

Appendix 1

Extracts from Relevant UK Legislation

Communications Act 2003 (as amended)

Section 3: General duties of OFCOM

- (1) It shall be the principal duty of OFCOM, in carrying out their functions -
 - (a) to further the interests of citizens in relation to communications matters; and
 - (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- (2) The things which, by virtue of subsection (1), OFCOM are required to secure in the carrying out of their functions include, in particular, each of the following:
 - (e) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services;
 - (f) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both:
 - (i) unfair treatment in programmes included in such services; and
 - (ii) unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.
- (4) OFCOM must also have regard, in performing those duties, to such of the following as appear to them to be relevant in the circumstances:
 - (b) the desirability of promoting competition in relevant markets;
 - (g) the need to secure that the application in the case of television and radio services of standards falling within subsection (2)(e) and (f) is in the manner that best guarantees an appropriate level of freedom of expression;
 - (h) the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection;

- (j) the desirability of preventing crime and disorder;
- (k) the opinions of consumers in relevant markets and of members of the public generally;
- (l) the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.

Section 319: OFCOM's standards code

- (1) It shall be the duty of OFCOM to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives.
- (2) The standards objectives are:
 - (a) that persons under the age of eighteen are protected;
 - (b) that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;
 - (c) that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;
 - (d) that news included in television and radio services is reported with due accuracy;
 - (e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;
 - (f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;

- (fa) that the product placement requirements referred to in section 321(3A) are met in relation to programmes included in a television programme service (other than advertisements);
 - (g) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;
 - (h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;
 - (i) that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with;
 - (j) that the unsuitable sponsorship of programmes included in television and radio services is prevented;
 - (k) that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services; and
 - (l) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.
- (3) The standards set by OFCOM under this section must be contained in one or more codes.
- (4) In setting or revising any standards under this section, OFCOM must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of the following matters:
- (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
 - (b) the likely size and composition of the potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;

- (c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;
 - (d) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;
 - (e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
 - (f) the desirability of maintaining the independence of editorial control over programme content.
- (5) OFCOM must ensure that the standards from time to time in force under this section include:
- (a) minimum standards applicable to all programmes included in television and radio services; and
 - (b) such other standards applicable to particular descriptions of programmes, or of television and radio services, as appear to them appropriate for securing the standards objectives.
- (6) Standards set to secure the standards objective specified in subsection (2)
- (c) shall, in particular, contain provision designed to secure that religious programmes do not involve:
 - (a) any improper exploitation of any susceptibilities of the audience for such a programme; or
 - (b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- (7) In setting standards under this section, OFCOM must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this section.

- (8) In this section “news” means news in whatever form it is included in a service.
- (9) Subject to subsection 10, subsection (2)(fa) applies only in relation to programmes the production of which begins after 19th December 2009.
- (10) So far as relating to product placement falling within paragraph 4(ba) of Schedule 11A (electronic cigarettes and electronic cigarette refill containers), subsection (2)(fa) applies only in relation to programmes the production of which begins after 19th May 2016.

Section 320: Special impartiality requirements¹⁰

- (1) The requirements of this section are:
 - (a) the exclusion, in the case of television and radio services (other than a restricted service within the meaning of section 245), from programmes included in any of those services of all expressions of the views or opinions of the person providing the service on any of the matters mentioned in subsection (2);
 - (b) the preservation, in the case of every television programme service, teletext service, national radio service and national digital sound programme service, of due impartiality, on the part of the person providing the service, as respects all of those matters;
 - (c) the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on any of those matters.
- (2) Those matters are:
 - (a) matters of political or industrial controversy; and
 - (b) matters relating to current public policy.

10. Section 320(1)(c) does not apply to BBC radio services. See Appendix 5.

- (3) Subsection (1)(a) does not require:
 - (a) the exclusion from television programmes of views or opinions relating to the provision of programme services; or
 - (b) the exclusion from radio programmes of views or opinions relating to the provision of programme services.
- (4) For the purposes of this section:
 - (a) the requirement specified in subsection (1)(b) is one that (subject to any rules under subsection (5)) may be satisfied by being satisfied in relation to a series of programmes taken as a whole;
 - (b) the requirement specified in subsection (1)(c) is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole.
- (5) OFCOM's standards code shall contain provision setting out the rules to be observed in connection with the following matters:
 - (a) the application of the requirement specified in subsection (1)(b);
 - (b) the determination of what, in relation to that requirement, constitutes a series of programmes for the purposes of subsection (4)(a);
 - (c) the application of the requirement in subsection (1)(c).
- (6) Any provision made for the purposes of subsection (5)(a) must, in particular, take account of the need to ensure the preservation of impartiality in relation to the following matters (taking each matter separately):
 - (a) matters of major political or industrial controversy, and
 - (b) major matters relating to current public policy, as well as of the need to ensure that the requirement specified in subsection (1)(b) is satisfied generally in relation to a series of programmes taken as a whole.
- (7) In this section “national radio service” and “local radio service” mean, respectively, a sound broadcasting service which is a national service within the

meaning of section 245 and a sound broadcasting service which is a local service within the meaning of that section.

