



**Broadcasting Code Review:
Commercial references in
television programming**
Statement on the Ofcom Broadcasting Code

Statement

Publication date: 20 December 2010

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Annex

The annexes are not included within this document. They can be found at:
<http://stakeholders.ofcom.org.uk/consultations/bcrtv2010/statement/>.

1	Revised Section Nine of the Broadcasting Code (2011)
2	Initial guidance to revised Section Nine of the Broadcasting Code (2011)
3	The Broadcasting Code Review: Commercial references in television programming Consultation (28 June to 17 September 2010) (“the 2010 consultation”)
4	The Broadcasting Code Review Consultation (15 June to 4 September 2009) (“the 2009 consultation”)
5	Equality Impact Assessment
6	Glossary

Part 1

Executive Summary

This statement concludes Ofcom's 2009 and 2010 consultations on the Broadcasting Code rules for commercial references¹ in television programming, and sets out new rules to permit product placement, subject to certain safeguards. It also sets out revised rules for other types of commercial references during television programming, such as sponsorship.

Ofcom has revised the Broadcasting Code to ensure that it remains fit for purpose, and to fulfil our statutory duty to set standards for product placement in television programming. The new rules implement changes to EU and UK legislation, and are designed to enable commercial broadcasters to access new revenue streams, while ensuring that audiences are protected.

*The new and revised rules are being issued alongside this statement in a revised Section Nine of the Broadcasting Code, together with accompanying initial guidance. **The rules in this revised Section Nine do not come into force until 28 February 2011, after an implementation period.** Until that date, commercial references in television programming must continue to comply with the existing rules, now set out in Section Nine (Television) on Sponsorship, and Section Ten (Television) on Commercial References and Other Matters, which sit alongside a new Section Ten (Radio) in the December 2010 Broadcasting Code.*

Introduction

- 1.1 This document is the final regulatory statement on changes to the Ofcom Broadcasting Code ("the Code") rules on commercial references in television programming.
- 1.2 It follows two consultations on the rules in this area: the Broadcasting Code Review Consultation (15 June to 4 September 2009) ("the 2009 consultation")² and the Broadcasting Code Review: Commercial references in television programming Consultation (28 June to 17 September 2010) ("the 2010 consultation")³. This statement should be read in conjunction with these consultation documents.
- 1.3 The rules resulting from the consultations can be found in Section Nine of the Code (2011), which can be viewed at Annex 1. The rules are being issued alongside this statement, but do not come into force until **Monday 28 February 2011**, to allow for an implementation period.
- 1.4 Until this date, broadcasters must ensure that commercial references in television programming continue to comply with the existing rules in Sections Nine (Television) and Ten (Television) of the (December 2010) Code. These can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

¹ For a glossary of the meanings and terms used throughout this document, see Annex 6.

² 2009 Code Review consultation is at Annex 4 of this statement and is available at: <http://stakeholders.ofcom.org.uk/consultations/bcode09/>

³ 2010 Code Review consultation is at Annex 3 of this statement and is available at: <http://stakeholders.ofcom.org.uk/consultations/bcrtv2010/>

- 1.5 Stakeholders should note that a separate statement and revised Section Ten (Radio) of the Code is being issued at the same time as this statement. This applies to commercial communications in radio programming, and is available at: <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/statement/>. The Code section and rules applying specifically to radio programming come into force on the date of their publication.

Background

- 1.6 As part of its duties and functions under the Communications Act 2003 (“the Act”), Ofcom is required to draw up and, from time to time, revise a code for television and radio services, covering standards in television and radio programmes. The Code first came into effect in July 2005.
- 1.7 In June 2009, Ofcom published a consultation in which it proposed, amongst other matters, revisions to the rules that apply to commercial references in television programming (such as the rules on programme sponsorship and product placement).
- 1.8 The rules proposed in the 2009 consultation were drafted on the basis of the UK’s longstanding prohibition on product placement⁴. However, during the consultation period, the UK Government announced⁵ its intention, subject to a consultation⁶, to lift this prohibition and permit product placement in television programming, with certain limitations. In view of this announcement, Ofcom decided to extend its review of the rules that apply to commercial references in television programming.
- 1.9 In April 2010, the Government amended the Act (via the Audiovisual Media Services (Product Placement) Regulations 2010) to enable product placement on television and to require Ofcom to set standards in respect of product placement.
- 1.10 In June 2010, Ofcom launched a further consultation proposing new rules for commercial references in television programming (“the 2010 consultation”).

Responses to the 2009 and 2010 consultations

- 1.11 Ofcom received 48 responses to the proposals made in this area in the 2009 consultation and 41 responses to the 2010 consultation.
- 1.12 The purpose of this final regulatory statement is to set out: the key issues raised in stakeholder responses to both the 2009 and 2010 consultations; Ofcom’s consideration of those key issues and assessment of impacts; and its decisions, including (where applicable) the final principle(s), rule(s), meaning(s) and explanatory text, which are now included in the revised Section Nine of the Code.
- 1.13 Where appropriate, having taken into account stakeholder responses, we have re-drafted the rules that were proposed and/or addressed certain issues in guidance. In

⁴ Product placement is the inclusion in a programme of, or reference to, a product, service or trade mark, in return for payment or other valuable consideration. This is a summary of the definition of product placement set out in the amended Act. The definition can be found at Schedule 11A, paragraph 1(1) of the Act.

⁵ http://www.culture.gov.uk/reference_library/minister_speeches/6194.aspx

⁶ http://www.culture.gov.uk/reference_library/consultations/6421.aspx

doing so we have taken account of Ofcom's duty to secure its statutory objectives under the Communications Act 2003 and to comply with the Human Rights Act 1998 and the European Convention on Human Rights.

Overview of Ofcom's decisions

1.14 In summary, having considered stakeholders' views on both consultations, Ofcom's decisions are as follows:

Product placement

1.15 We have introduced Code rules to permit product placement in television programming, subject to certain safeguards, by implementing the explicit requirements of the Act. In addition, we have:

- included a rule prohibiting product placement in news programmes;
- included a rule that a product, service or trade mark cannot be product placed if it is prohibited from being advertised on television;
- included a rule requiring that, where product placement must be signalled, this must be done by means of a universal visual logo (which Ofcom will issue to broadcasters during the implementation period before the rules come into force);
- confirmed that we will be issuing a formal request to broadcasters in relation to an audience awareness campaign or message about the universal visual logo. This request will apply to broadcasters who transmit signalled programmes at any time within the first six months that the rules are in force;
- clarified that single dramas fall within the permitted genre of "films made for television" and may therefore contain product placement and must also comply with appropriate film advertising break patterns (see paragraph 1.26, below, and Part 4 for details of a new proposal Ofcom intends to consult on, as a means of addressing the concerns raised by stakeholders in relation to this issue); and
- clarified that we will apply the product placement rules to paid-for references to products, services and trade marks that are included in a television programme for a non-commercial purpose.

1.16 Full details of these decisions can be found in **Part 4** of this statement.

Sponsorship

1.17 We have introduced revised sponsorship Code rules. In doing so, we have:

- confirmed that sponsors can product place in the programmes they are sponsoring, subject to the product placement rules;
- included a rule permitting sponsorship credits to be broadcast during programmes ("internal credits"), with limitations on their content;
- included a rule prohibiting internal credits in programmes that may not contain product placement (e.g. children's programmes) or for sponsors that may not product place (e.g. alcohol brands); and

- included a rule clarifying that all sponsorship credits must make clear the relationship between the sponsor and the sponsored content.

1.18 Full details of these decisions can be found in **Part 5** of this statement.

Other revisions

1.19 We have made other revisions to the Code rules for commercial references in television programming. In doing so, we have:

- re-structured the Code, placing all the rules for commercial references in television programming (including those for sponsorship) in the revised Section Nine;
- included introductory text to accompany the rules and given meanings to terms and further explanatory text, where appropriate;
- amended the principle and associated rule requiring *separation* between advertising and editorial content to ones requiring *distinction*;
- introduced a consumer protection principle;
- introduced a rule prohibiting surreptitious advertising;
- introduced a rule requiring the cost of premium rate services to be made clear;
- revised the wording of the rules for appeals for funds for programmes or services;
- removed the rule on virtual advertising; and
- made other minor amendments to existing rules for clarity.

1.20 Full details of these decisions can be found in **Part 6** of this statement.

Public Information Programming

1.21 As part of the 2009 consultation, Ofcom sought stakeholders' views on the appropriateness of introducing rules for Public Information Programming⁷. Responses to the questions set out in the consultation were strongly polarised. In recognition of the complexities of the issues raised by respondents and the fact that there is no clear consensus on the desirability of this type of programming, Ofcom has decided to defer any decision on introducing specific rules for Public Information Programming until after the implementation of product placement.

1.22 Full details of this decision can be found in **Part 7** of this statement.

⁷ Programmes about matters in the public interest that are funded by organisations that have an interest in the subject matter.

Section Nine of the Broadcasting Code (2011) and initial guidance

- 1.23 As discussed above we are now issuing a new Section Nine of the Code which can be found at Annex 1.
- 1.24 The new rules come into force on **Monday 28 February 2011**. Until this date, broadcasters must ensure that commercial references in television programming continue to comply with the existing rules, now set out in Sections Nine (Television) and Ten (Television) of the (December 2010) Code. These can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.
- 1.25 We are also issuing new and revised **initial** guidance in relation to the new (2011) Section Nine of the Code. It can be found at Annex 2.

Implementation period - next steps

- 1.26 Stakeholders should note the following key issues:
- Ofcom may issue **further or amended guidance** in relation to the new (2011) Section Nine of the Code at the time that the rules come into force. If stakeholders have any comments on the initial guidance (available at Annex 3), or they wish Ofcom to address any additional matters within the guidance, they should contact Suzanne Wright (suzanne.wright@ofcom.org.uk) or Lauren Cleverley (lauren.cleverley@ofcom.org.uk) during the implementation period to discuss this.
 - During the implementation period, Ofcom is **consulting on a new proposal for a trial waiver** of the COSTA restriction on advertising break length for films shown by public service broadcasting (PSB) channels. For full details of this proposal, please see paragraphs 4.42 to 4.43 of Part 4 of this document.
 - In January 2011, Ofcom will issue the **universal visual logo** for product placement signalling. It will also issue a formal request to television broadcasters seeking confirmation of their intentions in relation to the **product placement signalling audience awareness campaign or announcement**. For full details, please see paragraphs 4.145 to 4.151 of Part 4 of this document.
 - This statement also sets out details of Ofcom's intention to start (from January 2012) **requesting annual data on all net revenue** (from 2011) that licensed broadcasters, and the producers they commission, have generated as a result of product placement. We are inviting stakeholders' comments on this proposal during the implementation period. For full details, please see paragraphs 4.159 to 4.162 of Part 4 of this document.

Part 2

Introduction and Background

Introduction

2.1 This statement includes:

- the background to Ofcom's review of the Broadcasting Code ("the Code") rules that apply to commercial references in television programming;
- the proposals made in two consultations: the Broadcasting Code Review Consultation (15 June to 4 September 2009) ("the 2009 consultation")⁸ and the Broadcasting Code Review: Commercial references in television programming Consultation (28 June to 17 September 2010) ("the 2010 consultation")⁹;
- the key issues raised in stakeholder responses to these proposals; and
- Ofcom's consideration of the key issues raised in stakeholder responses and our conclusions, including revisions to the Code.

2.2 This statement should be read in conjunction with the consultation documents (which set out the rationale for our proposals and approach to impact assessment); the revised Section Nine of the Code, which can be found at Annex 1; and the associated initial guidance, which can be found at Annex 2.

2.3 Stakeholders should note that, while the new and revised rules are being issued alongside this statement, **there is an implementation period before the rules come into force on Monday 28 February 2011.**

2.4 Until this date, broadcasters must ensure that commercial references in television¹⁰ programming continue to comply with the existing rules in Sections Nine (Television) and Ten (Television) of the (December 2010) Code. These can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

Background

2.5 As part of its duties and functions under the Communications Act 2003 ("the Act"), Ofcom is required to draw up, and from time to time revise, a code for television and radio services, covering standards in programmes. The Code first came into effect on 25 July 2005 following extensive public consultation and research. It was revised

⁸ 2009 Code Review consultation is at Annex 4 of this statement and is available at: <http://stakeholders.ofcom.org.uk/consultations/bcode09/>

⁹ 2010 Code Review consultation is at Annex 3 of this statement and is available at: <http://stakeholders.ofcom.org.uk/consultations/bcrtv2010>

¹⁰ Stakeholders should note that a separate statement and revised Section Ten (Radio) of the Code is being issued at the same time as this statement. This applies to commercial communications in radio programming, and is available at: <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/statement/>. The Code section and rules applying specifically to radio programming come into force on the date of their publication.

subsequently in October 2008. It is separated into ten sections, each designed to secure the relevant objectives set out in the Act in relation to standards, sponsorship and fairness and privacy.

- 2.6 Since the Code was first introduced, the consumer, industry and regulatory environments in which it operates have undergone many changes. Ofcom made a commitment in its 2008/9 Annual Plan to further develop the Code according to these changes. This was to ensure that the Code remains fit for purpose: providing both adequate protection for the audience, and a consistent and robust regulatory framework for broadcasters. In addition, by 19 December 2009, Ofcom was required to give effect to a number of requirements relating to the Audiovisual Media Services (“AVMS”) Directive.
- 2.7 In response to these commitments Ofcom published a consultation in 2009 in which it proposed revised rules relating to four sections of the Code, including those relating to sponsorship and commercial references in television and radio programming (Sections Nine and Ten of the Code).
- 2.8 The rules relating to sponsorship and commercial references proposed in the 2009 consultation were based on the UK’s longstanding prohibition on product placement¹¹. However, during the consultation period, the UK Government announced¹² that it was minded, subject to a consultation¹³, to lift this prohibition.
- 2.9 In view of this announcement, Ofcom evaluated its 2009 consultation proposals and decided to extend its review of the rules that apply to commercial references in programming. This extension was to enable Ofcom to take into account not only the outcome of the Government’s consultation on product placement, but also the potential wider implications of any change in this area on other rules (e.g. those relating to sponsorship). Ofcom issued a statement explaining that it would reach a decision on the rules in this area, taking account of the responses to the 2009 consultation (in relation to those rules unaffected by the Government’s decision) and also the responses to a further consultation.
- 2.10 In April 2010, the Government amended the Act (via the Audiovisual Media Services (Product Placement) Regulations 2010 (“the Regulations”)) to enable product placement on television and to require Ofcom to set standards in respect of product placement. When introducing the legislation, the Government made clear that television product placement would not become permissible until Ofcom had consulted on detailed changes to the Code.
- 2.11 Subsequently, Ofcom launched two further consultations in June 2010, one relating to commercial references in television programming (“the 2010 consultation”) and the other relating to commercial references in radio programming.
- 2.12 Unlike the 2009 consultation, the 2010 consultation addressed solely those rules that apply to commercial references in television programming (including sponsorship) and set out proposals based on the new legislative framework.

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

¹² http://www.culture.gov.uk/reference_library/minister_speeches/6194.aspx

¹³ http://www.culture.gov.uk/reference_library/consultations/6421.aspx

- 2.13 Both the 2009 and 2010 consultations took into account Ofcom's regulatory objectives and statutory duties. In particular, its duty to ensure that regulation does not impose unnecessary burdens, and that it does not maintain regulatory burdens which have become unnecessary.

What did Ofcom propose in the 2009 consultation?

- 2.14 In summary, we proposed:
- 2.15 **Code structure:** To date, the rules that apply to commercial references in programming have been separated into two sections: those which apply to sponsorship and those which apply to other forms of commercial references. The rules have applied to both television and radio programming.
- 2.16 In recognition that the statutory framework within which television operates differs from radio, we proposed to restructure the Code to create separate sections for those rules that apply to television (proposed as Section Nine) and those for radio. We also proposed that both of these sections would include rules covering all types of commercial references that feature in programming, including sponsorship.
- 2.17 This approach received stakeholder approval in the responses to the 2009 consultation. We therefore made clear in the 2010 consultation (see paragraph 2.16 of Annex 3) that it was our intention to adopt this approach.
- 2.18 **Section structure and minor amendments:** The existing Code sections contain overarching principles followed by detailed rules. We proposed to restructure Section Nine to provide introductory text explaining the objectives of the rules and their relation to the overarching principles. We also proposed minor amendments to some of the meanings, overarching principles and rules set out in the Code (for the purpose of clarity or to reflect legal definitions).
- 2.19 **Additional principle:** We proposed to introduce a new consumer protection principle to support proposed new rules relating to viewer interaction with programming (see immediately below).
- 2.20 **Viewer communication rule:** We proposed to introduce a new rule requiring that all viewer communication solicited by or on behalf of the broadcaster in programming must be treated fairly and consistently.
- 2.21 **Premium rate services rule:** We proposed to introduce a new rule requiring the cost to viewers for using premium rate services to be made clear to them and broadcast as appropriate. This rule was to be applied in tandem with the existing rule requiring that the use of premium rate numbers comply with the Code of Practice issued by PhonepayPlus.
- 2.22 A summary of the proposals, the key issues raised in stakeholder responses to these proposals and Ofcom's decisions, including, where appropriate, final principles, rules, meanings and explanatory text, are detailed in Part 6 of this document.

Public Information Programming

- 2.23 The 2009 consultation also sought stakeholders' views on the potential introduction of rules to permit Public Information Programming ("PIPs") – programming funded by non-commercial, not-for-profit entities (e.g. public services), that seeks to educate or inform the audience on matters in the public interest, and that may also refer to the

interests and/or activities of the funder. The consultation included a set of example rules to help inform stakeholder responses. These covered, amongst other issues, the types of subject matter covered by such programming and the status of potential funders.

- 2.24 Stakeholder responses to the questions raised in the consultation are set out in Part 7 of this document, along with Ofcom's response and decision.

What did Ofcom propose in the 2010 consultation?

- 2.25 Changes to the Act have resulted in the lifting of the prohibition on product placement. The amended Act contains a number of specific requirements in relation to the regulation of product placement. It sets out those programme genres in which product placement is permitted: films; television series; sports programmes; and light entertainment programmes. It expressly prohibits product placement in all children's programmes, and in religious, current affairs, and consumer affairs programmes that are produced under UK jurisdiction¹⁴.
- 2.26 It prohibits the product placement of cigarettes or other tobacco products and prescription-only medicines in all programmes, and further prohibits in programmes produced under UK jurisdiction the paid-for placement of products associated with smoking (such as cigarette lighters and papers), alcoholic drinks, foods or drinks which are high in fat, salt or sugar, gambling, all medicinal products and infant and follow-on formulae.
- 2.27 It sets general requirements and safeguards in relation to the impact product placement can have on programmes. It also specifies when audiences should be made aware that a programme contains product placement.
- 2.28 Ofcom's 2010 consultation therefore proposed rules that reflected these requirements. It also proposed additional rules that we considered: i) clarify the requirements of the Act; or ii) are appropriate to ensure that audiences are afforded adequate protection; or iii) are appropriate in light of the changes to the regulatory landscape resulting from the introduction of product placement.
- 2.29 In summary, our proposals were:

Product placement

- 2.30 **Scope of product placement rules:** the Act defines product placement as being "for a commercial purpose". We proposed to apply the rules to all instances of paid-for placement, regardless of whether the placement is intended to serve a commercial purpose.
- 2.31 **Single dramas:** these are not specifically referred to in the list of programme genres in which product placement is permitted. We proposed to clarify that such

¹⁴ "Programmes produced under UK jurisdiction" means any programme produced or commissioned by either: a) the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or b) any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the AVMS Directive). For further details on these requirements and their meanings, see Part 4.

programmes fall within the definition of films and may therefore contain product placement.

- 2.32 **News:** the Act does not explicitly prohibit product placement in news but the Government has made it clear in its statement that news does not fall within the programme genres in which product placement is permitted. We therefore proposed a rule to clarify that product placement is prohibited in news programmes.
- 2.33 **Thematic placement:** we proposed to clarify that thematic placement – that is the creation of scripts/storylines as vehicles for the purpose of featuring the aims, objectives, beliefs or interests of a third party funder – is prohibited.
- 2.34 **Specialist factual programmes:** we sought views on whether Ofcom should prohibit product placement in specialist factual programmes (e.g. purely factual programmes covering educational, science, medical or arts subjects, or those that are investigative in nature).
- 2.35 **Prohibited restricted products/services:** in addition to those products, services and trade marks that are prohibited under the Act from being included in programmes as a result of product placement arrangements, we proposed to prohibit the paid-for placement within programmes of any product, service or trade mark that cannot be advertised on television.
- 2.36 **Signalling of product placement:** the Act includes a signalling requirement for product placement. We proposed that audiences are made aware of instances of product placement by means of a universal neutral logo, and a universal audio signal (to ensure that both visually and hearing impaired audience members are made aware when a programme contains product placement). Additionally, we proposed that broadcasters make available to the audience a list (in a programme's end credits or on the broadcaster's website) of products, services or trade marks that have been placed in a programme. We also made a range of proposals in relation to raising audiences' awareness of the product placement signals and what they mean.
- 2.37 The key issues raised in stakeholder responses to each of the proposals summarised above are detailed in Part 4 of this document. Part 4 also explains Ofcom's consideration of these key issues and sets out the final version of the rules, meanings and any explanatory text. We are also issuing initial guidance¹⁵ to assist broadcasters in their compliance with these rules.

Sponsorship

- 2.38 The existing rules applying to television sponsorship were based on the principle that paid-for commercial references must be kept separate from editorial. The introduction of product placement changes this position. We therefore consulted on proposed revisions to those sponsorship rules that were underpinned by this principle of separation.
- 2.39 **Sponsor references within sponsored programmes:** we proposed to remove the rules that prevent sponsorship arrangements resulting in references to the sponsor within a sponsored programme. We also stated that we intended to clarify that where a reference to the sponsor's products, services or trade mark are included in a programme as a result of a commercial arrangement, this will be treated as product placement and must therefore comply with the relevant rules.

¹⁵ Available at Annex 2.

- 2.40 **Identifying sponsorship arrangements (sponsorship credits¹⁶):** we proposed revisions on how sponsorship arrangements are announced to ensure that audience members are made appropriately aware when they are viewing commercial messages, and can distinguish between different types of commercial arrangements, such as sponsorship and product placement.
- 2.41 **Sponsorship credits during programmes (“internal credits”):** we also proposed to amend the rules on sponsorship credits to allow credits to be broadcast *during* programmes. However, to ensure that such credits do not conflict with the product placement rules and are not unacceptably intrusive, we proposed a number of restrictions on the content and scheduling of these internal credits.
- 2.42 Key issues raised in stakeholder responses to each of the proposals summarised above are detailed in Part 5 of this document. Part 5 also explains Ofcom’s consideration of these key issues and sets out the final version of the rules, meanings and any explanatory text. We are also issuing guidance¹⁷ to assist broadcasters in their compliance with these rules.

