

R A D I O A U T H O R I T Y

**N e w s a n d
C u r r e n t A f f a i r s C o d e
a n d P r o g r a m m e
C o d e**

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AUTHORITY

The News and Current Affairs Code and Programme Code

The Radio Authority licenses and regulates the independent radio industry in accordance with the statutory requirements of the Broadcasting Act 1990 and the Broadcasting Act 1996.

It plans frequencies, awards licences, regulates (as necessary) programming and radio advertising and plays an active role in the discussion and formulation of policies which affect the independent radio industry and its listeners.

The Authority takes a fair and impartial stance in support of the development and growth of a successful UK independent radio network which offers a wide listening choice.

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Introduction

The Radio Authority's **News & Current Affairs Code** and **Programme Code** are based on the requirements of Sections 90 and 91 of the Broadcasting Act 1990.

The Codes apply to :

- All local, regional and national analogue licence holders.
- All local, regional and national digital programme service providers.
- All cable and satellite licence holders.
- Access Radio pilot scheme licence holders.

Restricted Service Licence (RSL) operators are expected to comply with the **Programme Code**, but they are exempt from general compliance with the **News & Current Affairs Code**, apart from the requirement to ensure news presentation is accurate and impartial. RSL operators are advised to seek Authority guidance if they are unsure whether certain content falls into the 'news' category. At times of election they must follow the rules concerning election coverage.

Additional Service Licence holders are exempt from compliance with the Codes, although visual or other programme-related data provided by digital sound services to accompany the audio content of those services should not, either in isolation or when taken in the context of the audio, breach any part of the letter or spirit of this Code.

Licencees should be familiar with the contents of both the Radio Authority's **News & Current Affairs Code**, and **Programme Code**, as well as the **Advertising & Sponsorship Code** and the Codes published by the Broadcasting Standards Commission. Licencees should bring these Codes to the attention of all their relevant employees when they are first employed and at least once a year thereafter. Appropriate staff will also be expected to have a grasp of relevant media law, including at least basic libel and contempt of court knowledge.

Code rules are shown in bold. The arguments, explanations and ancillary information that accompany them are in ordinary type. Personal pronouns are in the masculine but should be taken as being either masculine or feminine in all cases.

In consultation with Licence Holders, these Codes may be revised from time to time to reflect changes in circumstances and public views and attitudes.

This Code has been prepared to reflect the legislation which applies in England and Wales. It does not necessarily reflect the position in Scotland, Northern Ireland or the Channel Islands, even though guidance and cross-referencing is included. Legal advice should be taken in those jurisdictions to ensure compliance with any legislative requirements.

Part One – The News and Current Affairs Code

1 Undue Prominence and Impartiality

1.1 General

The Broadcasting Act 1990 and the Broadcasting Act 1996 require the Radio Authority to do all it can to secure that any news given (in whatever form) in a licensed service is presented with due accuracy and impartiality. It must also strive to ensure that national services and national digital services preserve due impartiality with respect to matters of political or industrial controversy or relating to current public policy and that local (including regional) services and local and regional digital services do not give undue prominence to the views and opinions or particular persons or bodies on such matters.

The Licence Holder may not express his views on such matters on his service unless those views directly involve broadcasting policy or developments (see Rule 1.5).

Unless otherwise stated, in considering complaints which allege partiality on a national service or a national digital service, the Authority may consider a series of programmes as a whole. In the case of a local, digital local, satellite or licensable sound programme service, the Authority will normally consider complaints alleging undue prominence over a period commencing three months prior to the item complained of and culminating three months after.

This code also applies to any visual or other programme-related editorial data provided by digital services to accompany the audio content of those services.

1.2 News

All news in whatever form (including bulletins, longer news programmes and general coverage of news events) must be accurate and duly impartial. An appropriate range of views on controversial subjects should be reported fairly either within a single news bulletin or in a series of news bulletins which are as adjacent as reasonably possible. Any mistakes that do occur should be corrected as quickly as possible and an apology broadcast where appropriate.

1.3 General programming on matters of political, public or industrial controversy

On national services and national digital services, due impartiality should be preserved within programming on matters of political or industrial controversy or relating to current public policy. Where due impartiality is not achieved within a single programme, it should be achieved within a series of programmes. A series of programmes is defined as those being broadcast consecutively, or usually not more than a week apart at a time when comparative numbers of people are likely to be listening. A

listener to one in a series of programmes on the same topic should not be misled into thinking that he has heard the whole story.

On other services covered by this Code, such programming should not be conducted in such a way as to give undue prominence, in programming as a whole, to the views and opinions of particular persons or bodies.

Whilst balance, in a mathematical sense of equal time, is not always necessary, programmes should not be slanted by the concealment of relevant facts or by misleading emphasis.

In achieving the above, an appropriate range of relevant views may be expressed through a number of interviewees or through contributions from 'phone in contributors; and a presenter's questioning as 'devil's advocate' may contribute to giving a satisfactory contrasting view.

1.4 Presenters' Views

Individual presenters, hosts or chairmen of discussions may only express their views on matters of political or industrial controversy or relating to current public policy if an appropriate and adequate response from others, given with equivalent force, is clearly available. Stations should ensure that such views are clearly seen to be personal views, and not as those of the Licence Holder.

Over programming as a whole and over time, presenters should not use the advantage of their regular and frequent appearances on radio as a platform to express such views in an unduly prominent way which would be denied to others.

Licence Holders must ensure that statements of fact which form part of the views expressed by presenters are accurate, and that opinions expressed, however partial, do not rest on false evidence.

Where the off-air status of a host might call into question his role within a programme (eg newspaper editor, vocal party supporter, agent etc), he should ensure that his position is appropriately transparent to listeners.

Suitable responses to a presenter's view may come, for example, from interviewee/s or phone in contributor/s. These should be given within the same programme or series of programmes (see 1.3) in the case of national services or national digital services, and within the same programme or another appropriate programme in the case of local services or local digital services. The presenter must ensure that these other participants, some of whom will have less radio experience than others, have the facility to express their views; and that the discussion moves forward as coherently and logically as possible.

1.5 Expression of opinion by licensees

Expressions of opinion by and/or on behalf of Licence Holders on matters other than broadcasting

which are politically or industrially controversial or relate to current public policy must be excluded from programmes broadcast on their services. If a Licence Holder expresses an opinion, or an opinion is expressed on his behalf, on such matters in a broadcast on another licensed or BBC service it must be in a context which makes it clear that he is expressing a personal opinion and not the opinion of the company.

These restrictions apply to views expressed by Licence Holders ie. the company or person holding the licence or its management or staff speaking on its behalf rather than employees/presenters speaking in a personal capacity in the normal course of their programmes, within the constraints of Section 1.4

The restrictions do not apply to broadcasts of proceedings in either House of Parliament, or to proceedings of local authorities. Expression of a licence holder's opinion on the proscribed matters therefore do not have to be excluded where they occur in broadcasts of such proceedings, but these exceptions do not apply to comments on such proceedings.

1.6 Conduct of Interviews

Stations should be straightforward and fair in their dealings with participants in programmes falling within the scope of this Code.

Stations must ensure that an interviewee chosen as a representative of an organised group is in a position to speak on behalf of its members or supporters. As far as is practicable, within the constraints imposed by the speed of news gathering, the interviewee should be made aware of the format, subject matter and context of the interview and the nature of any other likely contributions. He should also be informed of the way in which the interview will be used, whether live or recorded, and whether it may be edited.

1.7 Editing of Interviews

A shortened version of an interview must not misrepresent an interviewee's contribution. An interview should not be edited so as to appear by juxtaposition to associate a contributor with a line of argument which he would probably not accept and on which he is given no opportunity to comment in the programme or feature.

Due weight should be given to any qualifying remarks that may perhaps weaken the force of an answer but to which the interviewee is likely to attach importance. There is no justification for picking out a brief extract to support a particular line of argument to which the interviewee does not himself subscribe without qualification.

The context in which extracts from a recorded interview are used is important. It is quite defensible to run together a number of different answers made by different contributors to the same question.

There is no general obligation to let a contributor listen to an edited piece before it goes on air. On the other

hand, it is possible that particular circumstances will make such a move desirable or even essential, and producers, interviewers and/or managements should always give thought to this before completing their programme or feature. To minimise risks of misunderstanding, or even resentment, it may be helpful if the producer or interviewer tells the interviewee that the edited version of his words used in a programme or feature is likely to be shorter than the recording made at the time.

1.8 Use of Recorded Library or Archive Material

Library or archive material must not be presented in a misleading manner.

For example, it should not be taken for granted that the views expressed by an interviewee on a particular subject, as recorded on a previous occasion, are still held by him when it is proposed to rebroadcast the extract in a possibly different context. When library or archive material is included in a programme, it is important to indicate the period when it was originally recorded.

1.9 Right of Reply

Corrections of factual errors should be broadcast as soon as is sensibly possible after the original error. A right of reply should be offered to a relevant person or persons if the Licence Holder feels that fairness and impartiality and/or the need to avoid undue prominence merit such a step.

Despite all the efforts made by Licence Holders to observe undue prominence, accuracy and impartiality requirements, there may be occasions when an individual or organisation is misrepresented in a programme. A mis-statement of fact can sometimes be simply corrected, particularly if the programme is live, since there is then the opportunity for a correction to be made within the programme itself. If this is not possible then, unless the need for correction is urgent, the licensee should, if the error has occurred in a regular bulletin, feature or programme, wait until the next relevant one.

Calls for a right of reply may come from those who feel that a programme as a whole or in part has been misleading or unfair in a more general sense than that resulting from straightforward mis-statement of fact. Requests for such a reply may come either direct to the Radio Authority or to the Licence Holder. If the Radio Authority, having listened to a recording of the programme or feature complained of, upholds the complaint, it may require the licensee to broadcast a correction or apology or both in such form, and at such time or times, as it may determine. In exceptional circumstances, the Radio Authority has additional regulatory sanctions at its disposal. It is also open to the complainant to refer his complaint (either before or after referring it to the Licence Holder and/or Radio Authority) to the Broadcasting Standards Commission if he has a direct interest in the programme or feature complained of, or if the complaint concerns the portrayal of sex or violence. (See also Radio Authority **Programme Code**.)

1.10 Fiction (Including Drama)

Where proposed subject matter relates to political or industrial controversy, or current public policy, this

section should be read in conjunction with the provisions contained within these Section 1 rules.

The Radio Authority does not regard the transmission of fiction or drama with a contemporary political or social message as in itself an indication of lack of impartiality. The due impartiality required in fiction/drama by an independent writer is not identical to that required of current affairs programming. Nevertheless a play dealing with a particular current issue which at the time of transmission had become a matter of imminent national or local decision could raise difficulties. Impartiality may need to be reinforced by providing an opportunity for opposing viewpoints to be expressed. This might take the form of a studio discussion following the drama itself, or a separate programme providing a right of reply within a reasonable period.

2. Party Politics, Politicians and Programmes

2.1 Politicians in Programmes

Politicians may host programmes, although care and discretion should be exercised. They should not present news bulletins or longer news programmes.

If programmes hosted by politicians comprise wholly, or in part, discussion of matters of political or industrial controversy or relating to current public policy, licensees should ensure that a mix of politicians holding a full and appropriate range of views is represented over time (see below). Any such programming should be clearly separate and distinct from news bulletins and programming. When presenting programming, politicians should observe the general requirements for presenters, as outlined in 1.4 above.

On national services and national digital services, programming hosted by an appropriate mix of politicians should be achieved over a period of three months within the run of a particular programme or day part, when considered in isolation. In the case of other services, it may normally be achieved across a number or series of programmes or dayparts over a three-month period, provided that discrepancies in comparative audience levels for programmes do not afford undue prominence to a particular person or viewpoint.

In this context, 'politicians' includes not only Members of both Houses of the UK Parliament, the Scottish Parliament, the Welsh Assembly, the Northern Ireland Assembly and the European Parliament and prospective candidates, but also local councillors, party officials and anyone who is involved in policy making or similar forms of political activity.

The appearances of politicians at times when an election is pending are restricted, as outlined in Section 3.

Whilst achieving an appropriate mix of politicians, as required above, will demand representation from a

range of parties, licensees should also take care to recognise and reflect where certain issues do not divide upon party lines.

2.2 Party Political Broadcasts

Independent National Radio (INR) will make available to United Kingdom political parties an agreed quota of airtime during which parties may transmit Party Political Broadcasts or Party Election Broadcasts (PPBs or PEBs) scripted and planned by those parties. The requirement lies with national analogue services alone and does not extend to national or local/regional digital services or local/regional analogue services.

The allocation and frequency of PPBs and PEBs, the length of time allocated to each party and the number involved will be reviewed annually and promulgated by the Radio Authority. Special arrangements may be made for Scotland and Wales if transmission arrangements allow. There are no separate PEBs in Northern Ireland.

Candidates must not appear in PPBs or PEBs if reference is made either to their candidature or to matters of particular concern to their own constituencies.

Editorial control rests with the political parties, but the broadcasts should conform to the requirements of the 1990 and 1996 Broadcasting Acts, and the ultimate responsibility for ensuring nothing broadcast breaches the Code rests with the Licensee. PPBs/PEBs must not include direct appeals for funds nor be likely to give rise to the threat of legal action. They must not contain extracts from Parliamentary proceedings. Responsibility for delivery of the broadcasts in forms acceptable to the stations rests with the parties.

2.3 Use of Recordings of Parliamentary Proceedings

Use of such recordings must be confined to news, documentary, current affairs and educational programming. They may be used in trailers for such programming, but not for advertising, promotions or other forms of publicity. They may not be used in light entertainment or satire programming.

3 Election Coverage

3.1 Election Coverage –

Guidelines for the Pending Period of General Elections, European Parliament, Scottish Parliament, Welsh Assembly and local elections:

Guidelines drawn up by the Radio Authority place restrictions on broadcasts in which an election

Election Reporting – Radio Authority Guidelines

(replacing Section 93 of the RPA)

Section 93 of the Representation of the People Act 1983 (the 'RPA') has been amended by the Political Parties, Elections and Referendums Act 2000, which obliges the broadcasting authorities to draw up codes of practice for pending election periods. The amendment means that candidates who withhold their consent from constituency reports or debates can now no longer effectively exercise a veto over all other candidates. The Guidelines are active until the close of poll.

The amendments do not weaken in any way your station's obligations to fairness, balance and accuracy. Extra care must also be taken to ensure, especially when a particular constituency is featured often, that undue prominence is not given to any single candidate over time. So, when the pending period begins, the guidelines below come into effect : -

The Pending Period normally begins :

- a) with the official announcement of a general election;
- b) a month before European Parliament, Welsh Assembly, Northern Ireland and London or Scottish Parliament elections;
- c) with the issuing of a writ in by-elections
- d) five weeks before local government elections

The Pending Period ends with the close of polling (normally at 2200 hours).

Balance

To be impartial, constituency reports or debates should give due weight to candidates of the main parties*.

Main Candidates

If any candidate actually takes part in an item about a specific constituency, then candidates of each of the main parties should be offered the opportunity to take part.

Others

To be authoritative, it is right to make some distinction in the weight of the contribution between these main candidates and others. Constituency items which involve candidates should also include some participation from candidates representing parties with either previous significant electoral support (for example parties which have gained a few seats in other recent elections or individuals who have been elected before under another label) or parties with evidence of significant current support. Where a party or an individual is mounting a significant campaign in a particular region, this should be reflected appropriately in the coverage.

Lists

To be comprehensive and fair, full-length constituency reports or debates should include a list of all candidates standing. If a constituency is being reported on several times on the same station in a day, it may be enough to broadcast the full list once a day, with audiences directed to a full list of candidates (Teletext, station website etc) at other times.

Invitations

Programmers may decide to use either candidates or party representatives. But if the candidate from one of the parties is invited to take part, the other participants should, where at all possible, also be candidates. In exceptional circumstances, if a candidate is genuinely unavailable, the opportunity may be offered instead to a suitable party representative from within the constituency (eg: party official, agent or Councillor) but it should be made clear to the audience that the missing candidate(s) was invited and why they were unable to take part or declined to put forward any spokesperson. If a party declines to put forward any representative the item/programme may go ahead without them.

* The major parties in England are currently defined as Labour, Conservative, Liberal Democrats; In Scotland these three plus the SNP; in Wales these three plus Plaid Cymru; in Northern Ireland the Ulster Unionists, the SDLP, the DUP and Sinn Fein. Any other applicable guidance will be issued by Martin Campbell, Radio Authority Director of Programming and Advertising, from whose department general advice is also available. 020 7430 2724.

candidate may allow himself lawfully to take part. The guidelines are reproduced opposite. Coverage of the direct elections to the European Parliament, Scottish Parliament, Welsh Assembly and local government elections are all subject to the guidelines as well as to the Broadcasting Act 1990. All licensees should be familiar with these guidelines which form part of the Code.

Under the terms of the Election Guidelines it is essential that extreme care be exercised in cases where a candidate takes part in a broadcast and speaks about a matter specific to a constituency or electoral area when an election is pending.

3.2 Candidates and 'Taking Part'

In the context of this section, 'taking part' during the pending period means actively participating in a broadcast, rather than being reported or with audio 'clips' of public speeches, doorstep canvassing etc, being aired. Such material must, however, be used cautiously. It is not acceptable to use such material in a way that might be seen to give an unfair advantage to one candidate (e.g. using lengthy rather than illustrative 'clips'). Broadcasting a politician's answers to reporters' questions at, say, a news conference could constitute 'taking part.' Similarly, it is not acceptable for such 'clips' to be edited together in such a way as to imply that the candidate has actively participated in a programme.

The local government equivalent of the Parliamentary terms 'constituency' and 'by-election' are 'electoral area' and 'election to fill a casual vacancy'. The Guidelines restrict programming about an electoral division, borough, ward or other area in the same way as a constituency for a parliamentary election. Therefore, in a County Council election, the relevant electoral area is not the county, but each separate electoral area within the county concerned.

3.3 'Phone-ins

Care should be exercised to ensure that a range of views is heard and that phone-in callers, some of whom will have limited experience of expressing views on-air, are allowed a satisfactory opportunity so to do.

Whilst mathematical formulae cannot easily be applied to the numbers of callers to a 'phone-in or the duration of their contributions, an appropriate mix should be sought, and relevant views should not be suppressed.

Stations which broadcast 'phone-ins and interview material should do all they can to ensure that no contributors/callers participating in programming contravene, perhaps even inadvertently, Code rules.

3.4 General coverage

Stations should satisfy themselves that parties and election issues have been treated with due impartiality.

During the pending period, it is recommended that stations keep records of the numbers and duration of stories carried about parties and significant election issues, so that any unwarranted over- or under-representation may be identified and rectified.

However, due impartiality may not necessarily be achieved by parity of time within each item. It should be achieved within the pending period itself. It is not sufficient for a balancing view to be broadcast after the election, or before the start of the pending period. The eve of poll is perceived as having heightened importance, so coverage should also be balanced in isolation within that day in itself.

When arranging general political discussions, stations should ensure that parties have a fair and appropriate opportunity to state their respective views. This may be achieved within a programme, or within a logical series of programmes, defined in advance.

For national services and national digital services, care should be exercised that the voices and views of the nationalist parties are appropriately reflected, both in general UK coverage and, particularly, where a story has a direct relevance to Scotland, Wales or Northern Ireland.

3.5 Polling Day

Discussion about election issues should finish when the polls open. A licensee may not publish the results of any poll he has commissioned or undertaken on polling day itself until the election polling booths have closed.

On polling day before the close of poll, licensees may report on the weather and the pace of voting. There can be factual reporting of opinion polls (but not exit polls). Any reporting of opinion polls, however, must be put carefully in context (rarely should a poll be a major story in itself); using neutral language (eg. opinion polls might 'indicate' but they never 'show'); signifying a margin of error; and avoiding giving too much credence given to one-off 'shock' polls (i.e. polls which show a one-off massive swing against the trends of other polls). Reports may feature independent pundits. It would be most unwise to feature candidates, politicians, party agents, known supporters of political parties, or those speaking on policies relevant to the election.

3.6 Politicians As Presenters

During the pending period, politicians should not host any programming devoted wholly or in part to coverage or discussion about political or industrial controversy or relating to current public policy.

In this context, 'politicians' includes not only members of other parliaments or assemblies and prospective candidates for the election concerned, but also party officials and anyone who is involved in policy making or similar forms of political activity

A candidate's appearance on any other sort of programme during the pending period might be regarded

as enhancing his general standing and thereby breaching the requirements for due impartiality. Appearances, if any, therefore, should be managed with care and sensitivity. Certainly, if a candidate does appear in a non-political role, it is essential that no reference is made to his candidature.

Similarly, a candidate should not appear in news items on matters unconnected with the election unless his absence would obviously be in conflict with sensible treatment of the news. Such cases are likely to be rare.

3.7 Role of Presenters During the Pending Period

Presenters should not take advantage of their position on-air. Their experience of the medium and the regularity with which they appear should not be used to further political objectives. Views on election matters should not be expressed where there is no opportunity for a satisfactory response with equivalent force. Extreme care should be exercised to conduct interviews or 'phone-in programmes fairly.

Presenters/broadcasters who intend or declare an intention to stand for election (for whatever purpose) should cease regular programming presentation or on-air involvement until the close of polling.

3.8 Other Election Legislation

Licensees' attention is drawn to the existence of Section 92 of the Representation of the People Act 1983, which was not amended in 2001 at the same time as Section 93. It deals with the influence on elections of broadcasts from overseas that have not been agreed with the Radio Authority, and with municipal elections, other than ward elections.

3.9 Devolution Issues during a General Election

The Scottish Parliament, National Assembly of Wales and the Northern Ireland Assembly may be in session during a UK General Election. All matters should continue to be covered on news merit with the usual rules of balance applied. Each institution has its own areas of responsibility separate from Westminster (e.g. health and education) but it is expected programmes will reflect a blend of views on issues regardless of which institution is responsible for which issue. There is, of course, an expectation for programmes to make clear, when appropriate, who does what in the political structure, and which issues would be influenced by the outcome of the election in each part of the UK.

4 NEWS SPONSORSHIP

4.1 News Bulletins and Sponsorship

News bulletins and news output may not be sponsored. It is, however, permissible to sponsor programmes

or features that have a current affairs background (e.g. weekly round-up programmes) if they are distinct from, and do not involve, news desk presentation. Similarly business news, finance news (but not commercially specific finance advice – see **Programme Code 5.7**), travel and sports news can be sponsored as long as the sponsor’s business interests do not prejudice, or appear to prejudice, the impartiality of the programme. Licensees must be familiar with the Radio Authority’s **Advertising & Sponsorship Code**. It is available on request or at the Authority’s website: www.radioauthority.org.uk. Rule 3.8 (a) concerning news, and the avoidance of any perception that news output might be sponsored, is reproduced here:

Prohibited Sponsorships

- a) *All programming may be sponsored, with the exception of news bulletins, and any news desk presentation. Care must be taken with the positioning of all sponsorships/commercials to avoid the impression that a news bulletin or the station’s news output is sponsored.*

The Broadcasting Act 1990 Section 90(1)(b) requires that ‘any news given (in whatever form) is presented with due accuracy and impartiality.’ Sponsorship should not compromise this requirement. However, stations may credit news sources with a simple single acknowledgement of the news provider, whether a news agency or local newspaper. This is not regarded as sponsorship, as long as the provider has not paid for the credit and it is not presented in a way which appears to suggest that the provider has paid for the credit.

Appendix 1 – Broadcasting Act 1990 (Relevant Clauses)

Broadcasting Act, Section 90

General Provisions about licensed services

- 1 The Radio Authority shall do all that they can to secure that every licensed service complies with the following requirements, namely –
 - a) that nothing is included in its programmes which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling;
 - b) that any news given (in whatever form) in its programmes is presented with due accuracy and impartiality; *and*
 - c) that its programmes do not include any technique which exploits the possibility of conveying a message to, or otherwise influencing the minds of, persons listening to the programmes without their being aware, or fully aware, of what has occurred.

- 2 The Authority shall, in the case of every licensed service which is a national, local, satellite or licensable sound programme service, do all that they can to secure that the service complies with the following additional requirements, namely –
 - a) the appropriate requirement specified in subsection (3);
 - b) that (without prejudice to the generality of subsection (1)(b) or (3)(a) there are excluded from its programmes all expressions of the views and opinions of the person providing the service on matters (other than sound broadcasting) which are of political or industrial controversy or relate to current public policy; *and*
 - c) that due responsibility is exercised with respect to the content of any of its programmes which are religious programmes, and that in particular any such programmes do not involve –
 - i any improper exploitation of any susceptibilities of those listening to the programmes; *or*
 - ii any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.

- 3 The appropriate requirement referred to in subsection (2)(a) is –
 - a) where the licensed service is a national service, that due impartiality is preserved on the part of the person providing the service as respects matters of political or industrial controversy or relating to current public policy;
 - b) where the licensed service is a local, satellite or licensable sound programme service, that undue prominence is not given in its programmes to the views and opinions of particular persons or bodies on such matters.

- 4 In applying subsection (3)(a) to a national service a series of programmes may be considered as a whole; and in applying subsection (3)(b) to a local, satellite or licensable sound programme service the programmes included in that service shall be taken as a whole.

Appendix 2 – Terrorism Act 2000

- 5** The Authority shall –
- a) draw up, and from time to time review, a code giving guidance –
 - i as to the rules to be observed in determining what constitutes a series of programmes for the purposes of subsection (4);
 - ii as to the rules to be observed in other respects in connection with the application of subsection (3)(a) in relation to a national service; *and*
 - iii as to the rules to be observed in connection with the application of subsection (3)(b) in relation to a local, satellite or licensable sound programme service; *and*
 - b) do all that they can to secure that the provisions of the code are observed in the provision of licensed services.
- and the Authority may make different provision in the code for different cases or circumstances.
- 6** The Authority shall publish the code drawn up under subsection (5), and every revision of it, in such a manner as they consider appropriate.
- 7** Nothing in this section or in sections 91 to 96 has effect in relation to any licensed service which is an additional service.

Section 107

Party Political Broadcasts

- 1** A national licence shall include—
- (a) conditions requiring the licence holder to include party political broadcasts in the licensed service; *and*
 - (b) conditions requiring the licence holder to observe such rules with respect to party political broadcasts as the Authority may determine.
- 2** Without prejudice to the generality of paragraph (b) of subsection (1), but subject to Section 37 of the Political Parties, Elections and Referendums Act 2000 (prohibition of broadcast by unregistered parties), the Radio Authority may determine for the purposes of that subsection –
- a) the political parties on whose behalf party political broadcasts may be made; *and*
 - b) in relation to any political party on whose behalf such broadcasts may be made, the length and frequency of such broadcasts.
- 3** Any rules made by the Authority for the purposes of this section may make different provision for different cases or circumstances. Before making any rules for the purpose of this section the Radio Authority shall have regard to any views expressed by the Electoral Commission.

The Terrorism Act 2000 is now in force and Licensees should make sure appropriate staff are aware of its effect on reporting terrorism. News gathering and the protection of news sources are affected chiefly by Section 19, Section 58 and Schedule 5 of the Act. These deal primarily with a Licensee’s responsibility to ensure that reports of terrorism do not amount to incitement, and the failure to disclose information about fundraising, the use and possession of money or property, funding arrangements and money laundering.

The definition of terrorism within the Act is important to note. The central element is ‘the use or threat of action where the threat is designed to influence the government or to intimidate the public or a section of the public and the use or threat is made for the purpose of advancing a political, religious, or ideological cause.’ It includes terrorist activity both within and outside the UK, and involves action against both people and property.

Under Section 12 of the Act it becomes a criminal offence to invite support for a proscribed organisation. The definition of ‘support’ is not restricted to providing funds. It is also an offence to assist in or arrange meetings known to be connected with such an organisation.

Part Two – The Programme Code

programmes which cover explicit violent or sexual topics in a frank manner; musical items with violent or sexually explicit lyrics; fictional material with strong language or violent scenarios

1 Taste, Decency, Offence to Public Feeling and the Portrayal of Violence

The Authority recognises that lines between programming and news will often be blurred, and that while both this **Programme Code** and the **News & Current Affairs Code** set out rules for commercial radio broadcasting within each specific field, they will not be regarded as mutually exclusive when considering this remit.

1.1 General

The Broadcasting Act 1990, Section 90(1)(a) requires that the Authority do all that it can to ensure that ‘nothing shall be included in programmes which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling.’

1.2 Protection of Younger Listeners

Section 91(2) of the 1990 Act requires the Authority, in drawing up its Programme Code, to ‘have special regard to programmes included in licensed services in circumstances such that large numbers of children and young persons may be expected to be listening to the programmes.’

Proper regard for taste and decency, matters concerning drugs and the manner of portrayal of violence, are clearly areas where the position of younger listeners needs to be considered. It is not one that lends itself to the laying down of hard and fast rules. But Licensees must be vigilant, and sensitive to the problems, and have regard to the following:

- a) The Act does not define ‘children and young persons’, but for the purposes of this Code it is those below adult age, that is, under 18 years. This age group embraces a wide range of maturity and sophistication, and in interpreting this Code’s advice it is legitimate for Licensees to distinguish, if appropriate, those approaching adulthood from much younger, pre-teenage, listeners.
- b) Adult listeners should have opportunities to enjoy material which would not be thought suitable for younger listeners. But much programming, though not aimed specifically at the younger listener, is of a kind, or is broadcast at a time, such that substantial numbers of young listeners are likely to be attracted to it and to be listening. Breakfast programming is an obvious example. Audience research and other evidence indicates when there may be expected to be significant numbers of young listeners.
- c) When programming is specifically directed at a young audience, or there is evidence of a substantial young audience – and in particular if it includes pre-teenage children – care must be taken to avoid content such as: strong language; explicit news reports; discussion or ‘phone-in’

1.3 Language in Programming, including Song Lyrics

The gratuitous use of offensive language, including blasphemy (see also paragraph 7.2) must be avoided. Bad language and blasphemy must not be used in programmes aimed at young listeners or when audience research indicates they might be expected to be listening in significant numbers, such as during school holidays (see paragraph 1.2).

There is no absolute ban on the use of bad language but its use must be defensible in terms of context and authenticity. It is one thing, for example, when such language occurs in documentary output, and quite another when introduced for its own sake in, for example, a music based, entertainment programme. Many people who would not be unduly shocked by swearing are offended when it is used to excess and without justification.

Where lyrics in songs might cause offence, Licensees must make considered judgements having regard to scheduling (particularly bearing in mind listener sensitivity to ‘school run’ times as revealed in research such as RAJAR, or the Authority’s Listening 2000 research), station remit, re-mixes, editing possibilities and the like.

1.4 Sexual Matters

- a) The portrayal of, or allusion to, sexual behaviour should be defensible in context and presented with tact and discretion.
- b) Humour relying on sexual innuendo should take account of the likely audience and should not be gratuitous.
- c) No portrayal or description of sexual activity between humans and animals or between adults and children may be transmitted and these can be referred to in programmes only after consultation at senior radio station management level.
- d) Gratuitous sexual stereotyping and degradation must be avoided.

