

Annex 4

**The Broadcasting Code Review
Consultation (15 June to 4 September
2009 (“the 2009 consultation”))**



Broadcasting Code Review

Proposals on revising the Broadcasting Code

Consultation

Publication date: 15 June 2009

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Part 1

Executive Summary

Introduction

- 1.1 Under the Communications Act 2003 (“the Act”), Ofcom is required to draw up and, from time to time, revise a code for television and radio services, covering standards in programmes, sponsorship and fairness and privacy. This Code is known as the Ofcom Broadcasting Code (“the Code”) and came into effect on 25 July 2005 following extensive public consultation and research during 2004.
- 1.2 Ofcom made a commitment in the 2008/9 Annual Plan to review the Code and consider whether it still reflected the consumer, industry and regulatory environments. In order to understand developments in these areas since 2005 we took into account the following:
- **high profile compliance failings** (notably in relation to competitions and voting and sexual material);
 - **pre-consultation discussions** with stakeholders (including broadcasters and representatives of consumer groups);
 - **consumer research** (in relation to commercial radio and in relation to sexual material); and
 - **legislative change** in particular the European Commission Audio Visual Media Services (AVMS) Directive which must be implemented into UK legislation by 19 December 2009 and includes a number of mandatory changes (please see below at paragraph 1.11 to 1.13).
- 1.3 In light of these considerations, we have identified certain sections of the Code where we believe revisions are required at this time. However we have not identified a need to revise all the rules in the Code. Where the factors listed above have not suggested that rules should be revised, we propose leaving the rules unchanged. This is discussed below under ‘Overview of our approach’.

Overview of our approach

- 1.4 The Code is currently separated into ten sections, each designed to secure the relevant objectives in relation to standards, sponsorship and fairness and privacy, as set out in the Act.
- 1.5 We have identified, following the considerations discussed above, four main areas of the Code which we believe now require updating:
- to ensure that the Code remains fit for purpose;
 - to provide adequate protection for citizens and consumers;
 - to reduce regulatory burdens in areas where we have identified rules which may be considered to be unnecessary or unnecessarily restrictive; and

- to afford greater clarity where we believe this is needed.
- 1.6 As discussed above in those areas of the Code where we have not identified the need for revisions we propose leaving the rules unchanged. We are seeking stakeholders' comments on this targeted approach to the Code review. If stakeholders believe that other sections of the Code should also be amended, they should respond to the consultation question in Part 8 of this document and we will consider this further, and if necessary, will consult on the other sections of the Code at a later stage.
- 1.7 In light of the above, we are proposing to make changes to the following Code sections:
- Section One: Protecting the Under-Eighteens;
 - Section Two: Harm and Offence;
 - Section Nine: Sponsorship; and
 - Section Ten: Commercial References and Other Matters.
- 1.8 The headline changes proposed are as follows:
- **A clarified set of rules on sexual material within Code Section One** (Protecting the Under-Eighteens), as discussed at Part 4 of this document;
 - **A clarified set of rules on competitions and voting** within Section Two (Harm and Offence) and within Sections Nine and Ten, as discussed at Part 5 of this document;
 - Replacing Code Section Nine (Sponsorship) and Code Section Ten (Commercial References) with **a new Section Nine on Commercial References in Television Programming** and **a new Section Ten on Commercial References in Radio Programming**, as discussed at Parts 6 and 7 of this document;
 - **Three new sets of rules within the proposed Code Section Ten on Commercial References in Radio** set out in overview at Part 7 of this document:
 - **Content-related promotions** - proposals to allow a brief offer of further information, or offer for sale, of a product or service that is directly associated with specific content and funded by a third party.
 - **Venue-sponsored outside broadcasts** - proposals to allow the sponsorship of outside broadcasts by the venue or venue owner.
 - **Sponsored listener competition features** - proposals to allow sponsor references to form part of listener competition features.
- 1.9 We are also considering the introduction of rules for a new genre of **Public Information 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 may also refer to the interests and/or activities of the funder. These potential rules are discussed at Part 6 of this document in relation to television, and at Part 7 in relation to radio, and we invite stakeholders' views.

- 1.10 In addition, we have also set out other proposed revisions to rules where we believe these would clarify existing rules. All proposals to clarify rules are aimed at avoiding future compliance failures by clarifying the regulatory principles already in place. This in turn would benefit viewers and listeners by reducing the risk of material being broadcast that is in breach of the Code.
- 1.11 In relation to the requirements of the AVMS Directive, stakeholders should note that this replaces the current Television Without Frontiers (“TWF”) Directive, and therefore all general references to the TWF in the Code will be replaced, where relevant, by references to the AVMS Directive which must be implemented into UK legislation by 19 December 2009.
- 1.12 In July 2008 the Department for Culture, Media and Sport (“DCMS”) consulted on its proposals to implement the AVMS Directive, including the enforceable requirements relating to product and prop placement¹. On 11 March 2009 a Ministerial Statement included the Government’s decision to continue to prohibit product placement in television programmes made by and for UK broadcasters².
- 1.13 The enforceable requirements of the AVMS Directive relating to product and prop placement, will be set out directly in amendments to the Act by new AVMS Directive (Implementation) Regulations (“the Regulations”). The Regulations are expected to be laid before Parliament in October 2009³. Ofcom will have a duty to ensure broadcasters comply with the new statutory requirements relating to product and prop placement. Given that the requirements will be set out in legislation, Ofcom will have no discretion to draft its own rules. We therefore propose to replicate the wording adopted in the new legislative provisions within the revised Code (please see Part 6 in relation to the proposed new Section Nine of the Code).
- 1.14 In reviewing the Code, we have had particular regard to each of the following:
- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material;
 - the likely size and composition of the potential audience;
 - the likely expectation of the audience as to the nature of a programme’s content;
 - the likelihood of persons who are unaware of the nature of a programme’s content being unintentionally exposed, by their own actions, to that content;
 - the desirability of securing that the content of services identifies when there is a change affecting the nature of a service being watched or listened to; and
 - the desirability of maintaining the independence of editorial control over programming content.
- 1.15 As a public authority, we also have a duty under the Human Rights Act 1998 to ensure that we do not act in a way which is incompatible with the European Convention of Human Rights (“the Convention”). Therefore, in reviewing the Code,

¹ The DCMS public consultation on implementing the AVMS Directive can be found at: http://www.culture.gov.uk/reference_library/consultations/5309.aspx.

² The Ministerial Statement on the implementation of the AVMS Directive can be found at: http://www.culture.gov.uk/reference_library/minister_speeches/5932.aspx.

³ The draft Regulations can be obtained from the DCMS.

we have also taken into account Article 10 of the Convention which provides for the right to freedom of expression. This encompasses the broadcaster's right to "impart information and ideas" and also the audience's "right to receive information and ideas without interference by public authority". Under the Communications Act 2003 Ofcom must have regard to the need to guarantee an appropriate level of freedom of expression in relation to standards in television and radio services. This informs both the current Code and our proposals for revisions.

1.16 Overall, we believe the benefits of the proposed targeted approach to the Code review are that it:

- appropriately furthers the interests of citizens and consumers and the radio and television industries;
- ensures that the Code enables Ofcom to meet its duties effectively and efficiently, providing adequate protection and an appropriate level of freedom of expression, while remaining responsive to changes in the industry, regulatory and commercial landscape since the publication of the current Code; and
- additionally, making all changes to the Code by the AVMS Directive implementation deadline of 19 December 2009, reduces any risk of confusion over the revisions and optimises both citizen understanding, and industry's implementation, of the changes.

Guidance

1.17 We propose to update and revise existing guidance to the Code, as appropriate, in light of changes made following this consultation. We have indicated where we consider new guidance would be appropriate and of assistance to broadcasters in relation to particular changes we are proposing. The current guidance to the Code can be found at <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/>. In Part 8 of this document we invite stakeholders to identify any areas where they consider updated guidance would be helpful.