Other proposed revisions

- 2.43 We proposed revisions to other Code rules that we considered were appropriate as a result of the introduction of product placement. These included:
- 2.44 **Separation of programming and advertising:** the existing rules were based on an overarching principle that editorial content must be kept separate from advertising. The rules were based on the requirements of European legislation. Changes to EU law mean that advertising no longer has to be separated from editorial but that the two must be *distinct* from one another. We therefore proposed to amend those rules requiring separation to ones requiring distinction between such content. We also stated our intention to amend the corresponding principle set out in the Code.
- 2.45 **Surreptitious advertising rule:** we proposed a rule prohibiting surreptitious advertising as we considered that the introduction of product placement, and therefore the inclusion of paid-for references within programmes, posed an increased risk that viewers may be exposed to surreptitious advertising.
- 2.46 **Virtual advertising:** this occurs during the broadcast coverage of an event, and involves replacing advertising that is present at a venue with advertising tailored for the television audience. The existing Code contains a specific rule about this practice, which provided a limited exemption to the existing prohibition on product placement. The removal of this prohibition renders the rule unnecessary and we therefore proposed to remove it from the Code.
- 2.47 Stakeholder responses to each of the proposals summarised above are detailed in Part 6 of this document. Part 6 also explains Ofcom’s consideration of the responses and sets out the final version of the principles, rules, meanings and any explanatory text.

¹⁶ Sponsorship credits are announcements informing the audience when a programme is sponsored and by whom.

¹⁷ Available at Annex 2.

- 2.48 We are also issuing guidance¹⁸ to assist broadcasters in their compliance with these rules.

Approach to impact assessment

- 2.49 The 2009 and 2010 consultations did not contain separate impact assessments. Instead the consultation documents as a whole assessed the impact of the proposed changes on stakeholders (including citizens and consumers, television broadcasters, producers and advertisers). It should be noted that our proposals took account of the potential consumer, regulatory and economic impacts in areas where we had discretion to decide between different ways of implementing policy: to be clear, we did not seek to repeat the impact assessment the Department of Culture, Media and Sport carried out in relation to permitting product placement per se.

Summary of impact issues

- 2.50 The paragraphs below summarise the key issues Ofcom identified in its assessment of the impacts in each consultation.

2009 consultation

- 2.51 The 2009 consultation identified that new rules for Public Information Programming would, if introduced, result in a change to the current regulatory framework, and therefore compliance procedures.
- 2.52 Ofcom recognised the benefits to viewers of informing and educating them about matters in the public interest. Without specific rules that facilitate Public Information Programming, such content might not be the subject of commercial television programming.
- 2.53 Ofcom also recognised that there were risks with the introduction of rules to facilitate Public Information Programming. In particular, Ofcom considered that any rules would need to ensure that funders did not use such programming to circumvent the existing rules which prevent surreptitious advertising, ensure editorial independence and due impartiality, or prohibit political advertising. We were also mindful that there was a risk that this type of funded programming could replace existing non-funded programming about matters in the public interest, and therefore potentially reduce the variety of public interest content. In addition, broadcasters might be more likely to make this type of programming, in return for funding, rather than continuing to make a more varied range of programming overall.
- 2.54 In terms of economic impact, we noted a clear appetite amongst broadcasters and potential funders for this type of programming over recent years. However, we also noted that the extent of any benefit would depend on how much of the revenue raised as a result of the proposed new rules would be new revenue, and how much would simply be displaced (e.g. from spot advertising). We also considered that the potential rules could also have a negative economic impact on other forms of media, if non-commercial, not-for-profit organisations diverted spending from other media in favour of Public Information Programming on television.
- 2.55 We considered that there was insufficient data currently available to conduct a detailed cost-benefit analysis of allowing this type of programming and therefore we invited consultation responses on potential economic impacts.

¹⁸ Available at Annex 2.

- 2.56 Ofcom considered that other proposed revisions were not significant and were designed to clarify the existing rules. These were aimed at avoiding future compliance failures by clarifying the regulatory principles already in place.
- 2.57 Therefore, our assessment of the impact of our proposals on stakeholders was that broadcasters would have a better understanding of regulatory principles already in place with regard to the particular statutory framework for television, and therefore the likelihood of future compliance failures would be reduced. Viewers would also benefit from appropriate protection in relation to commercial references on television.

2010 consultation

- 2.58 The 2010 consultation impact assessment was informed by the responses to the 2009 Code Review, our 2010 pre-consultation discussions with stakeholders and the Government's most recent consultation on product placement¹⁹ discussed below.
- 2.59 Ofcom has a statutory duty to introduce new rules for product placement and so we took the impact assessment set out in the Government's last consultation on product placement as the starting point for this consultation, i.e. that allowing product placement would deliver modest economic benefits to broadcasters in the region of £25-30m p.a. once established.
- 2.60 Further, the 2010 consultation document did not include assessments of the potential impacts of those proposed product placement rules Ofcom considers to be direct requirements of the Act, which Ofcom has a statutory duty to implement in the Code.
- 2.61 With regards to the proposals made in the 2010 consultation for revisions to sponsorship rules, Ofcom considered that failing to relax the rules on sponsor references in programmes might result in companies replacing sponsorship with product placement. The attractiveness of sponsorship could therefore decline, along with the revenues associated with it, which would present the risk that potential new product placement revenue could simply be diverted from sponsorship.
- 2.62 Ofcom also took into account that following the introduction of rules to permit product placement, companies other than the sponsor would be able to place their products in sponsored programmes. Ofcom therefore considered that it was questionable whether preventing sponsors from doing the same would reduce the overall level of audience exposure to commercial references within programmes.
- 2.63 We considered that the proposal to treat sponsor references within editorial content as product placement provided important and appropriate protection for viewers. Under the proposal, the audience would be protected from surreptitious advertising and broadcasters would be responsible for exercising editorial independence over the programmes they transmit. The promotion of products and services within programming would be prevented, as would unduly prominent references to products and services. Further, the product placement rules would prevent references to sponsors' products and services deemed potentially harmful (e.g. alcoholic drinks and gambling).
- 2.64 Because the proposal to allow sponsorship credits during programmes represented a general liberalisation of rules in this area, we identified no negative economic impacts, and instead considered that the proposal might enable broadcasters to raise additional revenue.

¹⁹ http://www.culture.gov.uk/reference_library/consultations/6421.aspx

- 2.65 Ofcom also considered that its proposal to require all sponsorship credits to include a clear statement referring to the sponsorship arrangement would help ensure that audiences are able to distinguish sponsorship from other commercial arrangements such as advertising and product placement. We took into account that this proposal might impact on the production of sponsorship credits by requiring that they contain additional information, but also noted that credits generally already include this information. We considered that any financial impact of including this information was likely to be outweighed by the need to ensure the transparency of commercial arrangements, and would also be offset by the benefits of our proposal to allow sponsorship credits during programmes.
- 2.66 With regards to the proposal to amend the wording of the principles in the revised Section Nine of the Code, Ofcom took into account that these principles act as a guide to help stakeholders understand the rationale behind the rules and are not enforceable requirements. As such, Ofcom considered that the proposed amendments would not impact on stakeholders.
- 2.67 With regards to the proposed rule on distinction between editorial content and advertising, Ofcom considered that it would provide broadcasters with greater flexibility in terms of how paid-for commercial references can feature within programming, while retaining the important protection for viewers from surreptitious advertising and helping to limit the impact of commercial arrangements on editorial content.
- 2.68 With regards to the proposed rule prohibiting surreptitious advertising, Ofcom considered that it would provide additional important audience protection. We also considered that the proposal would not lead to additional regulatory burdens on broadcasters, because existing rules already effectively prevent surreptitious advertising.
- 2.69 With regards to the proposed removal of the virtual advertising rule, Ofcom considered that any impact on stakeholders would be negligible.

Impact issues raised by stakeholders in the 2009 and 2010 consultations

- 2.70 Where stakeholders responded to the consultations with comments or information in relation to possible impacts linked to specific proposals, or challenged Ofcom's assessment of impacts, we have summarised the key issues raised in the relevant Parts of this statement (for example, in relation to the classification of single dramas as films – see Part 4). Having taken these into account, we have reflected on our proposals and taken appropriate action in finalising revisions to the Code and/or guidance.
- 2.71 This statement as a whole addresses issues in relation to the impact of our decisions. Again, it should be noted that our decisions take account of the potential consumer, regulatory and economic impacts in areas where we had discretion to decide between different ways of implementing policy. As such, this statement does not include an impact assessment in relation to permitting product placement per se.

Equality impact issues

- 2.72 Ofcom is required by statute to have due regard to any potential impacts its proposals may have on race, disability and gender equality, as well as the other

groups protected by legislation in Northern Ireland²⁰. To fulfil this obligation, we conducted an Equality Impact Assessment (EIA). We completed the first part of this EIA, which takes the form of an initial analysis of whether the proposals we are making raise equality issues, and if so, what their potential impacts might be.

- 2.73 In relation to the 2009 consultation, we considered that our proposals, including the possible introduction of rules for Public Information Programming, would not have any particular equality implications. We sought views on this issue from stakeholders as part of the consultation, but none were received. Therefore we have not conducted a Full EIA on the proposals made in the 2009 consultation.
- 2.74 In relation to the 2010 consultation, we considered the need for paid-for commercial references to be readily recognisable to all audience groups, including both visually and hearing impaired audience members. In particular, we considered the signalling of product placement and sponsorship.
- 2.75 In relation to equality issues more generally, we considered that our proposals would be unlikely to involve any adverse effect with regard to gender or ethnicity, or the other groups protected by legislation in Northern Ireland. However, where appropriate, the consultation document asked stakeholders to submit responses on any potential impacts they consider should be taken into account, including in relation to matters of equality. This was to ensure we did not fail inadvertently to consider any possible equality impacts resulting either from the 2010 consultation or our specific proposals, particularly in relation to the signalling of product placement and sponsorship to visually and hearing impaired audience members.
- 2.76 Following the closure of the 2010 consultation and consideration of stakeholder responses, we have completed our full EIA. As part of this full assessment, we have reviewed whether, on the basis of stakeholder responses received, there are in fact, equality impacts and/or considerations which we had not, to date, accounted for.
- 2.77 Full details of our consideration of equality impacts in relation to the signalling of product placement can be found in Part 4, and our full EIA is available at Annex 5.

Section Nine of the Broadcasting Code 2011 and initial guidance

- 2.78 The updated and revised Section Nine of the Code can be found at Annex 1. As stated in paragraph 2.3 above, the revised Section Nine of the Code does not come into force **until 28 February 2011**. Until that date, the existing rules for television programming remain in force, now set out in Section Nine (Television) and Section Ten (Television) of the (December 2010) Code, which can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.
- 2.79 The updated and revised initial guidance in relation to the revised 2011 rules can be found at Annex 2.

²⁰ In addition to race, disability and gender, equality legislation in Northern Ireland also covers age, sexual orientation, carers, marital status, religious belief and political opinion. Further, from 1 April 2011, Ofcom will be required by law to conduct equality impact assessments against the additional protected characteristics set out in The Equality Act 2010. Therefore these additional requirements are not yet in force. However, for the purposes of completeness, in addition to having due regard to the potential impact of our policy approach on the areas of disability, gender and race, and equality legislation in Northern Ireland, we have also assessed impacts against the new protected characteristics (i.e. age, gender re-assignment, pregnancy and maternity, religion or belief and sexual orientation).

Part 3

Overview of consultation responses

Respondents

- 3.1 Ofcom received **48 responses to its proposals on commercial references in television programming in the 2009 consultation**. These included responses from seventeen individuals and the following organisations: BBC; Box Television; Camelot Group plc; Central Office of Information; Channel 4; Channel 4 BRITDOC Foundation; Channel 5 Broadcasting Ltd; Christian Broadcasting Council, Christian Broadcasting Network, Christian Concern for Our Nation & Christian Legal Centre; Crimestoppers Trust; Dartmouth Films; Institute of Practitioners in Advertising; International Broadcasting Trust; Mediawatch-UK; MTV Networks Europe; Comedy Central and Nickelodeon; S4C; STV Group; UTV (Television); Viasat Broadcasting Ltd; Voice of the Listener & Viewer; and The Wellcome Trust.
- 3.2 Eight organisations requested confidentiality and are not therefore identified in the list of respondents above.
- 3.3 Ofcom received **41 responses to its proposals in the 2010 consultation**. These included responses from two individuals and the following organisations: Advertising Association; Association of Entertainment Marketing Agencies; the BBC; BBC Commercial Services; Box Television; BrandZilla; British Heart Foundation; Camelot UK Lotteries Ltd; Campaign for Press and Broadcasting Freedom; Carat Ltd; Channel 4; Channel 5 Broadcasting Ltd; Children's Food Campaign; Central Office of Information; Directors UK; Discovery Communications Europe Ltd; European Sponsorship Association; Food and Drink Federation; Institute of Practitioners in Advertising; Krempelwood llp; Liverpool FC TV; Madigan Cluff Ltd; MirriAd Ltd; Motion Picture Association; MTV Networks Europe; Comedy Central and Nickelodeon; National Heart Forum; Pact; S4C; Satellite and Cable Broadcasters' Group; Viasat Broadcasting Ltd; and Which?
- 3.4 Seven organisations requested confidentiality and are not therefore identified in the list of respondents above.

Responses

- 3.5 Responses from those individuals and organisations which did not request confidentiality have been published on Ofcom's website²¹.

Ofcom's approach to responses

- 3.6 Following the 2009 and 2010 consultations, we have taken into account in detail each of the responses. As a result, and where appropriate, we have revised areas of the proposed Section Nine of the Code and/or addressed specific issues in guidance. In doing so we have taken account of Ofcom's duty to secure its statutory objectives under the Communications Act 2003, and to comply with the Human Rights Act 1998 and the European Convention on Human Rights.

²¹ <http://stakeholders.ofcom.org.uk/consultations/bcode09/?showResponses=true> (2009) and <http://stakeholders.ofcom.org.uk/consultations/bcrtv2010/?showResponses=true> (2010).

- 3.7 This statement sets out **a summary of the key issues** raised by stakeholders in response to both the 2009 and 2010 consultations.
- 3.8 Due to the large number of proposals and stakeholder responses reflected in this statement, we have attributed responses to specific (non-confidential) respondents only in cases where an issue they have raised is particular to their circumstances.
- 3.9 In relation to the 2009 consultation, we have taken into account that responses received to that consultation were submitted at a time when the UK Government's intention was to continue the prohibition of product placement. Where we proposed new or revised principles, meanings, rules or explanatory text in the 2010 consultation, we have judged that it would be more appropriate to reflect the 2010 consultation responses to these proposals, unless any respondents raised a significant issue in 2009 which it remains appropriate to address in this statement.
- 3.10 In relation to the 2010 consultation, it is our view that the scope of that consultation was relatively limited. As a result of changes to European and UK legislation, which lifted the prohibition of product placement in television programming, Ofcom proposed new rules to reflect the legislation, thereby enabling product placement on television, subject to certain safeguards. Therefore, in this statement, we have not summarised responses to the 2010 consultation which addressed issues beyond the scope of Ofcom's consultation (e.g. objections to the removal of the prohibition on product placement, or objections to the UK Government's decisions on specific aspects of the relevant UK legislation). However, all non-confidential responses have been published on our website²².
- 3.11 In relation to assessment of impact, both consultation documents explained that they did not contain a separate impact assessment document. Instead the consultation documents as a whole assessed the impact of the proposed changes on stakeholders (including citizens and consumers, television broadcasters, producers and advertisers). Likewise this statement as a whole responds to issues relating to impact. A summary of Ofcom's approach to impact issues can be found at paragraphs 2.49 to 2.77.
- 3.12 Because of the addition of proposed rules for product placement in the 2010 consultation, the proposed rule numbers in the 2009 and 2010 consultations were different. For ease of cross-reference, we have indicated the paragraph number and the consultation in which each proposal was made. In addition, where a stakeholder referred to a proposed rule number in their response, **we have updated the number in our summary of that response to refer to the final rule number which is used in the revised Section Nine of the Code.**

Alternative approaches

- 3.1 Ofcom's 2009 and 2010 consultations asked respondents if they wished to suggest any alternative approaches to the proposed regulation of commercial references in television programming (see paragraphs 6.122 to 6.123 of Annex 4; and paragraphs 7.4 to 7.6 of Annex 3). In relation to Ofcom's overall approach to this area of regulation, respondents made no suggestions. Where respondents suggested alternatives to specific proposals, we have reflected these within the relevant parts of this statement.

²² <http://stakeholders.ofcom.org.uk/consultations/bcrtv2010/?showResponses=true>

New Code rules in force

Consultation proposal

- 3.2 Ofcom's 2010 consultation asked respondents if they agreed that the revised Section Nine of the Code should come into force on the same date it is published by Ofcom and, if not, sought their views on the duration of an implementation period (see paragraphs 7.7 to 7.8 of Annex 3).

Stakeholder responses

- 3.3 The majority of respondents, including many broadcasters, were eager for the rules to come into force as soon as possible to take advantage of the commercial benefits of product placement. However, they acknowledged that it would be helpful for there to be an implementation period after the revised Section Nine of the Code is issued, and before the rules come into force. There was general agreement that such an implementation period would allow broadcasters sufficient time to prepare for compliance with the new rules.
- 3.4 In general, suggestions for the duration of the implementation period ranged from between one to six months, with the majority favouring a period of two or three months.

Ofcom's decision

- 3.5 We note that the majority of respondents accepted that the introduction of product placement represents a significant change to compliance in this area, and therefore agreed that an implementation period would be beneficial. Nonetheless, we also acknowledge that stakeholders welcome the opportunity to benefit commercially from product placement as soon as they can.
- 3.6 Therefore we have decided that the revised Section Nine of the Code will come into force on **Monday 28 February 2011**. Until that date, television broadcasters must ensure that commercial references in television programming comply with the existing rules, now set out in Section Nine (Television) and Section Ten (Television) of the (December 2010) Code. These can be found at:
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

Part 4

Product Placement

Introduction

- 4.1 This part of the statement sets out stakeholders' responses to Ofcom's proposed rules and meanings regarding product placement (and prop placement).
- 4.2 Product placement is the inclusion in a programme of, or reference to, a product, service or trade mark, for a commercial purpose, in return for payment or other valuable consideration. This is a summary of the statutory definition of product placement which is now set out in the (2011) Section Nine of the Code at Annex 1.
- 4.3 Prop placement is the inclusion in a programme of, or reference to, a product, service or trade mark where its provision has no significant value and is not in return for payment or other valuable consideration (other than the cost saving of including the prop in the programme). This is a summary of the statutory definition of prop placement which is now set out in the (2011) Section Nine of the Code at Annex 1.
- 4.4 The rules proposed as part of the 2010 consultation (Annex 3) reflected the requirements of the Communications Act 2003 (as amended by The Audiovisual Media Services (Product Placement) Regulations) ("the Act"). Additional rules or clarifications to rules or meanings were also proposed where Ofcom considered it appropriate to do so.
- 4.5 Where we proposed additional rules, our reasons for doing so and the potential impacts of our proposals were set out in the consultation (see Part 4 of Annex 3). As Ofcom has a statutory duty to amend the Code to reflect the new requirements of the Act, we did not assess the impact of those product placement rules we considered to be explicit requirements of the legislation. However, respondents were invited to comment on the relevant proposed rules (see paragraph 4.6 below).
- 4.6 Set out below is a summary of each proposal, the key issues raised in stakeholder responses, and Ofcom's decision, including (where applicable) the final rule(s), meaning(s) and/or explanatory text, now included in the revised Section Nine of the Code. The issues are set out below in the following order:
 - Requirements of the AVMS Directive and the Act (paragraphs 4.8 to 4.11, below);
 - Applying product placement rules to non-commercial placement (paragraphs 4.12 to 4.15, below);
 - Clarification that product placement is permitted in single dramas (paragraphs 4.16 to 4.45, below);
 - Clarification that product placement is prohibited in news (paragraphs 4.46 to 4.58, below);
 - Thematic placement (paragraphs 4.59 to 4.76, below);
 - Specialist factual programming (paragraphs 4.77 to 4.93, below);

- Additional prohibited categories and advertising scheduling restrictions (paragraphs 4.94 to 4.111, below);
 - Signalling – visual and audio (paragraphs 4.112 to 4.139, below);
 - Signalling – audience awareness (paragraphs 4.140 to 4.151, below); and
 - Signalling – other issues (paragraphs 4.152 to 4.158, below).
- 4.7 Broadcasters should also note that, at paragraphs 4.159 to 4.162 below, there is important information about Ofcom’s intention to collect product placement revenue data from its licensees.

Relevant requirements of the AVMS Directive and the Act

Consultation proposal

- 4.8 Ofcom’s 2010 consultation asked respondents if they agreed that the explicit requirements of the Audiovisual Media Services (“AVMS”) Directive and the Act were reflected appropriately in the proposed product placement rules (see paragraphs 7.2 to 7.3 of Annex 3).

Stakeholder responses

- 4.9 Nine organisations agreed that the proposed rules reflected the requirements of the legislation.
- 4.10 Some respondents considered the proposals went beyond legislative requirements, specifically those proposals in the following areas:
- the product placement signalling requirements and associated audience awareness campaign (paragraphs 4.112 to 4.154);
 - thematic placement (paragraphs 4.59 to 4.65);
 - specialist factual programming (paragraphs 4.77 to 4.86); and
 - treatment of sponsor references within programmes as product placement (see Part 5).

Ofcom’s decision

- 4.11 The specific proposals that stakeholders considered as exceeding legislative requirements are addressed throughout this part of the statement under the relevant headings (e.g. product placement signalling). Subject to the revisions set out in this part, we are satisfied that the revised Code implements the relevant requirements of both the AVMS Directive and the Act appropriately.

Applying product placement rules to “non-commercial” placement

Consultation proposal

- 4.12 The Act defines product placement as being “for a commercial purpose”. Ofcom acknowledged that there may be circumstances in which a third party funder wishes to pay for the inclusion in a programme of a reference to a product, service or trade mark for a non-commercial purpose (for instance, some cases in which a charity pays to place a reference to its name in a programme). Therefore, Ofcom’s 2010 consultation proposed including introductory text in the revised Code section stating that the product placement rules would also apply to paid-for references in programmes to products, services and trade marks that are included for a non-commercial purpose (see paragraphs 4.21 to 4.25 of Annex 3):

The following rules also apply to paid-for references that are included in a programme for a non-commercial purpose. For example, some cases in which a charity pays for the inclusion in a programme of a reference to its name or trade mark.

Stakeholder responses

- 4.13 All respondents who commented on this proposal agreed that it was appropriate. Respondents considered that the proposal provided opportunities for non-commercial organisations to take advantage of product placement opportunities while ensuring that such placements were subject to the same regulatory safeguards as the placement of commercial brands.

Ofcom’s decision

- 4.14 We note the support for the proposal and, for clarity, have included a slightly revised version of the introductory text in the new Code section.

Final introductory text

- 4.15 The final introductory text is as follows (Note 2 in the introductory text to the product placement rules in the revised Section Nine):

The following rules also apply to paid-for references to products, services or trade marks that are included in a programme for a non-commercial purpose.

Clarification that product placement is permitted in single dramas

Consultation proposal

- 4.16 The Act specifies the programme genres in which product placement is permitted. This requirement is derived from Article 11(3)(a) of the AVMS Directive which states that product placement is permitted in: “cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes”.
- 4.17 Ofcom’s 2010 consultation (see paragraphs 4.26 to 4.37 of Annex 3) proposed to introduce the following rule that set out these genres, and to include explanatory text

to clarify that single dramas fall within the definition of “films made for television” and therefore can feature placed products:

- 9.8 Product placement is prohibited except in the following programme genres:
- a) films
 - b) series made for television (or other audiovisual media services)
 - c) sports programmes
 - d) light entertainment programmes.

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

- 4.18 The consultation identified that this proposed clarification could impact on the number of advertising breaks broadcasters can schedule in single dramas. Article 20(2) of the AVMS Directive requires that “The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of 30 minutes...”. This is implemented by Ofcom’s Code on the scheduling of television advertising (“COSTA”) which permits fewer advertising breaks during films than during other programmes.
- 4.19 Prior to the consultation, Ofcom examined the break patterns of public service broadcasters and also looked at those channels relying heavily on imported dramas. Ofcom’s conclusion at that time was that, with few exceptions, channels were following the film break patterns when scheduling single dramas. On this basis, we suggested that our proposal to treat single dramas as films was unlikely to have a significant negative impact on broadcasters and would open up product placement opportunities.
- 4.20 In making this proposal, Ofcom took into account that if it were the case that single dramas could not include product placement, not only could broadcasters not produce or commission single dramas containing product placement, but they would also have to edit out or obscure any product placement in single dramas they had acquired before transmitting them.

Stakeholder responses

- 4.21 With the exception of the one organisation (who objected to any introduction of product placement), respondents welcomed clarification that product placement would be permitted in single dramas. There was general agreement with Ofcom that it would be anomalous to allow product placement in drama series but not in one-off dramas. It was noted that UK drama is a key public service genre. As advertising revenues decline, it is increasingly difficult for commercial broadcasters to sustain investment in dramas, which are costly to produce.
- 4.22 While there was support for clarifying that single dramas could benefit from product placement, all broadcasters who responded, along with representatives of the advertising industry, expressed serious concern about the potential impact of the proposal on advertising break patterns and consequent reduction in advertising revenues.
- 4.23 Contrary to Ofcom’s assertion in the consultation, a number of broadcasters stated that many single dramas were transmitted with conventional programme break

patterns, not film break patterns. One broadcaster questioned whether Ofcom's proposal confused and conflated acquired programming (i.e. mainly US-produced TV movies) with UK produced and commissioned single dramas. Another broadcaster questioned the basis for Ofcom's proposal, noting the consultation did not provide information on which services had been monitored and which programmes were analysed.

- 4.24 There was widespread concern that Ofcom's proposed classification would have a significant negative impact on broadcasters and their incentives to commission UK-produced single dramas.
- 4.25 Some broadcasters submitted detailed confidential data to quantify their estimated potential loss of revenue as a result of the proposed classification.
- 4.26 Other broadcasters (which commission little or no drama themselves) were nonetheless concerned that imposing film break patterns on acquired dramas would result in additional costs to re-version their back catalogues of single dramas, and would reduce revenue. One broadcaster provided an estimate of re-versioning costs, in confidence.
- 4.27 Respondents believed that the negative impact through the loss of advertising revenue would be very unlikely to be compensated for by new revenue from product placement. Therefore the proposed classification would have the perverse effect of making single dramas less economically viable. Therefore respondents considered that it would result in a significant disincentive to the UK production and transmission of single dramas, which ran counter to the Government's intention in implementing the AVMS Directive.
- 4.28 While there was general consensus that single dramas should be open to product placement but not attract film break pattern restrictions, differing views were expressed on how this outcome could be achieved:
- 4.29 Some respondents noted that Article 11 of the AVMS Directive (in relation to product placement) refers to "films and series made for audiovisual media services" but Article 20(2) (in relation to break patterns) refers to "films made for television". There was a view among some stakeholders that the differing wording used to describe films provided Ofcom with sufficient scope to treat single dramas as films for the purposes of product placement but not for advertising purposes.
- 4.30 One respondent suggested that the definition of a "film made for television" should hinge on whether it was of equivalent duration to a feature film; another suggested that definitions should enable a distinction to be drawn between UK-made original dramas and US "films made for television".
- 4.31 One broadcaster noted that neither "films made for television" nor "series" were defined in the Directive. It disagreed that a single drama should be classified as a film, stating that a "film made for television" had a particular industry meaning, being a feature length film that has not had a theatrical release. It considered that it was reasonable for Ofcom to interpret "series" to include a single programme. It was the respondent's view that "series" includes the singular as well as the plural.
- 4.32 Other respondents simply urged Ofcom to seek a pragmatic solution which would permit product placement in single dramas without an adverse effect on the number of advertising breaks and therefore on revenues.

Ofcom's decision

- 4.33 Ofcom understands why the broadcasters who responded on this proposal would prefer that their single dramas benefit from the scope to incorporate product placement, without a reduction in the number of advertising breaks they may currently carry. We recognise that commercial references help meet the costs of broadcasting dramas, whether these are commissioned by the broadcaster or acquired from elsewhere. Based on the estimated confidential data provided by broadcasters, Ofcom acknowledges that there may be a greater impact on broadcasters than it had estimated previously.
- 4.34 However, Ofcom must consider the meaning and effect of the AVMS Directive and, in particular, the UK legislation transposing it. We remain of the view (as expressed in paragraph 4.31 of Annex 3) that the intention of the AVMS Directive is that the film break pattern rules should apply to single dramas. Therefore, while taking into account the arguments raised by broadcasters in terms of the adverse financial impacts of our proposal, we have also considered the extent to which some of this adverse impact reflects necessary compliance with the film break patterns required by Article 20 of the AVMS Directive.
- 4.35 We considered carefully broadcasters' arguments that the differences in the way "films" are referred to in Articles 11 and 20 of the AVMS Directive would allow Ofcom to treat single dramas as films made for TV for the purposes of product placement (Article 11), but not for the purposes of break patterns (Article 20). In our view, these differences in wording simply reflect the fact that the parts of the Directive concerned with advertising minutage and break patterns (Article 20) only apply to linear television services, while the provisions for product placement (Article 11) apply to both linear television and video-on-demand services. In addition, Article 20 explicitly excludes specific types of programming (series, serials and documentaries) from the film break pattern requirements. The term "films made for television" is therefore clearly broad in nature, otherwise there would be no need explicitly exclude specifically series, serials and documentaries from it in the way that Article 20 does. Importantly, single dramas are not excluded from the requirements of Article 20. Therefore we do not consider it is appropriate to exclude single dramas from the film break pattern requirements given that the Directive makes clear that where its intention is to exclude certain types of programming, it does so explicitly.
- 4.36 Moreover, notwithstanding the wording of the Directive, Ofcom is bound to give effect to the UK legislation transposing relevant provisions. In this case, paragraph 7(2) in Schedule 11A of the Act provides (amongst other things) that product placement may be included in a programme if it is "a film ... made for a television programme service". If a single drama is considered to be a "film made for television" for one rule derived from the AVMS Directive, we consider that it would be difficult not to conclude that it is a "film made for the television" for the purposes of other rules derived from the Directive.
- 4.37 Further, in relation to the suggestion from some stakeholders that the permitted genre of "series" could include single dramas, we note there is European case law (2003) on the definition of the term 'series' in relation to the Television Without Frontiers Directive. In brief, the Court ruled against the German broadcaster RTL Television, judging that for two films made for television to meet the definition of a series (and therefore be able to carry more advertising breaks than a film), there must be clear links of substance, such as the development of the same story from one episode to another or the re-appearance of one or more characters in different episodes. While the circumstances of the case relate to advertising breaks, rather

than product placement, we consider the Court's ruling demonstrates that the use of the word "series" in relation to product placement was unlikely to be intended to include single programmes.

- 4.38 In response to other arguments put forward, Ofcom considers that there is no standard length for films; determining a particular duration for regulatory purposes would not provide an objective basis for applying different rules to some films than to others. The AVMS Directive does not provide a basis for programmes made in the UK to be treated differently from those made elsewhere. Finally, a decision not to provide clarity about how single dramas should be treated would perpetuate regulatory uncertainty, which creates risks both for broadcasters and for the UK Government, which has ultimate responsibility for ensuring the UK's implementation of the AVMS Directive.
- 4.39 We also considered carefully the potential impact, both on broadcasters that schedule significant volumes of acquired dramas, and on those that commission or produce dramas themselves. We accept that the potential benefits of product placement may not exceed the benefits of additional breaks for these programmes. However, based on information provided to us by broadcasters who responded to the consultation, we consider that non-public service channels would be able to take steps to mitigate the adverse effects on costs and revenues of stricter break patterns by scheduling longer ad breaks.
- 4.40 We accept that this option is not currently available to public service broadcasters ("PSBs"), which are restricted by COSTA to a maximum of 3 minutes and 30 seconds of advertising in any internal advertising break. Removing this restriction could help to mitigate the effects for all PSBs, for example, by lengthening advertising breaks to 4 minutes and 30 seconds.
- 4.41 In view of the above, we intend to proceed with the clarification (both in the Code and COSTA) that the term "films" includes single dramas.
- 4.42 **Subject to consultation, we are also now proposing to waive the COSTA restriction on advertising break lengths for films shown on PSB channels for a trial period of six to 12 months, starting from 28 February 2011. Stakeholders who wish to comment on this proposed waiver should submit their response to Peter Bourton (peter.bourton@ofcom.org.uk) by 28 January 2011.**
- 4.43 **If following this consultation, the trial waiver proceeds, it would begin from 28 February 2011, and we would then give stakeholders a further opportunity to comment again on this matter before deciding whether or not to make the waiver permanent.**

Single documentaries

- 4.44 Stakeholders should note that we have clarified in the final meaning that single documentaries are included within the meaning of "films". Therefore, subject to any other restrictions (e.g. prohibition of product placement in current affairs programmes produced under UK jurisdiction), single documentaries can contain product placement. As mentioned in paragraph 4.35 above, Article 20 of the AVMS Directive specifically excludes series, serials and documentaries from the meaning of "films" for the purposes of the film break pattern requirements. For the same reasons as are set out above, if the intention of the AVMS Directive had been to exclude single documentaries from being permitted to include product placement, the Directive would have done so explicitly. Therefore, in the absence of similar wording in Article

11 (product placement), documentaries are clearly to be treated as “films”. However, broadcasters should note that, as made clear above, documentaries are nevertheless exempt from the film break pattern requirements of Article 20.

Final rule and meaning

4.45 The final rule and meaning (with a minor revision for clarity) are as follows:

- 9.6 Product placement is prohibited except in the following programme genres:
- a) films;
 - b) series made for television (or other audiovisual media services);
 - c) sports programmes; and
 - d) light entertainment programmes.

Meaning of “films”:

Includes films made for cinema and films (including single dramas and single documentaries) made for television or other audiovisual media services.

“Series made for television (or other audiovisual media services)” includes serials.

Clarification of the prohibition of product placement in news

Consultation proposal

4.46 News does not fall within any of the genres in which the Act permits product placement. Ofcom’s 2010 consultation (see paragraphs 4.38 to 4.44 of Annex 3) therefore proposed to introduce the following rule and explanatory text clarifying that product placement is not permitted in news programmes:

- 9.9 Programmes that fall within the permitted genres must not contain product placement if they are:
- a) news programmes
 - b) children’s programmes.

A children’s programme in this context is “a programme made for a television programme service or an on-demand programme service, and for viewing primarily by persons under the age of sixteen”.

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

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

Stakeholder responses

4.47 There was no objection to the rule prohibiting product placement in news, as respondents accepted that this was an implicit requirement of both the EU and UK legislation.

- 4.48 While accepting that the Act did not permit product placement in news, broadcasters and representatives of the advertising industry were concerned about the potential impact of the prohibition in circumstances in which acquired clips of a programme or non-UK news footage containing product placement may be featured in news for legitimate editorial reasons. For example, the use of a clip from a US entertainment programme (which happened to contain a placed product) within a UK news item, or cutting to a US news feed as part of an Ofcom licensee's coverage of a breaking international news story. Respondents stated that it would be extremely difficult for broadcasters to know whether the clip or feed in question was subject to a product placement arrangement, or in any event to remove or obscure the placed reference in advance of its transmission. There was concern that this could discourage broadcasters from using such clips or feeds from non-UK news programming.
- 4.49 Some broadcasters also expressed concern about the potential impact of the prohibition on the live simulcast of acquired foreign news programming (e.g. from a US broadcaster) in UK news programmes. It was submitted that this practice occurs regularly on rolling news channels (particularly during the night) where blocks of a live feed from a US broadcast network might be shown on a regular basis. In such circumstances the US broadcast network may include product placement which cannot be detected or removed by the Ofcom licensee in advance of its transmission, because of the live nature of content.

Ofcom's decision

- 4.50 In view of the effect of the AVMS Directive and the Act in this area, we will proceed to introduce the Code rule prohibiting product placement in all news programming.
- 4.51 In relation to stakeholders' concern about the effect of this prohibition on the use in UK news programming of acquired programme clips (that contain product placement) we have clarified in guidance²³ that such circumstances are unlikely to fall within the definition of product placement. The Act defines product placement as "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 product placement".
- 4.52 It defines "relevant provider" as –
- (a) the provider of the television programme service in which the programme is included; and
 - (b) the producer of the programme.
- 4.53 In the case of a programme clip or a live feed from a foreign news channel, the product placement arrangement would be likely to relate specifically to the inclusion of the product in the non-UK transmission of the original programme in its whole form. If an Ofcom licensee acquired a whole programme to transmit, the general product placement rules would apply. However if, for editorial reasons, a UK broadcaster selected a clip of the programme to report on, or cuts to a live acquired

²³ Available at Annex 2.

feed as part of its own news coverage, we consider that any references to products within such content would be unlikely to meet the definition of product placement. In the vast majority of such cases, the inclusion of products within the Ofcom licensed news programming would not be subject to a placement arrangement involving payment or other similar consideration to the Ofcom-regulated broadcaster or producer.

- 4.54 We have therefore clarified in guidance²⁴ that, where such circumstances arise, we expect broadcasters to take reasonable steps to ensure that any commercial references that appear in programmes are editorially justified, non-promotional and not unduly prominent.
- 4.55 On the issue of live syndicated rolling news feeds from non-UK broadcasters, we understand that this is a relatively common practice during non-peak hours on specialist news channels, as well as during the day on some international channels aimed at specific UK communities. We acknowledge that broadcasters' ability to identify and cut out or obscure particular references during live simulcast transmissions is clearly limited. However, there may be some circumstances in which a broadcaster is able to determine that a simulcast acquired non-UK news feed regularly contains a particular placed reference which it is possible to obscure or mask on UK transmission.
- 4.56 In view of the UK Government's intention that the introduction of product placement should not increase regulatory burden, we have clarified in guidance that, wherever it is practically possible, we expect broadcasters to take reasonable steps to determine whether the broadcast of such programming contains product placement, and to take appropriate action to ensure compliance.

Final rule and meaning

- 4.57 In view of the additional guidance, as outlined at paragraphs 4.54 and 4.56 above, we have deleted the note about programmes produced after 19 December 2009 (that we had proposed to position after the meaning of "children's programme").
- 4.58 The final rule and meaning are as follows:

- 9.7 Programmes that fall within the permitted genres must not contain product placement if they are:
- a) news programmes; or
 - b) children's programmes.

Meaning of "a children's programme":

In this context a children's programme is "a programme made for a television programme service or an on-demand programme service, and for viewing primarily by persons under the age of sixteen".

²⁴ Available at Annex 2.

Thematic placement

Consultation proposal

- 4.59 Ofcom's 2010 consultation (see paragraphs 4.45 to 4.51 of Annex 3) proposed to introduce the following rule and explanatory text to clarify that thematic placement is prohibited:

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

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

Stakeholder responses

- 4.60 Three respondents agreed with the proposal, considering it was necessary to provide important viewer protection.
- 4.61 Two respondents argued that thematic placement should be allowed but that, to ensure viewer protection, it could perhaps carry its own form of signalling (such as "TPP").
- 4.62 A number of respondents argued that the reference to thematic placement in the Recital to the AVMS Directive was used for illustrative purposes and there was no legislative requirement to refer to the practice in the Code, therefore it would be undesirable and inappropriate for Ofcom to do so. As such, stakeholders submitted that "thematic placement" should not be defined or referred to explicitly in the Code.
- 4.63 The majority of stakeholders expressed concern over the scope and practical application of the proposed definition of thematic placement. While these respondents did not necessarily disagree with the spirit of the proposal, there was a shared view that concerns over thematic placement would be better dealt with through guidance on the proposed Rule 9.10 (editorial independence). Respondents submitted that addressing the issue in guidance would provide the benefit of flexibility in this complex area, particularly while the product placement market develops.
- 4.64 Respondents considered that the manipulation of editorial content in such a way as to compromise the independence of the broadcaster was at the heart of the issue. Many respondents argued that a storyline that appeared naturally within the editorial of a programme should be able to benefit from product placement. Some submitted that it should be possible for scriptwriters to work with product placers when creating storylines, provided that placed products fitted naturally in the resulting script and the arrangement did not undermine the broadcaster's editorial independence.
- 4.65 One respondent believed that there were potential public interest benefits in allowing some types of thematic placement (e.g. for products and services that promote the public good such as health care, or safe driving). The respondent also considered the proposed definition of thematic placement combined three different issues: the potential for product placement to influence storylines/scripts; the placement of a

group (or generic) interest rather than that of an identifiable brand or product; and the disclosure of paid-for references to aims, beliefs or interests.

Ofcom's decision

- 4.66 We note the concerns expressed by respondents, in particular, that “thematic placement” should not be defined in the Code, and that it is a complex concept to apply in practice.
- 4.67 Having taken into account stakeholder views on these issues, we accept that there may be potential difficulties and uncertainties resulting from the application of the proposed definition of thematic placement. In particular, we have considered the following areas:
- whether the relevant legislative requirements permit a product or service that is integral to a storyline (i.e. a filming location) being subject to a product placement arrangement;
 - whether the Code should restrict the point at which a product placement arrangement can be agreed (i.e. before, during or after the editorial creation of a scene), irrespective of whether there is sufficient editorial justification for its inclusion; and
 - what impact the proposed definition of thematic placement may have on advertiser-funded programmes, in which the funder is integrally involved in the creation of the content from the outset.
- 4.68 Having assessed these issues and respondents’ concerns carefully, we have decided to revise our approach to the proposed definition of “thematic placement” in the Code. In our view, where the Recitals to the AVMS Directive refer to the prohibition of “thematic placement”, the intention is to protect the editorial independence of the broadcaster and the programme-maker, and to prevent programmes being used as promotional vehicles for placed products. However, we do not consider that this necessarily precludes all circumstances in which product placement arrangements are entered into before or alongside the creation of scripts, storylines or programme themes.
- 4.69 We consider that the extensive safeguards provided by the product placement Code rules are sufficient to ensure that product placement arrangements do not impair the editorial independence of the broadcaster. In particular, the rules requiring that:
- there must always be sufficient editorial justification for the inclusion of placed products, services and trade marks in programmes (Rule 9.8);
 - placed products, services and trade marks should not be referred to or shown in a promotional way, and the distinction between editorial and advertising content should not be blurred (Rule 9.9); and
 - placed products, services and trade marks should not be referred to or shown in a way that gives them undue prominence (Rule 9.10).
- 4.70 To emphasise the importance of the relevant rules, we have included a revised version of the explanatory text accompanying the proposed Rule 9.10 (editorial independence must not be impaired) (see paragraph 4.76 below).

- 4.71 In relation to the issue of paid-for *generic* references (where no brand is identifiable), stakeholders should note that the inclusion of a reference in a programme of a generic (i.e. non-identifiable) product, service or trade mark, in return for payment or other valuable consideration would meet the statutory definition of product placement. Therefore **the product placement rules would apply in such circumstances.**
- 4.72 Furthermore, we consider that the placement of such generic references carries a potentially increased risk of surreptitious advertising and/or the distortion of editorial content for promotional purposes. We have therefore issued guidance in this area to clarify that, while generic product placement will be subject to the product placement signalling rules, we consider that viewers are less likely to associate a generic, non-branded reference with product placement. As a result, the proposed minimum signalling requirements may not be sufficient to alert viewers to instances of generic placement. To ensure that instances of generic product placement do not raise issues of surreptitious advertising (and therefore potentially breach Rule 9.3), we are advising broadcasters who wish to enter into such generic product placement arrangements to consider taking additional steps to ensure adequate signalling of generic placements (for example, it may be appropriate to provide further information in the programme's end credits naming the placer and stating what the placed product was).
- 4.73 We have also clarified in guidance (and in Note 3 of the introductory text that appears before the product placement rules in the revised Section Nine) that the statutory definition of product placement encompasses the paid-for placement of references in programmes to products, services and trade marks **only**. Therefore the product placement Code rules do not enable the inclusion in programmes of paid-for references to a third party's aims, objectives or beliefs.
- 4.74 We consider that these clarifications – alongside other Code rules requiring that references to placed products, services and trade marks should be editorially justified and not promotional nor unduly prominent – are sufficient to deliver the protections required under the AVMS Directive and Act.
- 4.75 We intend to keep our guidance on these areas under review, updating it as product placement practices become established.

Final rule and explanatory text

- 4.76 The final rule and explanatory text are as follows:

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

There must always be sufficient editorial justification for the inclusion of product placement in programmes. In particular, editorial content must not be created or distorted so that it becomes a vehicle for the purpose of featuring placed products, services or trade marks.