The same considerations apply here as to bad language. Entertainment and comedy have often relied on sexual innuendo: but this does not justify gratuitous crudity, the portrayal of perversion, sexism or the degradation of either sex. Music and art are often concerned with love and passion, and it would be wrong (and impossible) to require writers or lyricists not to shock or disturb; but the aim should be to move, not offend.

1.5 Bad Taste in Humour

- a) Licensees must avoid humour which offends against good taste or decency. There is a danger of offence in the use of humour based on particular characteristics like race, gender or disability.

Even where no malice is present, jokes can all too easily, and plausibly, exploit or humiliate for the purpose of entertainment. This not only hurts those most directly concerned but can also repel many listeners. Racist terms should be avoided. Insensitive comments or stereotyped portrayal may cause offence. Their inclusion is acceptable only where it can be justified within the context of the programme.

Careful account should be taken of the possible effect upon the minority concerned, as well as the population as a whole, and of changes in public attitudes to what is, and is not, acceptable.

- b) **Recorded Items: Items not used immediately must be checked before transmission to ensure that jokes or scenarios are not rendered tasteless by intervening events, such as death, injury or other misfortune.**

1.6 Portrayal of Violence

- a) Violence must never be glorified or applauded.
- b) The degree of violence portrayed or described must be essential to the integrity and completeness of the item.
- c) Violence must not be described solely for its own sake, or for the gratuitous exploitation of sadistic or other perverted practices. In particular, descriptions of sexual violence should be treated with extreme care.
- d) Methods of inflicting pain or injury, particularly if ingenious or unfamiliar or capable of easy imitation, must not be described or portrayed without the most careful consideration. There should be no more detailed description of the means or method of suicide than is justified by the context, scheduling and likely audience. Where appropriate, professional advice or guidance should be sought (eg. the Samaritans).
- e) The context of the broadcast (for example, where research suggests there may be significant numbers of young listeners (see 1.2)) must be taken into account before broadcasting material which portrays violence, including the effects of natural disaster, accident, and suffering (for example, more detailed descriptions may be included in late news bulletins from those in earlier bulletins).
- f) The cumulative effects of portraying violence must be avoided. What might be tolerable once may add up to an unacceptable level when used repeatedly either in the same programme or over time.

The portrayal of violence, whether physical, verbal or psychological, is an area of public concern. This is addressed in the Broadcasting Act 1990 which requires the Radio Authority to draw up a Code giving guidance 'as to the rules to be observed with respect to the inclusion in programmes of sounds suggestive of violence, particularly in circumstances such that large numbers of children and young persons may be expected to be listening to the programmes', and to ensure that Licence Holders exclude material which 'offends against good taste and decency' or 'is likely to be offensive to public feeling'.

Violence portrayed or described on radio may be imitated in real life. Regular and recurrent descriptions of violence might lead listeners to think such behaviour has been given the stamp of approval. Once violence is thus accepted and tolerated people may, it is believed, tend to become more callous and indifferent to the suffering imposed on the victims of violence.

Some portrayed violence is potentially so disturbing that it might be psychologically harmful, particularly for young or emotionally insecure listeners.

However, research has shown that some people's fear of violence is out of proportion to the actual risk. Violence should not be portrayed so as to increase unnecessarily listeners' fears nor should it be implied that certain types of violence are commonplace when they are not.

1.7 Behaviour Easily Imitated by Children

The portrayal or description of dangerous behaviour easily imitated by children, including the use of offensive weapons or articles readily accessible to them, must not be broadcast when children are likely to be listening. See 'Protection of Younger Listeners' at 1.2.

1.8 Opening Announcements and Warnings

Very occasionally when material is broadcast that is likely to disturb in the extreme, a short factual statement must be given about the nature of that material immediately in advance. However, the statement must be straightforward and should not invite listeners to be shocked.

2 Accuracy and Misleading Listeners

2.1 Accuracy in General and in News

All broadcasts should be duly accurate: the Broadcasting Act 1990 requires the Radio Authority to do all that it can to secure that any news given (in whatever form) is presented with due accuracy and impartiality. Any mistakes that do occur should be corrected as quickly as possible and an apology broadcast where appropriate. (See also the Radio Authority News & Current Affairs Code and Section 10 of this Code, 'Public Accountability'.)

2.2 Election Coverage

All Licence Holders must observe the restrictions on political broadcasting, particularly during the times of pending elections, as set out in the News & Current Affairs Code, Sections 2 and 3.

2.3 Recorded Programmes

Programming which is either repeated or not used immediately must be checked before transmission in order to ensure that nothing has been overtaken by intervening events.

2.4 Reconstructions

Reconstructions must be clearly described on air as such so that listeners are not misled. Programming intended to re-examine past events involving trauma, including crime, should take care to minimise the potential distress to surviving victims or surviving relatives in re-telling the story.

The use of reconstructions is legitimate so long as reality is not distorted.

2.5 Simulated News Broadcasts

Simulations of radio news bulletins or news flashes may only be broadcast if the simulation is clearly obvious to listeners.

2.6 Programmes on Medical and Alternative Medical Subjects

Licence Holders must handle with care any information about controversial or novel forms of treatment, or criticisms, explicit or implicit, of current medical practice. Special care is required when claims are made for particular healing powers or properties (for example, those ascribed by some to crystals). Presenters must ensure that listeners are left in no doubt that such claims, while genuinely believed by their protagonists, may be disputed by others. Equal care must be exercised in fictional programmes in which medical matters are featured.

Programmes on medical subjects must obtain competent professional advice; and on matters of potential controversy give a hearing to more than one opinion. There are some subjects, such as cancer, AIDS, or certain aspects of mental health, that are particularly sensitive.

3 Privacy and Gathering of Information

The broadcasters' freedom of access to information and their freedom to publish are subject to certain limitations. These limitations arise not only from considerations of national security but from the laws, for example, of libel, contempt and trespass, from the requirements of the Broadcasting Act itself and from each individual citizen's right to privacy. There will be occasions when a person's right to privacy must be balanced against the public interest. The Radio Authority is concerned that this right should be protected from unwarranted intrusion, particularly on occasions, for example, of bereavement or other personal distress. The Broadcasting Standards Commission (see Appendix 2) is empowered to adjudicate on complaints of unwarranted infringement of privacy.

3.1 Scenes of Extreme Suffering and Distress

Scenes of human suffering and distress are often an integral part of any report of the effects of natural disaster, accident or human violence, and may be a proper subject for actuality rather than indirect reporting. But before presenting such scenes, Licensees must balance the wish to serve the needs of truth and the desire for compassion against the risk of sensationalism and the possibility of unwarranted invasion of privacy. In particular, great discretion should be used when interviewing or recording those directly affected by the disaster, accident or crime, and efforts made to ensure that they are not caused any additional anxiety or distress.

3.2 Interviews with Members of the Public

When coverage is given to events in public places, Licence Holders must satisfy themselves that words spoken or actions taken by individuals are sufficiently in the public domain to justify their broadcast without express permission being sought.

3.3 Telephone Interviewees and Participants

Telephone interviewees and participants must have given consent to the use of their contributions prior to broadcast and telephone conversations may not be broadcast without the permission of the participants save in circumstances covered in 3.4 below.

There may be very rare cases, such as those involving investigation of allegedly criminal or otherwise disreputable behaviour, in which these normal requirements cannot be observed. In such cases, permission to proceed with the broadcast or recording must be given by senior radio station management. Members of the public who telephone in to phone-in shows will be deemed to have given consent for the broadcast of their contributions.

3.4 Hidden Microphones

The use of hidden microphones to record or broadcast the words of people who are unaware that they are being recorded or broadcast is acceptable only when it is clear that the material so acquired is essential to establish the credibility and authority of the story, and where the story itself is equally clearly of important public interest. In such cases, permission to proceed with the recording and broadcast must be given by senior radio station management.

3.4.1 Wind Up Calls

The 'wind up' call is a technique that, if it is to be used, requires care. The general idea behind 'wind-ups' should be that they are good-humoured and that 'victims' should not be exploited in an unacceptable way.

The Radio Authority expects that permission to broadcast 'wind up' calls will be sought in a proper

manner. The person being 'wound up' should be both fully able to realise what has taken place and fit to grant permission wittingly and without feeling he has been put on the spot or is being a 'bad sport' for refusing permission to broadcast. Additionally, when a person is 'wound up' in his professional capacity, that is, when he is representing an organisation or an employer and that employer is identified or implied, then broadcasters must be clear that the permission of that organisation has also been given before the call may be broadcast. No 'wind up' scenarios should distress or upset callers or offend against good taste or decency, either when recorded or when broadcast.

3.5 Interviewing of Children

All interviews with children require care. They must not be interrogated to elicit views on private family matters, nor asked for expressions of opinion on matters likely to be beyond their judgement.

Other matters concerned with children are listed under 4.6 Sexual and Other Offences Involving Children, and 5.5 'Appearances by Children in Programmes'.

3.6 Information about Listeners

Listeners may elect to have their names, telephone numbers and/or addresses passed to third parties, either on or off air, for example, to arrange meetings or to sell or exchange goods. However, if information of this kind is to be passed on to third parties, Licence Holders must ensure that the listener to whom the information relates has given express permission that he or she wishes this to occur and that, as far as is reasonably practical to ascertain, the safety of the party or parties involved is not at risk.

Information which is imparted with a view to a 'blind date' occurring requires special care. All those involved must have declared themselves to be aged 18 or over. Women's addresses and/or telephone numbers should never be divulged by Licence Holders to men during, or as a consequence of, a blind dating programme or feature.

Licencees should err on the side of caution if there is the slightest doubt that the safety of a listener or listeners might be at risk. Licencees have adopted several methods by which risk can be minimised. For example, the information that is passed on so that a meeting might take place is generally in a letter, vetted by the licensee, from the party being introduced. Advice is also regularly given that any first meeting that may occur should be in a well lit, public place known to the recipient of the information.

3.7 Misuse of a Wireless Receiver to Obtain Information

Under Section 5 of the Wireless Telegraphy Act 1949, it is an offence for anyone to use a wireless receiver with intent to obtain information about any message which he is not authorised to receive. It is also an offence for anyone to pass on information about an intercepted message, whoever did the intercepting (see 4.4 'Hijacking and Kidnapping Reports').

4 Crime, Terrorism and Anti-Social Behaviour

Section 90 of the Broadcasting Act 1990 requires the Radio Authority to do all that it can to ensure that 'nothing is broadcast which ... is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling.' See also the News & Current Affairs Code Appendix II (Terrorism Act 2000)

4.1 Interviews with Criminals, those Suspected of Crime and/or those who Advocate Crime

Interviews with criminals may run the risk of infringing Section 90 of the Act (above), and Licencees must always consider carefully whether each interview can be justified in the public interest.

Apart from the requirements of the Broadcasting Act, other legal considerations must be borne in mind. When an interviewee is known to be wanted by the police or on the run from prison, there are two statutes which may be relevant. The Criminal Justice Act 1961 Section 22(2) states broadly that it is an offence for anyone to give to a person who has escaped from jail or who is unlawfully at large any assistance with intent to prevent, hinder or interfere with his being taken into custody. The Criminal Law Act 1967 Section 4(1) states 'Where a person has committed an arrestable offence, any other person who, knowing or believing him to be guilty of the offence, or of some other arrestable offence, does without lawful authority or reasonable excuse any act with intent to impede his apprehension or prosecution shall be guilty of an offence'. To be held guilty of an offence under the above, it would have to be shown that the person charged either misled the police or gave the criminal some assistance. Assistance is difficult to define, but it would only be necessary to prove some element of encouragement. In the case of an ordinary criminal who has escaped from jail, considerable risks would be run by employees of a radio station who conducted an interview unless everything possible was done to secure the criminal's arrest.

4.2 Payments to Criminals and Former Criminals and Trial Witnesses

No payment should be made to a criminal whose sentence has not yet been discharged. Former criminals should not be paid for interviews about their crimes unless an important public interest is served. No commitment should be made to pay any witness in a trial before proceedings are fully concluded.

No payment should be made to those, convicted or otherwise, for interviews about acts committed by them of a seriously anti-social nature unless an important public interest is served.

4.3 Terrorism

All plans for a broadcast which explores and exposes the views of people who use or advocate violence for the achievement of political ends must be considered carefully by senior station management before any arrangements for broadcasting are made.

When reporting information relating to terrorism, Licence Holders should be aware that in some cases legislation imposes a duty of disclosure upon a person who possesses information relating to certain terrorist activities [eg the Criminal Law Act (Northern Ireland) 1967, The Prevention of Terrorism (Temporary Provisions) Act 1989, and the Terrorism Act 2000.] Licence Holders should refer to advice in the **News & Current Affairs Code** Appendix II.

4.4 Hijacking and Kidnapping Reports

Licence Holders must act in a responsible manner when broadcasting any information that could endanger lives or prejudice the success of attempts to deal with a hijack or kidnap, and must refer to the current relevant agreements and/or guidelines agreed with the forces of law and order.

Information about hijacks can on occasion be picked up by monitoring communications between aircraft and the ground, or between police radio cars and their base control. As noted in 3.7 it is an offence under Section 5 of the Wireless Telegraphy Act 1949 for anyone to pass on information about an intercepted message, whoever did the intercepting.

4.5 Demonstration of Criminal Techniques

Licence Holders must give careful thought and, where appropriate, seek suitable advice before items are broadcast which give detailed information about criminal methods and techniques.

In programming dealing with criminal activities there may be conflict between the demands of accurate realism and the risk of unintentionally assisting the criminally inclined. A public-spirited warning to listeners against novel or ingenious criminal methods, for example, may defeat its own aims by giving those methods wider currency than they might otherwise have. Similar caution is needed in the representation of police techniques of crime prevention and detection.

4.6 Sexual and other Offences Involving Children

When covering any pre-trial investigation into an alleged criminal offence in the UK, licensees should pay particular regard to the potentially vulnerable position of any person under 18 involved as a witness or victim, before broadcasting their name, address, identity of school or other educational establishment, place of work, or any other material likely to identify this person.

Particular justification is also required for the broadcasting of such material related to the identity of any person under 18 who is involved in the offence as a defendant or potential defendant.

The courts have a power to lift/impose identification restrictions in the case of a child or young person charged with/convicted of certain serious offences (including violent or sexual offences) and who is unlawfully at large, for the purpose of apprehending him.

Where children are or have been involved in police enquiries or court proceedings concerning sexual offences, special care needs to be taken to avoid the so-called identification 'jigsaw effect'. This happens when several reports in different media give different details of a case which, when pieced together, reveal the identity of a child involved. The Authority advocates liaison with other relevant media to lessen the possibility of the jigsaw effect occurring.

Particular care needs to be taken when reporting sexual crimes within a family. (Incest should not be referred to as 'incest' but as 'a serious sexual offence against a child' to avoid victim identification). Naming the accused and describing the crime can have the effect of identifying the victim. Giving information about an accused person's address may contribute to the jigsaw which identifies the victim.

4.7 Smoking and Drinking

The editorial content of Licence Holders' programmes must not endorse smoking or excess drinking and these activities should not be mentioned unless the context requires it.

Tobacco and alcohol are social drugs whose consumption carries no particular stigma even though they can constitute a major health risk and may be as addictive as drugs which are less socially approved, or actually illegal.

Particular care is needed with programming likely to be heard by younger listeners. Programming directed especially at younger listeners should not normally contain any reference to smoking or drinking of alcohol unless an educational point is being made, or the context makes it absolutely essential.

4.8 Drug Taking and Solvent Abuse

Drugs, drug addiction and their effect are valid subjects for radio programming. However, no impression should be given that drug taking is desirable, particularly in programming of special appeal to younger listeners. The same caution must be applied to solvent abuse (glue sniffing etc.), and descriptions of such practices that could easily be imitated must be avoided.

5 Other Legal Matters

5.1 Defamation*

Licence Holders must be aware of the law on defamation and of what may constitute a defamatory statement.

(The following notes on the law of defamation in England and Wales are intended merely to alert Licence

Holders to situations where legal advice may be required. In Scotland and Northern Ireland the law is different in some respects and guidance should be sought.)*

- a) *The law on defamation enables individuals (and companies) to protect their reputations, whilst preserving the right of free speech. The law attempts to preserve a proper balance between these two objectives.*
- b) *Defamation broadly consists of material which is likely to affect a person adversely in the estimation of reasonable people. Under the Defamation Act 1952, broadcasting of a defamatory statement is treated as libel.*
- c) *Fictional programmes as well as factual ones can give rise to actions for libel if a character portrayed in the programme is identifiable with a person in the real world.*
- d) *A Licence Holder is liable for all material that it broadcasts, including defamatory statements, made by contributors to its programmes.*
- e) *It is a defence to a defamation action to prove that the statement in question was true, or to show that it constituted 'fair comment.' Fair comment in this context means an honest statement of opinion on a matter of public interest, based on true facts which are referred to in the statement. If a programme is planned that includes what may constitute such a statement, then the Licence Holder concerned must seek competent legal advice on whether the statement is actionable and if so whether a successful defence might be made. If the advice is that any action could be defended, this does not in itself mean that the programme or programme item should be broadcast. The Licence Holder will need to take into account wider considerations, such as those of impartiality, that lie outside the law of defamation.*
- f) *Licence holders should also make themselves aware of the circumstances in which some statements might attract absolute or qualified privilege (such as Parliamentary statements and some council business) as a defence.*

5.2 Contempt of Court*

Licence Holders must ensure that they do not broadcast material which would place them in contempt of court.

The law of contempt exists to safeguard the administration of justice. It is a statutory contempt to publish or broadcast any material which creates a substantial risk that the course of justice in 'active' legal proceedings will be seriously impeded or prejudiced. Criminal proceedings become 'active' for the purposes when, for example, an individual is arrested or a warrant is issued for his arrest.

By way of example, where criminal proceedings are active, broadcasting details of the defendant's previous criminal record, or pre-judging the outcome of the case could constitute a contempt.

Statutory contempt is a serious criminal offence. It is no defence that the broadcaster had no intention to interfere with the course of justice. It is a defence, however, that a broadcast was made in good faith and

was a fair, accurate and contemporaneous report of legal proceedings held in public. The courts have power to prevent a broadcast which is potentially in contempt.

(The law on contempt is complex and may vary between England and Wales, Scotland, Northern Ireland and the Channel Islands. Licence Holders should obtain legal advice wherever there may be a risk that a comment or interview could be a contempt.)*

*Basic guidance is included within Appendix III but but none of the notes within this code provide a substitute for legal advice, which should always be sought where there is doubt over content.

5.3 Official Secrets Acts

In recent years there has been increased public discussion of some matters which would previously have been considered forbidden territory. The Official Secrets Acts present pitfalls for journalists who come upon matters covered by the provisions of the Acts. They would be prudent to check carefully on the nature and status of any information about affairs of State generally.

5.4 Defence Advisory Notices (DA Notices)

DA Notices are issued by the Defence, Press and Broadcasting Advisory Committee (DPBAC) as advice and guidance to the media about defence and counter-terrorist information, the publication of which would be damaging to national security.

It is recommended that each Licence Holder notify the Secretary of the DPBAC of the identity and business address of a 'named person' to whom reference can be made on DA Notice issues. His address is Room 2235, Ministry of Defence Main Building Whitehall, London SW1A 2HB. Tel: 020 7218 2206, Fax: 020 7218 5857. The Licence Holder and the Secretary will then decide whether the station should hold a copy of the DA Notices.

The DA Notice Secretary is available at all times to Government departments and the media to give advice on the system and to help in assessing the relevance of a DA Notice to particular circumstances.

5.5 Appearances by Children in Programmes

Performances by children under the upper limit of compulsory school age are controlled in England and Wales by Home Office regulations administered by Education Authorities. All such performances, apart from those appearances expressly exempted under the Children and Young Persons Acts, require a licence from the Education Authority responsible for the area in which the child lives. Parental consent alone is not enough (some special restrictions also apply to young people above school age but under 18 years).

Exempted performances include those given under arrangements made by a school, and performances where no payment is made to the child or another person in respect of the child's performance, and where the child has not taken part in performances covered by the regulations on more than three days in the previous six months.

The law on public performance by children is complex. Licence Holders should be familiar with the general regulations and should take advice when the use of a child is contemplated. Casual, phone-in contributions from children in their leisure time fall outside these requirements.

5.6 Protection of Children from Indecency

The Protection of Children Act 1978 is aimed at preventing the exploitation of children under 16 by pornographers. Some provisions in the Act, however, widen its scope and apply to radio programmes.

The Act does not define what is 'indecent'. However, the courts have said that, whilst something is indecent or obscene if it offends against recognised standards of propriety, it is the exclusive province of a jury to decide whether or not the matter is indecent or obscene. Because of this vague definition of 'indecent', it is not possible to lay down hard-and-fast rules about what is, or what is not, permissible. Where doubt exists Licence Holders should take legal advice.

5.7 Financial Programming and the Promotion of Investment Activity

Transparency of any personal interest, where the individual has potential to gain financially from the promotion of investment activity, is paramount. Therefore, anyone directly involved in deciding the content of the programme (including expert guests), who may benefit from the broadcast of material that promotes investment in a particular share, must disclose his or her interest in such a share on air at the time of broadcast. Such personal benefit and interest extends to that of close family members: a spouse and children under 18 years of age.

Any clearly identified chief executive, director or employee of a company, who appears in that capacity, may speak about the company without personal disclosure, provided he is not doing so as part of an organised marketing campaign, but any interviewer remains 'directly involved in deciding the content of the programme.'

Journalists and expert guests are allowed to discuss financial products or services. However, Licensees are reminded that only legitimate and objective coverage of a commercial product or service in programme editorial is acceptable (see Section 1 Rule 2 Product Placement and Undue Prominence of the Radio Authority Advertising and Sponsorship Code). Licensees are responsible for ensuring that appropriate procedures are in place to minimise the risk of covert financial gain.

Personal disclosure is not required within the programming of any Licensee who is otherwise exempt under the provisions of Article 20(2)(b) of the Financial Services and Markets Act (Financial Promotion) Order 2001.

5.8 Racism

Licence Holders' attention is drawn to the requirements of the Public Order Act 1986, which makes it an

offence to publish or distribute written material which is threatening, abusive or insulting, with an intention to start racial hatred or in circumstances where racial hatred is likely to be stirred up by such publication. The same prohibition applies to playing a recording of sounds which are threatening, abusive or insulting, or including such material in a programme service.

6 Appeals for Donations and Editorial Publicity for Charities

6.1 Advertisements within Appeal Programmes

This part of the Programme Code gives guidance on appeals by charities and others (including Licence Holders) in programme time. Such bodies can seek funds or promote their aims and objectives by broadcast appeals or paid-for advertisements. Guidance on the latter is contained in the Radio Authority's Advertising and Sponsorship Code.

6.2 Basic Principles

- a) **Licensees may appeal for funds, goods or services on behalf of others. They may also appeal for funds to make programmes and, if a listener-funded station, to fund the radio station. Licensees may not make profits from such appeals and money, goods and services donated by listeners must be carefully controlled.**
- b) **Before appealing for funds, goods or services on behalf of a charity or other body or giving editorial opportunities for a charity or body to describe its activities or appeal for funds, goods or services, Licensees must ensure that the organisation or body concerned is either registered with the Charity Commissioners in England and Wales, or in Scotland recognised by the Inland Revenue as eligible for tax relief on the grounds that its purposes are exclusively charitable, or recognised by relevant bodies in Northern Ireland, or that its bona fides is satisfactory.**

If regular charity or other appeals are undertaken, it is strongly recommended that a Trust or other appropriate legal body is established and registered with the appropriate bodies. Trustees or administrators will wish to assure themselves that proper procedures are followed for handling funds. It would be proper and desirable for an audit to be conducted, with expenses deducted from the funds of the charitable body.

- c) **In order to prevent undue prominence being given to a particular cause or charity, a wide spread of charities and causes should benefit over time. None should receive an undue share of appeal time, except for a charitable body which the Licensee sets up as a means to distribute charitable funds to a range of recipients, or appeals for funds to make programmes on a particular Licensee's station.**

In the event of a disaster which merits a subsequent appeal for goods or funds, a Licensee may take the initiative to set one up. However, he should ensure its charitable status, and, in most cases, should organise the appeal in conjunction with other interested parties, such as the Disasters Emergency Committee, which brings together major UK charities active overseas.

6.3 Publicity for Donations

- a) Appeals for donations must clearly indicate the person/s or body/ies who will benefit from the appeal and how the money will be used.
- b) The nature and progress of any appeal which directly involves a Licensee or its programme provider(s) in raising money, goods or services (rather than just giving publicity for appeals made by others) must be made clear to listeners and donors. During, and until three months after the conclusion of, any such appeal, the Licence Holder must broadcast, on at least two separate days in each month in daytime (between 0700 and 1900), a feature of at least one minute's duration which tells listeners of the money raised or goods or services offered so far and the uses to which donations have been or are intended to be put. Where the appeal is for money to make programmes, or in the case of a listener-supported station to fund the radio station, this process must continue until the money raised is exhausted. A listener-supported station must regularly report, at least quarterly, to its donors on the use of the funds received.

Listeners should be told very clearly and regularly before, during and at the end of the appeal, how much has been raised and for what causes.

6.4 Distribution of monies raised

Funds or goods collected must be distributed to, and services offered used for, the ends for which they were sought. None of the funds collected should be used to meet programming expenses or other costs incurred by Licence Holders unless otherwise made clear. All money raised by appeals must be separately accounted for and the Radio Authority reserves the right to call for fully audited accounts of any appeal.

Licence Holders may legitimately deduct part of the proceeds to meet their own related expenses or use the proceeds to make programmes only if they made clear throughout the appeal that they would do so. However, a fund-raising event, such as a gala concert for which tickets are sold in aid of some charity or cause, would be a different matter. Here, only the profits usually go to the charity or cause, after expenses have been deducted. This is perfectly legitimate as long as the position is made clear and there is no suggestion that the full price of each ticket is going to the charity or cause.

If no Trust or other charitable body is established, funds received by Licence Holders as agents for charities must be paid into a separate account and disbursed as rapidly as possible. Figures should be available for audit, or other purposes, and fully audited accounts of any appeal may be requested by the Radio Authority.

6.5 Charity Legislation and Commercial Participation

Licence Holders in England and Wales should make themselves aware of the requirements of the Charities Act 1992 and the Charitable Institutions (Fund-raising) Regulations 1994. In particular, Licence

Holders should be aware that if appeals for donations to charities are made during the course of any programme, the Licensee may fall within the definition of a 'commercial participator' under the Charities Act 1992 and be subject to certain requirements, including the following :

- a) where an appeal for a donation to a charity is made, the following information must be made clear: the name of the charitable institution concerned; the method by which it will be determined what proportion of the proceeds will be applied for the benefit of the institution concerned; and, in the case of solicitations on behalf of more than one charity, in what proportions the charities will benefit.
- b) appeals for a donation should only be made on behalf of a charity in accordance with an agreement between the commercial participator and the relevant charity involved.

A 'commercial participator' is someone other than a fundraiser (into which bracket a Licence Holder is likely to fall) engaging in a promotional venture for charity. A 'promotional venture' means 'any advertising or sales campaign or any venture undertaken for promotional purposes.'

7 Religious and Spiritual Matters and Coverage of Paranormal and Supernatural Issues

7.1 Religious Programming

The Broadcasting Act 1990 (Section 90(2)(c)) requires the Authority to do all that it can to ensure 'that due responsibility is exercised with respect to the content of any of its programmes which are religious programmes, and that in particular any such programmes do not involve -

- i any improper exploitation of any susceptibilities of those listening to the programmes, or
- ii any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.'

In particular, religious programming broadcast to a particular geographical area must be sensitive to the religious make-up of the area served.

Religious traditions in the United Kingdom are mainly Christian and most mainstream output which carries religious material is likely to reflect this fact. However, programming and stations aimed at different religious groups and /or particular communities will reflect their religious traditions as appropriate.

Religious belief and practice are central to many people's lives and capable of evoking strong passions and emotions. The content of programmes which deal with religious matters or beliefs requires particular care. Much of the following guidance is therefore designed to safeguard both listeners and their beliefs from abuse, exploitation or charlatanism.

It is the Authority's view that the spirit of the guidance within the Broadcasting Act applies both to specifically religious programmes and to programming in which religion becomes an issue.

7.2 Religious Views and Blasphemy

Licence Holders must exercise care to ensure that the religious views and beliefs of those belonging to a particular religion or religious denomination are not abused. Theological debate and disagreement may occur; however, programmes and/or follow-up material must not be used to denigrate or attack the beliefs of other people.

Britain contains communities with different faiths and cultures, each with its own particular religious sensitivities. All broadcasters must make themselves aware of these sensitivities lest they give unintentional offence to these communities. Additionally, many people find that the use of, for example, 'God', 'Jesus Christ' or 'Christ' as expletives is especially offensive and these should only be used where there is proper dramatic justification. Advice regarding care in this section is equally applicable to general programming in which religion might play a part as to specific religious programmes.

7.3 Identity

The identity of religious bodies featured in programming must be made clear to listeners. Radio stations with a particular religious stance, whether or not this is stated in the Format/Promise of Performance, must make this clear to listeners.

7.4 Accuracy

The belief and practice of religious groups must not be misrepresented, and programming about religion must be accurate and fair.

7.5 Unacceptable Religious Programme Providers

Licence Holders must not broadcast religious programming produced or provided by bodies or persons who practise or advocate illegal behaviour or whose rites or other forms of collective observance are not normally directly accessible to the general public.

7.6 Recruitment

Programming broadcast by Licence Holders may quite properly be used to propound and propagate religious belief. However, neither the programmes themselves nor any follow-up material may be used to recruit members for any religious faith or denomination in a way contrary to the requirements of Section 90(2)(c)(i) of the Broadcasting Act 1990, which requires that religious programmes may not involve 'any improper exploitation of any susceptibilities of those listening to the programmes'.

7.7 Appeals and Donations

Programming may include appeals. Religious programmes making appeals must take full account of the requirements of Section 6 of this Code and Section 90(2)(c)(i) of the Broadcasting Act 1990 (see above).

7.8 Susceptible Listeners

While it is quite proper for a religious body or its members to extol the virtues and assets of subscribing to a particular religious belief or view of life, programming must not seek to persuade or influence listeners by preying on their fears, nor by any other means engage in improper exploitation of the susceptibilities of listeners.

7.9 Claims Incapable of Substantiation

Except in the context of a legitimate investigation, programming may not contain claims, by or about living people or groups, suggesting that they have special powers or abilities which are incapable of being substantiated.

Paranormal and Supernatural Issues

7.10 Psychic Issues

Demonstrations of psychic or supernatural practice, including supposed contact with the dead, should not be presented unchallenged. This does not, however, prevent discussion of factual aspects where they are the subject of a legitimate investigation. Care must also be taken in the scheduling of all such programming. It should not, for example, be broadcast in circumstances when children may particularly be expected to be listening (see Rules 1.2). Where such programming is part of a phone-in, or similar programming, care should be taken not to give listeners advice which could be life-changing.

7.11 Exorcism

The same considerations as for 7.10 above apply to exorcism.

7.12 Horoscopes and Divination

Horoscopes and other forms of divination should neither be presented in a serious manner nor purport to give listeners important or essential advice regarding the future.

7.13 Hypnotism

Licence Holders must prevent hypnosis being induced in susceptible listeners. In particular, the hypnotist must not broadcast his verbal routine.

Demonstrations of hypnotism for public entertainment are regulated by the Hypnotism Act 1952 which requires such demonstrations to be licensed or authorised by the local controlling authority, and prohibits their being carried out on anyone under the age of 18. The provisions of the Act are relevant to any broadcast demonstration of hypnotism at, or in connection with, an entertainment to which the public are admitted.

8 Emergency, Obituary and Royalty

8.1 Emergency and Obituary Procedures

Where appropriate, Licence Holders should make advance arrangements for normal programming to be interrupted and, if need be, changed, following local, national or international emergencies, or the deaths of certain eminent or generally much beloved national and international figures, including some members of the British Royal Family. Each circumstance is likely to be different but stations may suspend normal output and make arrangements which they feel will suit the mood of their audiences in the particular circumstances. This may mean a station will vary its programming temporarily beyond the limits of its Format/Promise of Performance. Under the terms of the licence, such circumstances would be regarded as 'exceptional' and legitimate variations to a Format would be permitted without prior approval.

All output, and particularly those items scheduled in advance, such as music and advertisements, should be checked to ensure that nothing is broadcast which might in the changed circumstances offend against good taste or decency or public feeling. It may be advisable to suspend all advertisements for a short period. At an appropriate time national newspapers may wish to advertise their coverage of a death or incident, and particular care should be taken with the content and scheduling of these. Licensees' broadcasting employees must be regularly reminded of the procedures and the location or source of any special programme material.

Names of people likely to fall into this category are available from providers of national broadcast news services, such as IRN, who will usually announce such deaths and can offer programming guidance in emergencies. The Radio Authority publishes a more detailed guidance note to assist with decisions and IRN has produced a booklet on its Obituary Procedure, both available to Licensees on request.

8.2 Use of Broadcasts or Recordings by Her Majesty the Queen

Licence Holders should ensure that any broadcasts or recordings by the Queen are carried in accordance with any specific agreements with Buckingham Palace.

9 Competitions and Premium Rate Services

9.1 Legal Compliance for Competitions

All competitions should comply with relevant legislation (for example, the Lotteries and Amusements Act 1976).

Where a competition involves a random draw to determine the winner of the prize, care must be taken to avoid an illegal lottery under the Lotteries and Amusements Act 1976. An illegal lottery requires three elements: the distribution of prizes, the distribution by chance, and a contribution on the part of the participants. There is no illegal lottery, therefore, if the participant does not make a 'contribution' in return for the chance to enter the prize draw. (e.g. There is no illegal lottery if the caller is not being charged more than the cost of a first class stamp and the station is not benefiting more than nominally from the call being made).

An element of skill can be introduced to avoid the distribution of prizes by chance, but it is important that there is a significant degree of skill required (e.g. a tie-breaker rather than a simple question) and that at no stage is there a random element to the allocation of the prize to the winner. If in doubt, Licence Holders should seek legal advice.

9.2 Competition Rules

Competitions should be conducted fairly, to rules which are appropriately made known. In particular, prizes should be described accurately and despatched to winners as promptly as possible.

Any rules which disqualify, for example, repeat or regular callers should be made known. It may be useful to produce general written conditions to support all or specific competitions. If particular prizes become unavailable, suitable substitutes must be offered instead.

If competitions are run simultaneously on other stations (e.g. on a network) resulting in participation spread wider than might be obvious to a listener, then this must be made clear in any written rules. It should also be stated on air within all promotions or sweepers involving such competitions (perhaps running as general station drop-ins) that there are other participating stations in competitions. Without such clarification Licence Holders are vulnerable to accusations of misleading listeners.

9.3 Sponsored Competitions

All sponsored competitions, that is, programming competitions which include commercial partners and mention brand names, must comply with the Sponsorship Code Rules, as set out in the Radio Authority's Advertising and Sponsorship Code.

Licence Holders retain responsibility for all competitions in programming time, whether or not commercial partners are involved.

9.4 Premium Rate Telephone Services

All premium rate telephone services must comply fully with the Code of Practice issued by the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS). Call charges must be stated as and where appropriate.

ICSTIS can be contacted at 4th Floor, Clove Building, 4 Maguire Street, London SE1 2NQ, phone: 020 7940 7474, fax: 020 7940 7456; e-mail secretariat@ictis.org.uk. It provides confidential and free copy advice on how to apply its Code of Practice.

10 Public Accountability

10.1 Licence Holders' Telephone and Other Directory Listings

Licence Holders must take all reasonable steps to ensure that adequate entries appear in all telephone and other relevant directories within their coverage areas.

A radio station's most important link with its public is through its programmes and on-air presentation. Most Licence Holders will also conduct off-air activities to strengthen their presence in their areas. It is important to ensure that members of the public who wish to contact radio companies have no difficulty in doing so.

10.2 Handling of Complaints from Listeners

Complainants should be encouraged to telephone or write, in the first instance, to the Licence Holder. Licence Holders should deal promptly and thoroughly with complaints and must maintain their own internal complaints procedures and keep records of all written complaints received for at least twelve months. The Authority may ask to inspect these procedures and may ask for the submission of records. If listeners remain aggrieved, however, they must be told how to complain directly to the Radio Authority or the Broadcasting Standards Commission sufficiently promptly for them to conduct their own investigations, as appropriate.

Under the terms of the licence and the Broadcasting Acts, the Radio Authority can require a company to provide it with a tape or a transcript of broadcast material at any time up to 42 days after the broadcast was made. Many complaints, for example those concerning straightforward errors of fact, are best dealt with by the Licence Holder concerned but, where a complainant is not satisfied, he must always be sent a copy of the leaflet *How Do I Complain?* The Radio Authority takes all complaints seriously and, when it feels a complaint is justified, will take action with the Licence Holder concerned. Some categories of complaint can be taken up with the Broadcasting Standards Commission (see Appendix 2), the statutory body which considers both standards and fairness in broadcasting. It deals with complaints about the portrayal of

violence, sexual conduct and matters of taste and decency and also deals with complaints from those with a direct interest about unjust or unfair treatment or unwarranted infringement of privacy in a programme or in the making of a programme. The Commission's address is 5-8 The Sanctuary, London, SW1P 3JS. There is a Memorandum of Understanding existing between the Radio Authority and the BSC which seeks, among other things, to avoid double jeopardy for both complainants and licensees.

10.3 Publicity for Complaints Bodies

Licence Holders must promote the consumer protection roles and addresses of the Radio Authority and the Broadcasting Standards Commission as directed by the Radio Authority.

Twenty-five announcements publicising the regulatory duties of the Radio Authority shall be broadcast during daytime (0700 to 1900) within a single three week period each year. The timing of this period will be chosen by the Licence Holder. Restricted Service Licence Holders must broadcast at least one announcement in daytime hours during the period of each licence.

Licence Holders may discharge this duty as they see fit, provided the Authority believes that the objectives of raising awareness of its regulatory functions are met. The Radio Authority may ask for details of the campaign. Pre-recorded announcements played adjacent to advertising breaks or 'live' presentation are acceptable. A suggested script, and/or a pre-recorded announcement, are available from the Authority.

Licence Holders are also required to publicise the functions of the Broadcasting Standards Commission and how listeners may contact it. Each National Licence Holder shall make arrangements to broadcast the announcements six times a year, three of which should be in daytime; each Local Licence Holder shall broadcast the announcements four times a year, two of which should be in daytime; Restricted Service Licence Holders shall broadcast one announcement in daytime within each 28 day period. A suggested script is available from the Radio Authority.

10.4 Programme Tapes and Transcripts

a) Provision to the Radio Authority

Under the terms of the licence, the Radio Authority can require a company to provide it with a tape and/or a transcript of broadcast material at any time up to 42 days after the broadcast was made.

b) Provision to Others

When requests for recordings or transcripts are made on the grounds listed below, Licence Holders must respond promptly. If the company concerned proposes to withhold a recording or transcript, the Radio Authority must be told why. Tapes must be kept, if necessary beyond the 42 days, of all broadcasts in which Licence Holders are aware of possible or imminent complaints or problems.

A person or organisation who can establish a reasonable claim that a derogatory remark has been made about him on a licensed radio service, or who is affected by alleged strictures, unfairness or inaccuracies in

matter broadcast by a Licence Holder, should normally be provided with a tape or transcript on request.

This does not imply the automatic despatch of tapes or transcripts to applicants where the Licence Holder feels that it is more appropriate, as a first step, to attempt to satisfy them in some other way, for example by a letter of explanation or apology; or where it is felt necessary to ask them to establish that they have a proper interest in the matter at issue; or where there is clear legal advice that it is inadvisable that a tape or transcript be provided at that stage.

11 Programme Sponsorship

All sponsored programming and programming with commercial links must comply with rules and advice as set out in the Radio Authority's *Advertising & Sponsorship Code*, also available on our website: www.radioauthority.org.uk. See also 'News Sponsorship' in the News & Current Affairs Code, Rule 4.

12 Automation

Commercial radio is very much a 'live' medium and local and regional analogue stations are generally expected to broadcast 'live' during daytime hours, although a limited amount of automation* during that period is acceptable.

* **Automation definition:** *Computer controlled programming involving the music, voice tracks, drop-ins, commercials and other programming elements being played in accordance with a pre-defined schedule and which is not under the direct control of an on-air presenter.*

Section 85 (3) of the Broadcasting Act 1990 deals with the duty of the Radio Authority to facilitate the provision of licensed services which (taken as a whole) are of high quality.

The Authority recognises the distinction between circumstances where technology is used to enhance programmes, and also what a limited number of programme staff are able to do at any time, and those circumstances where the output of the station is effectively given over to the control of computer based technology. The limitation on automation does not restrict live assist techniques, when the system knows which commercials, drop-ins, music and features to play, but where there is a presenter to control the system and add or delete as appropriate.

Similarly, the limitation on automation is separate from issues of syndication, networking and pre-recorded programmes, although these issues may well need to be agreed formally if they necessitate a change, or addition, to a station Format.

Automation is regarded by the Authority as occurring when the system plays the music, voice tracks, commercials and drop-ins in accordance with a pre-defined schedule. Daytime is defined within each

station's Format. The spirit of this Code Rule is the most important aspect of the issue, and it is against the spirit of the Rule that the Authority will judge any possible contravention.

However, as a general Rule FM stations with a measured coverage area of over 50,000 should not broadcast more than two hours of automated output during daytime hours. AM stations (of any size) and those FM stations with an MCA of less than 50,000 should not broadcast more than four hours during daytime. Networked AM stations required to broadcast only four hours of locally produced and presented programming should not automate that four-hour segment.

Stations may apply for exemption from the limitation, or for an extension to the permitted hours of automation. For instance, the protection of live programming on local specialist stations, specialist music stations and volunteer-dependent stations fall into a different category.

The main grounds for exemption will be:

- a) **The levels of daytime automation which may have been indicated at the time of application or re-application.**
- b) **The population of the Measured Coverage Area.**
- c) **The commercial environment in which a Licensee operates.**
- d) **The nature of the automation concerned.**

A station allowed exemption from the general Rule will have that exemption written into its Format, although sensible exemptions in exceptional circumstances will be accepted and will not require such inclusion.

APPENDIX 1 : The Broadcasting Act 1990 Section 91

Section 91

General code for programmes

- 1 The Authority shall draw up, and from time to time review, a code giving guidance-
 - a) as to the rules to be observed with respect to the inclusion in programmes of sounds suggestive of violence, particularly in circumstances such that large numbers of children and young persons may be expected to be listening to the programmes;
 - b) as to the rules to be observed with respect to the inclusion in programmes of appeals for donations;
and
 - c) as to such other matters concerning standards and practice for programmes as the Authority may consider suitable for inclusion in the code;

and the Authority shall do all that they can to secure that the provisions of the code are observed in the provision of licensed services.
- 2 In considering what other matters ought to be included in the code in pursuance of subsection (1)(c), the Authority shall have special regard to programmes included in licensed services in circumstances such that large numbers of children and young persons may be expected to be listening to the programmes.
- 3 Before drawing up or revising the code under this section the Authority shall (to such extent as they consider it reasonably practicable to do so) consult every person who is the holder of a licence under this Part.
- 4 The Authority shall publish the code drawn up under this section, and every revision of it, in such manner as they consider appropriate.

APPENDIX 2 – The Broadcasting Standards Commission

Part V of the Broadcasting Act 1996 (Sections 106-130) is concerned with the Broadcasting Standards Commission.

Licence Holders must publicise the Commission and the Commission's functions (see 10.3)

The Commission considers complaints about the portrayal of violence, sexual conduct and matters of taste and decency and from those with a direct interest about unjust or unfair treatment or unwarranted infringement of privacy. It regularly researches public attitudes towards these matters.

It has published, and from time to time reviews, a Code on the portrayal of violence and sex and matters of taste and decency on television and radio, the general effect of which broadcasters are required to reflect in their own Codes and guidelines. All Licence Holders are expected to have read this Code. The 1996 Broadcasting Act also requires the Commission to produce a Code on Privacy and Fairness.

Complaints to the Broadcasting Standards Commission must be made in writing. The Commission will decide whether a complaint is within its remit and whether or not to entertain it. A judgement by the Commission does not preclude subsequent legal action; but it is up to the Commission to decide whether or not to entertain a complaint if it appears that there could be a remedy in litigation. There is a Memorandum of Understanding existing between the Radio Authority and the BSC which seeks, among other things, to avoid double jeopardy for both complainants and Licensees.

Before considering a complaint the Commission sends a copy of it to the relevant Licence Holder and the Radio Authority. To adjudicate on complaints, the Commission has the power to request recordings of broadcast material and written statements.

If the Commission decides to entertain complaints, those about the portrayal of sex and violence or taste and decency will simply be considered by the Commission but it may, in the case of issues of fairness or privacy, invite the Licence Holder to a formal hearing at which the Commission will invite further arguments and will itself ask questions.

The Commission's decisions are published in a monthly bulletin and on the internet. It has the power to require broadcasters to publish the Commission's own summaries of its findings either on-air or in a newspaper or magazine, reporting any action they have taken as a result.

For further information about the Broadcasting Standards Commission's complaints procedures, please contact the Commission.

APPENDIX 3 – The Law in Scotland & Northern Ireland

Legal references throughout this Code are based on UK-wide legislation. There may be national variations:

Scotland

Rule 4.1

The Criminal Justice Act 1961 and the Criminal Law Act 1967 do not apply in Scotland. However in Scotland similar provisions exist in Section 41 of the Police (Scotland) Act 1967.

Rule 4.6.

The offence under the 1999 Act applies to everyone in England, Wales and Scotland reporting on English or Welsh offences. However licensees (regardless of location) should also adopt the same approach in relation to Scottish offences.

There is an equivalent provision to the 1933 and 1969 Acts provision in Section 47 of the Criminal Procedure (Scotland) Act 1995 for those in England, Wales and Scotland reporting on Scottish Court proceedings. However, the law in respect of the Scottish proceedings applies to children under the age of 16.

Rule 5.1 Defamation

The law on defamation in Scotland extends to individuals, companies and other legal persons. The law of defamation interacts with the right to free speech and attempts to preserve a proper balance.

Defamation of a person broadly consists of false material that is likely to affect a person adversely in the estimation of reasonable people. Written and oral statements are both capable of being defamatory.

Defamation of property, title to property, goods or of business consists of false material that is issued spitefully, dishonestly or recklessly and causes financial loss. Again written and oral statements are both capable of being defamatory.

Fictional programmes as well as factual ones can give rise to actions for defamation if a character portrayed in the programme is identifiable with a person in the real world.

Possible defences to a defamation action include that the statement was true and ‘fair comment.’ Fair comment in this context means an honest statement of opinion on a matter of public interest, based on true facts which are referred to in the statement.

Remedies for defamation in Scotland include an action for payment of damages and an action for interdict and/or interim interdict (the Scottish equivalent of an injunction).

Rule 5.2 Contempt of Court

The law on Contempt of Court, which applies to all courts with judicial powers, is a complex one and its implementation does not always appear consistent from region to region. In Scotland, historically, the Contempt laws have always been robustly executed, and the rules concerning the period from which a case might be ‘active’ are imposed with much more rigor and with different guidelines. For example the phrase ‘detained for questioning’ is not the legal fiction in Scotland that it is in England and Wales. However, the status of detention can change, making it particularly important that specialist advice be sought where there might be a risk that an interview or comment could be a contempt.

On the question of reporting restrictions, when a person is ‘on petition’ (the Scottish equivalent of committal proceedings) it is considered dangerous to veer from or expand on (by, say, re-capping) official statements from the Procurator Fiscal. As with libel, legal advice must be sought if it appears contempt laws may be invoked by a broadcast.

Rule 5.5

The Children and Young Persons Acts 1933-1969 apply only in England and Wales. In Scotland, the Children and Young Persons (Scotland) Acts 1937-1963, in which education authorities in Scotland have discretion to make bylaws in relation to children employed in performances, apply. This power to make bylaws may at some point in the future be transferred to the Scottish Ministers.

Rule 5.6

The Protection of Children Act 1978 does not apply in Scotland. Instead, Section 52 of the Civic Government (Scotland) Act 1982 creates the equivalent offence in Scotland.

Rule 6.2(b)

The Charities Act 1992 and the 1994 Regulations, in general, do not apply in Scotland. However, Scottish Courts are obliged in certain respects to follow English charity law. No registration as such is required in Scotland but the Inland Revenue can only consider whether a body is a charity for tax purposes if it is established for charitable purposes only. Scotland’s charity sector is currently under review and it may be that in the near future regulations will come into effect to determine whether a body is a charity or not. In Scotland whether a charity must undertake an audit depends on the size of the charity and how the charity is constituted.

Licence Holders in Scotland should be aware of the terms of the Scottish Code of Fund-raising Practice produced jointly by the Institute of Charity Fund-raising Managers and the Scottish Council for Voluntary Organisations as a voluntary code of best practice to provide a framework of standards for fund-raising. The terms of that code are broadly similar to those set out in Section 6 of this Code.

Northern Ireland

Rule 4.1

The corresponding legislation in Northern Ireland to Section 22(2) of the Criminal Justice Act 1961 and Section 4(1) of the Criminal Law Act 1967 is Sections 4 and 5 of the Criminal Law Act (Northern Ireland) 1967 and Schedule 6 of the Police and Criminal Evidence (Northern Ireland) Order 1989.

Rule 4.6

The relevant legislation here is Sections 59 and 68 of the Children and Young Persons Act (NI) and Article 170 of the Children (NI) Order 1995 (see also Article 7(2), Schedule 3 of the Fines and Penalties (NI) Order 1984 and also see Article 8(4) of Sexual Offences (NI) Order 1978).

Rule 5.1(b)

The relevant legislation in Northern Ireland is the Defamation Act (Northern Ireland) 1955, as amended by the Defamation Act 1996.

Rule 5.5

The corresponding legislation in Northern Ireland is the Children and Young Persons Act 1968, to which exempted performances are contained in Articles 137 and 138 of the Children (NI) Order 1995.

Rule 5.6

The corresponding legislation to the Protection of Children Act 1978 is The Protection of Children (NI) Order 1978.

Rule 5.8

The equivalent of the Race Relations Act 1996 is the Race Relations (NI) Order 1997.

The corresponding Public Order legislation is the Public Order (NI) Order 1987 and note also that Articles 34 and 35 of The Fair Employment and Treatment (Northern Ireland) Order 1998 will also have effect in Northern Ireland with regard to advertisements included in any programme service in so far as they relate to religious and/or political discrimination.

Rule 6 (All)

The relevant legislation is the Charities Act (Northern Ireland) 1964 as amended by the Charities (Northern Ireland) Order 1987. Northern Ireland does not have an equivalent of the Charitable Institutions (Fundraising) Regulations 1994.

Rule 6.1

It will be necessary for advertisements under this Rule to have regard to Articles 34 and 35 of The Fair Employment and Treatment (Northern Ireland) Order 1998 in so far as they relate to religious and/or political discrimination.

Rule 6.2(b)

It should be noted that there is no separate register for charitable organisations in Northern Ireland save registration by the Inland Revenue on the basis that the organisation is eligible for tax relief on the grounds that its purposes are exclusively charitable.

Rule 7

It will be necessary for advertisements under this Rule to have regard to Articles 34 and 35 of The Fair Employment and Treatment (Northern Ireland) Order 1998 in so far as they relate to religious and/or political discrimination.

Rule 9.1

The corresponding legislation to the Lotteries and Amusements Act 1978 is the Betting, Gaming, Lotteries and Amusements (NI) Order 1985 as amended by the Betting and Lotteries (Northern Ireland) Order 1994.

Rule 11

It will be necessary for advertisements under this Rule to have regard to Articles 34 and 35 of The Fair Employment and Treatment (Northern Ireland) Order 1998 in so far as they relate to religious and/or political discrimination.

News and Current Affairs Code and Programme Code