Approach to Impact Assessment

1.18 The consultation document does not contain a separate impact assessment document. Instead the consultation document as a whole assesses the impact of the proposed changes on stakeholders (including citizens and consumers; and radio and television broadcasters). This assessment has been informed by our pre-consultation discussions with stakeholders and by the consumer research we have conducted in the areas of sexual material and commercial radio. Our approach is detailed in Part 2 of this document.

Next steps

1.19 We now seek stakeholders' views on these proposals. The consultation responses will enable us to consider our proposals in light of stakeholder comments. We will publish a summary of responses and statement in response when the revised Code is published in December 2009.

Part 2

Background

Introduction

- 2.1 As part of its duties and functions in relation to broadcasting under the Communications Act 2003 (“the Act”), Ofcom is required to draw up and, from time to time, revise a code for television and radio services, covering standards in programmes (which include the protection of people under the age of 18 and the application of generally accepted standards to protect the public from the broadcast of offensive and harmful material), sponsorship and fairness and privacy. The Ofcom Broadcasting Code (“the Code”) and came into effect on 25 July 2005 following extensive public consultation and research during 2004.
- 2.2 Ofcom made a commitment in the 2008/9 Annual Plan to review the Code and consider whether it still reflected the consumer, industry and regulatory environments. In order to understand developments in these areas since 2005 we have taken into account the following:
- **high profile compliance failings** (notably in relation to competitions and voting and sexual material);
 - **pre-consultation discussions** with stakeholders (including broadcasters and representatives of consumer groups);
 - **consumer research** (in relation to commercial radio and in relation to sexual material); and,
 - **legislative change** in particular the European Commission Audio Visual Media Services (AVMS) Directive which must be implemented into UK legislation by 19 December 2009 and includes a number of mandatory changes (please see below at paragraphs 2.11 to 2.13).
- 2.3 In light of these considerations, we have identified certain sections of the Code where we believe revisions are required at this time. However we have not identified a need to revise all the rules in the Code. Where the factors listed above have not suggested that rules should be revised, we propose leaving the rules unchanged (please see Part 8).
- 2.4 This part of this document explains the purpose of this consultation and the rationale for our approach. It sets out the stakeholder research which underpins two areas of the consultation and explains our approach to assessing the impacts of our proposals. It sets out the statutory duties and other relevant considerations that Ofcom must take into account in carrying out its duties, including considerations set out in the Act, other UK legislation, and European legislation. Part 2 also sets out the regulatory objectives of this consultation in relation to particular sections of the Code.

Purpose of this consultation

- 2.5 The Code is currently separated into ten sections, each designed to secure the relevant objectives in relation to standards, sponsorship and fairness and privacy, as set out in the Act.

2.6 Following high profile compliance failings in certain areas of the Code; extensive pre-consultation discussions with stakeholders, consumer research; and, with the prospect of legislative change (each referred to above), Ofcom has identified four main areas of the Code where mandatory, necessary or desirable changes are now required:

- to ensure that the Code remains fit for purpose and provides both adequate protection for citizens and consumers and a consistent and a robust regulatory framework for broadcasters;
- in order to reduce regulatory burdens in areas where we have identified rules which may be considered to be unnecessary or unnecessarily restrictive; and
- to afford greater clarity where we believe this is needed.

2.7 As discussed above in those areas of the Code where we have not identified the need for revisions, we propose leaving the rules unchanged. We are seeking stakeholders' comments on this targeted approach to the Code review. If stakeholders believe that other sections of the Code should also be amended, they should respond to the consultation question in Part 8 of this document and we will consider this further, and if necessary, will consult on the other sections of the Code at a later stage.

2.8 In light of the above, we are proposing to make changes to the following Code sections:

- Section One: Protecting the Under-Eighteens;
- Section Two: Harm and Offence;
- Section Nine: Sponsorship; and
- Section Ten: Commercial References and Other Matters.

2.9 The headline changes proposed are as follows:

- **A clarified set of rules on sexual material within Code Section One** (Protecting the Under-Eighteens), as discussed at Part 4 of this document;
- **A clarified set of rules on competitions and voting within Section Two** (Harm and Offence) and **within Sections Nine and Ten**, as discussed at Part 5 of this document;
- Replacing Code Section Nine (Sponsorship) and Code Section Ten (Commercial References) with **a new Section Nine on Commercial References in Television Programming** and **a new Section Ten on Commercial References in Radio programming**, as discussed at Parts 6 and 7 of this document;
- **Three new sets of rules within the proposed Code Section Ten** on Commercial References in Radio, set out in overview at Part 7 of this document:
 - **Content-related promotions** - proposals to allow a brief offer of further information, or offer for sale, of a product or service that is directly associated with specific content and funded by a third party.

- **Venue-sponsored outside broadcasts** - proposals to allow the sponsorship of outside broadcasts by the venue or venue owner.
 - **Sponsored listener competition features** - proposals to allow sponsor references to form part of listener competition features.
- 2.10 We are also considering the the introduction of rules for a new genre of **Public Information 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 may also refer to the interests and/or activities of the funder. These potential rules are discussed at Part 6 of this document in relation to television, and at Part 7 in relation to radio, and we invite stakeholders' views.
- 2.11 In relation to the requirements of the AVMS Directive, stakeholders should note that this replaces the current Television Without Frontiers ("TWF") Directive, and therefore all general references to the TWF in the Code will be replaced, where relevant, by references to the AVMS Directive which must be implemented into UK legislation by 19 December 2009.
- 2.12 In July 2008 the Department for Culture, Media and Sport ("DCMS") consulted on its proposals to implement the AVMS Directive, including the enforceable requirements relating to product and prop placement⁴. On 11 March 2009 a Ministerial Statement included the Government's decision to continue to prohibit product placement in television programmes made by and for UK broadcasters⁵.
- 2.13 The enforceable requirements of the AVMS Directive relating to product and prop placement, will be set out directly in amendments to the Act by new AVMS Directive (Implementation) Regulations ("the Regulations"). The Regulations are expected to be laid before Parliament in October 2009⁶. Ofcom will have a duty to ensure broadcasters comply with the new statutory requirements relating to product and prop placement. Given that the requirements will be set out in legislation, Ofcom will have no discretion to draft its own rules. We therefore propose to replicate the wording adopted in the new legislative provisions within the revised Code (please see paragraphs 2.39 to 2.42 below in relation to the proposed new Section Nine of the Code).
- 2.14 In reviewing the Code, we have had particular regard to each of the following:
- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material;
 - the likely size and composition of the potential audience;
 - the likely expectation of the audience as to the nature of a programme's content;
 - the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;

⁴ The DCMS public consultation on implementing the AVMS Directive can be found at: http://www.culture.gov.uk/reference_library/consultations/5309.aspx.

⁵ The Ministerial Statement on the implementation of the AVMS Directive can be found at: http://www.culture.gov.uk/reference_library/minister_speeches/5932.aspx.

⁶ The draft Regulations can be obtained from the DCMS.

- the desirability of securing that the content of services identifies when there is a change affecting the nature of a service being watched or listened to; and
 - the desirability of maintaining the independence of editorial control over programming content.
- 2.15 As a public authority, we also have a duty under the Human Rights Act 1998 to ensure that we do not act in a way which is incompatible with the European Convention of Human Rights (“the Convention”). Therefore, in reviewing the Code, we have taken into account Article 10 of the Convention which provides for the right to freedom of expression. This encompasses the broadcaster’s right to “impart information and ideas” and also the audience’s “right to receive information and ideas without interference by public authority”.
- 2.16 Under the Communications Act 2003 Ofcom must have regard to the need to guarantee an appropriate level of freedom of expression in relation to standards in television and radio services. Ofcom is charged with balancing this right to freedom of expression with the, at times competing, duty to provide adequate protection for citizens and consumers. This balanced approach informs both the current Code and our proposals for revisions.
- 2.17 Overall, we believe the benefits of the proposed targeted approach to the Code review are that it:
- appropriately furthers the interests of citizens and consumers and the radio and television industries;
 - ensures that the Code enables Ofcom to meet its duties effectively and efficiently, providing adequate protection and an appropriate level of freedom of expression, while remaining responsive to changes in the industry, regulatory and commercial landscape since the publication of the last Code; and
 - additionally, making all changes to the Code by the AVMS Directive implementation deadline of 19 December 2009, reduces any risk of confusion over the revisions and optimises both citizen understanding, and industry’s implementation, of the changes.
- 2.18 This consultation document sets out the proposed revisions to those areas of the Code requiring change and invites stakeholder comments on them.

Rationale for regulatory intervention

Sexual Material rules within Section One

- 2.19 Since the introduction of the current Code, a number of compliance failures have occurred in relation to the broadcast of material of a sexual nature. Some of these have resulted in significant financial penalties. As a result of this, Ofcom has identified a need for greater clarity in the rules which relate to material of a sexual nature, and in particular in relation to the distinctions within the range of such broadcast material.
- 2.20 We are not proposing to change the regulatory effect of the rules on sexual material, rather we are proposing to clarify the rules in relation to sexual material. We do not believe that the other rules within Section One require amendment at this stage. Stakeholders’ views are welcomed on this approach in Part 8 of this document.

- 2.21 Currently Section One of the Code includes a specific ‘Sex’ sub-section, with a rule that states that representations of sexual intercourse must not be broadcast before the watershed unless there is a serious educational purpose, and limits the discussion of, or portrayal of, sexual behaviour before the watershed. Section One also separately includes a rule that restricts the transmission of ‘adult-sex’ material (i.e. material broadcast for the primary purpose of sexual arousal) to PIN protected ‘encrypted’ channels after 22:00; and, a rule that prohibits the broadcast of material equivalent to the British Board of Film Classification (“BBFC”) R18-rating⁷ at any time.
- 2.22 The proposed revisions include a new rule, the purpose of which is to encourage more detailed consideration of the contextual justification for the broadcast of strong sexual material (where the primary purpose for broadcast is not sexual arousal and, therefore, mandatory access restrictions⁸ *do not* apply). It is also designed to assist broadcasters in distinguishing between strong sexual material and ‘adult-sex’ material where mandatory access restrictions *do* apply (e.g. by PIN protection).
- 2.23 Currently the existing rules in relation to material of a sexual nature do not sit together. Ofcom has identified the need to group together the existing rules that relate specifically to the transmission of sexual material, together with the proposed new rule, under an expanded set of rules in relation to sexual material in Section One of the Code.
- 2.24 The proposed rules would make clear that regulation in relation to material of a sexual nature continues to require that:
- **Material equivalent to the British Board of Film Classification (“BBFC”) R18-rating** is prohibited;
 - **‘Adult-sex’ material** is subject to mandatory access restrictions⁹ (‘adult-sex’ material would be described as material broadcast for the primary purpose of sexual arousal);
 - **‘Strong’ sexual material** must be strongly justified; and
 - **‘Pre-watershed’ sexual material** must be appropriately limited.
- 2.25 These proposed changes are intended to provide stakeholders with a clear model to follow when they consider the acceptability of broadcasting material of a sexual nature. We do not believe that these proposals change the amount or nature of sexual material that can be broadcast, rather we believe that the proposals would clarify the current position and thereby help to reduce compliance failures in the future. This in turn would benefit viewers by reducing the risk of material being broadcast that is in breach of the Code.
- 2.26 In order to inform our approach to the application of the rules relating to sexual material, Ofcom has commissioned deliberative and qualitative research among viewers to investigate public attitudes in this area. This research sought to gain an

⁷ The BBFC R18-rating is a special and legally restricted classification for works which show explicit images of consenting sex between adults. R18 films may only be shown to adults in specially licensed cinemas, and R18 DVDs (and other ‘video recordings’) may be supplied to adults only in licensed sex shops (not by mail order).

⁸ We propose replacing the term “encryption” (currently used in the Code) with the term “mandatory access restriction”. This is discussed below at paragraph 4.27.

⁹ Mandatory access restrictions are explained at paragraph 4.28.

understanding of generally accepted standards and viewers' expectations, understanding and perceptions in relation to a range of sexual material. An executive summary of the research findings is included at Annex 11. The full findings are published on the Ofcom website¹⁰.

Competitions and voting rules within Section Two (and Sections Nine and Ten)

- 2.27 Ofcom has carried out a number of high-profile investigations over the last three years which have highlighted serious consumer protection issues that can potentially result from the unfair or misleading conduct of broadcast competitions or voting.
- 2.28 As a result of these cases, Ofcom has identified a need for greater clarity over the rules that relate to competitions and voting. Additionally Ofcom has relied on broadcasters complying with the general requirement that they do not materially mislead audiences in the portrayal of factual matters. As there are no current specific rules which relate to audience voting, we propose replacing the single rule in relation to competitions in Section Two with three new rules that will cover both competitions and voting, together with proposed meanings to accompany the new rules.
- 2.29 We do not believe that the other rules within Section Two require amendment at this stage. Stakeholders' views are welcomed on this approach in Part 8 of this document.
- 2.30 We also propose new rules in Sections Nine and Ten solely to protect audiences from the risk of *financial* harm when paying to enter broadcast competitions and voting. The proposed rules in Section Two will continue to protect audiences from *broader* types of harm (such as the consequences of unfair or misleading conduct of competitions and voting). Please see Parts 5, 6 and 7 in relation to competition and voting rules in Sections Two, Nine and Ten.

Sections Nine and Ten – Sponsorship and Commercial Matters

Proposal to replace the current Sections Nine and Ten of the Code

- 2.31 Section Nine of the current Code contains rules that apply to sponsorship on radio and television; Section Ten contains rules that apply to commercial references and other matters on both television and radio.
- 2.32 We are proposing to replace these sections with separate sections tailored specifically for radio and television:
- Section Nine of the revised Code would contain the rules applying to all commercial references in television programming; and
 - Section Ten would contain the rules applying to all commercial references in radio programming.
- 2.33 Please see Parts 6 and 7 of this consultation for the full proposals.
- 2.34 We believe that re-structuring these Code sections in this way would better reflect that the statutory framework differs for radio and television. In particular, television is subject to stricter requirements (for example, limits on advertising minutage) as a

¹⁰ [Sexual Imagery on Television - Research Report](#)

result of the AVMS Directive which applies only to audiovisual media services (and therefore does not include radio).

- 2.35 In addition to separating the radio and television rules, we also propose to amalgamate the relevant sponsorship rules into each of the revised sections. We are integrating the sponsorship rules in this way because we have noted that, in general, there is a risk of broadcasters focusing on either Sections Nine or Ten of the current Code, rather than both. This can result in the significance of overarching rules (e.g. undue prominence) being diminished. The integration of the sponsorship rules, for both television and radio, would emphasise that sponsorship is just one way in which references to commercial activities can be included in broadcasting, and that it is subject to the same broad principles and overarching rules as other commercial references.
- 2.36 Each of the new sections would include:
- **Principles** that help stakeholders understand the relevant standards objectives;
 - **General rules** that apply to all commercial references within programming; and
 - **Specific rules** that apply to the different types of commercial references, such as sponsorship.
- 2.37 We propose to provide introductory text throughout the revised Sections Nine and Ten. This would explain the objectives of the rules and set out how the rules enable adherence to the relevant principles. Where appropriate, the introductions would also give meanings of terms.
- 2.38 We believe that re-structuring these Code sections in this way would provide stakeholders with a more user-friendly means of assessing the acceptability of commercial references in programming and would enable a better understanding of the purpose and spirit of the rules.

