



Code on the Scheduling of Television Advertising

Revised rules on the scheduling of advertisements

Statement

Publication date:

24 July 2008

Contents

Section		Page
1	Summary	1
2	Background	3
3	Comments from consultees, and Ofcom's response	6
Annex		Page
1	Code on the Scheduling of Television Advertising	16
2	Impact Assessment	20
3	Responses on minutage, frequency and teleshopping scenarios	28

Section 1

Summary

Review of advertising regulation

1.1 Following changes to the European framework of advertising regulation as set out in the Audio Visual Media Services (AVMS) Directive, Ofcom decided to carry out a comprehensive review of its Rules on the Amount and Distribution of Advertising (RADA). We published Stage One of the review in March 2008¹, and invited comments on proposals for simplified and liberalised rules on the placing (or 'distribution') of television advertisements. This document sets out the conclusions of Stage One of the review, and also describes the next steps in relation to Stage Two.

Stage One

- 1.2 Following the consultation on Stage One of the review, Ofcom has decided that RADA should be replaced by a shorter and simpler Code which will come into force on 1 September 2008 (Annex 1). The changes remove outdated or unnecessary rules that have little or no beneficial impact, either on viewers or broadcasters, and in some cases, are unhelpful, both to viewers and broadcasters. Examples include rules that force broadcasters to adopt a pattern of advertising breaks that is unpopular with viewers, the outdated rules that prohibit advertising after an epilogue (these are rarely, if ever, broadcast), and unnecessarily detailed guidance on what constitutes a natural break.
- 1.3 The changes also seek to create a more level playing field, by removing or liberalising rules that prevented broadcasters from taking as many breaks in documentaries, religious programmes or films as in other kinds of programmes. In the case of films, this means that one break will be allowed every 30 minutes, instead of once every 45 minutes. These changes will remove or reduce the disincentives to showing such programmes.

Stage Two

- 1.4 Stage Two of the review will deal with possible changes to the rules on the amount of advertising and teleshopping on television. We shall publish a consultation in the autumn dealing with the amount of advertising and teleshopping permitted on television, and how often advertising breaks should be allowed. Pending the outcome of that consultation, broadcasters may not increase the frequency of advertising breaks, and the current limit on the maximum length of breaks within programmes on the main channels will remain.
- 1.5 Alongside Stage One of the review, we set out a range of possible scenarios for Stage Two². The purpose of this was to ask interested parties if we had identified the appropriate range of options to include within the Stage Two consultation, and whether the suggested approach to assessing the impact of these options was reasonable. The views expressed by respondents will be helpful to Ofcom in framing the Stage Two consultation, and for refining our assessment of the impact of different options.

¹ *Review of advertising and teleshopping regulation*, March 2008, Ofcom (<http://www.ofcom.org.uk/consult/condocs/rada/rada.pdf>)

² Section 7 of *Review of advertising and teleshopping regulation*.

- 1.6 Many of those who commented on the range of scenarios for the amount of advertising on television told us which scenarios they would prefer, and which they would not. Their views are summarised in Annex 3. In particular, we note that almost all those who responded from all sides of the industry, including viewers, UK broadcasters, advertising agencies and many advertisers, believed that no-one would benefit from an increase in the advertising minutage allowances on television channels. We will reflect these views in the consultation we publish in the autumn, though it will be important to include within the consultation the full range of options.
- 1.7 Alongside the consultation on Stage Two of the review, we shall publish a full report on deliberative research into the attitudes of consumers towards possible changes to the frequency of television advertising. This is independently-conducted research with panels of viewers from across the United Kingdom. The results of the research will help us in framing options for the Stage Two consultation.
- 1.8 It is our current intention that any changes resulting from Stage Two of the review in would be implemented with effect from 1 January 2010.

Advertising on text services

- 1.9 As indicated in paragraph 6.77 of the March document, section 11 of the RADA now becomes a separate code applicable to the Public Teletext Service³. No changes have been made to these rules.

³ This can be found at <http://www.ofcom.org.uk/tv/ifi/codes/>.

Section 2

Background

Review of advertising regulation

- 2.1 In March 2008, Ofcom published Stage One of its review of advertising regulation, inviting comments on those rules restricting the placing (or distribution) of advertisements in television programmes⁴. In preparation for Stage Two of the review, we also invited views on the proposed approach to consultation on the amount of advertising and teleshopping. Stage Two, which will set out options for advertising and teleshopping minutage allowances, and the frequency of advertising breaks, will be published in the autumn.
- 2.2 The last review of advertising regulation was conducted in 1997 by Ofcom's predecessor, the Independent Television Commission (ITC), under the broadcasting legislation applicable at the time. As now, the review was occasioned by the need to give effect to changes to the European framework, set out in the Television without Frontiers Directive (now the Audio Visual Media services or AVMS Directive).
- 2.3 The 1997 review made relatively few changes of substance to rules that had evolved only slowly since they were put in place in the mid-1950s. Given this, and the significant changes in the television market since 1997, Ofcom decided to carry out a comprehensive review, to take account both of changing circumstances, and the duties placed upon Ofcom by the Communications Act 2003.

Current rules

- 2.4 The Television without Frontiers (or TWF) Directive limits the daily amount of advertising on television channels to an average of 9 minutes an hour (plus up to 3 minutes of teleshopping spots⁵), but no more than 12 minutes in any one hour. This means that a channel broadcasting for 24 hours a day has a minutage allowance of up to 216 minutes of advertising spots (9 minutes x 24 hours), and up to 72 minutes of teleshopping spots, a combined total of 288 minutes.
- 2.5 Ofcom applies these rules to most TV channels licensed in the UK. But, like its predecessor, the Independent Television Commission (ITC), Ofcom applies stricter rules to the public service channels (ITV1, GMTV1, Channel 4, Five, S4C). The daily amount of advertising on these channels is limited to an hourly average of 7 minutes (with no additional amount allowed for teleshopping spots), subject to a cap of 12 minutes in any one hour. During peak viewing times, there are further restrictions on the amount of advertising. From 7am to 9am, and from 6pm to 11pm, broadcasters may only show an average of 8 minutes an hour of advertising. PSB channels also have stricter rules on the number of advertising breaks, which means that they can only have one break in a half-hour programme.

⁴ Current regulation is set out in the Rules on the Amount and Distribution of Advertising (RADA), set out in Annex 3 of the *Review of television advertising regulation*, Ofcom, March 2008 (<http://www.ofcom.org.uk/consult/condocs/rada/>)

⁵ Teleshopping means television advertising which includes direct offers to the public to supply goods or services, in return for payment. Teleshopping may appear in teleshopping features no less than 15 minutes, or in teleshopping spots alongside normal advertising.

- 2.6 Except in special cases, advertising must be taken during a 'natural break' in programming (e.g. at the end of a comedy sketch, rather than half way through). There are no rules on advertising breaks between programmes, although the permitted amount of advertising must not be exceeded. However, the so-called '20 minute rule' effectively limits the number of breaks during programmes. This rule requires that there must be an interval of 20 minutes between advertising breaks within a programme. As Figure 1 below shows, the effect of this rule is to allow up to two breaks within a half hour programme and three breaks within a one hour programme.

Figure 1: existing break patterns in 30-minute and 60-minute programmes



- 2.7 These rules are set out in Ofcom's Rules on the Amount and Distribution of Advertising (RADA). RADA also contains more detailed rules on the distribution of advertising that:
- limit advertising in particular kinds of programme. There are restrictions on advertising in programmes with a religious theme, news and current affairs programmes, children's programmes and others; and
 - explain what is meant by 'natural breaks' and 'special cases' in different kinds of programming.

Ofcom's proposals in Stage One of the review

- 2.8 Stage One of the review, published in March 2008, set out proposed changes to the rules on the distribution of advertising. The key proposed changes were:
- a proposal that the rule requiring a 20 minute interval between advertising breaks within a programme should be scrapped. The current rule means that programmes must be made to fit an artificial break pattern. It is unlikely that this break pattern will always be the best for each programme, especially for programmes acquired from overseas, where different break patterns are normal. We suggested that allowing flexibility on the timing of breaks was likely to be better for viewers;
 - to maintain some limits on the frequency of advertising breaks. We suggested that if there were no limits, it was likely that the desire of advertisers to have shorter, more frequent breaks would lead to an increase in the number of breaks over time, to the irritation of viewers. We suggested that, pending the outcome of Stage Two of the review, we should maintain rules that would limit broadcasters to the same number of breaks that they would be allowed at present;

- c) to simplify the rules on natural breaks, with the aim of allowing broadcasters to exercise their best judgement about how to meet the European rules. These rules say that advertising breaks should not harm the integrity of programmes; and
- d) to remove or relax restrictions on advertising in particular types of programming so far as the new European rules allow. For example, this would mean that films could be interrupted by advertising once every 30 minutes, rather than once every 45 minutes. It would also mean that the restrictions on advertising breaks during current affairs and programmes with a religious theme would be removed, but that there would continue to be a ban on interrupting programmes of religious services with advertising.