Specialist factual programming

Consultation proposal

- 4.77 Neither the Act nor the AVMS Directive refer specifically to product placement in specialist factual programming. On the basis that stakeholders may have particular concerns about the inclusion of placed products, services or trade marks in such programming, Ofcom's 2010 consultation (see paragraphs 4.52 to 4.60 of Annex 3) sought views on the potential introduction of the following rule and explanatory text:

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

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

9.14 Product placement is not permitted in the following:

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

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

Stakeholder responses

- 4.78 Three respondents supported the prohibition of product placement in specialist factual programming produced under UK jurisdiction. One respondent, who objected generally to the introduction of product placement in any programme, believed that the proposed definition of specialist factual programming was too narrow. It argued that product placement should be prohibited in all factual programmes.
- 4.79 Another respondent believed allowing product placement in specialist factual programming (“where the burden of truth is high”) had the potential to impact on viewer trust in the veracity of the programme. However, the respondent expressed concern that such a ban would impact negatively on funding for this genre and urged Ofcom to either reinstate duties on broadcasters to protect the quality and volume of factual output, or provide some other form of assistance or incentive to maintain funding in this area.
- 4.80 While many other respondents recognised the concerns that might arise from allowing product placement in specialist factual programmes, there was a clear consensus that it would be inappropriate and unnecessary to introduce a blanket product placement ban on such programmes.
- 4.81 There was a general view that other rules proposed in the consultation (those covering editorial independence, undue prominence and the prevention of promotional material) provided adequate viewer protection and would ensure that product placement arrangements did not affect editorial content adversely. A number

of respondents representing broadcasters and programme-makers also said that decisions on the appropriateness of including product placement in individual specialist factual programmes should be left to them: neither programme-makers nor broadcasters would wish to make programmes that undermined viewer trust.

- 4.82 Many respondents agreed with a concern Ofcom had reflected in its consultation – namely that determining what constitutes a ‘specialist factual programme’ was likely to present broadcasters and programme-makers with practical difficulties. The subjective nature of the genre was likely to prove problematic when trying to assess whether a programme could include product placement. Respondents said that Ofcom would need to provide detailed and ongoing guidance on the suitability of different programmes. As such, respondents considered that the lack of regulatory certainty was a clear disincentive against introducing such a rule.
- 4.83 Respondents also remarked that the AVMS Directive and the Act set out a clear framework for the types of programmes that may contain product placement. Many believed that the prohibition on product placement in news, current affairs and consumer advice programmes addressed the potential concerns. Respondents believed that any rules introduced by Ofcom should be proportionate and not impose unnecessary regulatory burdens. One broadcaster commented that such a prohibition would put the UK at a disadvantage and could hamper international deals.
- 4.84 Concern was expressed that factual programming is a key public service genre that already faces a funding gap. Not allowing product placement within it would be detrimental to the genre (although no quantitative evidence was provided). It was argued that such a prohibition could lead to fewer commissions for ‘serious’ documentaries, with these being replaced with ‘lighter’ factual entertainment programmes in which product placement is permitted.
- 4.85 Some respondents put forward that, if Ofcom introduced any restriction in this area, it may be more appropriate to limit product placement in specialist factual programmes rather than introduce an outright ban. For example, it could be allowed only if the placed product had no immediate relationship to the primary subject matter of the programme.
- 4.86 One respondent, Which?, quoted consumer research that it had carried out on product placement, which showed an even split between respondents who objected to product placement in factual programming, those who supported it, and those who had no strong feeling either way. Which? noted, however, that its research did not distinguish between specialist factual programming and lighter entertainment factual programming.

Ofcom’s decision

- 4.87 We have noted the responses, particularly the views on the difficulties in classifying “specialist factual programming” and the consequent risk of regulatory uncertainty in complying with a rule applying to this very broad genre.
- 4.88 We have considered the suggestion of a tailored set of product placement rules for this genre that would allow placement of “background” products only (i.e. not those relevant or related to the primary subject matter of the programme). However, we are of the view that such a two-tier approach to the regulation of product placement is not in the interest of stakeholders. It would be likely to lead to confusion and a lack of clarity. Further, issues around the classification of specialist factual programming would remain. There would also be additional difficulties arising from the need to

determine the nature of a placed product's relationship to a programme's primary subject matter.

- 4.89 We have taken into account the argument put forward by a number of stakeholders that the prohibition of product placement in current affairs and consumer advice programmes produced under UK jurisdiction (as required by the Act) addresses many of the concerns in the area of specialist factual programming. We expect broadcasters to give careful consideration to whether a documentary falls within these prohibited genres (see initial guidance at Annex 2).
- 4.90 In addition, we consider that there are several other relevant safeguards provided by the Code – in particular, the rules requiring that: broadcasters must maintain their editorial independence, product placement must be editorially justified and included in programmes in a way that is neither promotional nor unduly prominent. We consider that these are sufficient to prevent product placement having an adverse effect on specialist factual programming.
- 4.91 In relation to the proposal that Ofcom could compensate for prohibiting product placement in specialist factual programming by providing broadcasters with other incentives, it should be noted that the alternative route suggested is not available to Ofcom. We have no power under the Act to impose quotas for the volume of or spending on such programmes.
- 4.92 Having taken account of respondents' views in this area, we have decided not to include a rule in the Code prohibiting product placement in specialist factual programming produced under UK jurisdiction.

Final explanatory note and rule

- 4.93 The final explanatory note and rule are as follows:

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

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

9.12 Product placement is not permitted in the following:

- a) religious programmes;
- b) consumer advice programmes; or
- c) current affairs programmes.

Additional prohibited categories and advertising scheduling restrictions

Consultation proposal

- 4.94 The Act specifies a range of products and services that are prohibited from product placement in programmes produced under UK jurisdiction. In addition to those products and services specified in the Act, Ofcom's 2010 consultation (see

paragraphs 4.61 to 4.71 of Annex 3) proposed a rule prohibiting the product placement in programmes produced under UK jurisdiction of any product, service or trade mark that cannot be advertised on television.

- 4.95 While we proposed that product placement arrangements must comply with television advertising prohibitions, we also proposed that it was not necessary to apply television advertising scheduling restrictions to product placement arrangements (see paragraphs 4.66 to 4.70 of Annex 3 for further information).
- 4.96 The following proposed meaning, rule, and note were included in the consultation:

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

HFSS products are defined by the nutrient profiling scheme which was devised by the UK’s Food Standards Agency for use by Ofcom. This can be found at

<http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod>

Stakeholder responses

- 4.97 A small number of broadcasters did not believe that Ofcom should introduce any further prohibition on the type of products, services or trade marks that can be product placed. They argued that the UK already has significant restrictions in place (as a result of the AVMS Directive and the Act). Some argued that product placement is inherently different from advertising as it forms part of editorial material and would not be accompanied by the promotional elements associated with advertising. Concern was expressed that the proposal conflated advertising and editorial and was therefore unnecessary, confusing and disproportionate.
- 4.98 However, the majority of stakeholders who responded to these proposals (including those representing major broadcasters, the advertising industry and consumer groups) agreed that it was appropriate for product placement rules to reflect advertising prohibitions.
- 4.99 There was also general support for the proposal not to apply advertising scheduling restrictions to product placement arrangements.
- 4.100 However, the British Heart Foundation, the National Heart Forum, the Children’s Food Campaign, and the Campaign for Press and Broadcasting Freedom considered that additional scheduling restrictions should apply to product placement.
- 4.101 One of these organisations believed that product placement should be permitted in strict conformity with advertising scheduling restrictions so that no advertiser could use product placement as a means of circumventing advertising regulations. It argued that, despite the prohibition of product placement in children’s programming, large numbers of children would watch programmes not specifically directed at them.

The respondent had concerns about the promotion of HFSS foods and drinks in acquired programming as well as the commercialisation of childhood more generally.

- 4.102 The three other organisations echoed this concern, stating that a prohibition on HFSS food and drink product placement should apply to all programmes broadcast before 9pm (i.e. not only those programmes produced under UK jurisdiction).
- 4.103 The Food and Drink Federation (“the FDF”) raised concerns that Ofcom had proposed to use the nutrient profiling scheme devised by the Food Standards Agency (“the FSA”) to define HFSS food and drink products, for the purposes of enforcing the relevant product placement rule.
- 4.104 The FDF’s concerns were two-fold: firstly, it argued that the nutrient profiling model was developed solely for the purposes of supporting Ofcom’s restrictions on television advertising around programmes watched by children. It continued that food and drink advertisers have been “repeatedly assured” that this model would not be used for any other purpose other than advertising. Secondly, the FDF said that the scheme was never designed as a tool for distinguishing which products can benefit from paid-for product placement within programmes watched by both children and adults alike. It therefore considered it unacceptable that Ofcom had proposed to extend the use of the nutrient profiling model in this way, without any prior consultation with the food and drink industry, relevant expert bodies (including the FSA) and other stakeholders.

Ofcom’s decision

- 4.105 We acknowledge the inherent differences between advertising and product placement. However, we remain of the view that it would be inappropriate for a product, service or trade mark that cannot be advertised on television to be subject to a product placement arrangement. Therefore, to prevent circumvention of advertising prohibitions, we are including a rule in the Code prohibiting the placement of products, services or trade marks that cannot be advertised on television. We note that there is widespread agreement with this proposal across all areas of the industry and amongst consumer groups.
- 4.106 We note the view of some respondents who argued against our proposal not to include a requirement that the advertising scheduling restrictions should apply to product placement. We also note that these respondents were of the view that acquired programmes containing the product placement of HFSS food and drink products should not be broadcast before 9pm. However, it should be noted that applying the advertising scheduling restrictions to programmes containing product placement would not have the effect of preventing the broadcast before 9pm of acquired programmes which include the product placement of HFSS products. Advertising scheduling rules prevent HFSS food and drink products from being advertised around programmes “likely to have a particular appeal” to children. Therefore there is no absolute prohibition on the advertising of HFSS food and drink products before 9pm²⁵.
- 4.107 The restrictions set out in the AVMS Directive already prohibit product placement in all children’s programmes (whether UK produced or acquired). Further, the UK Government has made clear its concerns about the potential impact of allowing the

²⁵ Full information on Ofcom’s consideration of advertising restrictions for HFSS food and drink products can be viewed at:
http://stakeholders.ofcom.org.uk/binaries/consultations/foodads_new/summary/foodads3.pdf

product placement of HFSS food and drink products in programmes by prohibiting this practice in all programmes produced under UK jurisdiction. Therefore, it is only in acquired non-children's programmes (that fall within the permitted genres) that the product placement of HFSS food and drink products is permitted. This maintains the current position (as to date the Code has included an exemption for acquired programmes from the longstanding prohibition on product placement).

- 4.108 In such cases, the Code's rules on editorial independence, prevention of promotion and undue prominence of placed products, services and trade marks will continue to apply. Given the extensive safeguards already in place, we consider it is unnecessary and disproportionate to extend the restrictions further.
- 4.109 Therefore, in accordance with our proposal in this area, we are not introducing a rule requiring advertising scheduling restrictions to apply to product placement arrangements. As set out in the consultation, there are extremely limited circumstances in which a product could be placed in a programme around which it could not be advertised. In such cases, we consider the Code will contain sufficient safeguards to protect viewers from any potential harm. Again, we note there is general agreement with this approach.
- 4.110 We note the FDF's concern regarding the use of the nutrient profiling scheme to determine what constitutes an HFSS product for the purposes of product placement. In reaching our decision to apply the nutrient profiling scheme to product placement, we have taken into account a number of factors, as follows:
- 4.110.1 Use of the nutrient profiling model other than to regulate spot advertising: we acknowledge that the model's intended purpose was to assist Ofcom in restricting television advertising of less healthy foods and drinks to children. However, there is already a clear precedent of the model being used to regulate content on television other than spot advertising – it is currently applied to sponsorship credits (which must comply with advertising scheduling rules).
- 4.110.2 Wording of the Act: we have also taken into account that the Government's legislation included the phrase "a food or a drink high in fat, salt or sugar" in relation to the prohibition of product placement of these products in UK-produced programmes. The nutrient profiling model is widely understood as the means by which foods and drinks are defined as "high in fat, salt or sugar" for the purposes of regulating the television advertising and sponsorship of such products. Therefore, we consider the Government's use of the phrase "a food or a drink high in fat, salt or sugar" in the Act indicates its intention that the model should be used to define HFSS products for the purposes of product placement.
- 4.110.3 The Government's approach: further, we note that the Government stated its intention, when legislating for a blanket prohibition of the product placement of HFSS food and drink products, to seek certainty in terms of potential effects on health and welfare, and especially children's health and welfare. It also took particular account of the fact that children's viewing is not confined to children's programmes. In the Government's statement following its most recent consultation on product placement, it said: "In the circumstances we intend to legislate for a complete bar on placing these

products. This is an important aspect of the cautious approach that we need to take²⁶.

- 4.110.4 Department of Health's position²⁷: in relation to the model's applicability to broadcasting regulation involving all programmes produced under UK jurisdiction (rather than programmes specifically directed at, or of particular appeal to, children), we sought the Department of Health's view. In brief, the suitability of the model for applicability to adults was considered by expert scientists in 2005. They concluded²⁸ that it was generally appropriate for use in relation to all people over the age of five.
- 4.110.5 Consistency: in light of the above, and taking into account the need for clarity and consistency in the definition of HFSS food and drink products across different types of commercial references broadcast on television, we consider it is appropriate to use the nutrient profiling model for the purposes of product placement.

Final rule and note

4.111 The final rule (with minor revisions for clarity and accuracy²⁹) and note are as follows:

- 9.13 The product placement of the following is prohibited:
- a) alcoholic drinks;
 - b) foods or drinks high in fat, salt or sugar ("HFSS");
 - c) gambling;
 - d) infant formula (baby milk), including follow-on formula;
 - e) all medicinal products;
 - f) electronic or smokeless cigarettes, cigarette lighters, cigarette papers, or pipes intended for smoking; or
 - g) any product, service or trade mark that is not allowed to be advertised on television.

HFSS food and drink products are defined by the nutrient profiling scheme which was devised by the UK's Food Standards Agency for use by Ofcom. This can be found at:

<http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod>

²⁶ Available at:

http://webarchive.nationalarchives.gov.uk/+/http://www.culture.gov.uk/reference_library/minister_speeches/6624.aspx

²⁷ From 1 October 2010, responsibility for nutrition policy transferred from the Food Standards Agency to the Department of Health in England and to the Assembly Government in Wales.

²⁸ A paper documenting this can be found at:

<http://www.food.gov.uk/multimedia/pdfs/nutprofmodelforadults.pdf>

²⁹ Stakeholders should note that the prohibited products listed at Rule 9.13(f) were omitted in error from the proposed rule in the 2010 consultation. These prohibitions are required explicitly by the Act (see Schedule 11A(6)(2)(a)).

Signalling – audio signal

Consultation proposal

- 4.112 The Act requires that broadcasters signal the fact that a programme produced under UK jurisdiction contains product placement. Further, the Act specifies at what junctures in the programme this should be done.
- 4.113 As part of the 2010 consultation, Ofcom conducted an initial Equality Impact Assessment (EIA), taking into account that product placement includes the placement of references in audio, as well as in vision. We therefore considered the signalling requirements in relation to visually impaired members of the audience, resulting in Ofcom's proposal for the use of a universal audio signal, as well as a visual one.
- 4.114 Ofcom's 2010 consultation (see paragraphs 4.72 to 4.97 of Annex 3) therefore proposed to introduce the following introductory note explaining to which programmes the signalling rules apply, and the following proposed rule and explanatory note regarding the signalling of product placement:

In addition to Rules 9.8 to 9.15, Rules 9.16 and 9.17 also apply to programmes (including films made for cinema) produced or commissioned by the provider of the television programme service or any person connected with that provider:

- 9.16 Product placement must be signalled clearly, by means of a universal neutral logo and universal audio signal, as follows:
- at the beginning of the programme in which the placement appears;
 - when the programme recommences after commercial breaks; and
 - at the end of the programme.

....

Acquired programmes and signalling

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

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

Stakeholder responses

- 4.115 There was strong opposition to the proposed requirement to signal product placement in sound as well as vision. Of the 25 stakeholders who responded to the questions on the proposed signalling requirements, 24 disagreed with the proposed audio signal, considering any potential benefits were heavily outweighed by

disadvantages (see further below). Only one respondent (who opposed the introduction of product placement generally) agreed with the proposed audio signal.

4.116 In summary, the following key concerns were cited:

- 4.116.1 Viewer irritation: all stakeholders who voiced concern about an audio signal believed that viewers would be likely to find it annoying and intrusive. Further, they thought that audience irritation would be increased as a result of the repetitive nature of signalling.
- 4.116.2 The consumer organisation Which? quoted research it had conducted on a group of 1,005 respondents. Fifty-one per cent of respondents wanted some form of product placement signalling. However, of those respondents, only 17% thought the signal should be in audio, while 41% would prefer an image or logo that appeared on screen. [The remainder favoured text appearing on screen (24%), or did not know (17%)].
- 4.116.3 Undue prominence: stakeholders considered that an audio signal would draw a disproportionate amount of attention to product placement. Many were concerned that this would act as a deterrent to potential placers.
- 4.116.4 Proportionality: some respondents commented that the majority of instances of product placement are likely to be visual and therefore not always evident to visually impaired members of the audience. It was also noted that visually impaired viewers make up a small percentage of the audience (one respondent quoted an estimate of 2 million blind or partially sighted people in the UK³⁰ and pointed to 2009 UK population figures from the Office of National Statistics (61,792,000) to illustrate that only 3.24% of the total population is blind or partially sighted). A number of stakeholders therefore considered that the transmission of an audio signal at all the times required by the Act would be disproportionate. The respondents did nevertheless acknowledge the important need for all audience members to be considered, and many suggested that if an audio signal was seen as desirable, this was best delivered via Audio Description (“AD”) services.

4.117 We received no responses to the consultation from stakeholders representing the interests of visually-impaired audience members. We therefore sought advice from the Royal National Institute for Blind People (“RNIB”) on the issue of the proposed audio signal. The RNIB advised us that it does not hold evidence about its members’ views on this matter. However, it provided us with an expert view, in which it raised concerns about certain aspects of the proposed audio signal. It suggested that the use of a ‘beep’ or any similar sound would be meaningless to visually impaired audience members without further education. In addition, it was of the view that audio signals may be best reserved for other purposes, such as alerting visually-impaired audience members to the availability of AD on a particular programme. The advice indicated that Ofcom could consider an audible indication of product placement within AD services. For example at the point when the visual signal appears, the AD could state “This programme contains product placement”.

³⁰ “The economic impact of partial sight and blindness in the UK adult population”. Report by Access Economics Pty Limited, July 2009, available at: http://www.rnib.org.uk/aboutus/Research/reports/eyehealth/Documents/FSUK_Report.pdf

Ofcom's decision

- 4.118 Based on the strength and uniformity of the views expressed in stakeholder responses, and the expert advice we have received from the RNIB on this issue, we have decided not to require the use of a universal audio signal. However, we are amending the guidance that accompanies the Code on Television Access Services to specify that AD should be used – where practicable and not detrimental to needs of the visually impaired audience – to alert the audience to the presence of product placement in programmes that require signalling.
- 4.119 Further detail on this decision is included within our Full Equality Impact Assessment at Annex 5.

Signalling – visual signal

Consultation proposal

- 4.120 As noted above, in the 2010 consultation, Ofcom made the following proposals in relation to the signalling requirements:

In addition to Rules 9.8 to 9.15, Rules 9.16 and 9.17 also apply to programmes (including films made for cinema) produced or commissioned by the provider of the television programme service or any person connected with that provider:

- 9.16 Product placement must be signalled clearly, by means of a universal neutral logo and universal audio signal, as follows:
- at the beginning of the programme in which the placement appears;
 - when the programme recommences after commercial breaks; and
 - at the end of the programme.

....

Acquired programmes and signalling

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

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

- 4.121 To help ensure that audiences can readily identify instances of product placement, and to prevent signalling being used as a marketing opportunity, we proposed that the visual logo used to identify product placement be universal and neutral in nature.
- 4.122 The consultation specified potential criteria for the logo and sought stakeholders' views on whether Ofcom should specify this criteria in the Code or in guidance (see paragraphs 4.72 to 4.80 of Annex 3 for further details).

Stakeholder responses

- 4.123 There was broad agreement that programmes containing product placement should be identified via a neutral visual logo.
- 4.124 Some broadcasters submitted that they would prefer the ability to customize the logo to reflect their channel's branding, rather than using a universal logo, as proposed.
- 4.125 Some respondents also raised the issue of whether the logo could be amended to take into account language variations (for instance, the issue of the proposed use of the letters "P" or "PP" in the logo to indicate product placement by those Ofcom licensees who do not broadcast in English).
- 4.126 In relation to other specific criteria proposed for the visual signal, most respondents who commented stated that they would prefer the flexibility to place the logo in which ever corner of the screen was most appropriate (e.g. so as not to conflict with other on-screen graphics). Those respondents who commented on the proposed size of the logo generally submitted that it should be a similar size to a channel on-screen logo. On the issue of the duration that the logo should appear on-screen, those respondents who commented generally suggested a duration of 2 to 3 seconds.
- 4.127 As regards the consultation question on whether the criteria for the visual signal should be included in the Code itself or in guidance to accompany the Code, some non-broadcaster stakeholders believed the Code was the most appropriate option. Those broadcasters who responded to this question submitted that including the criteria within the guidance, rather than the Code, would provide Ofcom with flexibility to make amendments easily.

Ofcom's decision

- 4.128 We acknowledge that some broadcasters wish to have scope to tailor a logo to reflect brand identity. However, we consider that at this stage, when product placement signalling will be unfamiliar to UK audiences, the logo used should be the same in style, size, colour and duration across all channels to avoid audience confusion.
- 4.129 Having noted the views expressed by stakeholders and other evidence, we have included a rule requiring that product placement in relevant programmes must be signalled by means of a universal neutral logo. We have taken into account respondents' submissions on the advantage of flexibility as a result of Ofcom including technical criteria for a universal logo in guidance, rather than in the Code itself. We have therefore decided to include a note in the Code alongside the signalling rule which explains that to meet the requirements of the rule, broadcasters must apply the criteria set out in an Annex to the guidance to Section Nine of the Code. This will enable Ofcom to update or amend the specific technical criteria relatively easily, should it be necessary or appropriate to do so.
- 4.130 During the implementation period, we intend to issue this Annex to broadcasters. It will contain a set of technical criteria which will define the universal logo, including the following:
- The letters PP in a specified black and white logo.
 - The logo must be placed within the 4:3 safe area, but may appear in any corner of the screen, provided it does not conflict with other on-screen graphics or logos.