The revised Section Nine (commercial references in television programming)

- 2.39 As discussed above, the proposed new Section Nine of the Code recognises that the statutory framework differs for radio and television. The revised Section Nine would reflect this statutory framework in order to best serve the regulation of commercial references in television programming.
- 2.40 We propose the new Section Nine would include mandatory revisions in relation to product and prop placement which result from the AVMS Directive. Our approach is explained above at paragraphs 2.11 to 2.13 and stakeholders are asked for their views on this approach as part of this consultation.
- 2.41 In addition, a potential set of new rules are put forward for consideration:
- **Public Information Programming** - the potential introduction of rules in relation to a new genre of programming funded by non-commercial, not-for-profit entities that seeks to educate or inform the audience on matters in the public interest, and may also refer to the interests and/or activities of the funder.
- 2.42 Otherwise the revised Section Nine contains no significant changes to the current rules in relation to television, only revisions for the purpose of increasing clarity and

understanding. Stakeholders views on this targeted approach are welcomed in Part 8 of this document.

The revised Section Ten (commercial references in radio programming)

- 2.43 Again as discussed above, the proposed new Section Ten of the Code recognises that the statutory framework differs for radio and television. The revised Section Ten would reflect this framework in order to best serve the regulation of commercial references on radio.
- 2.44 We propose three areas of significant change in relation to commercial references on radio. These are as follows:
- **Content-related promotions** - proposals to allow a brief offer of further information, or offer for sale, of a product or service that is directly associated with specific content and funded by a third party.
 - **Venue-sponsored outside broadcasts** - proposals to allow the sponsorship of outside broadcasts by the venue or venue owner.
 - **Sponsored listener competition features** - proposals to allow sponsor references to form part of listener competition features.
- 2.45 The proposed rules are intended to reduce, where possible, regulatory burdens on radio broadcasters. This would be in line with Ofcom's duty¹¹ to review regulation that may present an unnecessary burden on stakeholders, whilst ensuring, where necessary, that consumer protection is appropriately preserved. We believe these proposals would provide economic benefits to the commercial radio industry, while also ensuring that broadcasters are able to provide output that keeps pace with listeners' expectations in relation to commercial radio.
- 2.46 We have conducted deliberative and qualitative research into listeners' attitudes towards commercial references on radio which has informed our proposals (see Annex 12).
- 2.47 In addition a potential set of new rules are put forward for consideration:
- **Public Information Programming** - the potential introduction of rules in relation to a new genre of programming funded by non-commercial, not-for-profit entities that seeks to educate or inform the audience on matters in the public interest, and may also refer to the interests and/or activities of the funder.
- 2.48 Otherwise the revised Section Ten contains no significant changes to the current rules in relation to radio, only revisions for the purpose of increasing clarity and understanding. Stakeholders views on this targeted approach are welcomed in Part 8 of this document.

The revised Sections Nine and Ten (broadcast competitions and voting)

- 2.49 As discussed above in relation to Section Two, Ofcom has conducted a number of investigations that have identified a range of serious issues concerning the conduct of audience competitions and voting.

¹¹ Communications Act 2003, Section 6 (1)(b).

- 2.50 As a result, we are proposing to introduce new rules into both Sections Nine and Ten for broadcast competitions and voting that involve audience payment. These rules have been drafted in recognition that, where audiences have to pay to participate in competitions or voting, there is a risk that they may suffer financial detriment. Voting has been included in these rules because some of our investigations have raised similar issues to some of those concerning broadcast competitions.
- 2.51 The proposed rules for Section Two (discussed above) reflect and complement the scope and wording of the new proposed rules in Sections Nine and Ten which apply to audience competitions and voting.

Guidance

- 2.52 We propose to update and revise existing guidance to the Code, as appropriate, in light of changes made following this consultation. We have indicated where we consider new guidance would be appropriate, and of assistance to broadcasters, in relation to particular changes we are proposing. The current guidance to the Code can be found at <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/>.

Consumer research

- 2.53 As discussed above, deliberative and qualitative research has been commissioned into consumer attitudes to sexual material and commercial references on radio. This is referred to below in Parts 4 and 7 and the executive summary of the findings can be found at Annexes 12 and 13. The full findings are at <http://www.ofcom.org.uk/consult/condocs/bcode09/radioresearch.pdf> and <http://www.ofcom.org.uk/consult/condocs/bcode09/sextv.pdf>.
- 2.54 Ofcom also has a number of rules relating to offensive language both in Section One of the Code (in relation to protecting the under-eighteens), and Section Two of the Code (in relation to generally accepted standards). These rules are interpreted in light of Ofcom's understanding of the views of viewers and listeners, and this is underpinned by consumer research.
- 2.55 The rules in relation to offensive language appear to provide adequate information to stakeholders regarding the requirements to ensure offensive language complies with the Code. Concerns about these rules were not raised by stakeholders in pre-consultation discussions. Where compliance issues have arisen the rules have been sufficiently robust to deal with them. We do not therefore propose revisions to the rules. However, we are aware that attitudes towards language can change over time. We recognise that in the near future research on public attitudes towards offensive language may be required in order to establish current levels of acceptability in this area and inform Ofcom's application of the Code.

Approach to impact assessment

- 2.56 Ofcom's aim is to ensure that the Code appropriately furthers the interests of citizens and consumers and the radio and television industries; and enables Ofcom to meet its duties effectively and efficiently. Ofcom seeks to provide adequate protection for consumers and an appropriate level of freedom of expression for broadcasters, while remaining responsive to changes in the industry and regulatory environment since the publication of the current Code.

- 2.57 The consultation document does not contain a separate impact assessment document. Instead the consultation document as a whole assesses the impact of the proposed changes on stakeholders (including citizens and consumers; and radio and television broadcasters). This assessment has been informed by our pre-consultation discussions with stakeholder and by the consumer research we have conducted in the areas of commercial radio and sexual material.
- 2.58 The proposed revisions fall into four categories:
- **Mandatory rule revisions** which will be determined by new provisions of the Communications Act which will be inserted by the AVMS Directive (Implementation) Regulations (to be issued later this year by DCMS). For the reasons laid out in paragraphs 2.11 to 2.13 these revisions do not form part of this consultation. However stakeholders are invited to comment on our proposal to include the provisions in relation to product and prop placement as rules in the new Code;
 - **Significant rule revisions and/or new rules** which would result in a change to the current regulatory framework, and therefore compliance procedures. The significant rule revisions in this consultation document are in relation to the proposed new rules for commercial references in television programming (referred to in paragraphs 2.39 to 2.42 above and in the proposed new Section Nine) and the proposed new rules for commercial references in radio programming (referred to at paragraphs 2.43 to 2.48 above and in the proposed new Section Ten);
 - **Rule revisions, or new rules, for the purpose of clarification** where the reason for making proposed revisions is to avoid breaches as a result of a misunderstanding of the rules and thereby to benefit viewers and listeners by affording them more effective protection. These rule revisions relate to Sections One, Two, Nine and Ten;
 - **Minor and associated revisions** for example where the wording of a rule has undergone a minor change; where rules have been re-numbered or re-ordered but otherwise remain unchanged or there have been modifications of section sub-heading titles.
- 2.59 Since **mandatory rule revisions** referred to above do not form part of this consultation, this document will not assess their impact.
- 2.60 Where we are proposing **significant rule revisions** (in the new Sections Nine and Ten), the proposed rule revisions relate to allowing limited types of commercial references that are not currently permitted. While we have not conducted a quantitative assessment for forecasting revenue impacts, we have qualitatively assessed the impact of each proposal in more detail. Stakeholders are invited to respond to questions on the impact of these rules.
- 2.61 In the case of **rule revisions, or new rules, for the purpose of clarification**, our assessment of the impact on stakeholders is less detailed as there would be no change to Ofcom's regulatory approach if the proposed amendments were adopted. Therefore, our assessment of the impact of these proposals on stakeholders is broadly that broadcasters would have a better understanding of the regulatory principles already in place, as discussed in Ofcom's published findings¹², and so

¹² <http://www.ofcom.org.uk/tv/obb/>

avoid future compliance failures. Viewers and listeners would also benefit in that the revised rules are intended to provide greater clarity for broadcasters and therefore to minimise the risks of material being broadcast that is in breach of the Code. For these proposals our assessment highlights the benefits to stakeholders of clarifying the regulatory principles already in place.

- 2.62 In relation to equality (whether in Northern Ireland or the rest of the UK) including gender, disability or ethnicity, our approach to regulation as a result of the current proposals would remain unchanged and therefore we do not consider that our proposals would have any particular implications for people to whom these considerations relate.
- 2.63 For the reasons given at paragraph 2.61 above, impact assessments are not required in the case of **minor rule revisions** and **associated revisions** (as we anticipate no impact at all).

Ofcom's review of procedures for handling broadcasting complaints, cases and sanctions

- 2.64 Stakeholders should note that Ofcom is currently consulting on its procedures for handling broadcasting complaints, cases and sanctions. The review is intended to streamline and simplify Ofcom's complaints handling and sanctions procedures, providing stakeholders with a more efficient and responsive process. The consultation document can be found at <http://www.ofcom.org.uk/consult/condocs/broadcasting>

Next steps

- 2.65 The following parts of this document set out our proposals and invite stakeholders' views on them. In responding to the questions for stakeholders, please see Part 3 which sets out Ofcom's regulatory objectives and statutory duties. The consultation responses will enable us to consider our proposals in light of stakeholder comments. We will publish a summary of responses and statement in response when the revised Code is published in December 2009.

Part 3

Regulatory objectives and statutory duties

Ofcom's statutory duties

3.1 As part of its duties in relation to broadcasting, Ofcom is responsible for setting broadcast standards for the content of programmes. The objectives to be secured by these standards under section 319(2) of the Act are:

- that persons under the age of eighteen are protected;
- that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;
- that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;
- that news included in television and radio services is reported with due accuracy;
- that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;
- that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;
- that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;
- that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;
- that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with;
- that the unsuitable sponsorship of programmes included in television and radio services is prevented;
- that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services; and
- that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.

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

- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;

- the likely size and composition of the potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;
 - the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;
 - the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;
 - the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
 - the desirability of maintaining the independence of editorial control over programme content.
- 3.3 In relation to the standard objectives in relation to sponsorship, section 321 of the Act provides that Ofcom:
- must include general provision governing standards and practice in sponsorship; and
 - may include provision prohibiting forms and methods of sponsorship.
- 3.4 Broadcast standards are maintained by means of codes. The Code identifies the standards that apply to editorial content (i.e. programming) and sponsorship arrangements. Content is assessed on a case-by-case basis to determine whether it complies with the Code. The Code itself must comply with European legislation.

The BBC Agreement and Memorandum of Understanding

- 3.5 Section 198 of the Act confers certain powers on Ofcom concerning the BBC which are contained in the BBC Agreement.
- 3.6 Clause 46 of The BBC Agreement confirms these objectives:
- (1) The BBC must observe Relevant Programme Code Standards in the provision of the UK Public Broadcasting Services.
- (2) "Relevant Programme Code Standards" means those standards for the time being set under section 319 of the Communications Act 2003 -
- (a) which relate to the objectives set out in the following paragraphs of subsection (2) of that section, that is to say -
 - (i) paragraph (a) (protection of persons under the age of eighteen);
 - (ii) paragraph (b) (omission of material likely to encourage or incite any crime or disorder);

- (iii) paragraph (e) (exercise of responsibility with respect to the content of religious programmes);
 - (iv) paragraph (f) (application of generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material); and
 - (v) paragraph (l) (refraining from use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred), but
- (b) only to the extent that they do not concern the accuracy or impartiality of the content of any programme included in the UK Public Broadcasting Services.

3.7 Ofcom and the BBC Trust have a Memorandum of Understanding which helps explain the relationship between the two organisations. This can be found at <http://www.ofcom.org.uk/about/csg/ofcombbs/mou/>.

European legislation

- 3.8 The Television without Frontiers Directive ('the TWF Directive') was adopted by the then European Economic Community in 1989 and amended in 1997. The TWF Directive introduced minimum common standards of advertising and sponsorship regulation in order to facilitate a single market in broadcasting services in accordance with the Treaty of Rome. It sets minimum standards in relation to the protection of minors, to the prohibiting of incitement to hatred, as well as providing for a right of reply.
- 3.9 On 19 December 2007, the European Union adopted amendments to the TWF Directive (renamed the Audiovisual Media Services Directive ('the AVMS Directive')) which must be implemented into UK legislation by 19 December 2009. The AVMS Directive applies only to audiovisual media services. It does not therefore, extend to radio services.
- 3.10 Appendix 2 of the Code, which previously included the relevant extracts of the Television Without Frontiers (TWF) Directive, will set out the relevant extracts from the Audiovisual Media Services (AVMS) Directive. The revised Appendix 2 is attached at Annex 9.

Relevant consultation considerations

- 3.11 In consulting upon the review of the Code we must take into account our responsibilities under the Act and other relevant legislation.
- 3.12 Section 3(1) of the Act says that Ofcom's principal duty in carrying out its functions shall be to further the interests of:
- citizens in relation to communications matters; and
 - consumers in relevant markets, where appropriate by promoting competition.
- 3.13 Section 3(2) specifies matters which Ofcom must secure in carrying out its functions. These include:

- the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
 - the maintenance of a sufficient plurality of providers of different television and radio services;
 - the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services; and
 - the application in the case of television and radio services of standards that provide adequate protection to members of the public from unfair treatment in programmes and unwarranted infringements of privacy.
- 3.14 Section 3(3) and section 3(4) say that in performing the duties set out in section 3(1), Ofcom must have regard to a variety of other factors, including:
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
 - any other principles appearing to Ofcom to represent best regulatory practice;
 - the desirability of promoting the fulfilment of the purposes of the public service television broadcasting in the UK;
 - the desirability of promoting competition in relevant markets;
 - the need to secure the application of standards in the manner which best guarantees an appropriate level of freedom of expression;
 - the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection;
 - the needs of persons with disabilities, of the elderly and of those on low incomes; and
 - the opinions of consumers in relevant markets and of members of the public generally; and
 - the different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and urban areas.
- 3.15 Where it appears to Ofcom that any of its general duties conflict with one another, it must secure that the conflict is resolved in the manner it thinks best in the circumstances (section 3(7)).
- 3.16 In performing its duties under section 3(1)(b) to further the interests of consumers, Ofcom must also have regard to the interests of those consumers in respect of choice, price, quality of service and value for money.
- 3.17 Ofcom has both a general responsibility with respect to advertisements and forms and methods of advertising and sponsorship, as well as a related power to include

conditions in any licence granted by Ofcom that go beyond the provisions of its standards code (section 321(4)).

- 3.18 Ofcom also has duties that relate to how to carry out our work under the Act, including requirements:
- i) to secure that regulation by Ofcom does not involve the imposition of burdens that are unnecessary, or the maintenance of burdens which have become unnecessary (section 6(1)); and
 - ii) to carry out an assessment of the impact of a change in the way we carry out our activities where this would have a significant impact on persons carrying on businesses in markets that we regulate (section 7).
- 3.19 In addition to our responsibilities under the Act, as a public authority we have a duty under the Human Rights Act 1998 to ensure that we do not act in a way which is incompatible with the European Convention of Human Rights ('the Convention').
- 3.20 Article 8 of the Convention provides for the right to respect for private and family life, home and correspondence. It states that there shall be no interference by a public authority with the exercise of this right, except "as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".
- 3.21 Article 10 of the Convention provides for the right to freedom of expression. It encompasses the broadcaster's right to "impart information and ideas" and also the audience's "right to receive information and ideas without interference by public authority". Such rights may only be restricted if the restrictions are: "prescribed in law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary" (Article 10(2) of the Convention).
- 3.22 Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these rights in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.
- 3.23 The case law of the European Court of Human Rights on Article 10(2) of the Convention shows that national authorities have a discretion in deciding whether there is a pressing social need capable of justifying a restriction on freedom of expression. According to that case law, such a discretion is particularly essential in commercial matters and especially in a field as complex and fluctuating as advertising¹³.

Regulatory objectives in this consultation

- 3.24 The regulatory objectives of this consultation are as follows:
- i) To further the interests of citizens and consumers, in particular, in relation to:

¹³ See *VGT Verein gegen Tierfabriken v Switzerland*, judgment of the ECHR of 28 June 2001, Reports of Judgments and Decisions 2001-VI, paragraphs 66 to 70

- the application of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in television and radio services (addressed in further detail in objective (ii) below);
 - the range, quality and appeal of television and radio services available throughout the UK; and
 - the importance of securing a sufficient degree of plurality of providers of television and radio services.
- ii) To review and revise standards for the content of television and radio services to secure the following objectives:
- that persons under the age of eighteen are protected;
 - that generally accepted standards are applied to the contents of television and radio services to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;
 - that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented; and
 - that the international obligations of the UK with respect to advertising included in television and radio services are complied with (addressed in more detail in policy objective (iv) below).
- iii) To review the carrying out of its functions to ensure that regulation by Ofcom does not involve:
- the imposition of burdens that are unnecessary; or
 - the maintenance of burdens which have become unnecessary.
- iv) To ensure compliance with EC legislation, which requires that television advertising be subject to minimum rules to ensure that the interests of consumers as television viewers are fully and properly protected. These rules include limits on the volume of advertising and a requirement for advertising to be readily recognisable and distinct from programme content.
- v) To have regard to the right to freedom of expression, as expressed in Article 10 of the European Convention on Human Rights. Ofcom must have regard to the need to guarantee an appropriate level of freedom of expression in relation to standards in television and radio services.
- vi) That any changes to current regulation should, in furthering the interests of citizens and consumers, so far as possible:
- be evidence-based, transparent, proportionate, consistent and limited to the measures needed to achieve the objectives above;
 - take account of the desirability of promoting competition, and the nature and interests of different consumers, in relevant markets; and
 - take account of the desirability of promoting and facilitating effective self-regulation.

Part 4

Sexual Material Rules (Code Section One)

Introduction

- 4.1 Section One of the Code: Protecting the Under-Eighteens, requires broadcasters to observe the watershed and ensure that material unsuitable for children under the age of fifteen is not shown before 21:00. However, Ofcom recognises that under-eighteens continue to watch television after the 21:00 watershed and some of this material may include sexual content. Ofcom's duty is to protect the under-eighteens but it also recognises that that responsibility is also shared with parents, those who look after children and young people, as well as the broadcasters.
- 4.2 In addition, Section Two of the Code requires that generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the broadcast of harmful and/or offensive material.
- 4.3 This consultation paper proposes revisions to, and a re-structuring of, the rules relating to sexual material to explain and clarify Ofcom's approach to regulation in this area.
- 4.4 In Ofcom's view, these proposed revisions are necessary following a significant number of compliance failures in this area. During 2007 and 2008 there were six sanction decisions against licensees and 22 published findings regarding the broadcast of material of a strong sexual nature, including findings in relation to 'adult-sex'¹⁴ material which was transmitted without a mandatory access restriction¹⁵. Ofcom has found that recent material which has been transmitted without any access restrictions has featured nudity of a strong sexual nature, and sustained sex scenes and sexual language that has not, in some cases, been justified by the context in which the material was transmitted. Ofcom's Broadcast Bulletins contain Ofcom's published findings and sanctions decisions and can be found at <http://www.ofcom.org.uk/tv/obb/>.
- 4.5 Ofcom has previously investigated and adjudicated on much of this material under Section Two of the Code, most notably Rule 2.3 which states that *"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context"*. Rule 2.3 can be, and has been, applied to material of a sexual nature that is considered to be strong (but not broadcast for the primary purpose of sexual arousal). However, it is Ofcom's view that this rule does not provide sufficient information to stakeholders regarding the requirements to protect under-eighteens, i.e. material of a strong sexual nature requires strong contextual justification.
- 4.6 Ofcom has also drawn on Rule 1.24 of the Code which states that premium subscription services and pay per view/night services may broadcast 'adult-sex' material between 22:00 and 05:30 provided that mechanisms restricting access to

¹⁴ 'Adult-sex' material is material which is broadcast for the primary purpose of sexual arousal. It must not be broadcast unless access is restricted to adult viewers.

¹⁵ Previously referred to as "unencrypted".

adults are in place. However this rule does not clearly state that this material must not be broadcast outside of these specific services and restrictions.

Current position and overview of proposals

- 4.7 Section One of the Code currently includes a specific sub-section entitled ‘Sex’ with a rule which states that representations of sexual intercourse must not be broadcast before the watershed (in the case of television), or when children are particularly likely to be listening (in the case of radio), unless there is a serious educational purpose. The rule also requires any discussion, portrayal or representation of sexual behaviour before the watershed to be appropriately limited and inexplicit.
- 4.8 Section One also separately includes a rule that restricts the transmission of ‘adult-sex’ material to PIN protected ‘encrypted’ channels after 22:00 and a rule that prohibits the broadcast of material equivalent to the British Board of Film Classification (“BBFC”) Restricted (“R18”) rating¹⁶. Currently these three rules do not sit together in Section One, no meaning is given for ‘adult-sex’ material, nor for ‘encrypted’.
- 4.9 The purpose of this consultation document is to propose a number of changes to Section One of the Code, relating specifically to rules on material of a sexual nature. These proposed changes would affect Section One from Rule 1.17 onwards. It is proposed that Rules 1.1 to 1.16 would remain unchanged. The proposed changes include:
- revising, where necessary, current rules in relation to material of a sexual nature (including a meaning to be given for ‘adult-sex’ material);
 - creating a new rule, the purpose of which is to encourage more detailed consideration of the justification for broadcasting material of a strong sexual nature, and to clarify the distinction between ‘strong’ sexual material and ‘adult-sex’ material, where mandatory access restrictions must be in place;
 - replacing the term “encrypted” with the more accurate description “mandatory access restriction”; and
 - grouping all the existing rules relating to material of a sexual nature together in an expanded and redefined set of rules in relation to sexual material. This will fully place in context the rules contained in the Code that deal with the broadcast of sexual material and, in particular, provide broadcasters with a clearer model to follow when considering the context required when broadcasting sexual material.
- 4.10 As a consequence of grouping together the rules in relation to material of a sexual nature, minor changes would also be made to the ‘Films, premium subscription film services, pay per view services, adult-sex material on premium subscription services’ (‘Film’) section, and to the ordering of the rules in Section One from Rule 1.17 onwards.
- 4.11 For reference, the existing Code Section One (Rules 1.17 onwards) is attached at Annex 5.

¹⁶ The BBFC R18-rating is a special and legally restricted classification for works which show explicit images of consenting sex between adults. R18 films may only be shown to adults in specially licensed cinemas, and R18 DVDs (and other ‘video recordings’) may be supplied to adults only in licensed sex shops (not by mail order).

4.12 In summary, the proposed new set of rules in relation to sexual material would make clear that regulation in relation to material of a sexual nature continues to require that:

- **Material equivalent to the BBFC R18-rating**¹⁷ - is prohibited;
- **‘Adult-sex’ material** - which is material broadcast for the primary purpose of sexual arousal, must not be broadcast unless there are mandatory access restrictions in place, and then only between 22:00 and 05:30 with mandatory access restrictions in place¹⁸;
- **Strong sexual material** – material of a strong sexual nature which is not broadcast for the primary purpose of sexual arousal, and therefore not subject to mandatory access restrictions, may be broadcast after the watershed provided there is a strong contextual justification; and
- **Pre-watershed sexual material** - must be editorially justified and appropriately limited.

4.13 It is proposed that the existing rules relating to material that is equivalent to BBFC R18-rated works, and ‘adult-sex’ material, would be reworded and their guidance updated to provide further clarification. In addition the term ‘encryption’, previously used to refer to the measures which must be put in place by the broadcaster in relation to the broadcast of ‘adult-sex’ material, would be replaced with the term ‘mandatory access restriction’. It is proposed that the rule in relation to pre-watershed material of a sexual nature remains unchanged.

4.14 The proposed new rule on ‘strong sex material’ aims to capture material that is broadcast after 21:00 on what are considered general entertainment channels, all of which have widespread appeal. The proposed rule states that images and/or language of a strong sexual nature (i.e. material that is not broadcast for the purpose of sexual arousal or stimulation and which is therefore not ‘adult-sex’ material as already defined and captured by the Code) must be strongly justified by context.

4.15 As part of a more transparent approach, examples of factors broadcasters would need to consider in determining whether any material would be acceptable under this rule would be provided. These would include:

- taking into account the explicitness of any sexual material and/or sexual language used;
- the purpose of any sexual material in a programme;
- whether any plot or narrative provides sufficient editorial context for its transmission; and/or
- whether there is any other strong editorial justification for its transmission.

¹⁷ We propose to accompany this rule with guidance clarifying the criteria for material considered equivalent to the BBFC R18-rating.

¹⁸ We propose to accompany this rule with guidance clarifying the criteria which relates to ‘adult-sex’ material and to mandatory access restrictions.

- 4.16 These examples reflect and consolidate existing factors already considered by Ofcom when determining whether material of a sexual nature is suitable for broadcast.
- 4.17 As a result of the proposed revisions, other minor associated changes are also noted below (for example, re-numbering of rules which otherwise remain unchanged and modifications of section sub-heading titles).

Overview of the impact of these proposals

- 4.18 We are not proposing any significant rule revisions (as discussed at paragraph 2.58) in Section One (i.e. revisions which would result in a change to current regulatory framework, and therefore compliance procedures). Instead, we are proposing rule revisions, or new rules, which are designed to clarify the existing rules. These are aimed at avoiding future compliance failures by clarifying the regulatory principles already in place as discussed in our published findings in relation to complaints investigations and Code breaches (see paragraph 2.61).
- 4.19 Therefore, our assessment of the impact of these proposals on stakeholders is that broadcasters would have a better understanding of the regulatory principles already in place, and so be helped to avoid future compliance failures. Viewers would also benefit from being exposed to less material that is in breach of the Code.
- 4.20 In relation to equality (whether in Northern Ireland or the rest of the UK) including gender, disability or ethnicity, our approach to regulation as a result of the current proposals would remain unchanged and therefore we do not consider that our proposals would have any particular implications for people to whom these considerations relate. However Ofcom anticipates particular benefits for stakeholders as a result of the proposed Rule 1.19 and these benefits are explained below.

Proposed new rules on sexual material in Section One of the Code

- 4.21 The new set of rules in relation to sexual material proposed for inclusion in Section One of the Code is as follows (please refer to it in responding to the stakeholder questions which follow each proposal below):

Sex

- 1.17 Material equivalent to the British Board of Film Classification (“BBFC”) R18-rating must not be broadcast at any time.
- 1.18 ‘Adult-sex’ material - programmes that contain images and/or language of a strong sexual nature which are broadcast for the primary purpose of sexual arousal or stimulation - must not be broadcast at any time other than on premium subscription services and pay per view/night services between 2200 and 0530. In addition, mandatory restricted access must be in place. Mandatory restricted access means:
- there is a PIN protected system, or other equivalent protection, that restricts access solely to those authorised to view; and
 - there are measures in place that ensure that the subscriber is an adult.
- 1.19 Programmes or trailers which contain images and/or language of a strong sexual nature, which are not broadcast for the primary purpose of sexual

arousal or stimulation, can be broadcast after the watershed provided there is strong contextual justification. When considering the strength of the material, and therefore the contextual justification, broadcasters should take account of factors which might include (but are not limited to):

- the amount of sexual material;
- the explicitness of the material, i.e. the nature of the sexual activity and sexual language used, for example how graphic, prolonged or prominent it is;
- the purpose of the sex scenes within the programme, i.e. whether this is to support an editorial purpose. If the purpose is sexual arousal or stimulation of the viewer Rule 1.18 applies;
- whether any plot or narrative provides sufficient editorial context for its inclusion; and,
- whether there is an educational or other perspective to justify the inclusion of material of a strong sexual nature.

(See Rules 1.6 and 1.18 and Rule 2.3 in Section Two: Harm and Offence which includes meaning of “context”.)

1.20 Representations of sexual intercourse must not occur before the watershed (in the case of television), or when children are particularly likely to be listening (in the case of radio), unless there is a serious educational purpose. Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the watershed, or when children are particularly likely to be listening, and must be appropriately limited.

Note to stakeholders:

For ease of reference, we have adopted different styles in this document:

- all proposed rules appear in **light grey boxes**;
- all current rules appear in *italics* and without shading; and
- all stakeholder questions appear in **dark grey boxes**.

Rule revisions, or new rules, for the purpose of clarification

Proposed Rule 1.18

Proposal

4.22 Ofcom proposes a new Rule 1.18 which states:

1.18 ‘Adult-sex’ material - programmes that contain images and/or language of a strong sexual nature which are broadcast for the primary purpose of sexual arousal or stimulation - must not be broadcast at any time other than on premium subscription services and pay per view/night services between 2200 and 0530. In addition mandatory restricted access must be in place. Mandatory restricted access means:

- there is a PIN protected system, or other equivalent protection, that restricts access solely to those authorised to view; and

- there are measures in place that ensure that the subscriber is an adult.

4.23 This is proposed to replace the current Rule 1.24 which states:

“Premium subscription services and pay per view/night services may broadcast ‘adult-sex’ material between 2200 and 0530 provided that in addition to other protections mentioned above:

- *there is a mandatory PIN protected encryption system, or other equivalent protection, that seeks satisfactorily to restrict access solely to those authorised to view; and*
- *there are measures in place that ensure that the subscriber is an adult.”*

Reasons for proposed revision and impact on stakeholders

4.24 The existing Rule 1.24 does not clearly state what is meant by ‘adult-sex’ material. Nor does it explicitly state that this material must not be broadcast without any mandatory access restrictions.

4.25 In our view, stakeholders would benefit from a more transparent approach whereby the rule would clarify how Ofcom defines ‘adult-sex’ material: as programmes that contain images and/or language of a strong sexual nature which are broadcast for the primary purpose of sexual arousal or stimulation (this is currently only referred to in guidance); and, would clarify precisely when and how this material can and cannot be broadcast as has been discussed in our published findings referred to at paragraph 4.4 above¹⁹.

4.26 We also consider that by moving this rule from the existing heading ‘Films, premium subscription film services, pay per view services, adult-sex material on premium subscription services’ to a separate set of rules in relation to ‘Sex’ material, stakeholders would benefit from seeing this rule set within the wider and more relevant context of sexual material in general.