2.9 The detailed proposals were set out in Ofcom's March consultation document. Section 3 of this document summarises comments from consultees on these proposals, as well as Ofcom's response. Our assessment of the impact of our proposed changes, which takes account of comments made by consultees, is set out in Annex 2. The new Code on Advertising Regulation, which reflects Ofcom's decisions, is set out in Annex 1 and will take effect from September 1, 2008.

Ofcom's invitation to comment on issues for Stage Two of the review

- 2.10 Stage Two of the review, to be published in the autumn, will look both at the rules on the frequency of advertising, and how much advertising and teleshopping should be permitted. To inform this review, in the March document we invited views on:
- a) different possible scenarios for each of these issues, both for PSB channels and for non-PSB channels;
 - b) our approach to modelling the impact of changes in the permitted amount of advertising, both on PSB channels and non-PSB channels⁶.
- 2.11 Comments from respondents on these scenarios and the modelling approach are set out in Annex 3. These will be helpful to Ofcom in framing the Stage Two consultation.

⁶ These issues were described in section 7 of the March consultation document.

Section 3

Comments from consultees, and Ofcom's response

Introduction

- 3.1 Some 50 members of the public responded to the consultation, as did a wide range of broadcasters. These included ITV, Channel 4, S4C, and two other public service broadcasters (PSBs); five multi-channel broadcasters; and two UK-based operators of overseas channels. The Satellite and Cable Broadcasters' Group (SCBG) responded on behalf of its members, and individual responses were received from broadcasters QVC and Triple Media. Advertising-related interests included the Institute of Practitioners of Advertising (IPA) and an advertising trade association. Other respondents included the Association for Interactive Media and Entertainment (AIME), Buongiorno (which owns Quiz Call), the Campaign for Press and Broadcasting Freedom (CPBF), the Electronic Retailing Association (ERA), the Mobile Broadband Group (MBG), the National Union of Journalists (NUJ), and the Trading Standards Institute (TSI).
- 3.2 All non-confidential submissions have been posted on our website. We have also taken account of confidential submissions in formulating our conclusions. Key points from all submissions are summarised below.

Regulatory objectives

- 3.3 Ofcom is required to balance a variety of statutory duties and other relevant considerations in considering how to discharge its functions. In the March consultation document, we invited views on whether the proposed regulatory objectives struck an appropriate balance between these duties and other considerations that Ofcom should take account of in reviewing advertising regulation. Ofcom proposed that the first regulatory objective should be to further the interests of citizens and consumers, in particular, in relation to:
- a) the range, quality and appeal of television services available throughout the UK and in different parts of the UK and, in particular, public service channels;
 - b) the importance of securing a sufficient degree of plurality of providers of television services; and
 - c) such other matters as appear, having regard to the opinions expressed by consumers, important to them.
- 3.4 Further to this, Ofcom proposed that any changes to current regulation should, in furthering the interests of citizens and consumers, so far as possible:
- a) be evidence-based, transparent, proportionate, consistent and limited to the measures needed to achieve the first objective;
 - b) avoid the imposition or maintenance of regulation that is unnecessary; and
 - c) take account of the desirability of promoting competition, and the nature and interests of different consumers, in relevant markets.

Consultee comments

- 3.5 Many respondents did not comment on the regulatory objectives. Most of those who did, including a public service broadcaster, two multi-channel broadcasters and others (TSI, an advertising trade association), were broadly supportive. Among specific points made:
- a) three PSBs said that Ofcom should lay stress on the important role played by public service channels. One of them said that there should be a level playing field between public service and other channels, except where this would have an adverse effect on public service channels. By contrast, the advertising trade association was wary of the emphasis placed on public service broadcasters, given the uncertainty arising from Ofcom's current review of public service broadcasting;
 - b) one PSB said that Ofcom should not place too much weight on consumer research and viewer complaints as a source of information on the viewer interest. It pointed to Ofcom's own suggestion that viewers are not always fully aware of the precise amount and frequency of advertising in programming (paragraph 1.8 of the consultation document). It believed that sophisticated research techniques, which allowed viewers to consider the trade-offs associated with changes in the amount or patterns of advertising, should be used when analysing viewer irritation; and
 - c) a multi-channel broadcaster observed that Ofcom's analysis of its duties appeared comprehensive, but as some of the scenarios for increasing permitted advertising minutage could have a serious impact on smaller channels, it urged Ofcom to consider carefully its duty to promote competition; and
 - d) CPBF said that the objectives should include ensuring editorial integrity, cultural quality, and transparency and clear separation of editorial content and advertising. Specific mention should be made of Ofcom's obligations to promote media literacy.

Ofcom's response

- 3.6 We recognise that some stakeholders would prefer to see more emphasis laid on one or more objectives than others, but do not consider this a sufficient reason to reflect that weighting in the objectives themselves. It will of course be necessary for Ofcom to balance the objectives when making individual decisions, but it is neither necessary nor appropriate to prejudge that balance without considering the circumstances and all relevant considerations in each case. We consider that the points made by CPBF are already encompassed within the objective of furthering the interests of citizens and consumers. Accordingly, Ofcom has concluded that the regulatory objectives should be adopted as proposed.
- 3.7 When we publish Stage Two of the review, we shall also publish a report on the related deliberative research we commissioned, explaining the approach that was used to gauge the views of consumers.

Natural breaks

- 3.8 Ofcom proposed that the new Code should confirm the principle that advertising should only be scheduled in natural breaks within programmes, but should not include any genre-specific rules or guidance on what constituted natural breaks.

Consultee comments

- 3.9 Broadcasters (S4C, SBS, SCBG, two PSBs and one multi-channel broadcaster and others), and advertisers in general supported the proposals. Several pointed out that it was in broadcasters' interests to take breaks at sensible points in a programme. Responses from members of the public were mixed. Some were content for the detailed rules to be dropped, while some wanted to keep detailed guidance. Other organisations (the CPBF, TSI) were also cautious; TSI agreed with the proposals, but said that care should be taken to protect the integrity of programming. CPBF argued that the rules should be kept, but that broadcasters should be able to seek exemptions on a case-by-case basis.

Ofcom's response

- 3.10 As required by the AVMS Directive, broadcasters will continue to be required to avoid prejudicing the integrity of programmes, and to have regard to natural breaks when scheduling advertising within programmes. In the event of complaints about advertising breaks, Ofcom will retain the power to decide whether that principle has been breached. In practice, Ofcom has had very few complaints about the scheduling of breaks within programmes, and most of those that we have received stem from the requirement for a 20-minute interval between breaks within programmes, an issue that we discuss later in this section. Given that the guidance does no more than reflect common sense, and that broadcasters are incentivised not to schedule breaks in ways that annoy viewers (unless constrained by regulation such as the 20-minute rule), we do not think that retention of the guidance is needed to protect the interests of citizens and consumers. We therefore consider that the guidance is unnecessary and have decided to exclude it from the new Code.

Separation of advertising and editorial content

- 3.11 Ofcom asked whether stakeholders agreed that the new Code should:
- a) allow advertising and teleshopping breaks to be signalled in sound or vision or by spatial means, and should drop the requirement for teleshopping segments to be distinguished from programmes by both sound and vision; and
 - b) in the light of this, establish the principle that the distinction between advertising and editorial content should be readily recognisable, but drop more prescriptive rules for long advertisements.

Consultee comments

- 3.12 Most, but not all, members of the public favoured the retention of prescriptive rules on the separation of advertising and editorial content, as did the CPBF, which argued that separation should mean more than identification. One respondent pointed out that, as some viewers were deaf, it was appropriate to retain visual cues. For their part, several broadcasters (including SCBG, three PSBs, one multi-channel broadcaster and one UK-based operator of overseas channels) generally welcomed this proposal, as did others (an advertising trade association, TSI). An advertising trade association said spatial separation of advertising and editorial content would allow for split-screen advertising, though it warned that industry would have to resolve disputes about the value of this. CPBF was strongly opposed to split-screen advertising which, though rare, is already permitted.