Section 321: Objectives for advertisements, sponsorship and product placement (subsections (1), (3A) and (4) only are reproduced here)

- (1) Standards set by OFCOM to secure the objectives mentioned in section 319(2) (a) and (fa) to (j):
 - (a) must include general provision governing standards and practice in advertising and in the sponsoring of programmes and, in relation to television programme services, general provision governing standards and practice in product placement;
 - (b) may include provision prohibiting advertisements and forms and methods of advertising or sponsorship (whether generally or in particular circumstances); and
 - (c) in relation to television programme services, may include provision prohibiting forms and methods of product placement (including product placement of products, services or trade marks of any description) (whether generally or in particular circumstances).
- (3A) For the purposes of section 319(2)(fa) the product placement requirements are the requirements set out in Schedule 11A.
- (4) Ofcom –
 - (a) shall -
 - (i) in relation to programme services, have a general responsibility with respect to advertisements and methods of advertising and sponsorship; and
 - (ii) in relation to television programme services, have a general responsibility with respect to methods of product placement; and

- (b) in the discharge of that responsibility may include conditions in any licence which is granted by them for any such service that enable Ofcom to impose requirements with respect to any of those matters that go beyond the provision of Ofcom’s standards code.

Section 325: Observance of standards code (subsection (1) only is reproduced here)

- (1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes conditions for securing:
 - (a) that standards set under section 319 are observed in the provision of that service; and
 - (b) that procedures for the handling and resolution of complaints about the observance of those standards are established and maintained.

Section 326: Duty to observe fairness code

The regulatory regime for every programme service licensed by a Broadcasting Act licence includes the conditions that OFCOM consider appropriate for securing observance:

- (a) in connection with the provision of that service, and
- (b) in relation to the programmes included in that service; of the code for the time being in force under section 107 of the 1996 Act (the fairness code).

SCHEDULE 11A: Restrictions on product placement

Introductory

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

- (b) is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider; and
 - (c) is not prop placement.
- (2) “Prop placement”, in relation to such a programme, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where—
 - (a) the provision of the product, service or trade mark has no significant value; and
 - (b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.
- 2. The product placement requirements are—
 - (a) that the product placement does not fall within any of paragraphs 3 to 6;
 - (b) that all of the conditions in paragraph 7 are met; and
 - (c) that, where paragraph 8 applies, the condition in that paragraph is also met.

Prohibitions of product placement

- 3. (1) Product placement falls within this paragraph if it is in a children’s programme.
 - (2) In sub-paragraph (1) “children’s programme” means a programme made—
 - (a) for a television programme service or for an on-demand programme service, and
 - (b) for viewing primarily by persons under the age of sixteen.
- 4. Product placement falls within this paragraph if it is—

- (a) of cigarettes or other tobacco products;
 - (b) by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products;
 - (ba) of electronic cigarettes or electronic cigarette refill containers; or
 - (c) of prescription-only medicines.
5. Product placement of alcoholic drinks falls within this paragraph if—
- (a) it is aimed specifically at persons under the age of eighteen; or
 - (b) it encourages immoderate consumption of such drinks.
6. (1) Product placement falls within this paragraph if it is in a programme to which this paragraph applies and—
- (a) the programme is a religious, consumer affairs or current affairs programme;
 - (b) the product placement is of anything within sub-paragraph (2); or
 - (c) the product placement is otherwise unsuitable.
- (2) The following are within this sub-paragraph—
- (a) cigarette lighters, cigarette papers or pipes intended for smoking;
 - (b) medicinal products;
 - (c) alcoholic drinks;
 - (d) infant formulae or follow-on formulae;
 - (e) a food or drink high in fat, salt or sugar;
 - (f) gambling services.
- (3) This paragraph applies to—
- (a) a programme that has been produced or commissioned by the provider of the television programme service in which it is included, or by a

person connected with that provider, and that is not a film made for cinema; and

- (b) a programme that has been produced or commissioned by any other person with a view to its first showing taking place in a television programme service which is provided by a person under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive.

Conditions applying to product placement

7. (1) These are the conditions referred to in paragraph 2(b).
- (2) Condition A is that the programme in which the product, service or trademark, or the reference to it, is included is—
 - (a) a film made for cinema;
 - (b) a film or series made for a television programme service or for an on-demand programme service;
 - (c) a sports programme; or
 - (d) a light entertainment programme.
- (3) Condition B is that the product placement has not influenced the content or scheduling of the programme in a way that affects the editorial independence of the provider of the television programme service in which the programme is included.
- (4) Condition C is that the product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.
- (5) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned.
- (6) Condition E is that the product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.