- Minimum logo size, brightness and transparency (with relevant technical criteria).
- The logo must appear at the required points in the programme for a duration of no less than three seconds.

4.131 For those Ofcom licensed services which do not broadcast in English, we will offer some flexibility in relation to the letter used in the logo, taking into account language differences and viewer familiarity with product placement logos that may be used in other countries. We have included reference to this in the guidance³¹.

Final introductory note, rule and explanatory text

4.132 The final introductory note, rule (with a minor revision for clarity) and explanatory text are as follows:

In addition to Rules 9.6 to 9.13, Rule 9.14 also applies to programmes (including films made for cinema) produced or commissioned by the provider of the television programme service or any person connected with that provider:

9.14 Product placement must be signalled clearly, by means of the universal neutral logo, as follows:

- a) at the beginning of the programme in which the product placement appears;
- b) when the programme recommences after commercial breaks; and
- c) at the end of the programme.

The universal neutral logo is defined by the criteria set out in Annex 1 to the guidance accompanying Section Nine of the Code.

Acquired programmes and signalling:

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

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

Signalling – listing placed products

Consultation proposal

4.133 As part of the signalling requirement, we proposed that broadcasters make available, in a non-promotional manner, a list of products, services or trade marks placed in a programme. We made this proposal on the basis that viewers may wish to have this

³¹ Available at Annex 2.

information to enable them to differentiate between placed products and those that feature for solely editorial reasons (see paragraphs 4.85 to 4.87 of Annex 3).

4.134 The following rule and explanatory note were proposed:

9.17 Broadcasters must make available to the audience a list of those products, services or trade marks that have featured in a programme as a result of a product placement arrangement. This must be provided in a brief, non-promotional manner, either:

- a) in the programme's end credits; or
- b) on the broadcaster's website, with a reference to this given at the end of the programme.

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

Acquired programmes and signalling

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

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

Stakeholder responses

4.135 Some respondents argued that a requirement to list such information in end credits was disproportionate and onerous. In general, broadcasters were of the view that they should be given flexibility to decide whether such information was included in end credits or provided on websites or by other means.

4.136 Others submitted that the proposed requirement in relation to the list appearing before any minimisation of the credits was problematic, and that some programmes did not have end credits (e.g. blocks of music programming).

4.137 Overall, respondents accepted that if such information was broadcast, it could only be done so in a non-promotional manner.

Ofcom's decision

4.138 Based on the views expressed by the respondents, and given that there is no explicit requirement in legislation for details of placed products, services or trade marks to be provided in programmes, we have decided not to include in the Code a requirement that a list of placed products be made available to viewers.

4.139 Instead, we have stated in guidance³² that if broadcasters wish to provide viewers with a list of placed products, they may do so in the end credits or by other means. However, if such information is provided in programme credits, to comply with Rules 9.9 and 9.10 (no promotion; no undue prominence), this may only be done in a neutral, non-promotional manner, without the inclusion of any information about the placed products, services or trade marks (e.g. no brand slogans; advertising messages etc).

Signalling – audience awareness

Consultation proposal

4.140 To ensure that audiences understand from the outset what the product placement signal means, and the signalling therefore achieves its purpose, the consultation proposed that broadcasters take two specific actions:

- i. That, for the first month that a broadcaster transmits programmes including the signal, the signal is accompanied by additional text stating “This programme contains product placement”.
- ii. That, during the first six months of the rules coming into force, any broadcaster which transmits a programme that must be signalled must also transmit a specific audience awareness message. The consultation proposed potential key messages that Ofcom would be likely to require in such an audience awareness campaign and sought stakeholders’ views.

(see paragraphs 4.88 to 4.96 of Annex 3 for further details).

Stakeholder responses

4.141 Some respondents agreed that it would be beneficial to include explanatory text at the start of each programme containing product placement for the first month after new rules come into force. However, the majority of broadcasters who responded on this issue considered that the proposed requirement for additional text was disproportionate and would be unnecessarily intrusive for the audience, particularly taking into account the impact and effect of the audience awareness campaign in informing the audience about the meaning of the signal.

4.142 In general, respondents favoured the concept of an audience awareness campaign. Broadcasters were also generally supportive of the transmission of an audience awareness campaign containing key messages.

4.143 However, some respondents appeared to misunderstand Ofcom’s proposal, believing that Ofcom had suggested that the campaign should be broadcast for a total duration of six months (rather than *within* the first six months of the new rules being in force). As such, they considered the proposal to be excessive, disproportionate and likely to adversely affect the viewing experience.

4.144 Those respondents who referred to the duration that they considered any such audience awareness campaign should run for made suggestions ranging from one to three months.

³² Available at Annex 2.

Ofcom's decision

- 4.145 Stakeholders should refer to Ofcom's decision on the implementation period before the revised Section Nine of the Code comes into force. This can be found in Part 3, paragraphs 3.17 to 3.18.
- 4.146 After the publication of this statement, and before the new rules come into force, Ofcom will be issuing the technical criteria for the universal logo, and will also issue a formal request to all its television licensees in relation to how audiences are made aware of the meaning of the logo.
- 4.147 The formal request will apply to any broadcaster which transmits a programme requiring signalling during the first six months of the rules being in force (**i.e. between 28 February 2011 and 31 August 2011**).
- 4.148 Our formal request will require³³ those broadcasters to confirm to Ofcom by a specified deadline the means by which they intend to make their audience aware of the meaning of the universal logo. The request will also set out relevant information and possible options for broadcasters to adopt, as follows:
- a number of key messages which the awareness campaign or announcement should contain to explain the meaning of the logo;
 - Option 1: the broadcast of a specially created promo/campaign for four to six weeks around the time that the rules come into force (it is our understanding that some of the larger Ofcom licensees wish to transmit a shared campaign that they commission together); or
 - Option 2: if the broadcaster prefers, it may transmit a slate/announcement containing the key messages in text and with a voiceover, around the period that it begins to broadcast a programme or programmes requiring signalling during the first six months that the rules are in force.
- 4.149 We have taken into account stakeholders' responses on the proposal to require the transmission of additional on-screen text alongside the signal for the first month. We have also considered the following factors:
- As set out above, we are proceeding with the requirement for all broadcasters to transmit a universal product placement logo on programmes that require signalling. We consider the universality of the logo will help audiences to understand its meaning more rapidly than had we decided that channels could use individual logos, therefore additional information in text, is unnecessary.
 - Some of the larger broadcasters have given assurances to Ofcom that they intend to transmit a shared audience awareness promo/campaign across the first four to six week period that the rules come into force. In view of this approach, the campaign is therefore likely to reach an extremely high audience share, and we do not consider the proposed additional on-screen text is necessary to ensure that audiences understand the meaning of the universal logo.
 - A number of smaller broadcasters have indicated to Ofcom that they would prefer to transmit the audience awareness information in text form in a slate before the broadcast of signalled programmes during the first six months that the rules are in

³³ Under sub-conditions (2) and (3) of the "Compliance" condition in broadcasters' licences.

force. Given that this text will set out the key messages and will precede the signalled programme or programmes, we consider it would be disproportionate for such broadcasters to be required, in addition, to transmit the proposed additional text alongside the signal when it appears on the programme itself.

4.150 We consider that the requirement for the universal product placement logo, and the actions that broadcasters intend to take as set out above, are likely to achieve an appropriate level of audience awareness about the meaning of the signal. Therefore, we have decided not to proceed with the proposal to require the transmission of the additional text.

4.151 However, broadcasters should note that if, following Ofcom's formal request (see paragraphs 4.146 to 4.148, above):

- a broadcaster fails to provide Ofcom with confirmation of how it intends to make its audience aware of the meaning of the universal logo; or
- Ofcom considers that a broadcaster's stated audience awareness campaign or announcement is insufficient to achieve its intended purposes, then

Ofcom is likely to issue a direction to the broadcaster concerned, for example requiring it to transmit a specified audience awareness message and/or the additional text (as referred to at paragraph 4.140(i), above).

Signalling - other issues raised

4.152 Both the BBC and Channel 4 raised a specific issue in relation to the signalling of product placement in films made for cinematic release. They expressed concern that, under the Code, product placement in those films to which they had provided funding (via BBC Films and Film4, respectively) would have to be signalled on their services. Both stakeholders argued that, for the purposes of the product placement rules, investing in such feature films did not amount to producing or commissioning them. They also pointed to the fact that product placement in other feature films broadcast on UK television services will not be required to be signalled (as is the case for all acquired programmes).

4.153 Further, the BBC stated that "there is no sense in which the limited degree of control obtained through the BBC's investment can be considered to be in any way equivalent to the control obtained when TV programmes are commissioned". Channel 4 also stated that "In many cases, Film4 invests only a small proportion of a film's total production budget, and does not exercise ultimate control over the editorial or business decisions relating to the film (or any product placement contained in the film)".

4.154 In relation to the impacts cited on this issue, the BBC stated that it "will not wish to show films where it is required to signal product placement save in the most exceptional cases". It considered that this may lead to reduction in investment from the BBC "in a range of innovative and artistically valuable independent films". Channel 4 also argued that, as a large number of US films containing product placement will be shown on UK television without signalling, it will be confusing to viewers to see signalling on a small number of films with UK-backing, and might suggest that only the latter contain product placement.

Ofcom's response

- 4.155 We acknowledge that the cases raised by the BBC and Channel 4 are unusual as the vast majority of UK broadcasters do not commission or produce feature films for cinematic release.
- 4.156 However, we note that Schedule 11A of the Act requires the signalling of product placement in programmes that have been produced or commissioned by the broadcaster (or a connected person). Further, Article 1(1)(b) of the AVMS Directive defines the term "programme" and gives examples of it which include "feature-length films". Therefore, it is our view that there is no scope within the requirements of the AVMS Directive and the Act to waive the signalling requirements in these circumstances.
- 4.157 Furthermore, we are not convinced that the arguments raised merit a different policy approach in these circumstances. We accept that the degree of editorial control a broadcaster has in respect of a film in which it has invested may differ from that it has in relation to a commissioned programme. However, the broadcaster in question still benefits directly from the inclusion of the product placement in the film (as a result of the product placement revenue offsetting production costs). We consider that the potential financial benefits a broadcaster may gain from product placement arrangements goes to the heart of the legislation's intention in respect of the purpose of signalling.
- 4.158 Regarding Channel 4's concern about the signalling of product placement in films produced or commissioned by UK broadcasters but not in US films, we consider that this position is consistent with the signalling of product placement in programmes produced under UK jurisdiction, but not acquired programmes. Further, it is open to any broadcaster to make its audience aware of product placement in an acquired programme by use of the product placement signal, if it wishes to do so.

Note to licensees

Requirement to provide revenue data relating to product placement

- 4.159 Ofcom licensees should note that, from January 2012, Ofcom is planning to request data on all net revenue that licensed broadcasters and the producers they commission have generated as a result of product placement deals in relation to programming on the licensee's service/s.
- 4.160 The data Ofcom is intending to request will relate to product placement arrangements made directly between the broadcaster and product placers, as well as to those arrangements involving programme producers and/or other third parties (net of any production and/or agency fees).
- 4.161 Broadcasters will be required to provide product placement revenue information under powers set out in the Broadcasting Act 1990³⁴. As part of Ofcom's annual data

³⁴ Section 4(1)(c) and 19 of the 1990 Broadcasting Act (1) requires that the Licensee shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, returns, estimates, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it by or under the 1990 Act, the 1996 Act, or the Communications Act and in particular (but without prejudice to the generality of the foregoing): Section 4(1)(c) and 19 of the 1990 Act (c) annual statements of his qualifying revenue in respect of each entire accounting period of his in such form as Ofcom shall require.

collection³⁵, revenue information is provided by broadcasters to Ofcom through the Market Intelligence Database (MID). Licensees are required to provide turnover information to Ofcom in accordance with their licence condition regarding “General provision of information to Ofcom”. We are proposing to begin collecting product placement 2011 calendar year data from January 2012.

- 4.162 **We would welcome the views of stakeholders on this proposal.** If you have any comments please contact Chris Wynn in Ofcom’s Market Intelligence team (chris.wynn@ofcom.org.uk).

³⁵ Section 358(2)(b) of the Communications Act requires Ofcom to prepare a factual and statistical report for that period on the provision of those services and on the state of the market in which they are provided. Section 358(3)(e) requires Ofcom to report on the financial condition during that period of the market in which those services are provided and of the market in which programmes for such services are produced.

Part 5

Sponsorship

Introduction

- 5.1 This part of the statement sets out stakeholders' responses to Ofcom's proposed revisions to the sponsorship rules.
- 5.2 Limited changes to the rules were proposed in the 2009 consultation. More significant revisions were proposed in the 2010 consultation that took into account changes made possible as a result of the removal of the prohibition on product placement. As stated in Part 3 (see paragraph 3.17 to 3.18), where proposals made in 2009 were superseded by proposals in 2010, we have reflected only those responses to the 2010 consultation, unless an issue was raised in response to the 2009 consultation that it is still appropriate for us to address in this statement.
- 5.3 Set out below is a summary of each proposal, the key issues raised in stakeholder responses, and Ofcom's decision, including (where applicable) the final rule(s), meaning(s), and/or explanatory text, which is now included in the revised Section Nine of the Code. The issues are set out below in the following order:
- introductory meanings and explanatory text (paragraphs 5.4 to 5.14 below);
 - sponsor references (product placement) within programmes (paragraphs 5.15 to 5.28 below);
 - identifying sponsorship arrangements (sponsorship credits) (paragraphs 5.29 to 5.39 below);
 - scheduling of sponsorship credits (paragraphs 5.40 to 5.54 below);
 - content of sponsorship credits (paragraphs 5.55 to 5.86 below);
 - internal sponsorship credits and product placement restrictions (paragraphs 5.87 to 5.96 below); and
 - sponsorship credits and programme trails (paragraphs 5.97 to 5.101 below).

Introductory meanings and explanatory text

Consultation proposal

- 5.4 In the 2009 consultation (see paragraphs 6.97 to 6.100 of Annex 4), Ofcom proposed the following introductory meanings and explanatory text for the sponsorship rules.
- 5.5 This text was subject to amendments in the 2010 consultation (indicated below by strike-through text for deletions proposed in 2010 and underlined text for insertions proposed in 2010):

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

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

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

5.6 This was to replace the introductory text in the existing Code which states:

Meaning of "sponsored programme", "sponsored channel" and "sponsor":

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

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

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

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

Stakeholder responses

- 5.7 Eight respondents agreed with the proposed introductory meanings.
- 5.8 Four respondents disagreed with the proposed meanings, considering that they went further than the Audiovisual Media Services (“AVMS”) Directive, specifically in including references to the sponsor’s activities within the definition of a “sponsor reference”. One respondent considered the term “activities” had the capacity to cause confusion and unnecessarily limits a broadcaster’s scope for finding legitimate funders for its programmes.
- 5.9 One broadcaster suggested simplifying the term “natural person” to “person”, for the sake of clarity.

Ofcom’s decision

- 5.10 We note the views expressed by some respondents in 2009 about the scope of the meaning “sponsor reference”. A sponsor reference is a form of commercial reference. As stated in Part 6 (paragraphs 6.1 to 6.13) we have defined a commercial reference as a reference to a product, service or trade mark.
- 5.11 For consistency, we have amended the meaning of a “sponsor reference” to state that it includes references to a product, service or trade mark of the sponsor. In our view, the statutory definition of “trade mark” now set out in the Communications Act 2003 (“the Act”) (see Part 6, paragraphs 6.1 to 6.13) encompasses such aspects of the sponsor’s business as its image and logo.
- 5.12 We have therefore removed references to the “activities” of the sponsor from the meaning. However, we remind stakeholders that the scope for sponsored programmes to refer to the activities of the sponsor is restricted by other rules included in the revised Section Nine of the Code (for example: Rule 9.1 (editorial independence, Rule 9.2 (distinction) and Rule 9.3 (surreptitious advertising) – see Part 6 for further details.
- 5.13 In the meaning of a sponsor, we have replaced the term “natural person” with “individual”. The purpose of including the proposed wording was to reflect the content of the AVMS Directive, which uses the term to distinguish between a “legal person” – for example, an entity such as a corporation – and an individual. We consider the term “individual” is clearer and have therefore revised the rule accordingly.

Final meanings and explanatory text

- 5.14 The final meanings and explanatory text are as follows:

Meaning of “sponsored programming”:

Sponsored programming (which may include a programme, channel, programme segment or block of programmes) is programming that has had some or all of its costs met by a sponsor. It includes advertiser-funded programmes.

Meaning of “sponsor”:

Any public or private undertaking or individual (other than a broadcaster or programme producer) who is funding the programming with a view to promoting its products, services, trade marks and/or its activities.

Meaning of “sponsor reference”:

Any reference to the sponsor’s products, services or trade marks.

Meaning of “costs”:

Any part of the costs connected to the production or broadcast of the programming.

Note:

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

Sponsor references (product placement) within programmes

Consultation proposal

- 5.15 In the 2010 consultation (see paragraphs 5.17 to 5.25 of Annex 3), we proposed to introduce the following explanatory text in relation to the content of sponsored output:

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

- 5.16 This was to replace Rule 9.5 of the existing Code which states:

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

- 5.17 This rule was in place to ensure that sponsorship arrangements did not lead to the circumvention of the historical prohibition on product placement. In view of the removal of this prohibition, in the 2010 consultation, we proposed to allow sponsors to product place in the programmes they are sponsoring (subject to certain restrictions). The explanatory text proposed treating all sponsor references in programmes (except sponsorship credits) as product placement.

Stakeholder responses

- 5.18 Two respondents raised concerns that commercial arrangements that allowed a sponsor to product place in the programme it is sponsoring would give undue prominence to the sponsor and undermine the editorial independence of the broadcaster.
- 5.19 However, 14 respondents agreed that sponsors should be allowed to place their products in programmes they are sponsoring. Several commented that preventing this practice could lead to product placement opportunities displacing rather than increasing industry revenue, because companies would be likely to choose to product place within a programme rather than sponsor it. Some respondents said that this would particularly be the case if a competitor was able to product place in the programme, but the sponsor was unable to do so.

- 5.20 One respondent agreed with the proposal on the basis that foods and drinks that are high in fat, salt or sugar (“HFSS”) and alcohol products, which are prohibited from being product placed within programmes produced under UK jurisdiction, would also therefore be prohibited from paying for sponsor references within programmes.
- 5.21 While there was general support with the proposal to allow combined sponsorship and product placement arrangements, several broadcasters were concerned that the proposed text relating to the treatment of sponsored references in programmes covered a wide range of references, not all of which would meet the definition of product placement. For example:
- in circumstances where a company is sponsoring a sporting event, as well as the broadcast coverage of it, the sponsored programme may include incidental images of advertising for the sponsor (e.g. on hoardings) at the event location;
 - in cases where a sponsor of a programme has provided its products in a prop placement arrangement (e.g. a product is provided free of charge to a broadcaster or producer and placed within a programme as a prop for purely editorial reasons); and
 - in cases where a programme competition or support material is sponsored and this sponsorship is credited during the programme.
- 5.22 Some respondents submitted that the proposal would mean that there could be no reference to the sponsor in any sponsored children’s programmes, or in any programme produced under UK jurisdiction that was sponsored by an HFSS, alcohol or gambling brand. There was particular concern about sporting events, where the event sponsor is also the programme sponsor and the sponsor is an HFSS, alcohol or gambling brand. One of the organisations gave examples of several major sporting events, which it was concerned could no longer be sponsored by the event sponsor because they were alcohol brands and stated that this could have “a significant and detrimental impact on broadcasters and advertisers”.
- 5.23 One broadcaster suggested that Ofcom clarifies the note to make it clear that any reference to a sponsor that appears in a sponsored programme as a result of a commercial arrangement will be treated as product placement only where the reference appears as a result of a commercial arrangement with the broadcaster or a connected person.

Ofcom’s decision

- 5.24 We note there is broad support for allowing sponsors to product place in the programmes they are sponsoring. We have therefore made clear in the Code that this practice is permissible, but must comply with product placement rules.
- 5.25 In response to the concerns about how different types of sponsor references within programmes will be classified, we accept that many of the examples cited by respondents would not meet the statutory definition of product placement. We have therefore amended the text, clarifying that where a sponsor reference in a programme meets the definition of product placement, it must comply with the relevant product placement rules.
- 5.26 Further, we have clarified that references to products, services or trade marks that are not included in a programme in return for payment to the broadcaster, programme maker or a connected person are subject to the general rules in Section

Nine of the Code. For example, those relating to editorial independence, undue prominence and promotion within editorial content.

- 5.27 In response to the concerns that combined sponsorship and product placement arrangements will undermine editorial independence and result in undue prominence for the sponsor, we consider that the broad overarching rules – in particular, those requiring editorial independence, no promotion or undue prominence – are sufficient to address such concerns.

Final explanatory text

- 5.28 The final explanatory text is as follows:

With the exception of the sponsorship credits, any reference to a sponsor that appears in a sponsored programme as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement and must comply with Rules 9.6 to 9.14.

Identifying sponsorship arrangements (sponsorship credits)

Consultation proposal – association message

- 5.29 In the 2010 consultation (see paragraphs 5.26 to 5.33 of Annex 3), Ofcom proposed to introduce the following rule in relation to identifying sponsorship arrangements:

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

- 5.30 This was to replace the first sentence of Rule 9.6 of the existing Code which states:

9.6 *Sponsorship must be clearly identified as such by reference to the name and/or logo of the sponsor....*

Stakeholder responses

- 5.31 Seven respondents agreed with the proposal.
- 5.32 In addition, one broadcaster supported the proposal, but requested that there be some flexibility on the wording used to inform the audience of the sponsorship arrangement.
- 5.33 One organisation submitted that, while it did not oppose the proposed rule, some of its members have suggested that where sponsorship arrangements are already obvious to viewers there may be no need for an additional requirement to inform the audience that a programme is sponsored.
- 5.34 Twelve respondents were concerned that the proposed rule was overly restrictive. Many argued that viewers are familiar with sponsorship credits and therefore would not confuse them with product placement signalling. Specific issues raised were that:

- different methods of identification will be appropriate for different types of programming. For example, it may be appropriate for a “sponsored by” credit to accompany a brand logo shown during a general entertainment programme. However, a brand logo appearing by itself without the wording “sponsored by” may be more appropriate in live sports coverage, provided the sponsorship arrangement is clearly identified to viewers.
- the proposed rule would limit the creativity of sponsorship credits. However, there appeared to be some misunderstanding about the nature of our proposal (see Ofcom’s decision below).
- a potential impact of the proposal would be an additional compliance cost to amend existing sponsorship credits.
- the drafting of the proposed rule should allow for a “clear statement” regarding the sponsorship arrangement, so that non-conventional language such as “flavoured by...” or “powered by...” could be used to identify sponsorship arrangements.

Ofcom’s decision

- 5.35 The purpose of the proposed rule is to ensure that viewers can readily recognise sponsorship arrangements and not confuse credits with other forms of commercial messages. While Ofcom therefore considers it important that credits fulfil their purpose of identifying sponsorship arrangements, we did not intend the proposed rule to be prescriptive in relation to the language used for the association message.
- 5.36 In response to the concerns raised by the respondents, we have amended the wording of the rule, as set out below.
- 5.37 We have clarified in guidance³⁶ that the association requirement is not intended to be restrictive and that non-conventional language can be used as long it makes the sponsorship arrangement clear to the viewer, and does not raise any other issues in relation to the sponsorship credit rules (e.g. no promotional language is used).
- 5.38 We remain of the view, as set out in the 2010 consultation, that the vast majority of current sponsorship credits are already compliant with the proposed rule. Therefore its introduction will have minimal impact. However, as set out in Part 2 paragraph 2.3, there is now an implementation period before the revised Section Nine of the Code comes into force on 28 February 2011. This will provide an opportunity for broadcasters to amend any credits to ensure compliance with this rule.

Final rule

- 5.39 The final rule is as follows:

- 9.19 Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:
- the identity of the sponsor by reference to its name or trade mark; and
 - the association between the sponsor and the sponsored content.

³⁶ Available at Annex 2.

Scheduling of sponsorship credits

Consultation proposal – permitting sponsorship credits during programmes

- 5.40 In the 2010 consultation (see paragraphs 5.34 to 5.39 of Annex 3), we proposed to introduce the following rule and explanatory text in relation to the scheduling of sponsorship credits:

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

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

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

- 5.41 This rule was proposed to provide scope for broadcasters to transmit sponsorship credits during programmes as well as around them. It was to replace the second sentence of Rule 9.6 of the existing Code which states:

9.6 ...*For programmes, credits must be broadcast at the beginning and or end of the programme.*

Stakeholder responses

- 5.42 Sixteen respondents agreed with the proposed rule.
- 5.43 One broadcaster, who agreed with the proposal, said it was unclear how Ofcom envisaged it working in practice. The respondent set out a range of scenarios that it considered Ofcom should provide guidance on.
- 5.44 One respondent anticipated that the proposal would afford broadcasters more flexibility in raising revenue.
- 5.45 One respondent considered that the general practice should be to prohibit the broadcast of sponsorship credits during programmes, in order to prevent programmes becoming cluttered. The respondent considered that credits could become disruptive to viewers and products become unduly prominent. However, it believed that, in limited genres, such as some entertainment and sport programmes, broadcasting sponsorship credits during programmes may have less impact.

Ofcom's decision

- 5.46 We note the majority of respondents agreed with the proposal and have therefore introduced a rule that permits sponsorship credits during programmes ("internal credits").
- 5.47 We have addressed the issue of the potential impact of internal credits on viewers by the introduction of a specific rule relating to the content of such credits (as proposed in the 2010 consultation, see paragraphs 5.77 to 5.86 below for further details).

Final rule

5.48 The final rule is as follows:

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

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

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

Consultation proposal – timing of internal credits with sponsor’s placed products

5.49 In the 2010 consultation (see paragraphs 5.1 to 5.15 and 5.34 to 5.39 of Annex 3), we proposed to introduce the following rule in relation to the scheduling of sponsorship credits during programmes (“internal credits”):

9.29 Where a sponsor has placed products/services in the programme it is sponsoring, sponsorship credits broadcast during the programme must not coincide with the appearance of the placed products/services.

5.50 The proposal was made to prevent the combination of an internal sponsorship credit and a placed reference to the sponsor’s product, service or trade mark leading to the sponsor being given undue prominence in a programme.

Stakeholder responses

5.51 Seven respondents agreed with the proposed rule.

5.52 A further seven respondents disagreed with the proposal. Their objections can be grouped under four main issues:

5.52.1 Unnecessary regulation: respondents noted that neither the Directive nor the Act requires the proposed restriction. As long as the distinction principle is maintained, and product promotion and/or undue prominence are avoided, respondents considered that there is no reason why the two references should not appear simultaneously.

5.52.2 Duplication of rules: respondents considered that the proposed rules prohibiting undue prominence and promotion, coupled with the requirement that sponsorship credits are distinct from editorial content would provide adequate protection. One respondent considered that the proposed rule which covers undue prominence of internal sponsorship credits (see paragraphs 5.77 to 5.86) will “protect viewers from being overloaded with commercial messages”.

5.52.3 Overly restrictive: one respondent considered that the proposed rule could be “extremely difficult to administer” and does not allow for instances where

product placement may be present throughout a programme, for example in circumstances where a presenter's clothing is subject to a product placement arrangement. The respondent noted that sponsorship and product placement are two very different arrangements, and considered (provided that the two combined are not unduly prominent) that there is no justification for requiring them to be kept apart in programmes.

5.52.4 Timing of credits: there was a range of views submitted on the appearance of internal credits including:

- it is more appropriate for a sponsorship credit to appear around the point that the sponsor reference is on screen;
- it would be desirable to place internal credits at the most appropriate time from an editorial and technical perspective, rather than be restricted by a prohibition on credits coinciding with sponsor references;
- it is appropriate for an internal credit and placed products to be broadcast close together, especially if a brand has an appropriate editorial fit with the content, e.g. a fashion brand should be able to place its product in the fashion strand which it sponsors; and
- broadcasters should decide if it is appropriate for an internal sponsorship credit to appear in a programme at the same time as the sponsor's placed product. Many broadcasters may decide that it is inappropriate because it will cause viewer annoyance.

Ofcom's decision

5.53 We remain of the view that the simultaneous broadcast of a sponsorship credit and a reference to the sponsor's product, service or trade mark that occurs as a result of a product placement arrangement has the potential to give the sponsor an excessive level of prominence.

5.54 However, having taken into account the responses, we consider that this concern is best addressed through guidance to the product placement undue prominence rule. Therefore we have not included the proposed rule in the Code. Rather, we have made clear in the guidance that, to avoid giving undue prominence to the sponsor, internal sponsorship credits should not appear as though they have been placed purposefully to coincide with references to the sponsor (including its products, services or trade marks) during the programme. This would therefore allow for the broadcast of internal sponsorship credits during programmes where product placement may be present throughout, for example, a presenter's clothing.

Content of sponsorship credits

Consultation proposal – distinction of sponsorship credits from editorial content

5.55 In the 2010 consultation (see paragraph 5.32 of Annex 3), we proposed to introduce the following rule in relation to sponsorship credits:

9.23 Sponsorship credits must be distinct from editorial.

5.56 This proposed rule was to amend Rule 9.12 of the existing Code which states:

9.12 *Sponsorship credits must be clearly separated from programmes by temporal or spatial means.*

Stakeholder responses

5.57 The majority of respondents agreed with the proposed rule.

5.58 One organisation considered that the proposed rule would be more clearly expressed as follows: “Sponsorship credits must be distinct from editorial content”.

5.59 One respondent did not consider the proposal to be appropriate. It considered that the phrase “distinct from” is ambiguous and may lead to a blurring between programme content and sponsorship.

Ofcom’s decision

5.60 We consider that requiring sponsorship credits to be distinct from editorial content is appropriate, and consistent with the overarching “distinction” principle, and the requirements of the AVMS Directive. Further, we consider the revised Code contains sufficient safeguards to ensure that sponsorship arrangements do not impair editorial content.

5.61 We have therefore included the rule (with a minor amendment, for clarity) in the revised Section Nine of the Code.

Final rule

5.62 The final rule is as follows:

9.21 Sponsorship credits must be distinct from editorial content.

Consultation proposal – content of sponsorship credits broadcast *around* programmes

5.63 In the 2009 consultation (see paragraphs 6.108 to 6.113 of Annex 4), Ofcom proposed to introduce the following rule in relation to the content of sponsorship credits broadcast around programmes. This rule was subject to minor amendments in the 2010 consultation (the first sentence of the rule proposed in 2009 was removed and proposed as a stand-alone rule in 2010).

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

5.64 This proposed rules were to replace Rule 9.13 of the existing Code which states:

9.13 *Sponsorship must be clearly separated from advertising. Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.*

Stakeholder responses

5.65 Eight respondents agreed with the proposed amendments to Rule 9.23.

5.66 Nine other respondents generally agreed with the proposal, but raised the following concerns about the sentence in the proposed Rule 9.23 which stated: “However, any such references must not be given undue prominence”:

5.66.1 Two respondents respondent noted that the AVMS Directive does not make reference to undue prominence and therefore considered that the proposed rule does not accord with the Directive. One of these respondents considered that referring to undue prominence in relation to sponsorship credits is unnecessary in principle, and in practice will make it more difficult for broadcasters to interpret the acceptable boundaries for such references.

5.66.2 One broadcaster commented that undue prominence “is a concept which is widely and readily understood in the context of editorial content, and its use here in a sponsor credit context will potentially confuse people and dilute the efficacy of it as a concept generally”. It therefore suggested alternative wording (which was also suggested by another broadcaster).

5.66.3 One broadcaster was also concerned that the introduction of the words “undue prominence” in the proposed rule would lead to confusion as to the acceptability of a sponsor’s product or service featuring in a sponsorship credit. It submitted that provided the the reference to the sponsor’s product or service serves the sole purpose of identifying the sponsor or the sponsorship arrangement, the requirements of the AVMS Directive are met. The broadcaster also suggested amendments to the proposed rule.

5.66.4 One respondent believed that the wording would put sponsorship credits that consist of shots of the sponsor’s product in breach of the proposed rule. It considered that this would have a negative economic impact on the sponsorship market.

5.67 As well as a suggestion that Ofcom delete the reference to “undue prominence” in the rule, one organisation also suggested that the last sentence of the rule be changed to read: “In particular, credits must not directly encourage the purchase or rental of the products or services of the sponsor or a third party”.

5.68 Two respondents disagreed with the proposal to amend the rule.

5.69 No significant comments were submitted by stakeholders about Ofcom’s proposal (in the 2010 consultation) to place the requirement for sponsorship credits to be kept distinct from advertising in a separate, stand-alone rule.

Ofcom’s decision

5.70 We note the views expressed about the proposed revisions to the rule covering the content of sponsorship credits. The proposals stemmed from Ofcom’s ongoing

concerns, as identified in a number of its published Findings, that in some cases sponsorship credits appeared to have been used primarily for the promotion of the sponsor and not for the identification of sponsorship arrangements. As stated in the consultation, the AVMS Directive exempts sponsorship credits from the hourly limits applicable to advertising. The European Commission has made clear that sponsorship credits should not be used to circumvent the restriction on the amount of advertising that can be broadcast. It has issued guidance stating that any explicit reference made in a credit to the products or services of the sponsor should serve the “sole purpose” of identifying the sponsor or the sponsorship arrangement.

- 5.71 We acknowledge the concerns that some stakeholders have raised about the inclusion of the term “undue prominence” in the proposed rule. Undue prominence is a concept that has been used to regulate commercial references in television programmes for many years. Although sponsorship credits are a form of commercial reference, we recognise that some stakeholders are of the view that applying the concept of undue prominence to sponsorship credits is not appropriate or helpful.
- 5.72 In view of the comments received, we have amended the rule, removing the reference to “undue prominence” and replacing it with a requirement that the focus of any credit is the sponsorship arrangement. We consider this amendment will help ensure that credits are used as a means of identifying sponsorship rather than as a platform to promote products and services.
- 5.73 We have also made amendments to the rule, to directly reflect the guidance issued by the European Commission, and clarify that the “sole purpose” of “explicit references” to the sponsor’s products, services or trade marks must be to help identify the sponsor and/or the sponsorship arrangement.
- 5.74 We have not added the word “directly” to the final sentence of the rule. We consider the final rule reflects appropriately the requirements of the AVMS Directive and the European Commission’s interpretation of this legislation.
- 5.75 On reflection, we have decided that, because the restrictions on the content of sponsorship credits serve to ensure that credits are kept distinct from advertising, it is appropriate to amalgamate the distinction requirement with the rule on the content of credits. We have also included the relevant requirements for the content of sponsorship credits broadcasting *during* programmes under the same rule (as set out below, see paragraphs 5.77 to 5.86).

Final rule

- 5.76 The relevant part of the final rule (with revisions for clarity) is as follows:

9.22 Sponsorship credits must be distinct from advertising. In particular:

a) Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.

b) ... [for (b) see below].

Consultation proposal – content of sponsorship credits broadcast *during* programmes (“internal credits”)

5.77 In the 2010 consultation (see paragraphs 5.40 to 5.48 of Annex 3), Ofcom proposed to introduce the following rule in relation to the content of internal sponsorship credits:

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

Stakeholder responses

5.78 Five respondents supported the proposal to limit the content of sponsorship credits broadcast during programmes.

5.79 Three respondents agreed with the proposal to limit the content of internal sponsorship credits, but were concerned that the proposed rule could be too restrictive.

5.80 Nine respondents disagreed with the proposal. The following issues were raised:

5.80.1 Respondents believed it would be more appropriate for the rule to be similar to the current rule regarding programme trailers, i.e. that the sponsorship credit should be brief and secondary.

5.80.2 Some submitted that, in any event, broadcasters will self-regulate internal sponsorship credits to limit clutter so as not to irritate their viewers.

5.80.3 The proposed requirement that an internal sponsorship credit could only be a “static graphic” was considered inappropriate by one broadcaster. It believed that it should not matter whether the credit is static or non-static, provided that it is not unduly prominent. The respondent continued that there may be many cases where a non-static graphic would work better in the programme, for example in 3D programming or in a fast-moving section of a programme. It argued that Ofcom should not enshrine rules in its Code which are not able to take into account future scenarios of programming and technology.

Ofcom’s decision

5.81 We remain of the view that it is appropriate to place restrictions on the content of internal credits. These credits will be transmitted at the same time as editorial content and therefore have greater potential to distract audience members and cause viewer annoyance.

5.82 The reason for proposing that internal sponsorship credits should be static was to ensure that such credits are not overly intrusive and do not give undue prominence to the sponsor. We consider these remain valid concerns. Having considered stakeholder responses, we have introduced the proposed rule but with slight drafting changes to take into account respondents’ views.

- 5.83 The proposed changes will provide broadcasters with scope to display the graphic in various creative ways, as they deem appropriate (for example, a channel digital on-screen graphic could be rotated at certain points during a programme to display the internal sponsorship credit). We therefore consider the final rule to be sufficiently flexible to take account of future technological changes. However, the rule will prevent moving images within the internal credit itself, which we consider would have the potential to draw undue attention to the sponsor during the programme.
- 5.84 Given that rules allowing the broadcast of internal sponsorship credits represent a significant liberalisation in this area of the Code, we intend to keep this practice under close review after implementation. We may consider consulting on further changes to the rules in this area, as appropriate, once the practice is fully established.
- 5.85 As stated above in paragraph 5.75, we have decided that, because the restrictions on the content of sponsorship credits serve to ensure that credits are kept distinct from advertising, it is appropriate to amalgamate the distinction requirement with the rule on the content of credits. We have also included the relevant requirements for the content of sponsorship credits broadcast *around* programmes under the same rule (as set out above, see paragraphs 5.63 to 5.76).

Final rule

- 5.86 The relevant part of the final rule is as follows:

9.22 Sponsorship credits must be distinct from advertising. In particular:

- a) ... [for (a) see above].
- b) Sponsorship credits broadcast during programmes must not be unduly prominent. Such credits must consist of a brief, neutral visual or verbal statement identifying the sponsorship arrangement. This can be accompanied by only a graphic of the name, logo, or any other distinctive symbol of the sponsor. The content of the graphic must be static and must contain no advertising messages, calls to action or any other information about the sponsor, its products, services or trade marks.

Internal sponsorship credits and product placement restrictions

Consultation proposal

- 5.87 In the 2010 consultation, we proposed that internal sponsorship credits should not be shown during programmes that are prohibited from containing product placement (e.g. children's programmes) and during programmes in which the sponsor would be prohibited from placing its products (e.g. an alcohol brand in a programme produced under UK jurisdiction) (see paragraphs 5.45 to 5.48 of Annex 3). The following rule was proposed:

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

Stakeholder responses

- 5.88 Several respondents disagreed with this proposed rule. Their objections can be grouped under three main issues:
- 5.88.1 Inconsistent regulatory approach: several respondents referred to what they considered to be Ofcom's inconsistent approach to sponsorship and product placement. They noted that the consultation document acknowledged that sponsorship is distinct from product placement. They were therefore of the view that it was inconsistent to propose a rule that suggests internal sponsorship credits are equivalent to product placement.
 - 5.88.2 Unnecessary regulation: several respondents noted that there was no requirement in the Directive or the Act to apply product placement restrictions to internal sponsorship credits. They submitted that, by permitting sponsorship credits during programmes, the Directive does not appear to envisage that they could result in a circumvention of the product placement rules.
 - 5.88.3 Discriminatory practice: some respondents considered the proposal specifically targeted children's programming without proper justification. They argued that the rule would be inconsistent and would heavily discriminate against the children's television industry, which is already subject to significant additional regulatory burdens. Additionally, respondents were concerned that the proposed rule would have the effect of prohibiting HFSS products, alcohol and gambling brands from being credited during the programmes they are permitted to sponsor. Respondents argued that they could not envisage how a neutral internal sponsorship credit would circumvent product placement rules.
- 5.89 Seven respondents agreed with the proposal that sponsorship credits broadcast during programmes should not conflict with product placement restrictions.
- 5.90 One broadcaster agreed with the sentiment of the rule, but considered that the wording of the rule needed to be clearer and expanded upon in guidance.

Ofcom's decision

- 5.91 We note the comments of those respondents who disagree with the proposal, but we remain of the view that the proposed rule is appropriate, proportionate and consistent.
- 5.92 We acknowledge that product placement and sponsorship are distinct types of commercial references. However, we consider that it would be inconsistent if Ofcom was to permit a brand that is prohibited (under UK law) from being product placed in a programme to nevertheless appear in the programme as a result of a (paid-for) sponsorship arrangement. We consider that allowing an internal credit for a brand or a product that is subject to product placement restrictions (e.g. a can of high sugar cola) would undermine the safeguards set out by the UK Government in its amendments to the Act.
- 5.93 We recognise that our proposal will impact more significantly on children's channels than on other broadcasters. We also accept that the Directive does not *require* Member States to prohibit sponsorship credits during children's programmes. However, Article 10(4) of the Directive makes clear that: "Member States may

choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes". In our view, the European Commission therefore did make clear in the Directive that Member States should consider whether internal sponsorship credits may be inappropriate in those genres of programming.

5.94 It should also be noted that, as internal sponsorship credits currently are not permitted to appear during programmes of any genre, we are not placing further restriction on the children's television industry, rather, we are maintaining the status quo. Further, we do not perceive that there would be any wider public policy appetite for an increase in commercial branding in children's programming.

5.95 We have therefore introduced the proposed rule.

Final rule

5.96 The final rule is as follows:

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

Sponsorship credits and programme trails

Consultation proposal

5.97 In the 2009 consultation (see paragraphs 6.120 to 6.121 of Annex 4), we proposed to introduce the following rule:

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

5.98 This proposed rule was to amend Rule 9.14 of the existing Code which states:

9.14 *Where a programme trail contains a reference to the sponsor of the programme, the sponsor reference must remain brief and secondary.*

Stakeholder responses

5.99 There were no objections or suggested amendments to this proposed rule.

Ofcom's decision

5.100 As there were no objections or suggested amendments to this proposed rule, we have included this rule in the revised Section Nine of the Code, as proposed in the 2009 consultation. However, we have changed the word "sponsor" to "sponsorship", to ensure that we use the same terminology (i.e. "sponsorship credits") throughout the Code section, for consistency.

Final rule

5.101 The final rule is as follows:

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

Part 6

Other revisions and issues

Introduction

- 6.1 This part of the statement covers Ofcom’s decisions on other proposed revisions to Section Nine of the Broadcasting Code (“the Code”).
- 6.2 Set out below is a summary of each proposal, the key issues raised in stakeholder responses, and Ofcom’s decision, including (where applicable) the final rule(s), meaning(s) and/or explanatory text, now included in the revised Section Nine of the Code. The issues are set out below in the following order:
- Introductory meanings (paragraphs 6.3 to 6.15 below);
 - Section Nine principles (paragraphs 6.16 to 6.26 below);
 - Key changes to general rules (paragraphs 6.27 to 6.60 below);
 - Cost of premium rate services rules (paragraphs 6.61 to 6.74 below);
 - Programme-related material rules (paragraphs 6.75 to 6.97 below);
 - Cross-promotions explanatory text (paragraphs 6.98 to 6.106 below);
 - Removal of virtual advertising rule (paragraphs 6.107 to 6.111 below); and
 - Minor amendments to other rules (paragraphs 6.113 to 6.120 below).

New introductory meanings

Consultation proposal

- 6.3 In the 2009 consultation (see paragraphs 6.46 to 6.54 of Annex 4), Ofcom proposed the following introductory section and the meaning of terms used in the section. The intention was to provide clarity on the scope of the proposed Section Nine.

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

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

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

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

Stakeholder responses

- 6.4 Eight organisations and six individuals agreed with the proposed meanings. Another respondent also agreed with the proposed meanings, provided they reflected the terminology in the Audiovisual Media Services (“AVMS”) Directive and did not enable Ofcom to apply the meanings more widely than it currently did. However, some organisations questioned the suitability of the proposed meanings.
- 6.5 Many of these respondents considered the term “programming” was too simplistic and the proposed approach did not reflect the reality of sponsorship credits and cross-promotions. Respondents noted the commercial nature of sponsorship and some cross-promotions and questioned whether such practices could be fully reconciled with the general rules on commercial references. There was concern that the proposed meaning could lead to unintended and unwelcome consequences. Therefore, some respondents believed that sponsorship and/or cross-promotions should continue to be dealt with separately and subject to tailored sets of rules.
- 6.6 In relation to the proposed definition of “products or services”, the following points were raised:
- 6.6.1 the term should exclude “associated activities” as it is a “very wide term” which “does not seem to be derived from any specific reference in the AVMS Directive”;
 - 6.6.2 the definition would benefit from the addition of the word “non-commercial”, particularly if rules for Public Information Programming are to be introduced; and
 - 6.6.3 the definition should not extend to generic products or services which are not associated with any organisation or brand.
- 6.7 One organisation suggested the definition should be amended to make clear that it includes both verbal and visual references to products or services.

Ofcom’s decision

- 6.8 The revised Section Nine of the Code covers all references to products, services or trade marks broadcast outside the context of spot advertising and teleshopping. It covers references that may appear in a television programme for purely editorial reasons, and those that are included as a result of a commercial arrangement (e.g. sponsorship credits). We note that some respondents have questioned the appropriateness of applying the same general rules to commercial references made in a purely editorial context to those made as a result of a commercial arrangement.
- 6.9 Ofcom acknowledges that the proposed rules apply in a range of distinct circumstances. However, we consider it is appropriate for all references to products, services or trade marks that appear as part of programming to be subject to the same overarching rules, regardless of whether the basis of a reference is editorial, commercial, or both. We consider that this approach helps to ensure that commercial references in programming do not result in an increase in the amount of advertising broadcast on television (which is limited under Ofcom’s Code on the scheduling of television advertising, and the AVMS Directive). This consistent approach also emphasises that commercial references, whether paid-for or not, must not undermine the fundamental principle of editorial independence. It also clarifies the importance of

other key principles, such as protecting audiences from surreptitious advertising and financial harm.

- 6.10 To provide Code users with a clear understanding of the scope of the revised Section Nine, and having taken into account stakeholder comments, we have re-worded the meaning of “programming” to clarify the type of material covered by this section.
- 6.11 We have also noted the comments made by a number of respondents in relation to the proposed scope of the term “products or services”. In considering these, we have taken into account that the amended Communications Act 2003 (“the Act”), now defines product placement by use of the terms “a product, service or trade mark”. The amended Act also defines “trade mark” as “... any image (such as a logo) or sound commonly associated with that business or its products or services”³⁷.
- 6.12 To ensure consistency between the scope of the product placement rules and those that apply to other commercial references in programming, we have:
- removed the meaning of “products or services” from the introduction to Section Nine;
 - clarified that “commercial references” means references to products, services or trade marks, whether related to a commercial or non-commercial organisation;
 - included the statutory definition of “trade mark” at the beginning of Section Nine; and
 - added “trade mark” to all references to “products” and “services” throughout Section Nine.
- 6.13 We consider these amendments address the concerns raised by respondents in relation to the inclusion of “activities” within the meaning of “products or services”.
- 6.14 Finally, for clarity, we have added the words “visual or audio” to the meaning of “commercial reference”.

Final meanings

- 6.15 The final meanings are as follows:

Meaning of “programming”:

All broadcast content except spot advertising and teleshopping. Programmes, trailers, cross-promotions and sponsorship credits are all forms of programming.

Meaning of “commercial reference”:

Any visual or audio reference within programming to a product, service or trade mark (whether related to a commercial or non-commercial organisation).

Meaning of “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.

³⁷ Schedule 11A of the Act.

Principles

Consultation proposal

6.16 In the 2009 consultation (see paragraphs 6.1 to 6.11 of Annex 4), we proposed to introduce the following principles in the revised Section Nine:

To ensure that broadcasters maintain editorial independence and control over programming (editorial integrity).

To ensure that programming and advertising remain distinct (separation).

To protect audiences from surreptitious advertising (transparency).

To ensure that audiences are protected from the risk of financial harm (consumer protection).

To ensure that unsuitable sponsorship is prevented (unsuitable sponsorship).

6.17 These were to replace the relevant principles in the existing Code which state:

- *To ensure that the unsuitable sponsorship of programmes on radio and television is prevented, with particular reference to:*
 - *transparency – to ensure sponsorship arrangements are transparent;*
 - *separation – to ensure that sponsorship messages are separate from programmes and to maintain a distinction between advertising and sponsorship; and*
 - *editorial independence – to ensure that the broadcaster maintains editorial control over sponsored content and that programmes are not distorted for commercial purposes.*

In this Principle, programmes include ‘channels’...

- *To ensure that the independence of editorial control over programme content is maintained and that programmes are not distorted for commercial purposes.*
- *To ensure that the advertising and programme elements of a service are clearly separated.*

6.18 The reasons for the proposed revisions were:

6.18.1 to address duplication of principles resulting from the combining of the previous Sections Nine and Ten of the Code into one new section for television programming (see Part 2, paragraphs 2.15 to 2.17 for further details); and

6.18.2 to introduce a new principle relating to the importance of ensuring that audiences are afforded the appropriate level of financial protection.

6.19 As a result of the introduction of product placement, in the 2010 consultation (see paragraphs 6.8 to 6.11 of Annex 3), we proposed changes to the first two principles

(as indicated by strike-through text for deleted words and underlined text for insertions).

To ensure that broadcasters maintain editorial independence and control over programming (editorial ~~integrity~~ independence).

To ensure that there is distinction programming between editorial content and advertising ~~remain distinct~~ (~~separation~~ distinction).

Stakeholder responses

- 6.20 There was broad agreement with the principles proposed in the 2009 consultation.
- 6.21 However, two organisations considered that the principle regarding financial harm would be better placed in Section Two of the Code (Harm and Offence). Two further respondents considered the principle unnecessary. One of these respondents queried whether it is Ofcom’s role to protect audiences from the risk of financial harm, adding that this would ordinarily fall within the remit of other authorities, such as Trading Standards and the Courts. It concluded that the introduction of this principle would appear to extend the scope of the Code.
- 6.22 In relation to the principles proposed in 2010, there was general agreement with the amendments proposed to the principles. However, one respondent disagreed with changing the “separation” principle to one of “distinction”.

Ofcom’s decision

- 6.23 One of the key reasons for proposing the “consumer protection” principle in 2009 was to support the proposals made at the time to introduce new rules relating to viewer interaction with programming in the revised Section Nine. These included a general overarching rule (see paragraphs 6.51 to 6.58 below) and also rules for broadcast competitions and voting.
- 6.24 Following responses submitted to the 2009 consultation, Ofcom decided to place all competition and voting rules in Section Two of the Code. As a result, we have now decided not to introduce the general overarching rule (see reasoning in paragraphs 6.57 to 6.58 below).
- 6.25 While these particular rules will not now appear in Section Nine, we remain of the view that it is appropriate to include the consumer protection principle in this Code section. This principle supports a number of other rules that are included in the revised Section Nine including those covering charity appeals, appeals for funds and financial promotions. Further, the principle accords with Ofcom’s standards objectives, as set out in Section 319 of the Communications Act (in particular, Section 319(2)(f)).

Final principles

6.26 The final principles are as follows:

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

General rules

Consultation proposal – distinction rule

6.27 In the 2010 consultation (see paragraphs 6.12 to 6.16 of Annex 3), Ofcom proposed to replace the rule requiring that the editorial and advertising elements of a service are kept separate with the following rule:

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

Stakeholder responses

- 6.28 The majority of respondents agreed with the proposal rule.
- 6.29 Two respondents disagreed with the proposal as they considered the concept of distinction to be confusing for industry and consumers and citizens. In particular, one of the respondents could not see how distinction differed from separation.
- 6.30 One organisation was concerned that the proposed change of wording from “separation” to “distinction” might create a risk to editorial independence without clear regulation elsewhere in the Code preventing brands from having influence over editorial.
- 6.31 Although not in response to this particular proposal, one respondent considered that the revised Code should address “telepromotions” within the revised Section Nine of the Code. It said that the inclusion of “telepromotions” would bring the UK in line with the rest of Europe and would create new revenue streams for commercial broadcasters.

Ofcom’s decision

6.32 The shift from a requirement that advertising and editorial are kept separate to one requiring that these types of content are distinguishable from one another reflects the fact that the AVMS Directive refers to the principle of distinction, whereas its

predecessor, the Television Without Frontiers Directive, referred to the principle of “separation” instead. Therefore, we consider it appropriate to introduce the proposed amendments in accordance with the changes made in the AVMS Directive.

- 6.33 We have noted the comment on the issue of telepromotions, and the scope within the AVMS Directive for this form of advertising. However, given that such material would be counted towards a broadcaster’s advertising minutage, we are of the view that it would not be appropriate for any potential rules in this area to be considered for inclusion as part of the Broadcasting Code.

Final rule

- 6.34 The final rule is as follows:

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

Consultation proposal – surreptitious advertising rule

- 6.35 In the 2010 consultation (see paragraphs 6.17 to 6.23 of Annex 3), we proposed to introduce the following rule and meaning to prohibit surreptitious advertising:

9.3 Surreptitious advertising is prohibited.

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

- 6.36 We proposed this rule to reflect the requirements of the AVMS Directive (Article 9(1)(a)) and to complement the requirements that: a) there is distinction between advertising and editorial content; and b) sponsorship and product placement arrangements are signalled appropriately.

Stakeholder responses

- 6.37 Seventeen respondents agreed with our proposal to introduce a rule prohibiting surreptitious advertising.
- 6.38 Four respondents considered that the proposed rule duplicated other proposed rules in Section Nine unnecessarily - for example, the general rule that prohibits the promotion of products and services within programmes, or the general rule that requires editorial content to be kept distinct from advertising
- 6.39 Two respondents, who disagreed with the proposal, said that the line in the explanatory text: “Such advertising may be included in programmes in return for payment or other valuable consideration” was unclear.
- 6.40 Some respondents suggested drafting changes to clarify the rule, in particular one referred to the relevant definition within the AVMS Directive as a suggested alternative.

- 6.41 One organisation considered that the description of surreptitious advertising did not define the difference between product placement and product endorsement (e.g. situations where a celebrity appears on a chat show and talks about their latest venture).

Ofcom's decision

- 6.42 We note that there is general support for the proposed rule.
- 6.43 The rule is derived from the requirements of Article 9 of the AVMS Directive, which prohibits "surreptitious audiovisual commercial communication". We accept that a number of rules in the revised Section Nine also support this requirement (e.g. those requiring the identification of product placement and sponsorship, and the restrictions on the promotion and prominence of products in programmes). However, we consider that these rules do not necessarily negate the need for a general rule. The proposed rule provides important protection for viewers from exposure to content that has been included in programming for promotional purposes without this purpose being clear to them.
- 6.44 We are therefore introducing the rule, having made minor amendments to the wording (in accordance with the relevant definition in the AVMS Directive), to reflect respondents' comments.
- 6.45 We have also provided guidance on practices that are likely to be problematic under the new rule and those that are likely to be acceptable.³⁸

Final rule and meaning

- 6.46 The final rule and meaning is as follows:

9.3 Surreptitious advertising is prohibited.

Surreptitious advertising involves a reference to a product, service or trade mark within a programme, where such a reference is intended by the broadcaster to serve as advertising and this is not made clear to the audience. Such advertising is likely to be considered intentional if it occurs in return for payment or other valuable consideration to the broadcaster or producer.

Consultation proposal – rule on advertisements in programming

- 6.47 In the 2009 consultation (see paragraphs 6.61 to 6.67 of Annex 4), we proposed to introduce the following rule:

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

³⁸ Available at Annex 2.

6.48 This rule was to replace Rule 10.12 of the existing Code which states:

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

6.49 Ofcom asked respondents if they considered that the proposed rule was broadly the same, in terms of both scope and intent, as the existing rule.

Stakeholder responses

6.50 One broadcaster considered that proposed rule was wider than the existing rule. It continued that some programmes consist entirely of reviews and discussion of advertisements, and it could be argued that the new proposed rule would effectively prevent this type of programming because the presence of advertisements is very prominent. The broadcaster said that it did not believe that this was Ofcom's intention and suggested the second sentence of the proposed rule should read: "Where advertisements are featured as part of programming, the products or services being advertised must not be unduly prominent."

Ofcom's decision

6.51 We have noted the comments on the rule relating to the use of advertisements in programmes. We have considered further the aim and scope of the existing and proposed rules. The purpose of the rule is to facilitate the inclusion within editorial content of material originally created for advertising purposes, where there is an editorial reason for doing so.

6.52 We have concluded that there are now sufficient rules in the revised Section Nine of the Code to prevent the harm the rule is designed to address (i.e. surreptitious advertising and the distortion of editorial content for commercial purposes). We have therefore decided to remove the rule from the Code, but we are including guidance on the acceptable use of advertisements in programmes³⁹.

Consultation proposal – viewer communications rule

6.53 In the 2009 consultation (see paragraphs 6.61 to 6.67 of Annex 4), we proposed to introduce the following rule:

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

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

6.54 We proposed to introduce this rule in tandem with the proposed principle on consumer protection (see paragraphs 6.14 to 6.17) as a means of ensuring audiences are protected appropriately when responding to on-air solicitations by or on behalf of the broadcaster.

³⁹ Available at Annex 2.

- 6.55 As with the corresponding principle, this would be in line with Ofcom's duty to ensure that broadcasters apply generally accepted standards to programmes so as to protect audiences from harm. We proposed that the rule would be introduced alongside our proposal to include specific rules regarding viewer protection from financial harm when participating in broadcast competitions and voting in the revised Section Nine, whilst retaining the rules for the broader areas of harm under Section Two.

Stakeholder responses

- 6.56 Responses were mixed, but there was a common view that the rule duplicated requirements that appeared in Section Two of the Code (those rules relating to competitions and voting) and/or specific broadcasting licence conditions.
- 6.57 One respondent, while not disagreeing with the proposed rule, questioned how it related to commercial references and suggested that it may be better placed elsewhere in the Code.
- 6.58 A broadcaster was concerned that the proposed rule appeared to extend beyond communications relating to viewer participation in broadcast competitions and voting, and would cover matters such as solicitations to viewers for programme comments and programme contributor applications. The respondent considered that the rule could lead to Ofcom receiving complaints from viewers who believed they had been unfairly prevented from participating in a programme (e.g. a contestant on a game show or a participant in a reality series). It said that it did not believe it was Ofcom's intention that broadcasters' obligation to treat viewer communications fairly should have such a wide application.

Ofcom's decision

- 6.59 Ofcom notes that many respondents have commented that the proposed rule duplicates requirements of the competition and voting rules (Rules 2.13 to 2.16) and the relevant requirements set out in broadcasting licences. Having taken these comments into account, we agree that these licence requirements and the provisions in Section Two of the Code provide appropriate protection to viewers from harm that may result from participation in broadcast competitions and voting.
- 6.60 Where there is potential for viewers to be materially harmed as a result of interaction with programmes outside the context of broadcast competitions or voting, we have re-considered the necessity of the proposed rule and concluded that adequate protection is offered by Rule 9.30 (where interaction is via a premium rate service) or, in other cases, Rule 2.2 of the Code. We have therefore decided not to include the proposed rule in the revised Section Nine.

Premium rate services (PRS)

6.61 The following rules in relation to premium rate services (PRS) were consulted on and finalised as part of Ofcom's consultation on Participation Television⁴⁰. They were included in Section Ten of the existing Code (issued in September 2010) and are now being included in the revised Section Nine of the Code as follows:

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

Consultation proposal

6.62 The PhonepayPlus ("PPP") Code of Practice requires premium rate service providers to ensure that users of such services are fully informed of the cost of using some services. In the 2009 consultation (see paragraphs 6.68 to 6.75 of Annex 4), we proposed to introduce the following additional rule to place a responsibility on broadcasters to do the same for all PRS.

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

Stakeholder responses

- 6.63 There was broad agreement that viewers should be made aware of the cost of using PRS, but not all respondents considered the proposed rule necessary.
- 6.64 Three respondents considered the proposed rule to be superfluous as they believed it duplicated the rule requiring that any use of premium rate numbers must comply with the Code of Practice issued by PhonepayPlus. One of the respondents commented that the new rule would give rise to an additional and separate breach of

⁴⁰ <http://stakeholders.ofcom.org.uk/consultations/participationtv3/statement/>

the Code and would extend the obligations of broadcasters under the Code. The respondent considered that this was contrary to Ofcom's regulatory objectives, in particular, the need to ensure that regulation by Ofcom does not involve the imposition of burdens that are unnecessary, and is limited to the measures needed, taking into account the desirability of promoting and facilitating self-regulation.

- 6.65 Further, three respondents noted that the rule was a repetition of the obligations set out in broadcasting licences regarding the handling of communications from viewers (however, two of these respondents did not disagree with the proposed introduction of the rule).
- 6.66 Additionally, two broadcasters submitted that it was difficult to ascertain accurately the cost to any individual caller of using a premium rate service other than from a BT landline, as the cost could vary greatly depending upon which network provider the caller uses. As a consequence, it was difficult for broadcasters to make pricing information clear to viewers.
- 6.67 Another broadcaster stated that the consultation document seemed to suggest that not all PRS services were presently subject to a PPP Code requirement for all call costs to be included in promotions of PRS numbers. The broadcaster believed this to be incorrect and its understanding was that all PRS services were already subject to that requirement.

Ofcom's decision

- 6.68 Ofcom does not believe that overlap with provisions within the PPP Code is, in general, a sufficient reason to avoid including rules that apply to licensed broadcasters. Likewise, we do not consider that the inclusion of general overarching rules negates the need to include rules that make specific (potentially overlapping) requirements. Similarly, that television broadcasters' licences contain conditions relevant to the question of price indications should not in our view preclude a clear and simple rule covering that subject within the Code. It is our view that Ofcom should ensure that licensees are in no doubt about their obligations under the Code.
- 6.69 On the issues raised in relation to a perceived increase in regulatory burden, particularly in relation to the similar requirements within the PPP Code, Ofcom will be issuing a statement at the same time as PPP issues its new Code in early 2011. The Ofcom statement will make clear that, in circumstances where a broadcaster is subject to similar rules within both the PPP and Ofcom Codes, the Ofcom rules will be applied to the exclusion of the PPP rules.
- 6.70 We recognise the difficulties associated with quoting universally applicable prices in a highly diverse market across both fixed line and mobile networks. The rule does not expect – and nor did any prior rules, whether in the Broadcasting Code or the PPP Code of Practice – that all possible permutations of call cost are set out. Current standard practice is to give a benchmark BT price and indicate that variations, which may be considerable, can be expected on other networks. Ofcom guidance has been available on the point for some time.
- 6.71 In light of the observations made about the difficulty of comprehensive price indications for PRS, we believe it would be helpful to add a note to the new rule to draw attention to the available guidance.

- 6.72 We also note that the issue of consumer transparency about the costs of using PRS is currently under review by Ofcom⁴¹. We will keep a watching brief on any developments in this area and update the Code guidance accordingly.
- 6.73 In relation to the need to identify the cost for all PRS services, Ofcom notes that PPP's present Code contains stated exclusions for the display of certain, less costly PRS calls. However, we understand that promotional material for such services does, as a matter of course, contain pricing information. Ofcom's view is that best practice requires there to be clear and unambiguous requirements on licensees in the provision of PRS to their audiences. Further, changes made to television broadcasters' licences in 2008 make clear the licensee's responsibility that "publicity in programmes for voting, competitions, games or similar schemes is not materially misleading": we believe a mandatory PRS pricing rule within the Code is therefore complementary to that licence condition.

Final rule and explanatory text

- 6.74 The final rule and explanatory text are as follows:

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

Licensees should refer to the guidance for further details on the application of this rule, as well as guidance to relevant associated rules (see in particular, the guidance to Rules 2.13 to 2.16).

⁴¹ The consultation, Simplifying Non-Geographic Numbers, was published on 16 December 2010 and is available at: <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/>

Programme-related material (PRM)

Consultation proposal

- 6.75 In the 2009 consultation (see paragraphs 6.86 to 6.96 of Annex 4), Ofcom proposed replacing the existing rules regarding programme-related material with the following⁴²:

Programme-related material

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

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

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

9.38 The broadcaster must retain responsibility for ensuring the appropriateness of programme-related material.

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

- 6.76 This was to replace Rules 10.6, 10.7 and 10.8 of the existing Code which state:

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

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

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

Meaning of “programme-related material”:

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

- 6.77 We proposed to amend the definition of PRM slightly to clarify that only products and services that fulfil the dual condition of being directly derived from a programme and

⁴² Strike-through text indicates changes made in the 2010 consultation to the text set out in the 2009 consultation.

specifically intended to allow viewers to benefit fully from the programme may be promoted as PRM.

- 6.78 We proposed to expand the rule relating to the promotion of PRM within programming to provide greater clarity.
- 6.79 We also proposed to amend the rule that requires broadcasters to retain responsibility for PRM to reflect existing guidance on this rule. This guidance acknowledged that broadcasters are not required to have editorial responsibility for the content of the PRM itself. However, they are responsible for the inclusion of, or any reference to, material that is promoted as PRM. Broadcasters should therefore ensure that the inclusion or reference complies with the relevant criteria, and that it is appropriate for promotion within the relevant programming.
- 6.80 For consistency, we proposed to include the rule relating to the sponsorship of PRM with the other sponsorship rules.

Stakeholder responses

- 6.81 Four respondents agreed with the proposals, with three of these considering that the rules should in most cases also apply to the BBC.
- 6.82 However, other respondents raised a number of concerns over the proposals. The following views were expressed:
- 6.82.1 the existing rules would not benefit from clarification;
 - 6.82.2 the second paragraph of introductory text served no purpose, created confusion and was unnecessarily negative;
 - 6.82.3 the proposed Rule 9.37 was too restrictive and that PRM should be able to be promoted in or around the relevant programming. One respondent questioned whether that the proposed rule went beyond the requirements of the AVMS Directive;
 - 6.82.4 the reference to undue prominence was repetitious and unnecessary as the issue was already addressed elsewhere in the Code;
 - 6.82.5 the proposals went beyond clarifying the existing regulatory position;
 - 6.82.6 the wording “or interact with” in the proposed introductory text, limited the definition of ‘programme-related material’, with the effect of preventing a number of existing promotions/services and should therefore be deleted;
 - 6.82.7 the words “only in the programme from which it is directly derived” in the proposed introductory text, should be deleted from the proposed Rule 9.37, as the definition of PRM is given in the introductory text to the rule;
 - 6.82.8 the word “material” should be replaced by “item” to recognise that PRM is not always material (e.g. it could be a live event derived from a programme);
 - 6.82.9 the addition to the proposed Rule 9.37 of the wording, “References to programme-related material should be brief and confined to the name of the item, a basic description, its cost and/or availability”, which up until that

point had appeared in guidance only, increased the regulatory burden on broadcasters.

Ofcom's decision

- 6.83 The proposed rules on PRM reflect that Article 23 of the AVMS Directive exempts “announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes ...” from the hourly limits imposed on the amount of advertising a broadcaster can transmit (“advertising minutage”).
- 6.84 The Directive makes clear that “in order to avoid distortions of competition, this derogation should be limited to announcements concerning products that fulfil the dual condition of being both ancillary to and directly derived from the programme concerned. The term “ancillary” refers to products intended specifically to allow the viewing public to benefit fully from, or to interact with, these programmes” (Recital 98).
- 6.85 We have taken into account the submissions made in response to the 2009 consultation, bearing in mind the requirements of the AVMS Directive, and have made amendments to the proposed rules and associated text, as set out below:
- 6.86 We have amended the wording of the second paragraph of explanatory text to reflect the concerns raised by some respondents and also to provide additional information about the background and aim of the rule.
- 6.87 We have re-introduced the wording “or to interact with” to the part of the explanatory text which contains the definition of PRM, as we agree that this more closely reflects the wording of the Directive’s Recital.
- 6.88 Having taken into account several respondents’ comments on the wording of the proposed Rule 9.37, we have also changed this rule to reflect that references to programme-related material may appear either during or around the programme from which the material is derived. Further, in view of the concerns expressed by a number of respondents, we have also decided not to include the second sentence of this rule, as proposed in 2009. We consider that the aim of this sentence is covered adequately, and more appropriately, by other rules in Section Nine and also by the associated guidance.
- 6.89 We have also revised the wording of this rule to make clear that while broadcasters are responsible for ensuring that such material meets the definition of PRM and is appropriate for the intended programme audience, they are not responsible for producing PRM or the content of such material.
- 6.90 In addition to the amendments to the rules, we have added additional explanatory text to this part of the Code making clear that the promotion of PRM is exempt from advertising minutage limits.
- 6.91 We have also included explanatory text to refer broadcasters to the statutory definition of product placement. It is possible that, in some circumstances, a reference in a programme to PRM would meet the statutory definition of product placement (for example, if it is included in the programme in return for payment or other valuable consideration to the broadcaster or programme maker). If this were the case, such PRM could not be promoted as it would fall foul of the Code rule stating that references to placed products, services and trade marks must not be

promotional (see Rule 9.9). Therefore we are providing guidance to broadcasters that, in such cases, the promotion of PRM should be kept distinct from editorial content, for example, by referring to it in a distinct caption, or by means of an announcement at the end of the programme.

- 6.92 We are also including explanatory text to remind broadcasters that, in some circumstances, where the supply of PRM is dependent on viewers making a payment to purchase a product or service (e.g. the sale of a book or DVD), they should take account of the requirements of Rule 9.2 (editorial content must be distinct from advertising). While the AVMS Directive provides scope to exempt announcements about PRM from advertising minutage limits, other principles that are applicable to advertising, such as distinction, may apply depending on the circumstances. We are issuing additional guidance on how, in such circumstances, distinction can be achieved.

Final rules

- 6.93 The final version of the rules and explanatory text are as follows:

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

Broadcasters may refer to the availability of programme-related material without such references counting towards the amount of advertising they are permitted to transmit (as specified in Ofcom's Code on the scheduling of television advertising (COSTA)). The following rules support the key principle of editorial independence by ensuring that references to programme-related material are made primarily for editorial and not advertising reasons.

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

- 9.31 Programme-related material may be promoted only during or around the programme from which it is directly derived and only where it is editorially justified.

Broadcasters should refer to the statutory definition of product placement (see meanings and rules preceding Rule 9.6). Where the inclusion of references during programmes to PRM could meet the definition of product placement, the promotion of such material should be kept distinct from editorial content to avoid issues being raised under Rule 9.9.

Likewise, where the PRM involves the promotion to the audience of the availability of products or services in return for payment, it is possible that this could meet the definition of television advertising (see COSTA). Therefore, such promotions should be kept distinct from editorial content (see Rule 9.2).

- 9.32 The broadcaster must retain responsibility for ensuring the appropriateness of promoting programme-related material.

- 6.94 A number of respondents requested additional guidance on what types of material meet the definition of PRM and greater latitude in respect of the nature of products and services that would meet this definition. While we have not added further

information in the Code, we are issuing new guidance on the types of products and services that fall under these rules⁴³. However, we do not intend to extend the scope of the rule to allow references to a wider range of products or services as we consider that to do so would be contrary to the requirements of the AVMS Directive.

- 6.95 Two respondents suggested that the word “programme” in the rule be amended to “programming”. While the rules in Section Nine cover commercial references in programming, we consider that the use of the term programme in the rule is appropriate as it refers to the editorial material from which products or services must be derived.
- 6.96 We do not intend to change the term “programme-related material” as we consider the use of the word “material” is sufficiently broad to encompass the types of products and services covered by the rules.
- 6.97 In relation to the application of the rules to the BBC, the Agreement between Her Majesty’s Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation sets out the relevant Programme Code Standards to which the BBC must adhere. This does not include the standards set for commercial references in television programmes (with the exception of the requirements of the Act in relation to product placement)⁴⁴. Therefore it is not within Ofcom’s remit to apply the PRM rules to the BBC.

Cross-promotions

Consultation proposal

- 6.98 Ofcom’s Cross-promotion Code is incorporated as an Appendix to the Broadcasting Code. In the 2009 consultation, we proposed to include a cross-reference to the Cross-promotion Code in the revised Section Nine of the Broadcasting Code (see paragraphs 6.93 to 6.96 of Annex 4). The following text was proposed:

Cross-promotions

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

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

Stakeholder responses

- 6.99 Ten respondents agreed with the proposal.
- 6.100 Two respondents did not agree, considering the text unnecessary.
- 6.101 Two broadcasters proposed changes to the second paragraph of the proposed text to clarify that it relates to the cross-promotion itself, rather than the service/programme promoted.

⁴³ Available at Annex 2.

⁴⁴ For further information, see paragraph 4.8 of Annex 3 (the 2010 consultation).

6.102 One organisation suggested incorporating a summary of the Cross-promotion Code within the revised Section Nine, to amalgamate the relevant rules.

6.103 One organisation and two individual respondents considered that the Cross-promotion Code should apply to the BBC.

Ofcom's decision

6.104 We note that the majority of stakeholders who responded to the proposal agreed that the inclusion of the text in the revised Section Nine of the Code would be beneficial. The text is therefore now included. We have not amended the wording as we consider that it is sufficiently clear that it refers to the cross-promotions themselves, as opposed to the services that are being promoted.

6.105 In relation to the application of the cross-promotion rules to the BBC, the Agreement between her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation sets out the relevant Programme Code Standards to which the BBC must adhere. This does not include the standards set for commercial references in television programmes (with the exception of the requirements of the Act in relation to product placement)⁴⁵. Therefore it is not within Ofcom's remit to apply the Cross-promotion rules to the BBC.

Final explanatory text

6.106 The final explanatory text is as follows:

Cross-promotions

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

Broadcasters should note that cross-promotions should also comply with all relevant requirements of the Broadcasting Code and, in particular, Rules 9.1 to 9.5.

⁴⁵ For further information, see paragraph 4.8 of Annex 3 (the 2010 consultation).

Removal of the virtual advertising rule

Consultation proposal

6.107 In the 2010 consultation, Ofcom proposed to remove the existing virtual advertising rule (Rule 10.17) on the basis that, in light of the introduction of product placement, the rule was no longer necessary (see paragraphs 6.24 to 6.28 of Annex 3). The existing rule and meaning are as follows:

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

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

Meaning of “virtual advertising”

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

Stakeholder responses

6.108 Of the 23 responses to this proposal, only two respondents disagreed with it.

6.109 One of these respondents, who objected generally to any form of product placement, considered that the rule should not be removed until further research is conducted into industry practices, public opinion, and viewer awareness and attitudes.

Ofcom’s decision

6.110 Having taken the responses into account, we remain of the view (for the reasons set out in the consultation) that as a result of the introduction of the product placement rules, the rule on virtual advertising has been rendered obsolete.

6.111 In relation to the concerns raised about the removal of this rule, we consider that the revised Code contains appropriate safeguards to protect viewers, particularly in light of the new rule prohibiting surreptitious advertising.

Minor amendments to other rules

6.112 The following rules were proposed in the 2009 consultation, and involved minor amendments to the existing rules, for clarity. None of the proposals attracted significant stakeholder comments.

General rule - editorial independence

6.113 The following rule is now included in the revised Section Nine, as proposed in 2009:

9.1 Broadcasters must maintain independent editorial control over programming.

General rule – no promotion

6.114 The following rule is now included in the revised Section Nine, with a minor amendment from our proposal in 2009, for clarity:

9.4 Products, services and trade marks must not be promoted in programming.
For specific exemptions to this rule, see rules on premium rate services (Rules 9.26 to 9.30) and programme-related material (Rules 9.31 and 9.32).

General rule – no undue prominence

6.115 The following rule is now included in the revised Section Nine, as proposed in 2009, but with the addition of the term “trade mark” where relevant (see paragraphs 6.9 and 6.10 for further details on this addition throughout Section Nine):

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

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

Charity appeals

6.116 The following introductory text is now included in the revised Section Nine for the purpose of clarification:

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

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

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

Financial promotions and investment recommendations

- 6.117 The following text is now included in the revised Section Nine with a minor amendment (“editorial independence” in the place of “editorial integrity”, for consistency with the principles), together with the following rule:

Meaning of “financial promotion”:

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

Meaning of an “investment recommendation”:

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

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

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

Appeals for funds for programming or services

- 6.118 The following text is now included in the revised Section Nine, as proposed in 2009, with minor amendments to the principles set out in the 2010 consultation (for consistency with the editorial independence and distinction principles).
- 6.119 The following rules are also included in the revised Section Nine, as proposed in 2009, but with a minor change made to Rule 9.38 (the phrase “purpose of the appeal” is used rather than “purpose of the donation”, for clarity) and a minor addition to Rule 9.53 (the words “in relation to the overall output of the service”) to clarify the meaning of the term “undue prominence” in this context:

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

Rules 9.36 to 9.39 reflect the potential for financial harm when broadcasters appeal for funds from viewers (consumer protection) and ensure editorial independence, transparency, and distinction between advertising and editorial content are maintained.

- 9.36 Viewers must be told the purpose of the appeal and how much it raises.
- 9.37 All donations must be separately accounted for and used for the purpose for which they were donated.
- 9.38 Broadcasters must not offer any additional benefits or other incentives to donors.
- 9.39 Appeals for funds for programming or services must not be given undue prominence in relation to the overall output of the service.

6.120 Broadcasters should note that new guidance has been provided on these rules⁴⁶.

⁴⁶ Available at Annex 2.

Part 7

Public Information Programming

- 7.1 Ofcom's 2009 consultation sought views from stakeholders on whether it would be appropriate for Ofcom to introduce rules for Public Information Programming ("PIPs") (see paragraphs 6.30 to 6.45 of Annex 4). This part of the statement sets out stakeholders' responses.
- 7.2 In assessing the responses, we have taken into account that they were submitted by stakeholders at a time when the prohibition on product placement was in place and was set to continue (see Part 2, paragraph 2.8).
- 7.3 As part of the consultation, Ofcom drafted the following example introductory text and potential rules to assist stakeholders' consideration⁴⁷:

Public Information Programming

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

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

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

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

- 9.37 Public Information Programming is programming which has as its purpose a public interest benefit. Public Information Programming may not be funded with a view to promoting the name, trade mark, image, activities or products of the funder. It may be funded only by a non-commercial, not-for-profit entity.
- 9.38 Public Information Programming must not be funded by an individual or organisation that is prohibited from advertising on television.

⁴⁷ Strike-through text indicates changes made in the 2010 consultation to the text set out in the 2009 consultation.

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

Stakeholder responses

Overview

- 7.4 Responses were polarised, ranging from those respondents who believed that far less restrictive rules than those included in the consultation should be introduced, to those who believed such programming would be unacceptable.
- 7.5 Many respondents (both those who supported and opposed the introduction of rules for PIPs) expressed reservations about the scope and application of the potential rules. Some respondents believed that any introduction of new rules in this area would be premature and, given the significant issues raised, the matter should be subject to a separate debate.
- 7.6 There was a general consensus amongst respondents that, should Ofcom decide to introduce rules for PIPs, these should be subject to regular review.
- 7.7 The key issues raised by respondents were as follows:

Subject matter

- 7.8 A number of respondents, particularly individuals and those representing viewers' interests, were concerned about the potential for PIPs to be "propaganda" and present a "one-sided" view.
- 7.9 One organisation said that, while it strongly supported improvements in the dissemination of public information, it considered that there were many issues to be resolved before rules in this area could be implemented. For example, there was a

risk of overloading public service broadcasting with state-aided sponsored programming which risked editorial independence.

- 7.10 Many respondents cited concerns in relation to limiting the subject of such programmes to matters in “the public interest”. The following points were made:
- 7.10.1 the concept is difficult to define;
 - 7.10.2 Ofcom would need to clarify and issue additional guidance on what would be considered “programming in the public interest”;
 - 7.10.3 the subjective nature of the definition would make it difficult to regulate;
 - 7.10.4 the term could potentially cover a very wide range of subjects on which there are strong opposing views. For example, issues such as birth advice and abortion might fall within the rules under the guise of a public interest programme on health matters;
 - 7.10.5 the genre was open to exploitation - some extreme, single issue groups might seek to educate and inform in such a manner as to influence social and/or political policies unduly;
 - 7.10.6 the public interest test would seem to favour content produced by the Central Office of Information (“COI”), and content could potentially appear as propaganda;
 - 7.10.7 one broadcaster considered the “public interest” test as described in the consultation was not sufficient justification to create what would be, in its view, an arbitrary distinction. The broadcaster could see no reason why, if the safeguards were sufficient, the funding opportunities could not be extended to all editorial programmes; and
 - 7.10.8 one respondent considered PIPs should be restricted to “strictly factual programming with clear public benefit”.
- 7.11 Similar concerns were echoed with regards to the term “political, industrial or public controversy” set out in example Rule 9.42. Respondents considered that there might be considerable problems with determining what programming did “not cover matters relating to political, industrial or public controversy”. Ofcom would need to provide additional clarification and guidance.
- 7.12 One respondent noted that example Rule 9.42 raised issues when broadcasting across national borders, as “matters relating to political, industrial or public controversy vary from country to country”.
- 7.13 Another respondent queried whether a non-commercial, not-for-profit entity with both political and non-political agendas would be able to fund a PIP provided that the political agenda was not presented within the programme.
- 7.14 One organisation argued that there was no need to limit the subjects covered by such programming, as broadcasters should be free to decide which subjects they want to cover and approach potential funders.
- 7.15 One respondent submitted that most issues of importance could be considered as matters of “political, industrial or public controversy” as “there will always be a group

of voices on the other side of any subject”. The respondent considered that any restriction over an attempt “to influence the policies or decisions of local, regional, or national governments, whether in the UK or elsewhere” would seriously diminish the scope of the programming and would make PIPs a far less attractive opportunity for non-governmental organisations. It added that the only films that would meet the proposed criteria would be public information films, which it considered would be of very limited appeal to film makers and audiences.

Funder status

- 7.16 In relation to the issue of restricting the funding of PIPs to non-commercial entities, the following points were raised:
- 7.17 One broadcaster argued that the restriction was “misconceived” and would discriminate unfairly against commercial entities willing to fund programmes.
- 7.18 Seven other organisations considered the restriction unnecessary. Three stated that any individual or organisation that is permitted to advertise on television should be able to fund PIPs where such programming falls within the required definitions. One organisation suggested that Ofcom should consider whether commercial organisations could also fund PIPs provided that such programming was about a purely non-commercial topic and complied with all other areas of the Code.
- 7.19 In contrast, another organisation said that beyond what was, in its view, the “entirely legitimate case of the COI”, much further consideration was needed in this area. Similarly, one individual respondent suggested allowing only official public bodies such as the NHS to fund PIPs.
- 7.20 Concern was expressed that commercial interests may impact on PIPs. One respondent said that there should be a clear dividing line between advertising and programmes. It argued that PIPs may divert funds from advertising.
- 7.21 Many respondents raised questions over the interpretation “non-commercial, not-for-profit entities”. A number questioned whether the definition extended to charities, with some considering that it should. A broadcaster considered that registered charities should be eligible, even if they undertook some commercial activity.
- 7.22 Eight respondents commented that some not-for-profit organisations may be inappropriate funders, for example if they were linked to activities that were not in the public interest or represented issues in a partial way.
- 7.23 Some respondents expressed concerns that the rules could provide too much scope for rich individuals or well-funded groups to put forward their viewpoint.

Programme content

- 7.24 One respondent was not convinced that the example proposals would allow a significant increase in the number of organisations able to fund programming or the amount of content produced. The respondent suggested that, for this to happen, the rules should be drafted in such a way so as to allow funders to deal with subjects in which they were actively involved, provided that the subject was genuinely in the public interest and programmes were otherwise compliant with the rules.
- 7.25 A broadcaster questioned how programmes could refer to the activities of the funder without promoting these activities. This respondent and another broadcaster were of

the view that the word “activities” should be removed from example Rule 9.39 as it was not required under the AVMS Directive and rendered new forms of programming unworkable.

- 7.26 Two broadcasters commented that funders might only agree to provide funds for programming which were consistent with the perspective and ethos of the funder. They continued that this had the potential to place increased pressure on broadcasters to maintain editorial independence. However, one of the broadcasters considered that these are matters for those involved in such programming to be aware of and have processes to deal with, rather than matters which should prevent the principle of such funding being facilitated by the potential rules.
- 7.27 Five organisations and two individuals considered that the potential rules would maintain editorial independence, while two of the organisations also added that they considered the potential rules would provide adequate consumer protection. One organisation also agreed but commented that the rules should not be “enforced so stringently so as to undermine the whole purpose of the broadcast”.
- 7.28 One individual believed that while “in theory” there could be editorial independence, if a funder threatened to “pull the plug on funding”, independence would be in danger.
- 7.29 Two organisations considered that the potential rules would not maintain the editorial independence of the broadcaster and provide adequate consumer protection. This view was shared by one individual, who considered that every programme would have to be individually vetted for consumers to be protected appropriately.

Identification of PIPs

- 7.30 Again, views were polarised, with three respondents considering that all PIPs should clearly show a logo on the screen throughout the programme as well as announcements naming the funder at the beginning and end of the programme, plus every 15 minutes during the programme.
- 7.31 Conversely, some respondents were of the view that the example rules requiring transparency were likely to have a negative impact and deter potential funders.
- 7.32 Some respondents questioned why the example rules proposed different criteria for identifying PIPs than those required when identifying sponsorship arrangements. One respondent noted that the example identification rule for PIPs included in the consultation restricted credits to including only a reference to the name and/or logo of the funder, when commercial sponsorship credits can carry more information. Respondents considered that credits for PIPs and sponsored programmes should be the same. One of the organisations argued that to introduce different styles could lead to confusion among viewers.

Impact on funding

- 7.33 Many respondents supported, in principle, the introduction of new rules for PIPs as a way to widen sources of programme funding. One organisation added that the introduction of such rules was particularly pertinent against the backdrop of declining advertising revenues and the consequent reduction in programme budgets. Another stated that without such funding, there was a danger that such programming may not be made or broadcast on commercial television in the future.

- 7.34 One organisation considered that the future of public service content production and distribution must evolve to include a wide variety of non-traditional players. It considered that the involvement of the public sector in the funding and use of public service content offered an opportunity not only to fill a funding gap but to work with media in wholly new and progressive ways.
- 7.35 One broadcaster considered that such funding would make only a marginal contribution to broadcasters' finances, but in some instances might provide the extra funds to ensure that such programmes were made.
- 7.36 One organisation submitted that the COI was likely to be the biggest potential funder of PIPs. The respondent stated that this organisation was likely to work with the larger broadcasters in order to reach a larger audience. This could place some smaller channels at a disadvantage.

Other impacts

- 7.37 One broadcaster was of the view that all educational programmes can only have positive results for viewers, subject to the content being balanced and informative.
- 7.38 Another broadcaster considered that the rules would enable broadcasters to secure funding for programmes that could contribute to non-controversial social goals in the public interest. As a consequence, they would add to the range and breadth of programming available to viewers, and so enrich some viewers' experience.
- 7.39 Some respondents were concerned about the potential social and moral impact such programming may have. One respondent commented that PIPs would be "another source of power for those with the most resources, and is likely to increase inequality and social divisions".
- 7.40 An organisation referred to a 2008 Ipsos MORI poll which it said was evidence that awareness of the wider world leads to greater social cohesion.

Ofcom's decision

- 7.41 We have noted the range and strength of respondents' views about the potential introduction of rules for PIPs. We recognise that opinions are polarised. Significant concern has been expressed about risk that such programming leads to "propaganda". Other respondents expressed concerns that the potential parameters set out in the 2009 consultation were too restrictive and would lead to content that was likely to be unappealing to both broadcasters and viewers.
- 7.42 While many respondents appear to support, in principle, the introduction of rules for PIPs, it is clear that there are many issues that remain to be addressed, and a range of differing opinions explored as to how these should be resolved.
- 7.43 In recognition of the complexities of the issues raised and the fact that there is no clear consensus on: i) whether it is appropriate to introduce new rules; or ii) what any such rules should be, we have decided to defer our consideration of the introduction of rules for PIPs.
- 7.44 In reaching this decision we have taken into account not only the responses to the consultation as summarised above, but also the fact that the example rules included in the 2009 consultation was drafted at a time when there were no plans to lift the

prohibition on product placement. Likewise, as noted above, the responses in question were submitted by stakeholders in this context.

- 7.45 As product placement will provide an additional revenue stream for programme-makers and broadcasters, its introduction may have an impact on the potential appetite for PIPs. Ofcom's decision to apply the product placement rules to paid-for references in programmes to products, services and trade marks that have been placed for non-commercial purposes may be of particular interest to potential funders of PIPs (see Part 4, paragraphs 4.10 to 4.13).
- 7.46 Further, any new rules for PIPs would need to be considered in the light of a number of issues relating to the implementation of the new product placement rules. For instance:
- Could or should PIPs be able to include product placement?
 - If so, would it be appropriate for a programme funder that has both non-commercial and commercial interests, to product place one of its commercial interests in a PIP it had funded?
 - How would the legislative requirement for editorial independence (in relation to product placement) be ensured in the case of PIPs?
 - What impact would the prohibition on product placement in current affairs programmes produced under UK jurisdiction have on PIPs?
- 7.47 Ofcom's decision to defer its consideration of the introduction of rules for PIPs will :
- ensure that Ofcom takes account of the new and evolving product placement market and the possible impact of product placement on PIPs;
 - ensure that due consideration is given to this complex area; and
 - provide an opportunity for Ofcom to further explore stakeholder views, including, if appropriate, conducting deliberative audience research.
- 7.48 We therefore intend to consider this issue again at an appropriate point after the implementation of product placement.