- 3.13 Broadcasters generally (SCBG, three PSBs, one multi-channel broadcaster and one UK-based operator of overseas channels) agreed that, provided the principle was clear, detailed rules for distinguishing long advertisements from programmes were unnecessary. However, S4C said that if the onus was to be placed on broadcasters to make the appropriate editorial judgements, accompanying guidance should set out examples of how the general principles should be applied.

Ofcom's response

- 3.14 We agree with the viewer who pointed out that deaf viewers would not be able to rely upon audible cues alone to distinguish advertising from editorial content. Ofcom's regulatory objectives require that we further the interests of consumer and citizens. In interpreting this, we consider that it is relevant to take account of the needs of persons with disabilities, as provided for in section 3(4)(i) of the Communications Act 2003. We have therefore decided that the new Code should require advertising and editorial content to be separated visually, and either spatially or in sound. As this is similar to the existing rule, it will not impose any additional burden on broadcasters.
- 3.15 Having considered comments from consultees, we do not consider that it necessary or proportionate to maintain separate rules providing for long advertisements to be distinguished from editorial content in order to further the interests of consumers. The new Code will maintain the principle that advertising and teleshopping content should be readily recognisable and distinguishable from editorial content, and we believe that this provides sufficient protection for consumers and citizens, and sufficient guidance for broadcasters.

Advertising restrictions around certain types of programming

- 3.16 Ofcom invited views on whether the new Code should:
- a) discontinue the requirement for a buffer between advertising and coverage of a religious programme or Royal occasion;
 - b) remove the rule prohibiting advertising after an epilogue; and
 - c) omit the rule allowing Ofcom to exclude advertisements from specified programmes.

Consultee comments

- 3.17 Broadcasters (three PSBs, three multi-channel broadcasters and two UK-based operators of overseas channels) generally considered these to be sensible proposals; like advertisers they noted that some of the existing rules were outdated, and that broadcasters would be incentivised to make decisions that would avoid irritating viewers. The views of individuals were mixed; a few wanted all the rules retained, while some were content to see particular rules dropped (e.g. the requirements for a buffer before and after religious programmes or those covering a Royal occasion). While the CPBF supported the proposals, the TSI was ambivalent; it suggested that greater regulation might be appropriate in relation to advertising between programmes of religious services, Royal occasions, and children's programming, but it did not set out specific proposals.

Ofcom's response

3.18 We are not persuaded that the interests of consumers and citizens would be furthered by retaining rules that have little or no practical impact. We remain of the view that, for commercial reasons, broadcasters and advertisers will want to ensure that any advertising that does follow such a programme is not likely to be regarded as inappropriate by viewers. Accordingly, we have concluded that the advertising restrictions were unnecessary and should be omitted from the new Code.

Advertising around schools programmes

- 3.19 Schools programmes are broadcast mainly by Channel 4⁷ which is required to transmit at least 330 hours of schools programmes per year. These are generally scheduled on weekday mornings in term time and broadcast without advertising between them as Channel 4 broadcasts the advertising at other times of the day. Ofcom asked whether the new Code should:
- a) make clear that advertisements are permitted between schools programmes; and
 - b) maintain the current arrangements for transferring unused minutage that apply to all broadcasters, and apply them to Channel 4 in place of the special arrangements that allow to take more advertising at other times, instead of around schools programmes.
- 3.20 CPBF said that advertisements were commercial communications that should not occur as part of formal education, where the emphasis is on the educative nature and value of the programmes. Advertisers should not have a presence in the classroom; relaxation of the rules against advertising between schools programmes would be unacceptable, and very extensive consultation with relevant education bodies should be undertaken before any such step was considered. Some individual respondents were also uncomfortable with the idea of allowing advertisements between schools programmes. On the other hand, an advertising trade association said that it believed that most such programmes were recorded by schools and rarely shown live. Accordingly, it thought the rules on advertising around these programmes were a fairly marginal issue for advertisers, and best left to broadcasters.
- 3.21 Channel 4 said that the special arrangements for transferring schools minutage recognised the uneconomic nature of its public service contribution in relation to schools programming. Discontinuing these arrangements would cost the channel around a few million a year. It also advanced other, confidential, arguments. Taking all these into account, Channel 4 argued that the current arrangements should remain in place, unless other changes significantly altered the current model.
- 3.22 By contrast, two other PSBs and a multi-channel broadcaster said that the special arrangements should be discontinued. Two argued that they provided Channel 4 with an unwarranted commercial advantage, because they enabled the channel to show more advertising at commercially-advantageous times, a privilege denied to other channels. There was no need to maintain this anomalous arrangement, given that Channel 4 could schedule advertisements between school programmes and at other non-peak times of the day.

⁷ S4C also broadcasts some Welsh-language school programmes.

Ofcom's response

- 3.23 None of the respondents suggested changes to the general arrangements for transferring minutage that apply to all broadcasters, and we have concluded that they should continue.
- 3.24 Given that schools programmes, to the extent that they are used by schools, are generally viewed as pre-recorded excerpts, we doubt that students would be exposed to advertising between programmes. In any case, any advertising will need to comply with the Broadcasting and Advertising Codes, including the particular rules that apply to advertising around children's programmes. Accordingly, we do not agree with CPBF that the interests of young people would be jeopardised by permitting advertising between schools programmes.
- 3.25 We have carefully considered the points made by Channel 4, but do not consider that they justify maintaining exceptions to the general rules applying to PSB channels. As regards the financial impact, we note that confidential estimates supplied by Channel 4 indicate that stands to gain more from other changes to advertising regulation than it may lose from an end to the special regime for schools programmes. We recognise that Channel 4 may well have made long-term plans for scheduling schools programmes and advertising in the expectation that the current rules will continue to apply, and that it will take time to make the necessary adjustments. Accordingly, we shall allow Channel 4 a grace period until 31 December 2009 to implement the same rules as apply already to other PSB channels. As part of the PSB review, we shall also be discussing with Channel 4 the possibility of changes to its current obligations to schedule schools programmes, taking account of how schools use such programmes and the volume of online educational material available from Channel 4.

General rules on the timing and frequency of advertising breaks

- 3.26 Ofcom proposed to scrap the rule requiring a 20-minute interval between advertising breaks within a programme, but to prevent any increase in the number of breaks in programmes of a given duration, pending the outcome of further consultation. It also sought stakeholders' views on the principle of whether there should be a limit on the number of advertising breaks within programmes of a given scheduled duration.

Consultee comments

- 3.27 Some individuals were concerned that scrapping the 20-minute rule would herald more frequent advertising breaks, as was the CPBF. TSI suggested that it might be appropriate to apply a more flexible rule, protecting the integrity of the individual programme, but did not elaborate on this point. All broadcasters who commented (three PSBs, two multi-channel broadcasters, and two UK-based operators of overseas channels) welcomed the proposal to scrap the 20-minute rule, as did advertisers. There was widespread agreement that the current rule made it difficult, particularly with imported programmes, to adhere to natural break patterns (three PSBs, an advertising trade association).
- 3.28 Individual respondents strongly supported limits on ad breaks; as did participants in the deliberative research and some others (CPBF, TSI). Advertisers were also wary about removing all limits on the number of breaks, although they tended to favour more, shorter breaks. Most broadcasters saw no need for imposed limits on the number of ad breaks (SCBG, one PSB, two multi-channel broadcasters and two UK-based operators of overseas channels) on the grounds that it would be against their commercial interests to act contrary to viewer interests. However, two PSBs

conceded that commercial pressures could result in shorter and more frequent breaks. This, suggested one PSB, would mean extra 'clutter' that would be unpopular with viewers, including, said another PSB, more sponsorship bumpers and programme promotions. One PSB suggested that limiting the number of breaks would prevent this, and protect the interests of viewers. The other urged caution and welcomed Ofcom's plans for deliberative research. A third PSB broadcaster also favoured continuing the limits on the number of centre breaks in programmes on public service channels.

Ofcom's response

- 3.29 We agree with broadcasters and advertisers who say that removing the 20-minute rule would allow breaks to be scheduled in ways that viewers would prefer (for example, avoiding the need for a very short programme segment before the first break). In other words, we believe that broadcasters' incentives are sufficiently well aligned with viewers' preferences with regards to the positioning of breaks. We have therefore decided that the new Code should omit the 20-minute rule.
- 3.30 However, we are concerned that any incentive for broadcasters to act in viewers' interests does not necessarily extend to a scenario where all limits on the number of breaks are removed. Whilst we accept that it is not in the interests of broadcasters to annoy viewers, it is in broadcasters' interests to maximise their share of commercial impacts. Thus, if a channel was able to schedule more breaks without losing audience share, its share of commercial impacts would increase, and competing channels would have to follow suit if they wished to defend their share of commercial impacts. In other words, we believe, that if all limits regarding the frequency of breaks were to be removed, broadcasters would have a conflicting incentive to schedule more breaks which would act to viewers' detriment. We have therefore decided that, in principle, there should be limits on the number of breaks in programmes. We shall take account of the views expressed on the range of possible scenarios for break patterns in formulating the consultation on Stage Two of the review in the autumn.

Special rules on the timing and frequency of advertising breaks

- 3.31 Ofcom invited views on whether the new Code should:
- a) allow advertising breaks in documentary and religious programmes of less than half an hour (as is already permitted in most other types of programmes);
 - b) allow advertising breaks in films once in every 30 minutes instead of once in every 45 minutes; and
 - c) defer until December 2009 the implementation of rules that prohibits breaks in news and children's programmes unless they exceed 30 minutes.

Consultee comments

- 3.32 Broadcasters and advertisers agreed that the special rules should be scrapped or liberalised to the extent permitted by AVMS. The CPBF did not agree; it argued that the way to safeguard threatened programming was to impose stricter public service obligations, not to rely on market mechanisms. The views of individuals were mixed; some wanted the existing rules maintained, others were content to see some or all of them scrapped.

- 3.33 Most PSBs and a UK-based operator of overseas channels supported the proposal to relax the rules on breaks in films. One PSB pointed out that it should not significantly affect viewers' enjoyment of films, since it would only mean one additional break in a two hour film. Another said that it would help to promote investment in and access to films. However, individual respondents did not like this idea, fearing that it would reduce their enjoyment of films.
- 3.34 Broadcasters (SCBG, three PSBs and one multi-channel broadcaster) and some individual respondents agreed that it would make sense to defer implementation of the stricter rule on news and children's programmes. CPBF and other individual respondents did not; they favoured the more prescriptive rules.

Ofcom's response

- 3.35 Ofcom's regulatory objectives require that we further the interests of consumer and citizens. In interpreting this, we consider that it is relevant to take account of the duty placed upon Ofcom to secure a wide range of television services calculated to appeal to a variety of tastes and interests, as provided for in section 3(2)(c) of the Communications Act 2003. The current rules applying to documentaries, religious programmes and films limit the amount of advertising revenue that can be earned from them, by comparison with programmes of other genres. This could have the effect of limiting the variety of programming available to consumers. In the light of this, and having considered the points made by consultees, we consider that the best interests of viewers would be served by allowing advertising in documentaries and programmes with a religious theme in the same way as other programmes, and by liberalising the restrictions on advertising in films to the extent permitted by the AVMS Directive. By the same token, we believe that it is in the interests of viewers to defer new restrictions on news and children's programmes that will make scheduling such programmes less attractive to broadcasters. As required by the AVMS Directive, the rules will continue to prevent advertising breaks during religious services.

Limits on the length of advertisements and ad breaks on PSB channels

- 3.36 Ofcom asked whether the new Code should discontinue rules applying only to public service channels on the length of:
- a) individual advertisements (currently 3 minutes 30 seconds in peak, and 7 minutes at other times), and
 - b) advertising breaks within programmes (currently 3 minutes 50 seconds of which no more than 3 minutes 30 seconds may be advertising).

Consultee comments

- 3.37 Some individual respondents were concerned that removing the restrictions on the length of individual advertisements could lead to long advertisements becoming common. By contrast, most public service broadcasters supported the proposal. An advertising trade association doubted that it would be economic to produce and air a 7 minute advert. However, it was concerned that removing the rule might make the boundary between advertising and teleshopping more porous. Given the different regulatory regimes that applied to these two types of commercial promotions, it suggested that there should be guidance as to the definition of each.
- 3.38 As regards restrictions on the length of ad breaks, individual respondents were concerned that this might lead to longer breaks within programmes, increasing the

disruption to viewing. The views of public service broadcasters were mixed. One PSB said that such rules were unnecessary, as the broadcasters would exercise common sense, and their interests and those of consumers were broadly aligned. Two other PSBs disagreed. One warned that removing it would almost certainly lead to longer breaks within programmes, and correspondingly shorter breaks at the beginning and end of programmes. This would benefit channels with the most popular programmes, both because of higher audience figures generally, and because viewers would be inhibited from switching away from 'must-watch' programmes, such as serial dramas. The other suggested a modest increase in the limit, by adding promotional airtime, to 4 minutes. A fourth public service broadcaster said that this question should be incorporated into the consultation on advertising minutage, as the impact of changing this rule would depend on the rules on ad minutage and breaks.

- 3.39 An advertising trade association also wanted a limit retained. It said that neither advertisers nor broadcasters saw any value in a break longer than 3'50" (the current limit). While acknowledging that longer ad breaks might be unlikely and commercially counter-productive, it argued that retention of the rule provided a safeguard against the practice of lumping advertising allowances together in blocks, which it said happened in Germany. The CPBF also wanted the limit retained, as did several of the individual respondents who commented.

Ofcom's response

- 3.40 We remain of the view that restrictions on the length of advertisements on PSB channels are not necessary. In practice, advertisements longer than 60 seconds are extremely rare, and none has come close to the current limit of 7 minutes. The high cost of very long advertisements, the practical difficulties of scheduling them and the risk to advertisers that consumers would not engage with them all militate against the likelihood that they would become common. But even if they did appear from time to time, Ofcom does not consider that this would result in consumer detriment. Accordingly, we have decided to omit this rule from the new Code.
- 3.41 As regards the rules on the length of internal breaks on PSB channels, we agree with the broadcaster that suggested that this issue should be deferred for consideration in the second stage of the consultation, which will also look at whether there should be changes to the permitted amount of advertising and to the number of breaks in programmes of a given length. The reason for this is that the impact of this rule change on consumers could be affected by decisions on whether to increase the permitted amount of advertising, or to increase the permitted number of internal breaks, or both. For example, a decision to increase minutage while maintaining restrictions on the number of breaks could lead to longer internal breaks as broadcasters seek to increase their share of commercial impacts. On the other hand, if broadcasters were allowed more internal breaks, this might mean that they would become shorter. Accordingly, we will consult further on whether the limit on the length of internal breaks on PSB channels should be changed as part of our broader consultation in the autumn.

Power for Ofcom to ban adverts in specific programmes

- 3.42 Ofcom proposed to scrap the rule allowing it to exclude adverts from specific programmes.

Consultee comments

- 3.43 CPBF and individual respondents were generally opposed to this proposal, and believed that it should be retained as a precautionary measure. Those broadcasters who responded on this point generally agreed with the proposal (two PSBs, one multi-channel broadcasters and one UK-based operator of overseas channels). An advertising trade association said that the discretion about scheduling advertisements should rest with broadcasters, but that some regulatory guidance might be advisable.

Ofcom's response

- 3.44 This rule has never been used, and given that Ofcom does not preview either programmes or advertisements, it is difficult to see how it could be used in practice. Responsibility for ensuring that material which is broadcast complies with the standards set out in Ofcom's Broadcasting Code and BCAP's the TV Advertising Standards Code⁸ advertising codes lies with broadcasters. Broadcasters are also best placed to exercise discretion about whether particular types of advertisements would be appropriate within or adjacent to particular programmes. From time to time, they do remove advertisements from programmes where they or advertisers are concerned that viewers might regard the placing of particular advertisements as inappropriate. As regards the point made by the advertising trade association, we note that both Ofcom's Broadcasting Code and the ASA's advertising codes contain guidance on what is, and is not, permitted in advertisements, and what content-related scheduling restrictions apply. Accordingly, Ofcom has decided not to include this rule in the new Code.

⁸ The TV Advertising Standards Code is published by the Broadcast Committee of Advertising Practice (BCAP). This can be found at http://www.asa.org.uk/asa/codes/radio_code/.

Annex 1

Code on the Scheduling of Television Advertising

Introduction

1. This Code sets out the rules with which television broadcasters licensed by Ofcom⁹ (broadcasters) must comply when carrying advertising. These rules give effect to the provisions of the Audio Visual Media Services Directive and those policies determined by Ofcom following consultation. In accordance with Article 20 of the Directive, Ofcom may disapply some or all of the relevant rules to channels that are not receivable outside the United Kingdom.

2. Broadcasters must also comply with the Television Advertising Standards Code issued by the Broadcast Committee on Advertising Practice¹⁰.

Definitions

3. In this Code:

- a) 'advertising' or 'television advertising' means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment;
- b) the 'broadcasting day' for the purposes of this Code is deemed to start at 6am and run for the following 24 hours;
- c) 'Parliamentary proceedings' includes proceedings on the floor of either House and Parliamentary Committees;
- d) 'public service channels' means those television services designated in accordance with section 310 of the Communications Act 2003 other than the BBC services¹¹;
- e) a 'formal Royal ceremony' means a formal ceremony or occasion of which the Sovereign or members of the British Royal Family enjoying the prefix 'Royal Highness' are the centre. It applies to occasions such as the State Opening of Parliament and Trooping the Colour;
- f) 'self promotion' means advertising for the broadcaster's own products and services; and

⁹ For the purpose of this Code, this includes S4C, which is authorised by the Broadcasting Act 1990.

¹⁰ This Code replaces the Rules on Advertising and Distribution of Advertising (RADA) with effect from 1 September 2008. RADA can be found at <http://www.ofcom.org.uk/tv/ifi/codes/advertising/rules/>.

¹¹ Designated channels currently include any Channel 3 service, Channel 4, Channel 5, and S4C.

- g) 'teleshopping' means television advertising which includes direct offers to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment. It includes self-promotion channels, devoted to the promotion of the broadcaster's own goods or services. Teleshopping windows are extended teleshopping features with a minimum uninterrupted duration of 15 minutes. Shorter teleshopping spots may also in appear within conventional advertising breaks.

Allowances for advertising and teleshopping

4. The total allowance for advertising and teleshopping spots¹² :
- a) on any channel in any one hour must not exceed 12 minutes;
 - b) on public service channels must not exceed a daily average of 7 minutes per hour for every hour of transmission time across the broadcasting day, subject to a maximum average of 8 minutes an hour between 7am to 9am and 6pm to 11pm; and
 - c) on other channels must not exceed a daily average of 12 minutes an hour for every hour of transmission time across the broadcasting day. Within this, the maximum daily average for advertising spots is 9 minutes an hour across the broadcasting day.
5. Teleshopping windows must be at least 15 minutes long. On:
- a) public service channels, time used for teleshopping must be counted as part of the advertising spot allowance;
 - b) dedicated teleshopping and self-promotional channels, there are no restrictions on the amount of teleshopping, and such channels may also make use of the allowances for spot advertising described in paragraph 4; and
 - c) other channels, no more than 3 hours a day of teleshopping is permitted.
6. Channels licensed by Ofcom:
- a) which are available only in an area served by a Restricted Service Licence or distributed under a Television Licensable Content Service licence within contiguous areas served by a single cable headend; and
 - b) which are not receivable outside the United Kingdom,

may use all or part of their teleshopping windows for local advertising features that do not include direct offers for sale, provided that a significant proportion of each feature refers specifically to the locality in which it appears.

Transfer of minutage

7. If broadcasters have been unable to use their full allowance for advertising and teleshopping spots for reasons of good programme presentation, or because of unforeseen technical or human errors, they may transfer the unused minutage to other parts of the

¹² The Code makes no substantive change to the rules on the amount of advertising, as these are the subject of a separate consultation. Subject to the outcome of that consultation, Ofcom may make further changes to the provisions on the amount of advertising.

schedule on the same or any other day within 7 days, provided that they comply with the rules in paragraph 4. If a proposed transfer would result in a breach of the rules in paragraph 4 (b) or (c), the broadcaster should seek Ofcom's prior permission¹³. Transfers that would result in a breach of paragraph 4(a) are not permissible.

Identification of advertising and teleshopping breaks

8. Broadcasters must ensure that television advertising and teleshopping is readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service. This shall be done by optical (including spatial) means; acoustic signals may also be used as well.

Advertising and teleshopping breaks during programmes

9. Where advertising or teleshopping is inserted during programmes, television broadcasters must ensure that the integrity of the programme is not prejudiced, having regard to the nature and duration of the programme, and where natural breaks occur.

10. To avoid excessive abruptness, transition between live coverage of Parliamentary proceedings and advertising should take place where natural breaks occur via a programme presenter in sound or vision. Programme directors / editors must have the discretion to reschedule or cancel breaks to avoid artificial interruptions in live proceedings. Breaks should be dropped altogether where this would be incompatible with editorial responsibility, for example in coverage of matters of great gravity or emotional sensitivity.

11. Breaks within programmes on public service channels may not exceed 3 minutes 50 seconds, of which advertisements may not exceed 3 minutes 30 seconds.

Scheduling restrictions

12. Isolated advertising and teleshopping spots, other than in the transmission of sports events, shall remain the exception.

13. Restrictions apply when inserting advertising breaks within the following programmes¹⁴:

- a) films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes;
- b) children's programmes (other than schools programmes) with a scheduled duration of 30 minutes or less may not include an advertising or teleshopping break. Such programmes with a scheduled duration of longer than 30 minutes may have one break for each scheduled period of at least 30 minutes. Breaks are not permitted within schools programmes, but may be scheduled between programmes;
- c) programmes including a religious service may not have an advertising or teleshopping breaks during the service;

¹³ Until 31 December 2009, Channel 4 will be allowed to continue with the present arrangements for substituting advertising minutage which would otherwise be used between schools programmes with an amount equivalent to 60% elsewhere in the schedule, subject to complying with the rule in paragraph 4(a) and the peak-time restrictions in paragraph 4(b).

¹⁴ In the case of news programmes, and programmes for children (excluding schools programmes), this restriction will come into force on 1 December 2009. Until then, sections 3.2(i) and 3.2(iii) of RADA will apply.

- d) broadcasts of a formal Royal ceremony may not include advertising or teleshopping breaks during the ceremony;
 - e) broadcasts of live Parliamentary proceedings may not include advertising and teleshopping breaks in programmes of a scheduled duration of 30 minutes or less; and
 - f) live programme feeds from an overseas broadcaster may take the break pattern of the originating broadcaster. The broadcaster retransmitting the feed from the UK remains responsible for ensuring compliance with the Television Advertising Standards Code.
14. With the exceptions described in paragraph 13 above, the number of internal breaks permitted in programmes on public service channels is set out Table 1; the number permitted in programmes on other channels is set out in Table 2.

Table 1: Number of internal breaks permitted in programmes on public service channels

Scheduled duration of programme	Number of breaks
21 – 44 minutes	One
45 – 59 minutes	Two
60 – 89 minutes	Three
90 – 119 minutes	Four
120 – 149 minutes	Five

Table 2: Number of internal breaks permitted in programmes on other channels

Scheduled duration of programme	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes	Six

Annex 2

Impact Assessment

Introduction

- A2.1 The analysis presented in this annex represents an impact assessment (“IA”) as defined in section 7 of the Communications Act 2003 (the Act). However, it should be noted that this IA only addresses the likely impact of decisions set out in this document. We have reviewed the IA in the light of comments made by consultees in response to the March consultation document.
- A2.2 IAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out IAs where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom’s activities. However, as a matter of policy Ofcom is committed to carrying out and publishing IAs in relation to the great majority of our policy decisions. Further information about our approach to IAs is set out in Ofcom’s guidelines¹⁵.
- A2.3 Pre-consultation discussions with relevant stakeholders indicated that it would be difficult to quantify – in a systematic fashion – the impact of changes in relation to the distribution of advertising. This has been borne out in responses to the consultation document which have not provided any detailed estimates of the potential impact of the proposed changes. Some respondents did provide estimates of the impact of particular measures where they were likely to have a very specific impact on their operations but generally none of the respondents attempted to quantify the overall impact of these measures on their businesses.
- A2.4 As a result this impact assessment is focused more on a qualitative description of the impact of the proposed measures rather than a more detailed quantification. Where relevant we summarise the views on the impact of the proposals put to us by respondents and set out our response on those issues.

Citizen-Consumer Interest

- A2.5 As set out in the consultation document, Ofcom considers that, as regards television advertising regulation, the interests of citizens and consumers concern:
- a) the availability of a wide range of television services that, taken as a whole, are both of high quality and calculated to appeal to a variety of tastes and interests;
 - b) the maintenance of a sufficient plurality of providers of different television services;
 - c) the fulfilment of the purposes of public service television broadcasting (set out in section 3 of the main document);
 - d) such other matters as appear, having regard to the opinions expressed by consumers, important to them.

¹⁵ *Better policy-making: Ofcom’s approach to Impact Assessments*
(http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf)

- A2.6 In respect of (d) we are aware, both from issues raised by individual viewers, and by research that we have commissioned, that viewers are concerned both with the amount of advertising and the frequency of advertising breaks on television. However, these issues are often conflated. We are proposing to address formally issues around the amount and frequency of advertising in a separate consultation document to be published later this year.
- A2.7 In addition we note that while consumers also express opinions from time to time about the *content* of individual advertisements, these issues lie outside the current statement. This statement deals only with issues related to the rules on the distribution of advertising.

Ofcom's policy objectives

- A2.8 As explained in section 3 of this statement, Ofcom has considered what its objectives should be in relation to the regulation of the distribution of television advertising in the light of its statutory duties and other relevant considerations (including those set out above under 'Citizen consumer interest'). In brief, Ofcom has decided that its policy objective in this case should be to further the interests of citizens and consumers, in particular, in relation to:
- a) the range, quality and appeal of television services available throughout the UK and in different parts of the UK, and, in particular, public service channels;
 - b) the importance of securing a sufficient degree of plurality of providers of television services; and
 - c) such other matters as, having regard to the opinions expressed by consumers, appear important to them.
- A2.9 In doing so, Ofcom will also seek to secure that such regulation:
- a) is evidence-based, transparent, proportionate, consistent, and limited to the measures needed to achieve the first objective;
 - b) avoids the imposition or maintenance of regulation that is unnecessary; and
 - c) takes account of the desirability of promoting competition, and the nature and interests of different consumers, in relevant markets.
- A2.10 Given these policy objectives, and having regard to section 7 of the Communications Act 2003, Ofcom considers that the IA should assess the impact of different options for advertising regulation on:
- a) viewers – e.g. whether the change is likely to adversely affect the viewer in terms of the viewing experience and the perceived quality of the programming;
 - b) broadcasters, in particular PSBs: e.g. whether the burden imposed on broadcasters by either existing or new rules is proportionate and/or the likely financial impact of any proposed change; and
 - c) other stakeholders; for instance, the impact on the advertisers or media buying agencies or whether there is an impact on the use of television as an advertising medium.

Rules on the distribution of advertising

- A2.11 Stage One of the review of advertising regulation considered the rules on the placing (or 'distribution') of television advertisements. These include:
- a) the detailed genre-specific rules on natural breaks;
 - b) rules on the means by which the separation of advertising and programming is achieved, including break identification and buffers (e.g. between advertising and coverage of a religious service or a Royal occasion); and
 - c) rules on the intervals between advertising breaks within programmes (all channels), and the frequency of breaks in programmes of a given duration (PSB channels).
- A2.12 The current rules were summarised in section 6 of the consultation document, and reproduced in full in Annex 3 to that document. In many cases, the AVMS Directive would allow these rules to be retained, modified or scrapped. We consider the impact of each of these options on stakeholders – viewers, broadcasters and advertisers.
- A2.13 This section of the IA sets out the impact on the different groups of stakeholders in qualitative terms and only discusses the likely magnitude of any changes in general terms. Our starting hypothesis has been that more flexibility/fewer prescriptive rules should represent a benefit to broadcasters and advertisers. We have also assumed that additional flexibility for broadcasters has the potential to enhance rather than detract from the viewer experience. In addition, we have also had regard to our regulatory principles that regulation should be proportionate and that we should endeavour to remove unnecessary regulation.
- A2.14 Unless otherwise stated the comparison we have made in considering different options is relative to the status quo.

Natural breaks

- A2.15 Ofcom proposed that the new Code should set out the principle that advertising should only be scheduled having regard to natural breaks within programmes and that the detailed genre-specific rules on what constituted natural breaks should be scrapped. We have decided to adopt this proposal in the new Code.

Impact on stakeholders

- A2.16 The original assessment suggested that the change would not have an adverse effect on viewers, broadcasters or advertisers and could even be beneficial for the viewer experience. Broadcasters and advertisers generally agreed. Broadcasters argued that relaxing the rules on the scheduling of ad.breaks should improve their ability to schedule advertising more sympathetically. This could result in a positive impact if meant that audiences were more likely to be receptive to the advertising in the break. However, none of the broadcasters were able to quantify the scale of any positive effect from this proposal in itself. The responses from individuals on this issue were mixed. Some were content for the detailed rules to be relaxed while others wanted to retain them.
- A2.17 We remain of the view that the change will have little effect on stakeholders overall and no adverse effect on viewers.

Separation of advertising and programming

A2.18 Ofcom asked whether stakeholders agreed that a new Code should:

- allow advertising and teleshopping breaks to be signalled in sound or vision or by spatial means, and should drop the requirement for teleshopping segments to be distinguished from programmes by both sound and vision; and,
- establish the principle that the distinction between advertising and editorial content should be readily recognisable but drop more prescriptive rules for long advertisements.

A2.19 We have decided that:

- a) in order that people with hearing impairments should be aware of the separation between advertising and programming, the new Code should retain the requirement that advertising and editorial content be separated visually and either spatially or in sound; and
- b) it would not be proportionate to maintain separate rules in relation to long advertisements. The key principle is that advertising and teleshopping content should be readily recognisable and distinguishable from editorial content.

Impact on stakeholders

A2.20 In the original IA, we argued that the proposed rule changes would have little impact on viewers, and that the current rules were unnecessarily prescriptive. Broadcasters and advertisers agreed. Though individual respondents tended to favour the retention of the more detailed rules, we do not consider that their arguments demonstrated that removing the rules would result in consumer detriment. The exception to this was the proposal to allow advertising and teleshopping breaks to be signalled in sound or vision or by spatial means. We agree that this would make it more difficult in some circumstances for viewers with hearing impairments to distinguish readily between advertising and programming. To mitigate this risk, the new Code retains the requirement that advertising and editorial content be separated visually and either spatially or in sound.

A2.21 Some industry respondents suggested that the change would allow split screen advertising and that viewers might find this attractive, as it would enable (for example) coverage of a race to continue during an advertising break. In fact, split screen advertising is already permitted, so the proposals would have no impact. As the advertising trade association noted in its response, the infrequency of split screen advertising results from factors such as disagreement within the industry about how it should be priced.

Advertising restrictions around certain types of programming

A2.22 Ofcom has decided to adopt proposals that the new Code should:

- a) discontinue the requirement for a buffer between advertising and coverage of a religious programme or Royal occasion;
- b) remove the rule prohibiting advertising after an epilogue; and

- c) omit the rule allowing Ofcom to exclude advertisements from specified programmes.

Impact on stakeholders

A2.23 Ofcom suggested that the removal of these rules would have little practical impact on viewers, broadcasters or advertisers, and that the rules were unnecessary. Broadcasters and advertisers agreed. The views of individual respondents were mixed: a number being in favour of the retention of these rules, while others were happy to see the rules dropped. We remain of the view that the impact of the rule changes on viewers will be minimal.

Advertising around schools programmes

A2.24 Ofcom has decided to adopt proposals that would:

- a) make clear that advertisements are permitted between schools programmes; and
- b) maintain the current arrangements for transferring unused minutage, and apply them to Channel 4 in place of the special arrangements in respect of schools programmes.

Impact on stakeholders

A2.25 We suggested that these changes would have little or no adverse effect on viewers. The CPBF and some individual respondents opposed these changes, but we were not convinced that they had demonstrated that they would cause consumer detriment. Our understanding is that less use is made of schools programming now than was the case some years ago, that much of this programming is recorded for us in the classroom at a later date – it is not clear how much of this programming is in fact viewed “live”. Given that, it is not clear that school children would be subject to a particular increase in the amount of advertising that they were exposed to.

A2.26 We also invited views on how these proposals would affect broadcasters, particularly Channel 4, which has a licence obligation to broadcast schools programmes. Other public service broadcasters said that the special arrangements applying to Channel 4 gave them an unwarranted commercial advantage. Channel 4 said that for the new Code to state that advertisements are permitted between schools programmes would not confer any benefit on the channel, as this was already possible, and because spots between schools programmes were not particularly lucrative. Channel 4 argued that the special arrangements for transferring schools minutage recognised the uneconomic nature of its public service contribution in relation to schools programming. Discontinuing these arrangements would cost the a few million a year. It also advanced other, confidential, arguments.

A2.27 Ofcom agrees that the ability to schedule advertisements between schools programmes is not particularly valuable, given that audiences at these times are comparatively low, and that ending the special arrangements will deprive Channel 4 of the opportunity to schedule advertising in more profitable slots. Nonetheless, for the reasons set out in section 3, we do not consider that maintaining exceptions to the current arrangements are justified. To allow Channel 4 time to mitigate the costs of any changes to its advertising or programming arrangements, we shall allow Channel 4 a grace period until 31 December 2009 to implement the rules applying to other PSB channels.

General rules on the timing and frequency of advertising breaks

A2.28 As proposed, Ofcom has decided to scrap the rule requiring a 20-minute interval between advertising breaks, but to maintain the restrictions on the number of advertising breaks allowed on both PSB and non-PSB channels, pending a further consultation on Stage Two of the review, planned for autumn 2008.

Impact on stakeholders

A2.29 The original impact assessment argued that so far as broadcasters and advertisers are concerned, removing the 20-minute rule would replicate the status quo in terms of the number of breaks, and benefit viewers, broadcasters and advertisers by allowing more sympathetic scheduling of breaks.

A2.30 The consultation paper argued that, in the absence of some restrictions on the number of breaks, broadcasters would come under considerable commercial pressure to increase the number of ad breaks within programmes, to the detriment of viewers.

A2.31 Broadcasters and advertisers agreed with our assessment of the benefits of removing the 20-minute rule, although they were not able to quantify the extent of the benefit. Broadcasters also argued strongly in favour of removing the restrictions on the number of advertising breaks. They argued that viewers would still be protected by the limits on the amount of advertising (e.g no more than 12 minutes in any one clock hour) and also by the incentives to avoid viewer irritation i.e. they would not want to schedule too many advertisements.

A2.32 However, some individual respondents were concerned that doing so would result in an increase in break frequency. They strongly supported the proposal for limits on the number of advertising breaks, and advertisers (on balance) also favoured the retention of some restrictions. Both groups were concerned that, in the absence of any limits, the amount of advertising 'clutter' in programmes would grow over time, making television viewing less engaging. Advertisers worried that this would reduce the effectiveness of television advertising.

A2.33 Taking into account the views expressed by both sides, we believe that our original assessment in relation to the 20-minute rule remains valid. The proposals only increase the flexibility about how broadcasters can schedule advertising breaks without increasing either the number or frequency of advertising breaks. We do not believe that the proposal will result in a detrimental impact on viewers. Indeed, it is possible that viewers may welcome the opportunity for broadcasters to show more equal programme segments between advertising breaks: they may thus even benefit from the change.

A2.34 We do anticipate a positive impact on broadcasters (from increased flexibility) and advertisers (from maintained viewer attentiveness) although the absolute scale of this benefit appears to be difficult to quantify and may be relatively modest. We will return to the issue of rules on the number of breaks break frequency in Stage Two of the review.

Special rules on the timing and frequency of advertising breaks

A2.35 Ofcom has decided that the new Code should reflect its proposals to:

- a) allow advertising breaks in documentary and religious programmes of less than half an hour (as is already permitted in most other types of programmes);
- b) allow advertising breaks in films once in every 30 minutes instead of once in every 45 minutes; and
- c) defer until December 2009 the implementation of rules that prohibits breaks in news and children's programmes unless they exceed 30 minutes.

Impact on stakeholders

- A2.36 In the original IA, we said that we did not think that these changes would have an adverse impact on viewers, and that it might help those viewers who would like to see more documentaries and programmes with religious themes by removing one of the disincentives on broadcasters to schedule them. However, we did not necessarily expect to see any increase in the amount of such programming.
- A2.37 As regards the film rule, we said that this could deliver a tangible benefit to a range of broadcasters – but particularly dedicated film channels- by increasing the opportunity to schedule advertisements during films.
- A2.38 Broadcasters and advertisers agreed; the views of individual respondents were mixed, though most opposed the proposal to relax the film rule. Nonetheless, given that relaxing the film rule would only result in one additional break in a two-hour film, we do not believe that there would be a significant detriment to viewers and we believe that our original assessment remains valid.
- A2.39 In the March document, we also suggested that the tightening of restrictions introduced by the AVMS Directive on advertising breaks in news and children's programmes might work against the interests of viewers, as the tightening of restrictions would have a negative financial impact on broadcaster's willingness to invest in such programming. Broadcasters and advertisers agreed, as did some viewers. We remain of this view.
- A2.40 In order to allow broadcasters to mitigate this negative impact, we do not intend to implement these restrictions until December 2009.

Limits on the length of advertisements and advertising breaks

- 3.49 As regards PSB channels, Ofcom has decided:
- a) not to adopt its proposals that the new Code should omit rules on the length of advertising breaks within programmes, but to consider the issue in Stage Two of the review in the light of possible changes to the rules on the amount and frequency of advertising; and
 - b) to adopt its proposal to discontinue the rule which limited individual advertisements on PSB channels to no more than 7 minutes.

Impact on stakeholders

- A2.41 In the original impact assessment, Ofcom said that it did not think it likely that lifting the limit on internal advertising breaks (currently 3 minutes 50 seconds) was likely to result in any significant impact on viewers, given the economic incentives on broadcasters and advertisers to have shorter and more frequent breaks. Some

PSBs agreed, but advertisers, some individual respondents and one PSB channel disagreed with this assessment. The PSB channel argued that there could be a differential effect across broadcasters. It suggested that if Ofcom decided in Stage Two of the review to increase the permitted amount of advertising, broadcasters with the most popular programming might decide to schedule longer breaks within programmes: they might be able to increase the length of centre breaks without suffering a fall-off in audiences. Advertisers saw no value to them in longer advertising breaks, given the risk that viewing would fall off as the length of advertising breaks increased. Given the linkage to the question of break frequency, we have decided to defer consideration of this issue until Stage Two.

- A2.42 The original assessment also suggested that lifting the 7 minute limit on individual advertisements would not have any practical impact on viewers, broadcasters or advertisers, as it was unlikely that anyone would choose to buy or schedule such long advertisements. Most public service broadcasters agreed, and advertisers doubted that it would be economic to produce and air a 7 minute advert. We consider that our original assessment remains valid.

Power for Ofcom to ban adverts in specific programmes

- A2.43 Ofcom has decided to adopt its proposal to discontinue the rule allowing it to exclude adverts from specific programmes.

Impact on stakeholders

- A2.44 In the original impact assessment, Ofcom said that it was not aware that regulators had ever felt it necessary to resort to this rule, and that in practice it would be difficult for Ofcom to do so, given that it does not preview material before it is broadcast. Accordingly, we did not consider that removing the rule would have any impact on viewers, broadcasters or advertisers. Broadcasters and advertisers agreed, but CPBF and individual respondents believed that it should be retained as a precautionary measure. Ofcom remains of the view that discontinuing the rule will not have any practical impact on viewers, broadcasters or advertisers.

Annex 3

Responses on minutage, frequency and teleshopping scenarios

Introduction

- A3.1 In section 7 of the issues document published in March 2008, Ofcom invited views on scenarios for the future regulation of advertising and teleshopping minutage, and of the frequency of advertising breaks. We asked whether these were the right scenarios to be considering in the consultation planned for autumn 2008, and whether the approach we set out for assessing the impact of those scenarios was appropriate. A wide range of stakeholders responded; a list of respondents is set out in paragraph 3.1 of Section 3.
- A3.2 The views expressed by respondents will be helpful to Ofcom in framing the consultation planned for the autumn, and for refining our assessment of the impact of different options. However, it was not a formal consultation, and we have not reached any conclusions on particular scenarios. Representations made to that pre-consultation will not be taken into account when Ofcom makes a final decision on the options in the consultation.

Scenarios for average advertising allowances

- A3.3 Very few individuals who responded favoured the possibility of more advertising. Most were prepared to accept the status quo as a necessary evil, but some wanted less advertising. Similar messages come out of Ofcom's Tracker Surveys¹⁶, which suggest that 80% of adults do not want any more advertising; about half of these feel that 'there is already more than I am happy with'. However, the deliberative research¹⁷ suggested that some viewers would be prepared to accept extra advertising in the shoulder peak periods (6pm to 7pm, and 10pm to 11pm) on public service channels, provided that extra advertising revenue was invested in better programming.
- A3.4 However, most respondents, including four PSBs, several multi-channel broadcasters and some individual respondents were opposed to any increase in permitted advertising on public service channels. The PSBs argued that demand for television advertising was inelastic so that an increase in minutage would simply reduce the price of advertising and reduce industry revenue. Meanwhile, virtually all multi-channel broadcasters believed that any increase in advertising minutage would not increase net advertising revenue significantly, but would redistribute revenues from multi-channels to PSBs.
- A3.5 An advertising trade association said that there was 'no doubt that any increase in the supply of airtime would lead to a decrease in its aggregate price'. While this might stimulate some further demand for television advertising, an advertising trade

¹⁶ See pp 189-190, Annex 4 of *Public Service Broadcasting: Annual Report 2008*, Ofcom, April 2008 (http://www.ofcom.org.uk/tv/psb_review/annrep/psb08/psb08.pdf).

¹⁷ Ofcom will be publishing a full report on the deliberative research in the autumn, alongside its consultation on Stage Two of the review of advertising regulation.

association said that many advertisers were concerned that the extra clutter might reduce the impact of advertising on viewers. Most felt that the status quo represented a satisfactory, and perhaps even optimal, balance. As some other members argued respectively for an upwards or downwards harmonisation of advertising rules as between PSBs and non-PSBs, it considered that the range of scenarios identified by Ofcom represented the widest practical parameters.

- A3.6 Though ITV did not seek a general increase in advertising minutage, it did argue that it should be allowed to combine its daily peak time average minutage allowances and deploy them across the week. It argued that this would enable it to maximise the efficiency of those minutes. In subsequent representations, some other broadcasters (including a PSB channel and two multi-channel broadcasters) expressed concern at this proposal, on the grounds that this would increase ITV's share of commercial impacts at the expense of others.
- A3.7 A few respondents saw advantage in more advertising. The NUJ and a UK-based operator of overseas channels argued that higher minutage allowances would foster television advertising revenues, safeguarding the variety and quality of programmes that viewers expect; the NUJ said that this should be accompanied by stricter PSB obligations.

Frequency of advertising

- A3.8 On the assumption that were limits on the number of advertising breaks within programmes of a given scheduled duration, we set out possible alternative scenarios, and asked whether Ofcom had identified the right options for break frequencies, and what factors Ofcom should take into account in formulating proposals for consultation.
- A3.9 Like advertisers, some broadcasters (a public service broadcaster and a UK-based operator of overseas channels) agreed that Ofcom had identified the right options for consideration. However, most broadcasters (three multi-channel operators, several non-PSB channels and a UK-based operator of overseas channels) simply took the opportunity to argue against any limits on the number of breaks, on the grounds that the combination of viewer irritation and the hourly minutage restriction would prevent an excessive number of breaks. However, three public service broadcasters said that, in addition to considering the status quo and complete liberalisation, Ofcom should look at variations on the present rules that stop short of complete liberalisation, such as allowing four rather than three breaks within an hour-long programme, and allowing more breaks in programmes of a magazine nature. One public service broadcaster argued for a level playing field between PSB and non-PSB channels, preferably on the basis of no regulation at all. A multi-channel broadcaster said that, if Ofcom did maintain restrictions, it should allow more frequent breaks in short-form content channels; it argued that the overall limit of 12 minutes of advertising an hour would prevent the emergence of a US-style television environment.
- A3.10 Most individual respondents were opposed to any increase in the frequency of advertising breaks; some drew an unfavourable analogy with the US television market; CPBF agreed, and opposed any relaxation in the rules.

Teleshopping

- A3.11 Ofcom invited views on scenarios for teleshopping on public service channels and on other channels. On public service channels, we identified three main options: the

status quo (in which teleshopping is permitted, but no extra time is allowed for it), applying the same rules to PSBs as to non-PSB channels (up to 3 hours a day for channels not exclusively dedicated to teleshopping), and allowing PSB channels the same number of hours as non-PSB channels, provided that any teleshopping was broadcast between midnight and 6am. On other channels, Ofcom suggested four possible scenarios: the status quo (3 hours a day), a longer period, a shorter period, and a removal of all limits.

- A3.12 While one public service channel felt that the status quo was more consistent with their remit, another argued in favour of a level playing field for both PSB and non-PSB channels; it favoured a limit of 6 hours, to be used at any time. However, most respondents favoured the status quo. Non-PSB channels (including two multi-channel operators, several non-PSB channel and one UK-based operator of overseas channels) said that PSB channels should not be allowed any extra time for teleshopping, arguing that it would not sit well with their PSB obligations. A teleshopping operator said that a teleshopping allowance on PSBs was likely to be used for gambling services which would not be good for consumers, would take away revenue from the National Lottery (which would be bad for good causes), and that it would pose unfair competition for retail teleshopping services.
- A3.13 CPBF was also concerned that public service channels would use teleshopping time to carry gambling programmes; it did not object to other channels owned by public service channels carrying gambling programmes, but wanted strict rules on cross-promotion. In general, individual respondents also wanted the current limits retained; some thought that teleshopping was not appropriate on a public service channel. An advertising trade association said that advertisers were satisfied with the status quo, and did not recommend that either public service channels or other channels not wholly dedicated to teleshopping should be permitted any more teleshopping. It argued that there was plenty of teleshopping content available to who seek it.
- A3.14 Other broadcasters (including one teleshopping operator, one multi-channel operator and several non-PSB channels) wanted teleshopping restrictions on non-PSB channels lifted. Both non-PSB channels, dedicated teleshopping channels and some PSB channels favoured no limits at all; a teleshopping operator said that both market economics and the desire of non-PSB channels to avoid classification by EPG providers as a teleshopping channel would protect viewers from the loss of editorial content. In general, other broadcasters agreed, though as noted above, one public service channel wanted the same rules for both PSB and non-PSB channels.

Impact assessment

- A3.15 Respondents made a number of useful points in relation to Ofcom's modelling of the impact of changes in the amount of advertising. In particular, several respondents pointed out that the approach adopted in Ofcom's model was likely to overstate the increase in commercial impacts that would arise from a relaxation in minutage.
- A3.16 Firstly, there was a common concern amongst broadcasters that Ofcom's model did not take account of a number of practical considerations which constrain the scheduling of TV advertising in reality. For instance, broadcasters pointed out that fixed programme lengths would prevent the scheduling of additional advertising at certain times. Some types of programming e.g. live football matches, would prevent scheduling the maximum of advertising permitted. In addition, some broadcasters

might target specific demographics, rather than maximising the overall number of impacts (as assumed within Ofcom's modelling). One broadcaster also pointed out that Ofcom's method for allocating the additional minutage relied on perfect hindsight, i.e. it knew which clock hours ended up having the greatest impacts per minute of advertising rather than having to schedule advertising on the basis of imperfect audience predictions.

- A3.17 A number of respondents were also concerned with Ofcom's assumption that an increase in the amount of advertising would lead to no additional drop-off in audiences. Some respondents (including advertisers and non-PSB channels) felt that the assumption would be reasonable for relatively small changes in minutage but not for some of the more liberal scenarios considered in the modelling. Others (including two PSB channels and a multi-channel operator) disagreed with the assumption, and were concerned that any increase in the amount of advertising carried a significant risk of viewers 'switching off or switching over'. Consequently, these respondents felt that the model needs to take explicit account of audience drop-off, although there were limited suggestions on how to do so. One respondent that had commissioned their own modelling suggested that Ofcom may be overestimating the number of additional impacts by up to 10%.
- A3.18 The other key issue that arose in the IA was the apparent dichotomy between the results of econometric modelling (which suggests increases in advertising minutage would lead to an overall increase in revenue), and the industry-held view (which believes the opposite). In terms of translating the change in the volume of impacts into a change in advertising revenue, several respondents (including three PSBs and a multi-channel operator) critiqued the elasticity modelling used by Ofcom, arguing that Ofcom's IA was wrong to focus on the elasticity and constant premium approaches. These respondents maintained the industry viewpoint that the advertising market would be inelastic in the long-run, with the result that an increase in minutage would simply result in a reduction in the price of airtime and subsequently a fall in industry revenue.
- A3.19 Others (including some advertisers and non-PSB channels) agreed that elasticity estimates provided best estimates of the changes in revenue that would arise from increased minutage, but recommended that we exercise appropriate caution in their use and interpretation. For instance, it was suggested by one PSB and a multi-channel operator that we use a range of elasticity values rather than focussing on a single estimate. Overall however, none of the responses have definitively resolved the dichotomy although one respondent has suggested that it may be due to short-run/long-run differences in the market.
- A3.20 All of these contributions, along with several other technical comments on the IA, are now being used by us to help refine our modelling approach for the consultation on minutage which we will publish in the autumn.