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

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

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

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

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

Minor definitions

9. In this Schedule—

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

“electronic cigarette” has the meaning given in section 368R;

“electronic cigarette refill container” has the meaning given in section 368R;

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

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

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

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

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

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

“programme” does not include an advertisement;

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

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

(b) the producer of the programme;

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

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

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

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

Schedule 2 (Part 1), Broadcasting Act 1990 (as amended)(provisions related to definition of ‘connected person’)

1

(1) In this Schedule—

“the 1996 Act” means the Broadcasting Act 1996;

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

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

“associate”—

- (a) in relation to a body corporate, shall be construed in accordance with paragraph (1A), and

(b) in relation to an individual, shall be construed in accordance with subparagraph (2);

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

“control”—

(a) in relation to a body corporate, shall be construed in accordance with subparagraph (3), and

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

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

“local authority”—

(a) in relation to England ... , means any of the following, that is to say, the council of a county, district or London borough, the Common Council of the City of London and the Council of the Isles of Scilly;

(aa) in relation to Wales, means a county council or county borough council;

(b) in relation to Scotland, means a council constituted under section 2 of the Local Government etc (Scotland) Act 1994; and

(c) in relation to Northern Ireland, means a district council;

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

- (1A) For the purpose of determining the persons who are the associates of a body corporate for the purposes of this Schedule—
- (a) an individual shall be regarded as an associate of a body corporate if he is a director of that body corporate, and
 - (b) a body corporate and another body corporate shall be regarded as associates of each other if one controls the other or if the same person controls both.
- (2) For the purpose of determining the persons who are an individual's associates for the purposes of this Schedule, the following persons shall be regarded as associates of each other, namely—
- (a) any individual and that individual's husband or wife or civil partner and any relative, or husband or wife or civil partner of a relative, of that individual or of that individual's husband or wife or civil partner;
 - (b) any individual and any body corporate of which that individual is a director;
 - (c) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;
 - (d) persons carrying on business in partnership and the husband or wife or civil partner and relatives of any of them;
 - (e) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets; and in this sub-paragraph "relative" means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild or illegitimate child of any person, or anyone adopted by a person, whether legally or otherwise, as his child, being regarded as a relative or taken into account to trace a relationship in the same way as that person's child); and references to a wife or husband shall include a former wife or husband and a reputed wife or husband and references to a civil partner shall include a former civil partner and a reputed civil partner.

- (3) For the purposes of this Schedule a person controls a body corporate if—
- (a) he holds, or is beneficially entitled to, more than 50 per cent of the equity share capital in the body, or possesses more than 50 per cent of the voting power in it; or
 - (b) although he does not have such an interest in the body, it is reasonable, having regard to all the circumstances, to expect that he would (if he chose to) be able in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the body are conducted in accordance with his wishes; or
 - (c) he holds, or is beneficially entitled to, 50 per cent of the equity share capital in that body, or possesses 50 per cent of the voting power in it, and an arrangement exists between him and any other participant in the body as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power.
- (3A) For the purposes of sub-paragraph (3)(c)—
- (a) “arrangement” includes any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable, and
 - (b) a person shall be treated—
 - (i) as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which he controls or to which such a body corporate is beneficially entitled, and
 - (ii) as possessing any voting power possessed by such a body corporate.
- (4) ...
- (5) For the purposes of any provision of this Schedule which refers to a body controlled by two or more persons or bodies of any description taken together, the persons or bodies in question shall not be regarded as controlling the body

by virtue of paragraph (b) of sub-paragraph (3) unless they are acting together in concert.

- (6) In this Schedule any reference to a participant with more than a 5 per cent interest in a body corporate is a reference to a person who—
- (a) holds or is beneficially entitled to more than 5 per cent of the shares in that body, or
 - (b) possesses more than 5 per cent of the voting power in that body.
- (7) Sub-paragraph (6) shall have effect subject to the necessary modifications in relation to other references in this Schedule—
- (a) to an interest of more than a specified percentage in a body corporate, or
 - (b) to an interest of a specified percentage or more in a body corporate.

2

- (1) Subject to sub-paragraph (1A) any reference in paragraph 1 above to a person—
- (a) holding or being entitled to shares, or any amount of the shares or equity share capital, in a body corporate, or
 - (b) possessing voting power, or any amount of the voting power, in a body corporate,
 - (c) is a reference to his doing so, or being so entitled, whether alone or jointly with one or more other persons and whether directly or through one or more nominees.
- (1A) For the purposes of this Schedule, a person's holding of shares, or possession of voting power, in a body corporate shall be disregarded if, or to the extent that—
- (a) he holds the shares concerned—
 - (i) as a nominee,
 - (ii) as a custodian (whether under a trust or by a contract), or

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

3

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

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

Broadcasting Act 1996 (as amended)

Chapter 55

Unjust or unfair treatment or unwarranted infringement of privacy

Section 107

- (1) It shall be the duty of Ofcom to draw up, and from time to time review, a code giving guidance as to principles to be observed and practices to be followed in connection with the avoidance of:
 - (a) unjust or unfair treatment in programmes to which this section applies; or
 - (b) unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes.