13: Rule on distinction between editorial content and advertising**

- 13.1 *Do you consider that the proposed Rule 9.2 requiring that there is distinction between editorial content and advertising is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.*
- 13.2 *Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.*
- 13.3 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

### **Proposal 14: Rules prohibiting surreptitious advertising**

- 14.1 *Do you consider it is appropriate to include a rule prohibiting surreptitious advertising? If not, please explain why.*

14.2 *Do you consider that the wording of the proposed rule and meaning is appropriate? (see proposed Rule 9.3). If not, please explain why, and suggest drafting changes, where appropriate.*

14.3 *Please identify any potential impacts of the proposed rule that you consider should be taken into account, and provide evidence, wherever possible.*

14.4 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

### **Proposal 15: Removal of the virtual advertising rule**

15.1 *Do you consider that it is appropriate to remove the virtual advertising rule? If not, please explain why.*

15.2 *Please identify any potential impacts of the proposed removal of the virtual advertising rule that you consider should be taken into account, and provide evidence, wherever possible.*

### **Relevant requirements of the AVMS Directive and the Act**

16.1 *Do you agree that the explicit requirements of the AVMS Directive and the Act are reflected appropriately in the proposed rules for product placement, as set out in Part 4? If not, please explain why and suggest drafting changes, if appropriate.*

16.2 *Are there any other relevant matters you consider that Ofcom should take into account in this Review? If so, please provide details, with supporting evidence, wherever possible.*

### **Alternative approaches**

16.3 *Do you wish to suggest an alternative approach to the regulation of product placement, and its impact on sponsorship, and other rules in the revised Section Nine of the Code?*

*If so please outline your proposals, which must comply with the Communications Act 2003 (as amended by The Audiovisual Media Services (Product Placement) Regulations 2010), the AVMS Directive, Article 10 of the European Convention on Human Rights and Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008.*

### **New Code rules in force**

16.4 *Do you agree that the revised Section Nine of the Code should come into force on the same date it is published by Ofcom? If not, please explain why.*

16.5 *If you would prefer that the revised Section Nine of the Code does not come into force at the time it is published, to allow a period of preparation/ implementation, how long would you prefer this period to be? Please give reasoning.*

## Annex 5

## Glossary

The following is a glossary of television broadcasting terms to assist readers of this document:

<b>Advertiser-funded programming</b>	Advertiser-funded programming is <b>sponsored programming</b> .
<b>Advertising</b>	Any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment. <sup>48</sup>
<b>Associate</b>	In relation to <b>person connected</b> , “associate” has the same meaning as set out in paragraph 1, Part 1, Schedule 2 of the Broadcasting Act 1990.
<b>AVMS Directive</b>	The Audiovisual Media Services Directive – the European legislation relating to audiovisual media services which amended the <b>TWF Directive</b> .
<b>Children’s Programme</b>	A children’s programme in the context of <b>product placement</b> is “a programme made for a television programme service or an on-demand programme service, and for viewing primarily by persons under the age of sixteen”. <sup>49</sup>
<b>Commercial References</b>	An umbrella term to describe all references to products or services in <b>programming</b> . It includes those references that may have occurred as a result from commercial arrangements as well as those that have not.
<b>Control</b>	In relation to <b>person connected</b> , control has the same meaning as set out in paragraph 1, Part 1, Schedule 2 of the Broadcasting Act 1990.
<b>Costs</b>	In relation to <b>sponsorship</b> , “costs” means any part of the costs connected to the production or broadcast of the <b>programming</b> .
<b>Distinction</b>	(Proposed regulatory <b>principle</b> derived from the <b>AVMS Directive</b> ). To ensure there is distinction between <b>editorial</b> content and <b>advertising</b> .
<b>Editorial Independence</b>	(A current regulatory <b>principle</b> ). To ensure that <b>programming</b> is not distorted for commercial or other purposes. To this end, the broadcaster must maintain editorial control over all programming (i.e. including <b>sponsored programming</b> ).

<sup>48</sup> This definition is from Article 1(i) of the AVMS Directive for “television advertising” and is replicated in Ofcom’s Code on the Scheduling of Television Advertising.

<sup>49</sup> See Schedule 11A, paragraph 3(2) of the Act (see Annex 10).



<b>Films</b>	For the purposes of <b>product placement</b> , “films” includes films made for cinema and films (including <b>single drama</b> ) made for television or other audiovisual media services.
<b>HFSS Products</b>	Products which are high in fat, salt and sugar (“HFSS products”). HFSS products are defined by the nutrient profiling scheme which was devised by the UK’s Food Standards Agency for use by Ofcom. This can be found at <a href="http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod">http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod</a>
<b>Person connected</b>	In summary, the following persons are connected with a particular person (‘person’ includes an individual as well as a body corporate and other incorporated and unincorporated legal entities): <ol style="list-style-type: none"><li>a) a person who controls that person;</li><li>b) an associate of that person or of the person in (a); and</li><li>c) a body which is controlled by that person or an associate of that person.</li></ol>
<b>Principles</b>	Ofcom’s regulatory principles are enforced through current rules. The current principles concerning commercial references in <b>programming</b> are <b>transparency</b> , <b>separation</b> and <b>editorial independence</b> .
<b>Product Placement</b>	“The inclusion in a programme of, or of a reference to, a... <b>product, service or trade mark</b> where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any <b>relevant provider</b> or any person connected with a relevant provider, and is not <b>prop placement</b> ”. <sup>50</sup> (emphasis added).
<b>Products/services</b>	Includes logos, images, names, <b>trade marks</b> and/or associated activities, and may include references to non-commercial organisations.
<b>Programme-related material</b>	Consists of <b>products</b> or <b>services</b> that are both directly derived from a programme and specifically intended to allow viewers to benefit fully from that programme.
<b>Programmes produced under UK jurisdiction</b>	Any programme produced or commissioned by either: <ol style="list-style-type: none"><li>a) the provider of the television programme service or any <b>person connected</b> with that provider (except in the case of a film made for cinema); or</li><li>b) any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the <b>AVMS Directive</b>).</li></ol>
<b>Programming</b>	Content broadcast on a television programme service that is not <b>advertising</b> . Examples of programming include programmes, programme trails, self-promotions and sponsorship credits.

---

<sup>50</sup> See Schedule 11A, paragraph 1(1) of the Act (see Annex 10).

<b>Prohibited categories</b>	Categories of <b>products, services and trade marks</b> that cannot be advertised on television, as set out in the Broadcast Committee of Advertising Practice (BCAP) UK Code of Broadcast Advertising. <sup>51</sup>
<b>Promotional Reference</b>	This includes, but is not limited to, references (either explicit or implicit) that encourage, or are intended to encourage, the purchase or rental of a <b>product</b> or <b>service</b> .
<b>Prop Placement</b>	“The inclusion in a programme of, or of a reference to, a <b>product, service or trade mark</b> where the provision of the product, service or trade mark has no <b>significant value</b> , and no <b>relevant provider</b> , or <b>person connected</b> with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including...[it] in the programme”. <sup>52</sup> (emphasis added).
<b>Relevant Provider</b>	“The provider of the television programme service in which the programme is included or the producer of the programme”. <sup>53</sup>
<b>Residual Value</b>	In the context of <b>prop placement</b> , “residual value” means “any monetary or other economic value in the hands of the <b>relevant provider</b> other than the cost saving of including the <b>product, service or trade mark</b> , or a reference to it, in a programme”. <sup>54</sup> (emphasis added).
<b>Separation</b>	(A current regulatory <b>principle</b> derived from the <b>TWF Directive</b> , which preceded the <b>AVMS Directive</b> ). <b>Advertising</b> should be kept separate and distinct from <b>programming</b> .
<b>Signalling</b>	The means of informing audiences of instances of <b>product placement</b> .
<b>Significant value</b>	In relation to <b>prop placement</b> , “significant value” is a <b>residual value</b> that is more than trivial.
<b>Single drama</b>	A single drama falls within the definition of <b>films</b> .
<b>Specialist Factual Programming</b>	(Proposed meaning. See paragraph 4.13, proposed Rule 9.14(d)). For the purposes of <b>product placement</b> , “specialist factual programming” means purely factual programmes covering educational, science, medical or arts subjects, or those that are investigative in nature.
<b>Sponsor</b>	Any public or private undertaking or natural person (other than the broadcaster or programme producer) who is funding the <b>programming</b> with a view to promoting its <b>products, services</b> , logos, images, name, <b>trade marks</b> and/or its activities.
<b>Sponsor reference</b>	Any reference to the sponsor’s <b>products, services</b> , logos, images, names, <b>trade marks</b> and/or its activities.

<sup>51</sup> See: <http://bcap.org.uk/The-Codes/New-Advertising-Codes.aspx>

<sup>52</sup> See Schedule 11(A), paragraph 1(2), of the Act (see Annex 10).

<sup>53</sup> See Schedule 11(A), paragraph 9 of the Act (see Annex 10).

<sup>54</sup> See Schedule 11(A), paragraph 9, of the Act (see Annex 10).

<b>Sponsored programming/channel</b>	A programme, channel or block of programmes that has some or all of its costs met by a <b>sponsor</b> .
<b>Sponsorship</b>	Where an individual or organisation funds content (e.g. a programme or a channel) with a view to promoting itself through its association with that content. <sup>55</sup>
<b>Sponsorship credit</b>	An announcement which informs the audience when content is sponsored and by whom.
<b>Spot Advertisement</b>	Sometimes referred to as a ‘commercial’ or ‘spot ad’, this is an advertisement found in an <b>advertising</b> break.
<b>Trade mark</b>	In the context of <b>product placement</b> , “trade mark” in relation to a business “includes any image (such as logo) or sound commonly associated with that business or its <b>products</b> or <b>services</b> ”. <sup>56</sup> (emphasis added).
<b>Transparency</b>	(A current regulatory <b>principle</b> ). To ensure that a <b>commercial communication</b> is clear to the audience in order to protect it from surreptitious <b>advertising</b> .
<b>TWF Directive</b>	The Television Without Frontiers Directive – the European legislation relating to television services, which has been amended by the <b>AVMS Directive</b> .

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<sup>55</sup> This is a summary of the definition of sponsorship set out in Article 1(1)(k) of the AVMS Directive.

<sup>56</sup> See Schedule 11A, paragraph 9 of the Act (see Annex 10).

## Annex 6

# Current Broadcasting Code Sections Nine (Sponsorship) and Ten (Commercial references and other matters)

## Section Nine: Sponsorship

(Relevant legislation includes, in particular, sections 319(2)(i) and (j) and 319(4)(e) and (f) of the Communications Act 2003, Articles 1, 3(e), 3(f) and 10(1) of the Audiovisual Media Services Directive, and Article 10 of the European Convention on Human Rights.)

This section of the Code does not apply to BBC services funded by the licence fee.

### Principles

**To ensure that the unsuitable sponsorship of programmes on radio and television is prevented, with particular reference to:**

- **transparency – to ensure sponsorship arrangements are transparent;**
- **separation – to ensure that sponsorship messages are separate from programmes and to maintain a distinction between advertising and sponsorship; and**
- **editorial independence – to ensure that the broadcaster maintains editorial control over sponsored content and that programmes are not distorted for commercial purposes.**

**In this Principle, programmes include “channels” as defined below.**

### Rules

#### ***Meaning of “sponsored programme”, “sponsored channel” and “sponsor”:***

A sponsored programme, which includes an advertiser-funded programme, is a programme that has had some or all of its costs met by a sponsor with a view to promoting its own or another’s name, trademark, image, activities, services, products or any other direct or indirect interest.

A channel is a television or radio service. A sponsored channel is a channel that has had some or all of its costs met by a sponsor with a view to promoting its own or another’s name, trademark, image, activities, services, products or any other direct or indirect interest.

Costs include any part of the costs connected to the production or broadcast of the programme or channel.

A sponsor is any public or private undertaking (other than the broadcaster or programme producer), who is sponsoring the programme, programming or channel in question with a view to promoting their or another’s name, trademark, image, activities, services, products or any other direct or indirect interest. This meaning extends to those who are otherwise supplying or funding the programme or channel.

## **Content that may not be sponsored**

9.1 The following may not be sponsored:

- news bulletins and news desk presentations on radio; and
- news and current affairs programmes on television.

### ***Meaning of “current affairs programme(s)”:***

A current affairs programme is one that contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.

## **Prohibited and restricted sponsors**

9.2 No channel or programme may be sponsored by a sponsor that is not allowed to advertise on the relevant medium.

9.3 Sponsorship on radio and television must comply with both the advertising content and scheduling rules that apply to that medium.

## **The content of sponsored output**

9.4 A sponsor must not influence the content and/or scheduling of a channel or programme in such a way as to impair the responsibility and editorial independence of the broadcaster.

9.5 There must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products or to any of its other direct or indirect interests. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental.

### ***Meaning of “promotional reference”:***

This includes, but is not limited to, references that encourage, or are intended to encourage, the purchase or rental of a product or service.

## **Sponsorship credits**

### *Television and radio*

9.6 Sponsorship must be clearly identified as such by reference to the name and/or logo of the sponsor. For programmes, credits must be broadcast at the beginning and/or end of the programme.

9.7 The relationship between the sponsor and the sponsored channel or programme must be transparent.

### *Radio*

9.8 During longer sponsored output, credits must be broadcast as appropriate to create the degree of transparency required.

9.9 Credits must be short branding statements. However, credits may contain legitimate advertising messages.

9.10 Credits must be cleared for broadcast in the same way as advertisements.

9.11 Programme trails are treated as programmes and the same sponsorship rules apply.

### *Television*

- 9.12 Sponsorship credits must be clearly separated from programmes by temporal or spatial means.
- 9.13 Sponsorship must be clearly separated from advertising. Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.
- 9.14 Where a programme trail contains a reference to the sponsor of the programme, the sponsor reference must remain brief and secondary.

## **Section Ten: Commercial References and Other Matters**

Relevant legislation includes, in particular, sections 319(2)(f) and (i) and 319(4)(e) and (f) of the Communications Act 2003, Articles 1, 3 (e), 10(1) and 18 of the Audiovisual Media Services Directive, section 21(1) of the Financial Services and Markets Act 2000, paragraph 3 of the Investment Recommendation (Media) Regulations Act 2005, and Article 10 of the European Convention on Human Rights.)

This section of the Code does not apply to BBC services funded by the licence fee, which are regulated on these matters by the BBC Trust.

The rules in this section are subject to, and supplemented by, Ofcom's Cross-promotion Code.

### **Principles**

**To ensure that the independence of editorial control over programme content is maintained and that programmes are not distorted for commercial purposes.**

**To ensure that the advertising and programme elements of a service are clearly separated.**

### **Rules**

- 10.1 Broadcasters must maintain the independence of editorial control over programme content.
- 10.2 Broadcasters must ensure that the advertising and programme elements of a service are kept separate.

### **Products or services in programmes**

- 10.3 Products and services must not be promoted in programmes. This rule does not apply to programme-related material. (See Rule 10.6.)
- 10.4 No undue prominence may be given in any programme to a product or service.

### **Note:**

"Undue prominence" may result from:

- the presence of, or reference to, a product or service (including company names, brand names, logos) in a programme where there is no editorial justification; or
- the manner in which a product or service (including company names, brand names, logos) appears or is referred to in a programme.

10.5 Product placement is prohibited.

***Meaning of “product placement”:***

Product placement is the inclusion of, or a reference to, a product or service within a programme in return for payment or other valuable consideration to the programme maker or broadcaster (or any representative or associate of either).

- Prop placement: For the purpose of this rule, references to products or services acquired at no, or less than full, cost, where their inclusion within the programme is justified editorially, will not be considered to be product placement. On television, a brief, basic text acknowledgement of the provider of these products or services may be included within the end credits of the programme. This is permitted only where the identity of the product is not otherwise apparent from the programme itself.
- Acquired programmes: With the exception of children's programmes produced after 19 December 2009, Rule 10.5 does not apply to arrangements covering the inclusion of products or services in a programme acquired from outside the UK and films made for cinema provided that no broadcaster regulated by Ofcom and involved in the broadcast of that programme or film directly benefits from the arrangement.

Children's programmes in this context are programmes commissioned for, or specifically directed at, audiences below the age of 16.

Broadcasters should note that all acquired programmes or films must nevertheless comply with all other relevant rules in this Code. In relation to references to products and services in acquired programmes that may have resulted from commercial arrangements, broadcasters should pay particular attention to the requirements of Sections One, Two and Ten of the Code.

**Programme-related material**

10.6 Programme-related material may be promoted in programmes only where it is editorially justified.

10.7 The broadcaster must retain responsibility for all programme-related material.

10.8 Programme-related material may be sponsored, and the sponsor may be credited when details of how to obtain the material is given. Any credit must be brief and secondary, and must be separate from any credit for the programme sponsor.

***Meaning of “programme-related material”:***

These are products or services that are both directly derived from a specific programme and intended to allow listeners or viewers to benefit fully from, or to interact with, that programme.

**Premium rate numbers**

10.9 Premium rate numbers will normally be regarded as products or services, and must therefore not appear in programmes, except where:

- they form part of the editorial content of the programme; or
- they fall within the meaning of programme-related material (see above).

10.10 Any use of premium rate numbers must comply with the Code of Practice issued by PhonepayPlus.

## Competitions

- 10.11 References to brands within competitions must be brief and secondary.  
(See Rule 1.30 in Section One: Protecting the Under-Eighteens and Rules 2.13 to 2.16 in Section Two: Harm and Offence.)

## Use of advertisements in programmes

- 10.12 Advertising must be clearly separated from programmes. Advertisements must not appear in programme time, unless editorially justified.

## Charity appeals

- 10.13 Charity appeals that are broadcast free of charge are allowed in programmes provided that the broadcaster has taken reasonable steps to satisfy itself that:
- the organisation concerned can produce satisfactory evidence of charitable status, or, in the case of an emergency appeal, that a responsible public fund has been set up to deal with it; and
  - the organisation concerned is not prohibited from advertising on the relevant medium.
- 10.14 Where possible, the broadcast of charity appeals, either individually or taken together over time, should benefit a wide range of charities.

## Appeals for funds for programmes or services

- 10.15 Broadcasters may broadcast appeals for donations to make programmes or fund their service. The audience must be told the purpose of the donation and how much has been raised as a result of the appeal. All donations must be separately accounted for and used for the purpose for which they were donated.

## Financial promotions and investment recommendations

- 10.16 When broadcasting financial promotions and investment recommendations broadcasters must comply with the relevant provisions in Appendix 4 to this Code.

### ***Meaning of “financial promotion(s)”:***

A financial promotion is an invitation or inducement to engage in investment activity (in accordance with section 21(1) of the Financial Services and Markets Act 2000 (Restrictions on financial promotion).)

### ***Meaning of “investment recommendation(s)”:***

An investment recommendation occurs when someone directly recommends a particular investment decision, for example, buying or selling a particular share or underwriting a particular share offer.

## Virtual advertising

### *Television*

- 10.17 The use of electronic imaging systems during broadcast coverage of an event must comply with the following requirements:
- broadcasters and viewers must be informed in advance of the presence of virtual images;
  - virtual advertising may only replace existing on-site advertising – virtual advertising messages must not be more visible or conspicuous than the actual advertising at the venue;



- rules relating to prohibited advertisers also apply to virtual advertising; and the broadcaster may not trade in virtual advertising.

***Meaning of “virtual advertising”:***

Virtual advertising normally (but not exclusively) takes place at events, for example, sporting events, and involves altering the broadcast signal to replace existing venue advertising with other advertising in the television picture (potentially targeted at a particular geographical audience).

## Annex 7

# Relevant Extracts of 2009 Code Review Consultation Document

### **Section Nine: Commercial references in television programming**

(Relevant legislation includes, in particular, sections 319(2)(i) and (j) and 319(4)(e) and (f) of the Communications Act 2003 and new sections being inserted by the AVMS Directive (Implementation) Regulations 2009; Articles 11, 3e, 3f, 3g and 18 of the Audiovisual Media Services Directive; and Article 10 of the European Convention on Human Rights.)

**This section of the Code covers all commercial references that feature within television programming.**

**Examples of television programming include programmes, trailers, Cross-promotions and sponsorship credits. “Programming” does not include advertisements.**

**For the purposes of this Code section, “commercial references” means any references to products or services.**

**“Products or services” include logos, images, names, trade marks and/or associated activities, and may include references to non-commercial organisations.**

This section of the Code recognises that commercial references within programming occur in a range of different circumstances. It contains a set of general rules that apply to **all** commercial references in television programming. It also contains specific rules for different types of commercial references (e.g. programme-related material, sponsorship).

The rules ensure that the broad principles of editorial integrity; separation of advertising and programming; transparency of commercial arrangements; and the appropriate protection of consumers are maintained.

With the exception of Rules 9.10 and 9.11, this section does not apply to BBC services funded by the licence fee.

### **Principles**

- **To ensure that broadcasters maintain editorial independence and control over programming (editorial integrity).**
- **To ensure that programming and advertising remain distinct (separation).**
- **To protect audiences from surreptitious advertising (transparency).**
- **To ensure that audiences are protected from the risk of financial harm (consumer protection).**
- **To ensure that unsuitable sponsorship is prevented (unsuitable sponsorship).**

## Rules

### General Rules

**Rules 9.1 to 9.6 apply to all commercial references included within television programming. They reflect the fact that the inclusion of commercial references in television programming creates a particular risk that the key principles may be, or appear to be, undermined.**

- 9.1 Broadcasters must maintain independent editorial control over programming.
- 9.2 Products and services must not be promoted in programming, unless permitted by specific rules in this section of the Code (e.g. programme-related material).
- 9.3 No undue prominence may be given in programming to a product or service. Undue prominence may result from:
  - the presence of, or reference to, a product or service in programming where there is no editorial justification; or
  - the manner in which a product or service appears or is referred to in programming.
- 9.4 Broadcasters must ensure that advertising and programming are kept separate (see Rule 9.5 for limited exemptions that apply to the use of advertisements as part of programming).
- 9.5 Advertisements must not appear as part of programming, unless editorially justified. Where advertisements are featured as part of programming, their presence must not be unduly prominent.
- 9.6 Viewer communications that are solicited by or on behalf of the broadcaster in programming must be treated fairly and consistently.

*In the case of premium rate services, particular provisions apply to protect consumers from financial harm (see Rules 9.7 to 9.9). In all cases, however, it is important that broadcasters also consider carefully the provisions in Section 2 of the Code.*

### Product and prop placement

*“Product placement”, in relation to a programme included in a television programme service, means the inclusion for a commercial purpose of, or a reference to, a product, service or trade mark, so that it is featured in that programme in return for the making of any payment or the giving of other valuable consideration, to a relevant provider or any connected person.*

#### [Note to stakeholders:

We are not consulting on the above definition which is included for reference only. This definition of product placement is set out in the AVMS Directive and the above wording is taken from the Government’s draft AVMS Directive (Implementation) Regulations which set out the new statutory requirements relating to product and prop placement. These, together with the definitions of product and prop placement, will be inserted by the Regulations into the Communications Act in December 2009.

Ofcom will have a duty to ensure broadcasters comply with the new statutory requirements relating to product and prop placement. Given that the requirements will be set out in legislation, Ofcom will have no discretion to draft its own rules. We therefore propose to replicate the final wording adopted in the new legislative provisions within the revised Code (see paragraphs 2.11 to 2.13)].

## **Premium rate services**

*The definition of premium rate services (“PRS”) in this section is based on PhonepayPlus’ definition.*

### **[Note to stakeholders:**

The rules for the promotion of PRS within programming will be determined by the outcome of Ofcom’s consultation on Participation Television planned for autumn 2009. Rules 9.7 and 9.8 which follow are the current rules relating to PRS].

9.7 Premium rate numbers will normally be regarded as products or services, and must therefore not appear in programmes, except where:

- they form part of the editorial content of the programme; or
- they fall within the meaning of programme-related material (see below).

9.8 Any use of premium rate numbers must comply with the Code of Practice issued by PhonepayPlus.

9.9 The cost to viewers for using premium rate services must be made clear to them and broadcast as appropriate.

## **Broadcast competitions and voting**

*The following rules apply to:*

- *competitions featured in programming in which viewers are invited to enter for the opportunity to win a prize; and*
- *features in programming in which viewers are invited to register a vote to decide or influence the outcome of a contest (at any stage).*

*They apply to all television broadcasters, including BBC services funded by the licence fee, and should be read in conjunction with Rules 2.2 and 2.11 to 2.13 of the Code. Ofcom licensees should also refer to broadcast licence Condition 6(A) (the requirements for the handling of communications from viewers).*

*The rules reflect the potential for viewer participation to result in financial harm. Broadcasters should be particularly mindful of the need to ensure adequate consumer protection when inviting viewers to participate in broadcast competitions and voting.*

*For competitions and voting that involve the use of PRS, broadcasters should also refer to Rules 9.7 to 9.9.*

9.10 Broadcast competitions and voting must be fairly promoted and conducted and broadcasters must not materially mislead viewers so as to cause financial harm.

9.11 Terms and conditions of entry or participation must be drawn up by broadcasters and be appropriately brought to the attention of viewers. In particular, significant conditions that may affect a viewer’s decision to participate must be made clear at the time an invitation to participate is broadcast.

## **Programme-related material**

*Programme-related material consists of products or services that are both directly derived from a programme and specifically intended to allow viewers to benefit fully from that programme.*

*The following rules reflect the potential for the promotion of programme-related material in television programming to undermine the key principles of editorial integrity, separation and transparency.*

- 9.12 Programme-related material may be promoted only in the programme from which it is directly derived and only where it is editorially justified. References to programme-related material should be brief and confined to the name of the item, a basic description, its cost and/or availability and must not be unduly prominent.
- 9.13 The broadcaster must retain responsibility for ensuring the appropriateness of programme-related material.

*Programme-related material may be sponsored (see Rule 9.25).*

## **Cross-promotions**

*The Cross-promotion of programmes, channels and other broadcasting-related services is covered by specific rules contained in the Cross-promotion Code. This is included as an annex to the Broadcasting Code.*

*Broadcasters should note that Cross-promotions should also comply with all relevant requirements of the Broadcasting Code and, in particular, Rules 9.1 to 9.6.*

## **Sponsorship on television**

- *Sponsored programming (which may include a programme, channel, programme segment or block of programmes) is programming that has had some or all of its costs met by a sponsor.*
- *A sponsor is any public or private undertaking or natural person (other than the broadcaster or programme producer) who is funding the programming with a view to promoting its products, services, logos, images, name, trade marks and/or its activities.*
- *A sponsor reference means any reference to the sponsor's products, services, logos, images, names, trade marks and/or its activities.*
- *"Costs" means any part of the costs connected to the production or broadcast of the programming.*
- *An advertiser-funded programme is sponsored programming and therefore subject to the following rules.*

*The following rules recognise that a purpose of the sponsor's funding is to promote itself. However, sponsorship must not be used to circumvent the prohibition of product placement. The following rules prevent sponsor references within sponsored programming forming part of a sponsorship arrangement. The rules enable references to the sponsor within a sponsor credit, not within the sponsored content.*

*The rules seek to ensure editorial integrity is preserved and separation is maintained. They also aim to protect against unsuitable sponsorship, and to ensure that sponsorship arrangements adhere to the principle of transparency.*

#### Content that may not be sponsored on television

9.14 News and current affairs programmes must not be sponsored.

*A current affairs programme is one that contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.*

#### Prohibited and restricted sponsors on television

9.15 Programming (including a channel) may not be sponsored by any sponsor that is prohibited from advertising on television.

9.16 Sponsorship must comply with both the content and scheduling rules that apply to television advertising.

#### Content of sponsored output on television

9.17 A sponsor must not influence the content and/or scheduling of a channel or programming in such a way as to impair the responsibility and editorial independence of the broadcaster.

9.18 Sponsorship arrangements must not result in sponsor references being included within the editorial of the sponsored programming.

9.19 Sponsor references within the editorial of the sponsored programming that do not result from the sponsorship arrangement must be non-promotional, editorially justified and incidental. This requirement extends to generic references.

#### Sponsorship credits on television

9.20 Sponsorship must be clearly identified as such by reference to the name and/or logo of the sponsor (the sponsorship credit). For sponsored programmes, credits must be broadcast at the beginning and/or end of the programme.

9.21 The relationship between the sponsor and the sponsored content must be clear.

9.22 Sponsorship credits must be clearly separated from programming by temporal or spatial means.

9.23 Sponsorship credits must be distinct from advertising. Sponsor credits can include reference to the sponsor's products and services for the purpose of helping to identify the sponsor and the sponsorship arrangement. However, any such references must not be given undue prominence. Credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.

9.24 Where a sponsor credit is included in a programme trail, the credit must remain brief and secondary.

9.25 Programme-related material may be sponsored and the sponsor may be credited when details of how to obtain the material are given. Any credit must be brief and secondary, and must be separate from any credit for the programme sponsor.

### **Public Information Programming**

*Public Information Programming is programming funded by a non-commercial, not-for-profit entity that seeks to educate or inform the audience on matters in the public interest.*

*A non-commercial, not-for-profit entity is either an individual who operates without seeking to make a profit or an organisation that has non-profit making status. The entity's activities must be wholly or mainly of a non-commercial nature. In cases where such an entity does pursue some activities of a commercial nature, Public Information Programming funded by that entity may not relate to or include any form of reference to those commercial activities.*

*Public Information Programming must be restricted **solely** to seeking to educate or inform the audience on matters in the public interest. Examples of matters in the public interest in this context include public health or safety, crime detection/ prevention and education.*

*The following rules do not enable surreptitious advertising or allow broadcasters to circumvent rules for sponsorship or those prohibiting political advertising. The rules ensure the maintenance of editorial integrity, transparency and separation. Broadcasters are reminded that Public Information Programming must also comply with the requirements of all other relevant sections of the Code. Broadcasters should also cross-refer to the rules prohibiting political advertising.*

9.26 Public Information Programming is programming which has as its purpose a public interest benefit. Public Information Programming may not be funded with a view to promoting the name, trade mark, image, activities or products of the funder. It may be funded **only** by a non-commercial, not-for-profit entity.

9.27 Public Information Programming must not be funded by an individual or organisation that is prohibited from advertising on television.

9.28 The funder of Public Information Programming must not influence the content and/or scheduling of the programming in such a way as to impair the responsibility and editorial independence of the broadcaster.

9.29 Public Information Programming must not cover matters relating to political, industrial or public controversy. Similarly, Public Information Programming must not seek to influence the policies or decisions of local, regional or national governments, whether in the UK or elsewhere.

9.30 Public Information Programming must be identified as such by reference to the name and/or logo of the funder in credits at the start and end of the programming, and also at the start and end of any commercial break. There must be no other information and/or message included in such credits.

9.31 The relationship between the funder and the Public Information Programming must be transparent to viewers.

9.32 Public Information Programming must not relate to, or refer to, any commercial activities of the funder and/or any connected person.

9.33 References to non-commercial activities of the funder are permitted within the Public Information Programming **only** where they are in the public interest. All such references must be editorially justified and must not be unduly prominent.

### **Charity appeals**

*Charity appeals are allowed in programming only if they are broadcast free of charge.*

*The following rules recognise that while charities differ from purely commercial entities, there is still a potential risk that the audience may suffer financial harm as a result of such appeals (consumer protection). Further, many charities operate in competition with one another and the rules therefore aim to ensure that charity appeals benefit a range of charities. Where appropriate, broadcasters must also pay particular attention to Section Five of the Code (Due Impartiality).*

9.34 Charity appeals that are broadcast free of charge are allowed in programming provided that the broadcaster has taken reasonable steps to satisfy itself that:

- the organisation concerned can produce satisfactory evidence of charitable status, or, in the case of an emergency appeal, that a responsible public fund has been set up to deal with it; and
- the organisation concerned is not prohibited from advertising on television.

9.35 Where possible, the broadcast of charity appeals, either individually or taken together over time, should benefit a wide range of charities.

### **Financial promotions and investment recommendations**

*A financial promotion is an invitation or inducement to engage in investment activity (in accordance with section 21(1) of the Financial Services and Markets Act 2000 (Restrictions on financial promotion).)*

*An investment recommendation occurs when someone directly recommends a particular investment decision, for example, buying or selling a particular share or underwriting a particular share offer.*

*The rules applying to such promotions and recommendations reflect the particular risk that such references could result in financial harm to the audience (consumer protection), and the resulting need for editorial integrity and transparency to be maintained and protected.*

9.36 When broadcasting financial promotions and investment recommendations broadcasters must comply with the relevant provisions in Appendix 4 to this Code.

### **Appeals for funds for programming or services**

*During programming, broadcasters may broadcast appeals for donations to make editorial content or fund their service.*

*Rules 9.37 to 9.40 reflect the potential for financial harm when broadcasters appeal for funds from viewers (consumer protection) and ensure editorial integrity, transparency, and separation are maintained.*

9.37 Viewers must be told the purpose of the donation and how much it raises.



9.38 All donations must be separately accounted for and used for the purpose for which they were donated.

9.39 Broadcasters must not offer any additional benefits or other incentives to donors.

9.40 Appeals for funds for programming or services must not be given undue prominence.

### **Virtual advertising**

*Virtual advertising usually (but not exclusively) takes place at events, for example, sporting events, and involves the alteration of the broadcast signal to replace existing venue advertising with other advertising in the television picture (potentially targeted at a particular geographical audience).*

*The following rule reflects the particular need in this instance to prevent surreptitious advertising (transparency). The rule also protects editorial integrity and provides consumer protection.*

9.41 The use of electronic imaging systems during broadcast coverage of an event must comply with the following requirements:

- broadcasters and viewers must be informed in advance of the presence of virtual images;
- virtual advertising may only replace existing on-site advertising – virtual advertising messages must not be more visible or conspicuous than the actual advertising at the venue; and
- rules relating to prohibited advertisers also apply to virtual advertising; and the broadcaster may not trade in virtual advertising.

## Annex 8

# Section Nine: Commercial references in television programming [illustrative only]

**This is for illustrative purposes only and consists of the following:**

**2009 Code Review proposals:** rules in normal text (with clarification text in italics) [*please note Ofcom has not yet reached its decision on these proposals which were subject to the 2009 Consultation. These proposals are therefore subject to change as a consequence of responses to the 2009 Consultation*].

**2010 Code Review proposed additions:** in **grey shaded text**;

**2010 Code Review proposed changes/deletions:** in **strikethrough text (e.g. separation)**.

*(Relevant legislation includes, in particular, sections 319(2)(fa), (i) and (j) and 319(4) (a), (c), (e) and (f), section 321(1) and (4) and section 324(3) of the Communications Act 2003; Articles 9, 10, 11, and Chapter VII (Articles 19 to 26) of the Audiovisual Media Services Directive; regulation 3(4)(d) of the Consumer Protection From Unfair Trading Regulations 2008; section 21(1) of the Financial Services and Markets Act 2000; paragraph 3 of the Investment Recommendation (Media) Regulations Act 2005; and Article 10 of the European Convention on Human Rights.)*

*This section of the Code covers all commercial references that feature within television programming.*

*Examples of television programming include programmes, trailers, Cross-promotions and sponsorship credits. “Programming” does not include advertisements.*

*For the purposes of this Code section, “commercial references” means any references to products or services.*

*“Products or services” include logos, images, names, trade marks and/or associated activities, and may include references to non-commercial organisations.*

*This section of the Code recognises that commercial references within programming occur in a range of different circumstances. It contains a set of general rules that apply to **all** commercial references in television programming. It also contains specific rules for different types of commercial references (e.g. programme-related material, sponsorship).*

*The rules ensure that the broad principles of editorial ~~integrity~~ independence, ~~separation of advertising~~ distinction between advertising and programming editorial content; transparency of commercial arrangements; and the appropriate protection of consumers are maintained. ~~With the exception of Rules 9.10 and 9.11,~~ This section does not apply to BBC services funded by the licence fee, ~~with the exception of the relevant product placement rules (see the additional note on the BBC in product placement section).~~*

## Principles

- To ensure that broadcasters maintain editorial independence and control over programming (editorial integrity independence).
- To ensure that there is distinction programming between editorial content and advertising remain distinct (separation distinction).
- To ensure there is distinction between editorial content and advertising remain distinct (distinction).
- To protect audiences from surreptitious advertising (transparency).
- To ensure that audiences are protected from the risk of financial harm (consumer protection).
- To ensure that unsuitable sponsorship is prevented (unsuitable sponsorship).

## Rules

### General Rules

*Rules 9.1 to 9.7 apply to all commercial references included within television programming. They reflect the fact that the inclusion of commercial references in television programming creates a particular risk that the key principles may be, or appear to be, undermined.*

9.1 Broadcasters must maintain independent editorial control over programming.

9.2 Broadcasters must ensure that editorial content is distinct from advertising.

9.3 Surreptitious advertising is prohibited.

*Surreptitious advertising involves a reference to a product or service within a programme, where such a reference is intended by the broadcaster to serve as advertising and this is not made clear to the audience. Such advertising may be included in programmes in return for payment or other valuable consideration.*

9.4 Products and services must not be promoted in programming, unless permitted by specific rules in this section of the Code (e.g. programme-related material).

9.5 No undue prominence may be given in programming to a product or service. Undue prominence may result from:

- the presence of, or reference to, a product or service in programming where there is no editorial justification; or
- the manner in which a product or service appears or is referred to in programming.

~~Broadcasters must ensure that advertising and programming are kept separate (see Rule 9.5 for limited exemptions that apply to the use of advertisements as part of programming).~~

9.6 Advertisements must not appear as part of programming, unless editorially justified. Where advertisements are featured as part of programming, their presence must not be unduly prominent.

9.7 Viewer communications that are solicited by or on behalf of the broadcaster in programming must be treated fairly and consistently.

*In the case of premium rate services, particular provisions apply to protect consumers from financial harm (see Rules 9.7 to 9.9 9.32 to 9.36). In all cases, however, it is important that broadcasters also consider carefully the provisions in Section Two of the Code.*

### **Product and prop placement**

~~“Product placement”, in relation to a programme included in a television programme service, means the inclusion for a commercial purpose of, or a reference to, a product, service or trade mark, so that it is featured in that programme in return for the making of any payment or the giving of other valuable consideration, to a relevant provider or any connected person.~~

### **Product placement (and prop placement)**

**Product placement** means “the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider, and is not prop placement”<sup>57</sup>.

**Prop placement** means “the inclusion in a programme of, or of a reference to, a product, service or trade mark where the provision of the product, service or trade mark has no significant value, and no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including...[it or a reference to it] in the programme”<sup>58</sup>.

Prop placement involving the supply of products or services that are of **significant value** will be treated as product placement and must comply with Rules 9.8 to 9.17.

**Significant value** means “a residual value that is more than trivial”.

**Residual value** means “any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trade mark, or a reference to it, in a programme”.

**Trade mark** in relation to a business “includes any image (such as a logo) or sound commonly associated with that business or its products or services”.

**Relevant provider** means “the provider of the television programme service in which the programme is included or the producer of the programme”.<sup>59</sup>

**Person connected** has the same meaning as it has in section 202 of the Broadcasting Act 1990 (paragraph 3 in Part 1 of Schedule 2). The full definition is reproduced in Appendix 1 of the Code (Relevant legislation<sup>60</sup>). In summary, the following persons are connected with a particular person (‘person’ includes an individual as well as a body corporate and other incorporated and unincorporated legal entities):

- (a) a person who controls that person;
- (b) an associate of that person or of the person in (a); and
- (c) a body which is controlled by that person or an associate of that person.

<sup>57</sup> See Schedule 11A, paragraph 1(1) of the Act (see Annex 10).

<sup>58</sup> See Schedule 11A, paragraph 1(2) of the Act (see Annex 10).

<sup>59</sup> The definitions of significant value, residual value, trade mark and relevant provider are all set out at Schedule 11A, paragraph 9 of the Act (see Annex 10).

<sup>60</sup> See Annex 9.

**Control and associate** have the meanings set out in paragraph 1, Part 1, Schedule 2 of the 1990 Act. The full definition is reproduced in Appendix 1 of the Code (Relevant legislation<sup>61</sup>).

**The BBC** is prohibited from accepting most types of commercial revenue in relation to services funded by the licence fee. However the Act's product placement requirements apply to programmes the BBC acquires or those produced/commissioned by its commercial services or any connected entities. The Code rules required by the Act apply to the BBC in those respects.

The following rules also apply to paid-for references that are not included in a programme for a commercial purpose. For example, some cases in which a charity pays for the inclusion in a programme of a reference to its name or trade mark.

#### **Rules 9.8 to 9.13 apply to all programmes:**

9.8 Product placement is prohibited except in the following programme genres:

- a) films
- b) series made for television (or other audiovisual media services)
- c) sports programmes
- d) light entertainment programmes.

For the purposes of product placement, "films" includes films made for cinema and films (including single dramas) made for television or other audiovisual media services.

9.9 Programmes that fall within the permitted genres must not contain product placement if they are:

- a) news programmes
- b) children's programmes.

*A children's programme in this context is "a programme made for a television programme service or an on-demand programme service, and for viewing primarily by persons under the age of sixteen"<sup>62</sup>.*

*If any programme produced after 19 December 2009 that includes product placement either:*

- a) *does not fall within the permitted genres described at Rule 9.8; or*
- b) *falls within the permitted genres but is a news or children's programme, it must be edited to cut out or obscure the placed products, services or trade marks before the programme is transmitted on a television service under UK jurisdiction.*

9.10 Product placement must not influence the content and scheduling of a programme in a way that affects the responsibility and editorial independence of the broadcaster.

In particular, product placement arrangements must not involve thematic placement, i.e. the payment by a third party for the creation of storylines/scripts as vehicles for the purpose of featuring particular issues or references (including generic references) to the third party funder's aims, objectives, beliefs or interests.

<sup>61</sup> See Annex 9.

<sup>62</sup> Schedule 11A, paragraph 3(2), of the Act (see Annex 10).

9.11 References to placed products, services and trade marks must not be promotional.

*In the context of product placement, the factors that are likely to be considered promotional include, but are not limited to, the following:*

- *encouragements to purchase (whether direct or indirect);*
- *advertising claims;*
- *price information;*
- *any reference (either explicit or implicit) to the positive attributes or benefits of the placed product, service or trade mark;*
- *endorsements (either explicit or implicit); and/or*
- *slogans associated with the placed product, service or trade mark.*

9.12 References to placed products, services and trade marks must not be unduly prominent.

*Undue prominence may result from the manner in which a placed product or service features within a programme, including, but not limited to:*

- *the emphasis placed on a placed product/service/trade mark within a programme;*
- *the frequency of references to a placed product/service/trade mark (taken across a scene, programme or series);*
- *the editorial justification for references to a placed product/service/trade mark.*

9.13 The placement of the following products, services or trade marks is prohibited:

- a) cigarettes or other tobacco products;
- b) placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products; or
- c) prescription-only medicines.

**In addition to Rules 9.8 to 9.13, Rules 9.14 to 9.15 also apply to product placement included in all programmes produced under UK jurisdiction:**

*“programmes produced under UK jurisdiction” means any programme produced or commissioned by either:*

- a) *the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or*
- b) *any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the AVMS Directive).*

9.14 Product placement is not permitted in the following:

- a) religious programmes
- b) consumer advice programmes
- c) current affairs programmes
- d) specialist factual programming.

*For the purposes of product placement, “specialist factual programming” means purely factual programmes covering educational, science, medical or arts subjects, or those that are investigative in nature.*

- 9.15 The placement of the following is prohibited:
- a) alcohol
  - b) products high in fat, salt and sugar (“HFSS products”)
  - c) gambling
  - d) infant formula (baby milk), including follow-on formula
  - e) all medicinal products
  - f) any product, service or trade mark that is not allowed to be advertised on television.

*HFSS products are defined by the nutrient profiling scheme which was devised by the UK’s Food Standards Agency for use by Ofcom. This can be found at <http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod>*

**In addition to Rules 9.8 to 9.15, Rules 9.16 and 9.17 also apply to programmes produced or commissioned by the provider of the television programme service or any person connected with that provider:**

- 9.16 Product placement must be signalled clearly, by means of a universal neutral logo and universal audio signal, as follows:
- a) at the beginning of the programme in which the placement appears;
  - b) when the programme recommences after commercial breaks; and
  - c) at the end of the programme.
- 9.17 Broadcasters must make available to the audience a list of those products, services or trade marks that have featured in a programme as a result of a product placement arrangement. This must be provided in a brief, non-promotional manner, either:
- a) in the programme’s end credits; or
  - b) on the broadcaster’s website, with a reference to this given at the end of the programme.

*Product placement information included in the programme’s end credits should not include any trade marks, logos or other distinctive signs. If the programme’s end credits are likely to be minimised or scaled down, the product placement information should be positioned before this occurs to ensure that it is clear to the audience.*

### **Acquired programmes and signalling**

*When a broadcaster acquires a programme containing product placement, (i.e. the broadcaster has not produced or commissioned the programme, and it has not been produced or commissioned by a connected person), there is no signalling requirement. However, please note that such programmes must comply with any other relevant Code rules.*

*Nevertheless, if a broadcaster acquires a programme from a third party **on the condition that product placement within the programme will be broadcast** (subject to compliance with relevant rules), the requirements of Rule 9.3 (surreptitious advertising) should be noted. In such circumstances, Ofcom expects broadcasters to ensure that audiences are made aware that the programme includes product placement.*

## Sponsorship on television

- *Sponsored programming (which may include a programme, channel, or block of programmes) is programming that has had some or all of its costs met by a sponsor.*
- *A sponsor is any public or private undertaking or natural person (other than the broadcaster or programme producer) who is funding the programming with a view to promoting its products, services, logos, images, name, trade marks and/or its activities.*
- *A sponsor reference means any reference to the sponsor's products, services, logos, images, names, trade marks and/or its activities.*
- *"Costs" means any part of the costs connected to the production or broadcast of the programming.*
- *An advertiser-funded programme is sponsored programming and therefore subject to the following rules.*

The following rules recognise that a purpose of the sponsor's funding is to promote itself. However, sponsorship must not be used to circumvent the prohibition of product placement. The following rules prevent sponsor references within sponsored programming forming part of a sponsorship arrangement. The rules enable references to the sponsor within a sponsor credit, not within the sponsored content.

*The rules seek to ensure editorial integrity independence is preserved and separation a distinction is maintained between programming and advertising. They also aim to protect against unsuitable sponsorship, and to ensure that sponsorship arrangements adhere to the principle of transparency.*

## Content that may not be sponsored on television

9.18 News and current affairs programmes must not be sponsored.

*A current affairs programme is one that contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.*

## Prohibited and restricted sponsors on television

9.19 Programming (including a channel) may not be sponsored by any sponsor that is prohibited from advertising on television.

9.20 Sponsorship must comply with both the content and scheduling rules that apply to television advertising.

## Content of sponsored output on television

9.21 A sponsor must not influence the content and/or scheduling of a channel or programming in such a way as to impair the responsibility and editorial independence of the broadcaster.

*With the exception of the sponsorship credits, any reference to a sponsor that appears in a sponsored programme as a result of a commercial arrangement will be treated as product placement and must comply with Rules 9.8 to 9.17.*



~~Sponsorship arrangements must not result in sponsor references being included within the editorial of the sponsored programming.~~

~~Sponsor references within the editorial of the sponsored programming that do not result from the sponsorship arrangement must be non-promotional, editorially justified and incidental. This requirement extends to generic references.~~

### **Sponsorship credits on television**

- 9.22 Sponsorship must be clearly identified by reference to the name and/or logo of the sponsor, accompanied by a statement informing the audience of the sponsorship arrangement (the sponsorship credit).

~~The relationship between the sponsor and the sponsored content must be clear.~~

- 9.23 Sponsorship credits must be distinct from editorial.

~~Sponsorship credits must be clearly separated from programming by temporal or spatial means.~~

- 9.24 Sponsorship credits must be distinct from advertising.

- 9.25 For sponsored programmes, credits must be broadcast at the beginning and/or during and/or end of the programme.

*Credits may also be broadcast entering and/or leaving a commercial break during the sponsored programme.*

*For other sponsored content (e.g. channels) sponsorship credits should be broadcast at appropriate points during the schedule to ensure audiences understand that the content is sponsored.*

- 9.26 Sponsorship credits broadcast around sponsored programmes can include reference to the sponsor's products and services for the purpose of helping to identify the sponsor and the sponsorship arrangement. However, any such references must not be given undue prominence. Credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.

- 9.27 Sponsorship credits broadcast during programmes must not be unduly prominent. They must consist of a brief neutral visual or verbal statement identifying the sponsorship arrangement. This can be accompanied by only a static graphic of the name, logo, or any other distinctive symbol of the sponsor. There must be no advertising messages, calls to action or any other information about the sponsor, its products or services.

- 9.28 Where a sponsor is prohibited from product placing in the programme it is sponsoring, sponsorship credits may not be shown during the sponsored programme.

- 9.29 Where a sponsor has placed products/services in the programme it is sponsoring, sponsorship credits broadcast during the programme must not coincide with the appearance of the placed products/services.
- 9.30 Where a sponsorship credit is included in a programme trail, the credit must remain brief and secondary.
- 9.31 Programme-related material may be sponsored and the sponsor may be credited when details of how to obtain the material are given. Any credit must be brief and secondary, and must be separate from any credit for the programme sponsor.

**Premium rate services** [Please note the grey shaded rules in this section have already been consulted on as part of Ofcom's consultation on Participation Television].

*The definition of premium rate services ("PRS") in this section is based on PhonepayPlus' definition.*

~~Premium rate numbers will normally be regarded as products or services, and must therefore not appear in programmes, except where:~~

- ~~• they form part of the editorial content of the programme; or~~
- ~~• they fall within the meaning of programme-related material (see below).~~

~~Any use of premium rate numbers must comply with the Code of Practice issued by PhonepayPlus.~~

- 9.32 Where a broadcaster invites viewers or listeners to take part in or otherwise interact with its programmes, it may only charge for such participation or interaction by means of premium rate telephone services or other telephony services based on similar revenue-sharing arrangements.
- 9.33 Premium rate services will normally be regarded as products or services, and must therefore not appear in programmes, except where:
- they enable viewers/listeners to participate directly in or otherwise contribute directly to the editorial content on the programme; or
  - they fall within the meaning of programme-related material.
- Each of the above exceptions is subject to the undue prominence rule.
- 9.34 Where a premium rate service is featured in a programme, the primary purpose of the programme must continue to be clearly editorial. Promotion of the featured premium rate service must be clearly subsidiary to that primary purpose.
- 9.35 Any use of premium rate numbers must comply with the Code of Practice issued by PhonepayPlus.
- 9.36 The cost to viewers for using premium rate services must be made clear to them and broadcast as appropriate.

## Programme-related material

*Programme-related material consists of products or services that are both directly derived from a programme and specifically intended to allow viewers to benefit fully from that programme.*

*The following rules reflect the potential for the promotion of programme-related material in television programming to undermine the key principles of editorial ~~integrity~~ independence, ~~separation~~ distinction between advertising and editorial content and transparency.*

- 9.37 Programme-related material may be promoted only in the programme from which it is directly derived and only where it is editorially justified. References to programme-related material should be brief and confined to the name of the item, a basic description, its cost and/or availability and must not be unduly prominent.
- 9.38 The broadcaster must retain responsibility for ensuring the appropriateness of programme-related material.

*Programme-related material may be sponsored (see Rule 9.31).*

## Cross-promotions

*The Cross-promotion of programmes, channels and other broadcasting-related services is covered by specific rules contained in the Cross-promotion Code. This is included as an annex to the Broadcasting Code.*

*Broadcasters should note that Cross-promotions should also comply with all relevant requirements of the Broadcasting Code and, in particular, Rules 9.1 to 9.6.*

## Public Information Programming

*Public Information Programming is programming funded by a non-commercial, not-for-profit entity that seeks to educate or inform the audience on matters in the public interest.*

*A non-commercial, not-for-profit entity is either an individual who operates without seeking to make a profit or an organisation that has non-profit making status. The entity's activities must be wholly or mainly of a non-commercial nature. In cases where such an entity does pursue some activities of a commercial nature, Public Information Programming funded by that entity may not relate to or include any form of reference to those commercial activities.*

*Public Information Programming must be restricted solely to seeking to educate or inform the audience on matters in the public interest. Examples of matters in the public interest in this context include public health or safety, crime detection/ prevention and education.*

*The following rules do not enable surreptitious advertising or allow broadcasters to circumvent rules for sponsorship or those prohibiting political advertising. The rules ensure the maintenance of editorial ~~integrity~~ independence, transparency and ~~separation~~ distinction between advertising and editorial content. Broadcasters are reminded that Public Information Programming must also comply with the requirements of all other relevant sections of the Code. Broadcasters should also cross-refer to the rules prohibiting political advertising.*

- 9.39 Public Information Programming is programming which has as its purpose a public interest benefit. Public Information Programming may not be funded with a view to

promoting the name, trade mark, image, activities or products of the funder. It may be funded only by a non-commercial, not-for-profit entity.

- 9.40 Public Information Programming must not be funded by an individual or organisation that is prohibited from advertising on television.
- 9.41 The funder of Public Information Programming must not influence the content and/or scheduling of the programming in such a way as to impair the responsibility and editorial independence of the broadcaster.
- 9.42 Public Information Programming must not cover matters relating to political, industrial or public controversy. Similarly, Public Information Programming must not seek to influence the policies or decisions of local, regional or national governments, whether in the UK or elsewhere.
- 9.43 Public Information Programming must be identified as such by reference to the name and/or logo of the funder in credits at the start and end of the programming, and also at the start and end of any commercial break. There must be no other information and/or message included in such credits.
- 9.44 The relationship between the funder and the Public Information Programming must be transparent to viewers.
- 9.45 Public Information Programming must not relate to, or refer to, any commercial activities of the funder and/or any connected person.
- 9.46 References to non-commercial activities of the funder are permitted within the Public Information Programming only where they are in the public interest. All such references must be editorially justified and must not be unduly prominent.

### **Charity appeals**

*Charity appeals are allowed in programming only if they are broadcast free of charge. The following rules recognise that while charities differ from purely commercial entities, there is still a potential risk that the audience may suffer financial harm as a result of such appeals (consumer protection). Further, many charities operate in competition with one another and the rules therefore aim to ensure that charity appeals benefit a range of charities. Where appropriate, broadcasters must also pay particular attention to Section Five of the Code (Due Impartiality).*

- 9.47 Charity appeals that are broadcast free of charge are allowed in programming provided that the broadcaster has taken reasonable steps to satisfy itself that:
- the organisation concerned can produce satisfactory evidence of charitable status, or, in the case of an emergency appeal, that a responsible public fund has been set up to deal with it; and
  - the organisation concerned is not prohibited from advertising on television.
- 9.48 Where possible, the broadcast of charity appeals, either individually or taken together over time, should benefit a wide range of charities.

## Financial promotions and investment recommendations

*A financial promotion is an invitation or inducement to engage in investment activity (in accordance with section 21(1) of the Financial Services and Markets Act 2000 (Restrictions on financial promotion).)*

*An investment recommendation occurs when someone directly recommends a particular investment decision, for example, buying or selling a particular share or underwriting a particular share offer.*

*The rules applying to such promotions and recommendations reflect the particular risk that such references could result in financial harm to the audience (consumer protection), and the resulting need for editorial integrity independence and transparency to be maintained and protected.*

9.49 When broadcasting financial promotions and investment recommendations  
broadcasters must comply with the relevant provisions in Appendix 4 to this Code.

## Appeals for funds for programming or services

*During programming, broadcasters may broadcast appeals for donations to make editorial content or fund their service.*

*Rules 9.50 to 9.53 reflect the potential for financial harm when broadcasters appeal for funds from viewers (consumer protection) and ensure editorial integrity independence, transparency, and separation distinction between advertising and editorial content are maintained.*

9.50 Viewers must be told the purpose of the donation and how much it raises.

9.51 All donations must be separately accounted for and used for the purpose for which they were donated.

9.52 Broadcasters must not offer any additional benefits or other incentives to donors.

9.53 Appeals for funds for programming or services must not be given undue prominence.

## Virtual advertising

~~Virtual advertising usually (but not exclusively) takes place at events, for example, sporting events, and involves the alteration of the broadcast signal to replace existing venue advertising with other advertising in the television picture (potentially targeted at a particular geographical audience).~~

~~The following rule reflects the particular need in this instance to prevent surreptitious advertising (transparency). The rule also protects editorial integrity and provides consumer protection.~~

~~The use of electronic imaging systems during broadcast coverage of an event must comply with the following requirements:~~

- ~~• broadcasters and viewers must be informed in advance of the presence of virtual images;~~

- ~~virtual advertising may only replace existing on-site advertising virtual advertising messages must not be more visible or conspicuous than the actual advertising at the venue; and~~
- ~~rules relating to prohibited advertisers also apply to virtual advertising; and the broadcaster may not trade in virtual advertising.~~

## Annex 9

# Relevant legislative requirements: AVMS Directive and Appendix 1 of the Code

### Relevant legislative requirements: AVMS Directive

#### **DIRECTIVE 2010/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 10 March 2010**

**on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services)**

**(codified version)**

### **Definitions**

#### *Article 1*

For the purpose of this Directive the following definitions shall apply:

- (b) 'programme' means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and whose form and content is comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama;
- (c) 'editorial responsibility' means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services. Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided;
- (f) 'broadcaster' means a media service provider of television broadcasts;
- (h) 'audiovisual commercial communication' means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;
- (i) 'television advertising' means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;

- (j) 'surreptitious audiovisual commercial communication' means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration;
- (k) 'sponsorship' means any contribution made by a public or private undertaking or natural person not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting its name, its trade mark, its image, its activities or its products;
- (m) 'product placement' means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration;

#### *Article 9*

1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:
  - (a) audiovisual commercial communications shall be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited;
  - (b) audiovisual commercial communications shall not use subliminal techniques;
  - (c) audiovisual commercial communications shall not:
    - (i) prejudice respect for human dignity;
    - (ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
    - (iii) encourage behaviour prejudicial to health or safety;
    - (iv) encourage behaviour grossly prejudicial to the protection of the environment;
  - (d) all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited;
  - (e) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;
  - (f) audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited;



- (g) audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.
2. Member States and the Commission shall encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communication, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.

#### *Article 10*

1. Audiovisual media services or programmes that are sponsored shall meet the following requirements:
- (a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;
  - (b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;
  - (c) viewers shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in a appropriate way for programmes at the beginning, during and/or the end of the programmes.
2. Audiovisual media services or programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.
3. The sponsorship of audiovisual media services or programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.
4. News and current affairs programmes shall not be sponsored. Member States may choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes.

*Article 11*

1. The provisions of paragraphs 1, 2 and 3 shall apply only to programmes produced after 19 December 2009.
2. Product placement shall be prohibited.
3. By way of derogation from paragraph 1, product placement shall be admissible unless a Member State decides otherwise:
  - (a) in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, or
  - (b) where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme.

The derogation provided for in the first indent shall not apply to children's programmes.

Programmes that contain product placement shall meet at least all of the following requirements:

- (a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;
- (b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;
- (c) they shall not give undue prominence to the product in question;
- (d) viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

By way of exception, Member States may choose to waive the requirements set out in point (d) provided that the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.

4. In any event programmes shall not contain product placement of:
  - (a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products, or
  - (b) specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

*Article 19*

1. Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.
2. Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.’;

*Article 20*

1. Member States shall ensure, where television advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme, and the rights of the right holders are not prejudiced.
2. The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. No television advertising or teleshopping shall be inserted during religious services.

*Article 23*

1. The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20%.
2. Paragraph 1 shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.’;

**Relevant recitals**

- (31) In addition to television advertising and teleshopping, a wider definition of audiovisual commercial communication should be introduced in this Directive, which however should not include public service announcements and charity appeals broadcast free of charge.
- (41) Member States should be able to apply more detailed or stricter rules in the fields coordinated by this Directive to media service providers under their jurisdiction, while ensuring that those rules are consistent with general principles of Community law...
- (81) Commercial and technological developments give users increased choice and responsibility in their use of audiovisual media services. In order to remain proportionate with the goals of general interest, regulation should allow a certain degree of flexibility with regard to television broadcasting. The principle of separation should be limited to television advertising and teleshopping, product placement

should be allowed under certain circumstances, unless a Member State decides otherwise, and some quantitative restrictions should be abolished. However, where product placement is surreptitious, it should be prohibited. The principle of separation should not prevent the use of new advertising techniques.

- (88) It is necessary to prohibit all audiovisual commercial communication promoting cigarettes and other tobacco products including indirect forms of audiovisual commercial communication which, whilst not directly mentioning the tobacco product, seek to circumvent the ban on audiovisual commercial communication for cigarettes and other tobacco products by using brand names, symbols or other distinctive features of tobacco products or of undertakings whose known or main activities include the production or sale of such products.
- (89) It is also necessary to prohibit all audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls and to lay down strict criteria relating to the television advertising of alcoholic products.
- (90) Surreptitious audiovisual commercial communication is a practice prohibited by this Directive because of its negative effect on consumers. The prohibition of surreptitious audiovisual commercial communication should not cover legitimate product placement within the framework of this Directive, where the viewer is adequately informed of the existence of product placement. This can be done by signalling the fact that product placement is taking place in a given programme, for example by means of a neutral logo.
- (91) Product placement is a reality in cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. In order to ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is necessary to adopt rules for product placement. The definition of product placement introduced by this Directive should cover any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration. The provision of goods or services free of charge, such as production props or prizes, should only be considered to be product placement if the goods or services involved are of significant value. Product placement should be subject to the same qualitative rules and restrictions applying to audiovisual commercial communication. The decisive criterion distinguishing sponsorship from product placement is the fact that in product placement the reference to a product is built into the action of a programme which is why the definition in Article 1(m) of Directive 89/552/EEC as amended by this Directive contains the word "within". In contrast, sponsor references may be shown during a programme but are not part of the plot.
- (92) Product placement should, in principle, be prohibited. However, derogations are appropriate for some kinds of programme, on the basis of a positive list. A Member State should be able to opt-out of these derogations, totally or partially, for example by permitting product placement only in programmes which have not been produced exclusively in that Member State.
- (93) Furthermore, sponsorship and product placement should be prohibited where they influence the content of programmes in such a way as to affect the responsibility and the editorial independence of the media service provider. This is the case with regard to thematic placement.

**Relevant legislative requirements: Appendix 1 of the Code**

**SCHEDULE 2  
RESTRICTIONS ON THE HOLDING OF LICENCES**

**Part I General**

**1**

(1) In this Schedule—

“the 1996 Act” means the Broadcasting Act 1996;

“advertising agency” means an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an advertising agent, and any reference to an advertising agency includes a reference to an individual who—

- (a) is a director or officer of any body corporate which carries on such a business, or
- (b) is employed by any person who carries on such a business;

“associate”—

- (a) in relation to a body corporate, shall be construed in accordance with paragraph (1A), and
- (b) in relation to an individual, shall be construed in accordance with sub-paragraph (2);

“Broadcasting Act licence” means a licence under Part 1 or 3 of this Act or Part 1 or 2 of the Broadcasting Act 1996;

“control”—

- (a) in relation to a body corporate, shall be construed in accordance with sub-paragraph (3), and
- (b) in relation to any body other than a body corporate, means the power of a person to secure, by whatever means and whether directly or indirectly, that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person;

“equity share capital” has the same meaning as in the Companies Acts (see section 548 of the Companies Act 2006);

“local authority”—

- (a) in relation to England ... , means any of the following, that is to say, the council of a county, district or London borough, the Common Council of the City of London and the Council of the Isles of Scilly;
  - (aa) in relation to Wales, means a county council or county borough council;
- (b) in relation to Scotland, means a council constituted under section 2 of the Local Government etc (Scotland) Act 1994; and
- (c) in relation to Northern Ireland, means a district council;

“participant”, in relation to a body corporate, means a person who holds or is beneficially entitled to shares in that body or who possesses voting power in that body;

(1A) For the purpose of determining the persons who are the associates of a body corporate for the purposes of this Schedule—

- (a) an individual shall be regarded as an associate of a body corporate if he is a director of that body corporate, and
- (b) a body corporate and another body corporate shall be regarded as associates of each other if one controls the other or if the same person controls both.

(2) For the purpose of determining the persons who are an individual's associates for the purposes of this Schedule, the following persons shall be regarded as associates of each other, namely—

- (a) any individual and that individual's husband or wife or civil partner and any relative, or husband or wife or civil partner of a relative, of that individual or of that individual's husband or wife or civil partner;
- (b) any individual and any body corporate of which that individual is a director;
- (c) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;
- (d) persons carrying on business in partnership and the husband or wife or civil partner and relatives of any of them;
- (e) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets;

and in this sub-paragraph “relative” means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild or illegitimate child of any person, or anyone adopted by a person, whether legally or otherwise, as his child, being regarded as a relative or taken into account to trace a relationship in the same way as that person's child); and references to a wife or husband shall include a former wife or husband and a reputed wife or husband and references to a civil partner shall include a former civil partner and a reputed civil partner.

(3) For the purposes of this Schedule a person controls a body corporate if—

- (a) he holds, or is beneficially entitled to, more than 50 per cent of the equity share capital in the body, or possesses more than 50 per cent of the voting power in it; or
- (b) although he does not have such an interest in the body, it is reasonable, having regard to all the circumstances, to expect that he would (if he chose to) be able in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the body are conducted in accordance with his wishes; or
- (c) he holds, or is beneficially entitled to, 50 per cent of the equity share capital in that body, or possesses 50 per cent of the voting power in it, and an arrangement exists between him and any other participant in the body as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power.

(3A) For the purposes of sub-paragraph (3)(c)—

- (a) “arrangement” includes any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable, and

- (b) a person shall be treated—
  - (i) as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which he controls or to which such a body corporate is beneficially entitled, and
  - (ii) as possessing any voting power possessed by such a body corporate.
- (4) [repealed]
- (5) For the purposes of any provision of this Schedule which refers to a body controlled by two or more persons or bodies of any description taken together, the persons or bodies in question shall not be regarded as controlling the body by virtue of paragraph (b) of sub-paragraph (3) unless they are acting together in concert.
- (6) In this Schedule any reference to a participant with more than a 5 per cent interest in a body corporate is a reference to a person who—
  - (a) holds or is beneficially entitled to more than 5 per cent of the shares in that body, or
  - (b) possesses more than 5 per cent of the voting power in that body.
- (7) Sub-paragraph (6) shall have effect subject to the necessary modifications in relation to other references in this Schedule—
  - (a) to an interest of more than a specified percentage in a body corporate, or
  - (b) to an interest of a specified percentage or more in a body corporate.
- (8) [repealed]

## 2

- (1) Subject to sub-paragraph (1A) any reference in paragraph 1 above to a person—
  - (a) holding or being entitled to shares, or any amount of the shares or equity share capital, in a body corporate, or
  - (b) possessing voting power, or any amount of the voting power, in a body corporate,is a reference to his doing so, or being so entitled, whether alone or jointly with one or more other persons and whether directly or through one or more nominees.
- (1A) For the purposes of this Schedule, a person's holding of shares, or possession of voting power, in a body corporate shall be disregarded if, or to the extent that—
  - (a) he holds the shares concerned—
    - (i) as a nominee,
    - (ii) as a custodian (whether under a trust or by a contract), or
    - (iii) under an arrangement pursuant to which he has issued, or is to issue, depositary receipts, . . . , in respect of the shares concerned, and
  - (b) he is not entitled to exercise or control the exercise of voting rights in respect of the shares concerned.
- (1AA) In sub-paragraph (1A)(a)(iii), “depository receipt” means a certificate or other record (whether or not in the form of a document)—

- (a) which is issued by or on behalf of a person who holds shares or who holds evidence of the right to receive shares, or has an interest in shares, in a particular body corporate; and
  - (b) which evidences or acknowledges that another person is entitled to rights in relation to those shares or shares of the same kind, which shall include the right to receive such shares (or evidence of the right to receive such shares) from the person mentioned in paragraph (a).
- (1B) For the purposes of sub-paragraph (1A)(b)—
- (a) a person is not entitled to exercise or control the exercise of voting rights in respect of shares if he is bound (whether by contract or otherwise) not to exercise the voting rights, or not to exercise them otherwise than in accordance with the instructions of another, and
  - (b) voting rights which a person is entitled to exercise or of which he is entitled to control the exercise only in certain circumstances shall be taken into account only when those circumstances have arisen and for as long as they continue to obtain.

(2), (3) [repealed]

### 3

For the purposes of this Schedule the following persons shall be treated as connected with a particular person—

- (a) a person who controls that person,
- (b) an associate of that person or of a person falling within paragraph (a), and
- (c) a body which is controlled by that person or by an associate of that person.



## Annex 10

# The Audiovisual Media Services (Product Placement) Regulations

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## STATUTORY INSTRUMENTS

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2010 No.

### ELECTRONIC COMMUNICATIONS

### BROADCASTING

#### The Audiovisual Media Services (Product Placement) Regulations 2010

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

These Regulations are made by the Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(63)</sup> in relation to measures relating to television broadcasting<sup>(64)</sup> and in relation to information society services<sup>(65)</sup>, in exercise of the powers conferred by section 2(2) of that Act.

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Audiovisual Media Services (Product Placement) Regulations 2010 and come into force on 16th April 2010.

(2) In these Regulations “the 2003 Act” means the Communications Act 2003<sup>(66)</sup>.

#### Restriction on product placement in television programme services and on-demand programme services

2.—(1) Section 319 of the 2003 Act (OFCOM’s standards code) is amended as follows.

(2) In subsection (2), after paragraph (f) insert—

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<sup>(63)</sup> 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a)

<sup>(64)</sup> European Communities (Designation) Order 1997 S.I. 1997/1174

<sup>(65)</sup> European Communities (Designation)(No.2) Order 2001 S.I. 2001/2555

<sup>(66)</sup> 2003 c.21

“(fa)that the product placement requirements referred to in section 321(3A) are met in relation to programmes included in a television programme service (other than advertisements);”

(3) After subsection (8) insert—

“(9) Subsection (2)(fa) applies only in relation to programmes the production of which begins after 19th December 2009.”

**3.**—(1) Section 321 of the 2003 Act (objectives for advertisements and sponsorship) is amended as follows.

(2) For the heading of the section substitute “Objectives for advertisements, sponsorship and product placement”.

(3) In subsection (1)—

(a) for “(g)” substitute “(fa)”;

(b) in paragraph (a), after “programmes” insert “and, in relation to television programme services, general provision governing standards and practice in product placement”;

(c) omit “and” at the end of paragraph (a);

(d) after paragraph (b) insert—  
“; and

(c) in relation to television programme services, may include provision prohibiting forms and methods of product placement (including product placement of products, services or trade marks of any description) (whether generally or in particular circumstances).”

(4) After subsection (3) insert—

“(3A) For the purposes of section 319(2)(fa) the product placement requirements are the requirements set out in Schedule 11A.”

(5) In paragraph (a) of subsection (4)—

(a) for “shall,” substitute—  
“shall—

(i) ”;

(b) after “sponsorship; and” insert—

“(ii) in relation to television programme services, have a general responsibility with respect to methods of product placement; and”.

(6) In subsection (5)—

(a) omit “and” at the end of paragraph (a);

(b) after paragraph (b) insert—  
“; and

(c) the forms and methods of product placement that should not be employed in the provision of a television programme service (including the descriptions of products, services or trade marks for which product placement should not be employed).”

(7) In subsection (8), at the end insert “(except in the expression “television programme service”)”.

**4.**—(1) Section 324 of the 2003 Act (setting and publication of standards) is amended as follows.

(2) In subsections (3)(c) and (4)(a), after “sponsorship” insert “or for product placement”.

(3) After subsection (11) insert—

“(11A) A code (or draft code) contains standards for product placement for the purposes of this section to the extent that it sets standards under section 319 for securing the objective mentioned in paragraph (fa) of subsection (2) of that section.”

**5.**—(1) Section 325 of the 2003 Act (observance of standards code) is amended as follows.

(2) In subsection (4)—

(a) in paragraph (a), for “and the sponsorship of programmes” substitute “, the sponsorship of programmes and product placement”;

(b) in paragraph (b), for “and sponsorship” substitute “, sponsorship and product placement”.

(3) In subsection (5)—

(a) omit “and” at the end of paragraph (b);

(b) after paragraph (c) insert—  
“; and

(d) in the case of a television programme service, the forms and methods of product placement to be excluded from the service (including descriptions of products, services or trade marks product placement of which is to be excluded) (whether generally or in particular circumstances).”

6. In section 362 of the 2003 Act (interpretation of Part 3), in subsection (1), after the definition of “OFCOM’s standards code” insert—

““product placement” has the meaning given by paragraph 1 of Schedule 11A;”.

7. In section 368H of the 2003 Act (prohibition of product placement in on-demand programme services), in subsection (16), after the definition of “producer” insert—

““programme” does not include an advertisement;”.

8. In section 368R of the 2003 Act (interpretation of Part 4A), in subsection (1), for the definition of “children’s programme” substitute—

““children’s programme” means a programme made—

(a) for a television programme service or for an on-demand programme service, and

(b) for viewing primarily by persons under the age of sixteen;”

9. In the 2003 Act, after Schedule 11 insert—

## “SCHEDULE 11A

### Restrictions on product placement

#### Introductory

1.—(1) In this Part “product placement”, in relation to a programme included in a television programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark, where the inclusion—

(a) is for a commercial purpose;

(b) is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider; and

(c) is not prop placement.

(2) “Prop placement”, in relation to such a programme, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where—

(a) the provision of the product, service or trade mark has no significant value; and

(b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.

2. The product placement requirements are—

(a) that the product placement does not fall within any of paragraphs 3 to 6;

(b) that all of the conditions in paragraph 7 are met; and

(c) that, where paragraph 8 applies, the condition in that paragraph is also met.

### **Prohibitions of product placement**

3.—(1) Product placement falls within this paragraph if it is in a children’s programme.

(2) In sub-paragraph (1) “children’s programme” means a programme made—

- (a) for a television programme service or for an on-demand programme service, and
- (b) for viewing primarily by persons under the age of sixteen.

4. Product placement falls within this paragraph if it is—

- (a) of cigarettes or other tobacco products;
- (b) by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products; or
- (c) of prescription-only medicines.

5. Product placement of alcoholic drinks falls within this paragraph if—

- (a) it is aimed specifically at persons under the age of eighteen; or
- (b) it encourages immoderate consumption of such drinks.

6.—(1) Product placement falls within this paragraph if it is in a programme to which this paragraph applies and—

- (a) the programme is a religious, consumer affairs or current affairs programme;
- (b) the product placement is of anything within sub-paragraph (2); or
- (c) the product placement is otherwise unsuitable.

(2) The following are within this sub-paragraph—

- (a) electronic or smokeless cigarettes, cigarette lighters, cigarette papers or pipes intended for smoking;
- (b) medicinal products;
- (c) alcoholic drinks;
- (d) infant formulae or follow-on formulae;
- (e) a food or drink high in fat, salt or sugar;
- (f) gambling services.

(3) This paragraph applies to—

- (a) a programme that has been produced or commissioned by the provider of the television programme service in which it is included, or by a person connected with that provider, and that is not a film made for cinema; and
- (b) a programme that has been produced or commissioned by any other person with a view to its first showing taking place in a television programme service which is provided by a person under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive.

### **Conditions applying to product placement**

7.—(1) These are the conditions referred to in paragraph 2(b).

(2) Condition A is that the programme in which the product, service or trademark, or the reference to it, is included is—

- (a) a film made for cinema;
- (b) a film or series made for a television programme service or for an on-demand programme service;
- (c) a sports programme; or
- (d) a light entertainment programme.

(3) Condition B is that the product placement has not influenced the content or scheduling of the programme in a way that affects the editorial independence of the provider of the television programme service in which the programme is included.

(4) Condition C is that the product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.

(5) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned.

(6) Condition E is that the product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.

(7) Condition F is that the way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not—

- (a) prejudice respect for human dignity;
- (b) promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- (c) encourage behaviour prejudicial to health or safety;
- (d) encourage behaviour grossly prejudicial to the protection of the environment;
- (e) cause physical or moral detriment to persons under the age of eighteen;
- (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- (g) exploit the trust of such persons in parents, teachers or others; or
- (h) unreasonably show such persons in dangerous situations.

**8.**—(1) This paragraph applies where the programme featuring the product placement has been produced or commissioned by the provider of the television programme service in which it is included or by a person connected with that provider.

(2) The condition referred to in paragraph 2(c) is that the television programme service in which the programme is included signals appropriately the fact that product placement is contained in a programme no less frequently than—

- (a) at the start and end of such a programme; and
- (b) in the case of a television programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.

### **Minor definitions**

**9.** In this Schedule—

“connected” has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act;

“film made for cinema” means a film made with a view to its being shown to the general public first in a cinema;

“follow-on formulae” has the meaning given in Article 2 of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC;

“infant formulae” has the meaning given in Article 2 of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC;

“medicinal product” has the meaning given in section 130 of the Medicines Act 1968;

“prescription-only medicine” means a medicinal product of a description or falling within a class specified in an order made under section 58 of the Medicines Act 1968;

“producer”, in relation to a programme, means the person by whom the arrangements necessary for the making of the programme are undertaken;

“programme” does not include an advertisement;

“relevant provider”, in relation to a programme, means—

- (a) the provider of the television programme service in which the programme is included; and
- (b) the producer of the programme;

“residual value” means any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trademark, or a reference to it, in a programme;

“significant value” means a residual value that is more than trivial;

“tobacco product” has the meaning given in section 1 of the Tobacco Advertising and Promotion Act 2002;

“trade mark”, in relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.”

### **The Welsh Authority**

**10.**—(1) In section 60(4) of the Broadcasting Act 1990<sup>(67)</sup> (advertising on S4C), after paragraph (a) (but before “and” at the end of that paragraph) insert—

“(aa)from time to time consult the Secretary of State as to the forms and methods of product placement that should not be employed in the provision of S4C (including the descriptions of products, services or trade marks for which product placement should not be employed)”.

(2) In section 202 of the Broadcasting Act 1990 (general interpretation), in subsection (1), after the definition of “pension scheme” insert—

““product placement” has the meaning given by paragraph 1 of Schedule 11A to the Communications Act 2003;”.

(3) In paragraph 14 of Schedule 12 to the 2003 Act (corresponding obligations of the Welsh Authority)—

- (a) omit “and” at the end of paragraph (b);
- (b) after paragraph (c) insert—
  - “; and
- (d) the forms and methods of product placement to be excluded from those services (including descriptions of products, services or trade marks product placement of which is to be excluded) (whether generally or in particular circumstances).”

16 March 2010

*Ben Bradshaw*  
Secretary of State for Culture, Media and Sport  
Department for Culture, Media and Sport

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<sup>(67)</sup> 1990 c.42

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations relate to the implementation of Directive 2007/65/EC of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities<sup>(68)</sup>. These Regulations insert new provisions into the Broadcasting Act 1990 (“the 1990 Act”) and into the Communications Act 2003 (“the 2003 Act”).

Regulation 2 inserts paragraph (fa) into section 319(2) of the 2003 Act. That paragraph includes product placement requirements in the standards objectives mentioned in that section.

Regulation 3 inserts provisions into section 321 of the 2003 Act to add product placement to the general provision OFCOM must include in the standards set by them to secure the objectives in section 319(2)(fa). The regulation also inserts provision requiring OFCOM to consult the Secretary of State about the forms and methods of product placement that should not be employed in a television programme service. The Secretary of State is able to give OFCOM a direction in respect of those matters.

Regulation 4 amends section 324 of the 2003 Act so that OFCOM’s duty under that section to consult on the draft code required by that section extends to proposed standards for product placement.

Regulation 5 amends section 325 of the 2003 Act so that the conditions of a licence granted by OFCOM for a television programme service must secure compliance with the requirements of their standards code, or which go beyond that code, so far as it relates to product placement.

Regulation 6 inserts a definition of product placement into the 2003 Act.

Regulation 7 inserts a definition into section 368H of the 2003 Act to make clear that, in that section, “programme” does not include an advertisement.

Regulation 8 substitutes for the definition of “children’s programme” in section 368R of the 2003 Act a definition identical to that contained in paragraph 3 of Schedule 11A to the 2003 Act.

Regulation 9 inserts Schedule 11A into the 2003 Act which contains detailed provision about product placement. Paragraph 1 of that Schedule defines the meaning of “product placement” and “prop placement”. Paragraphs 3 to 6 contain prohibitions which apply to all product placement while paragraph 7 sets out particular conditions. Paragraph 8 imposes signalling requirements for product placement if that paragraph applies. Paragraph 9 sets out minor definitions.

Regulation 10 inserts provisions relating to product placement and the Welsh Authority into the 1990 Act and the 2003 Act.

An impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available from the website of the Department for Culture, Media and Sport ([www.culture.gov.uk](http://www.culture.gov.uk)). It is also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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<sup>(68)</sup> Directive 2007/65 EC OJ No L 332, 18.12.2007, p.27 amending Directive 89/552/EEC OJ No L 298, 17.10.1989, p.23 as amended by Directive 97/36/EC OJ No L 202, 30.7.1997, p.60

## Annex 11

# Equality Impact Assessment: Initial Screening Form

<b>Broadcasting Code Review (2010): Commercial References in Television Programming</b>	
<p>An overview of our approach in this consultation to Equality Impact Assessment can be found in Part 2, at paragraph 2.28 to 2.31.</p>	
<p><i>1. Briefly describe the aims, objectives and purpose of this policy/project</i></p>	<p>This review of the Broadcasting Code (“the Code”) is designed to ensure that it remains fit for purpose specifically in relation to commercial references in television programming. This review will take into account changes in the regulatory landscape brought about by legislative developments, namely the Audiovisual Media Services (AVMS) Directive and, in particular, the decision by the UK government to permit, for the first time, product placement in UK television.</p> <p>This project originally began in 2009, when a consultation was conducted on these rules. However, this took place before the UK government announced that it was minded to permit product placement. In light of this likely change of public policy, the review was extended until such time that the government reached its decision on product placement.</p> <p>This 2010 review is therefore intended to be targeted to cover only those rules relating to commercial references in television programming that we consider to be affected, either directly or indirectly, by the UK government’s decision to permit product placement. We will not now be re-consulting on those rules that are unaffected by the introduction of product placement. Instead, when we produce all the new rules in this area later in the year, we will take account of relevant responses received as part of the 2009 consultation.</p> <p>The proposed Code Rules are subject to a twelve-week public consultation.</p>
<p><i>2. Who is expected to benefit from the policy/project and in what way?</i></p>	<p>In relation to the introduction of product placement, Ofcom-licensed television broadcasters will benefit in terms of revenue through being able to accept payment in return for placing references to products/services in programmes, where permitted.</p> <p>Advertisers will be able to pay broadcasters to place their products/services in programmes.</p> <p>Viewers will be made aware that products/services are placed in a programme via a signal. The signalling of product placement is a requirement of the AVMS Directive and the Communications Act, as amended to allow product placement.</p> <p>We are also proposing some liberalisations to the sponsorship rules that are affected by the introduction of product placement. These proposals relate to sponsor references within sponsored programmes, and the placement of sponsorship credits.</p>



<p>3. <i>What are the desired outcomes of this policy/project?</i></p>	<p>To reflect in the Code, legislative developments, namely the AVMS Directive and amended Act, in particular, the decision by the UK government to permit, for the first time, product placement in UK television.</p>
<p>4. <i>Who are the main external stakeholders in relation to this policy/project?</i></p>	<p>The main external stakeholders are:</p> <ul style="list-style-type: none"> <li>• all television broadcasters;</li> <li>• citizen-consumers; and</li> <li>• groups representing both.</li> </ul>
<p>5. <i>Who is responsible for the project and who will be responsible for implementing the policy?</i></p>	<p>The Broadcasting Code Review project team in Ofcom's Content and Standards Group is responsible for this part of the Code Review project.</p> <p>Once the consultation has closed and the responses have been taken into account, a revised Broadcasting Code will be issued, containing the final revised rules relating to commercial references on television, and the review project will be complete.</p> <p>The Commercial &amp; Consumer Protection team (Standards) will then be responsible for implementing these rules through its ongoing enforcement work.</p>
<p>6. <i>Is this likely to have any relevance to equality and what evidence do you have to come to this conclusion?</i></p>	<p>Yes. The AVMS Directive requires that paid-for commercial references in programming are "readily recognisable" to the audience.</p> <p>Ofcom must therefore ensure that such paid-for references can be readily recognised by all audience groups. Having assessed this, we have concluded that it is relevant to consider the proposed Code Rules on the signalling of product placement and sponsorship in relation to disability groups - specifically, <b>visually and hearing impaired audience members</b>.</p>
<p>7. <i>Do you have any early indications of possible adverse impact on equality?</i></p>	<p>Action for Blind People (part of the Royal National Institute for Blind People (RNIB) Group), estimate that there are <b>nearly 2 million blind and partially sighted people in the UK</b>.</p> <p>[<a href="http://www.actionforblindpeople.org.uk/news/media-centre/faq-journalists,892,SA.html">http://www.actionforblindpeople.org.uk/news/media-centre/faq-journalists,892,SA.html</a>]</p> <p>According to the Royal National Institute for Deaf People (RNID) the latest estimated figure for the number of <b>deaf and hard of hearing adults (defined as 16+ years old) in the UK is 8,945,000</b>.</p> <p>[<a href="http://www.rnid.org.uk/information_resources/aboutdeafness/statistics/statistics.htm#deaf">http://www.rnid.org.uk/information_resources/aboutdeafness/statistics/statistics.htm#deaf</a>]</p> <p style="text-align: right;"><b>continued/....</b></p>

<p><i>7. Do you have any early indications of possible adverse impact on equality?</i></p>	<p>Visually-impaired individuals would not be able to benefit from a signalling regime for <b>product placement</b> which only involved a visual on-screen signal. In the absence of an audio signal, a visual signal would therefore carry the risk that product placement was not appropriately identified to this audience group. Ofcom is therefore proposing to require broadcasters to signal product placement in both sound and vision.</p> <p>In line with our proposals for the signalling of product placement, we have considered the equality impacts for the identification of <b>sponsorship</b> arrangements.</p> <p>The current rules relating to the identification of sponsorship arrangements require that such arrangements are identified through sponsorship credits. There is currently no specific requirement for sponsorship arrangements to be announced in sound as well as vision.</p> <p>Ofcom has considered that sponsorship, unlike product placement, is a well established practice and well understood by audiences. It has also considered that no concerns about the audio identification of sponsorship arrangements to audiences have been expressed to date.</p> <p>In addition, the AVMS Directive permits the identification of sponsorship arrangements during programmes. Ofcom considers that, on balance, requiring broadcasters to signal a sponsorship arrangement audibly during a programme would be intrusive to the audience experience.</p> <p>Having taken the above factors into account, Ofcom is not proposing to introduce a rule requiring the identification of sponsorship arrangements in <u>both</u> sound and vision.</p>
<p><i>8. What are the next steps? Will a Full EIA now be conducted?</i></p>	<p>In <b>Part 4 and 5 of the consultation document</b>, we seek respondents' views on these issues. We will take these responses into account and reflect them within a Full EIA to be conducted before we issue the revised Section Nine of the Code.</p> <p>We are also seeking any comments, information or evidence from respondents about any other potential equality impacts relating to our proposals. These will also be taken into account within our Full EIA.</p>