4.27 We propose replacing the term “encryption” with the term “mandatory access restriction”. In our view the new term would more accurately describe the range of ways (including the range of protections) in which sexual material can be accessed in the multi-channel environment.

4.28 Mandatory access restriction refers to access protection which must be put in place by the broadcaster, such as a PIN protected system, before the programme can be viewed. In addition, there would need to be measures in place to ensure that the subscriber is an adult.

4.29 Guidance for this rule would also be revised to take account of these changes and to clarify Ofcom’s position through the use of examples.

4.30 In our view the proposed revised rule in relation to ‘adult-sex’ material would provide broadcasters with a better understanding that this material must not be broadcast without particular restrictions (in relation to time of day and access) being in place. Its

¹⁹ ‘Adult-sex’ material is distinct from ‘adult entertainment’ and ‘adult sexual entertainment’ material where the primary purpose is revenue generation through invitations to call adult chat lines. This material is the subject of a separate Ofcom consultation on Participation Television planned for autumn 2009.

aim is to avoid future compliance failures and ensure that under-eighteens are therefore effectively protected from material that is in breach of the Code. In addition potential harm and/or offence for all viewers would be lessened by reducing the likelihood that they would encounter material which breaches the Code.

Stakeholder questions

4.31 Ofcom invites stakeholders' comments on this proposal.

Question 1

- a) *Do you consider that the rule in relation to 'adult-sex' material needs to be clarified?*
- b) *Do you agree with our proposed amendments to the rule on 'adult-sex' material (Proposed Rule 1.18 to replace Rule 1.24)?*
- c) *If you do not agree with our proposed amendments, please explain why and suggest alternative wording where appropriate.*

Proposed new Rule 1.19

Proposal

4.32 Ofcom proposes introducing Rule 1.19 which states:

1.19 Programmes or trailers which contain images and/or language of a strong sexual nature, which are not broadcast for the primary purpose of sexual arousal or stimulation, can be broadcast after the watershed provided there is strong contextual justification. When considering the strength of the material, and therefore the contextual justification, broadcasters should take account of factors which might include (but are not limited to):

- the amount of sexual material;
- the explicitness of the material, i.e. the nature of the sexual activity and sexual language used, for example how graphic, prolonged or prominent it is;
- the purpose of the sex scenes within the programme, i.e. whether this is to support an editorial purpose. If the purpose is sexual arousal or stimulation of the viewer Rule 1.18 applies;
- whether any plot or narrative provides sufficient editorial context for its inclusion; and,
- whether there is an educational or other perspective to justify the inclusion of material of a strong sexual nature.

(See Rules 1.6 and 1.18 and Rule 2.3 in Section Two: Harm and Offence which includes meaning of "context".)

4.33 There is no current rule in relation to material of a strong sexual nature.

Reasons for proposed revision and impact on stakeholders

- 4.34 There is currently no rule in the Code which directly takes account of images and/or language of a strong sexual nature, transmitted after the watershed without access restriction.
- 4.35 Although existing Rule 2.3 would continue to apply to sexual material of a strong nature in relation to potential harm and/or offence to all members of the viewing public, a new rule could give better information to stakeholders regarding the requirements of ensuring that this material complies with the Code in relation to the protection of under-eighteens (i.e. strong sexual material requires strong contextual justification).
- 4.36 We therefore propose that a new rule is created in order to clarify the circumstances in which sexual material of this kind can be transmitted.
- 4.37 This new rule would reflect and consolidate existing factors Ofcom already considers when determining whether sexual material is appropriate for broadcast, as evidenced in our findings in this area discussed at paragraph 4.4 above. These are factors that broadcasters should consider before broadcasting material of this nature.
- 4.38 This rule would be considered in conjunction with Rule 2.3, which provides further meanings of “context”.
- 4.39 This new rule would be placed directly after the rule relating to ‘adult-sex’ material (Rule 1.18) under the set of rules in relation to sexual material. We consider it is important that these rules follow one another, and cross refer, as they capture material that may be similar in nature, but differ in relation to the primary purpose for broadcast. Therefore, this positioning will allow stakeholders to easily review the information provided in both rules (Rule 1.18 and 1.19), which should help to identify the most appropriate rule to apply to the material.
- 4.40 We do not propose to accompany the rule with guidance. However, as with all Code Guidance this will be reviewed on an on-going basis.
- 4.41 In our view the proposed new rule in relation to material of a ‘strong’ sexual nature would benefit stakeholders in a number of ways:

Viewers

- For viewers, the impact of the proposed rule change would not adversely affect the viewing experience, given that the requirements for contextual justification are already in place in Rule 2.3.
- However, we consider that the specific contextual factors, as set out in the proposed Rule 1.19, would help ensure that appropriate protection is provided to under-eighteens. In addition potential harm and/or offence for all viewers would be lessened by reducing the likelihood that they would encounter material which breaches the Code.

Broadcasters

- The new rule would provide greater clarity to broadcasters in that it requires them to consider both the nature of the material for broadcast, and the contextual justification of that material. It highlights the strong contextual factors which must

be applied in relation to material of a strong sexual nature, thereby reducing the likelihood of both compliance failures and regulatory intervention.

- The new rule also would provide greater transparency to broadcasters by providing information regarding the contextual factors Ofcom considers when determining whether sexual material is suitable for broadcast (i.e. those factors which have formed the basis for previous published findings in the Broadcast Bulletin, where Rule 2.3 has been applied). This new rule draws upon these previous policy positions, making them clearer by including them in the Code itself, rather than within a range of findings.

Sponsors and advertisers

- As broadcasters would continue to broadcast material of a sexual nature, with appropriate contextual justification, and the audience who watch this material would not be affected, it is Ofcom's view that there would be no impact on sponsors and advertisers.

Stakeholder questions

4.42 Ofcom invites stakeholders' comments on this proposal.

Question 2

- a) *Do you consider that the introduction of a new rule in relation to material of a strong sexual nature is appropriate?*
- b) *Do you agree with our proposed rule on material of a strong sexual nature (proposed Rule 1.19)?*
- c) *If you do not agree with our proposed new rule, please explain why and suggest alternative wording where appropriate.*

Minor rule revisions

Proposed new Rule 1.17

Proposal

4.43 Ofcom proposes a new Rule 1.17 which states:

1.17 Material equivalent to the British Board of Film Classification ("BBFC") R18-rating must not be broadcast at any time.

4.44 The new rule is drawn from existing Rule 1.25 which states:

"BBFC R18-rated films or their equivalent must not be broadcast."

Reasons for proposed revision and impact on stakeholders

4.45 The British Board of Film Classification ("BBFC") R18-rating is a special and legally restricted classification for works which show explicit images of consenting sex between adults. R18 films may only be shown to adults in specially licensed cinemas,

and R18 DVDs (and other 'video recordings') may be supplied to adults only in licensed sex shops (not by mail order)²⁰.

- 4.46 The Video Recordings Act 1984 does not prohibit the supply of films classified as R18 for broadcast purposes. Therefore the availability of BBFC R18-rated films, or their equivalent (i.e. equivalent material made for television), has to be decided within the legal framework for broadcasting.
- 4.47 In the last Code consultation Ofcom concluded that R18 material should be prohibited²¹. In our view there have been no developments to change this position.
- 4.48 At present, we consider that the existing rule that relates to BBFC R18-rated material and its equivalent, that currently sits in the 'Film' section of Section One (please see Annex 5, Rules 1.20 to 1.25) could be separated to make two clearer rules.
- 4.49 The proposed Rule 1.17 would capture material equivalent to the BBFC R18-rating that is broadcast in programmes other than films, and would sit in the proposed expanded set of rules in relation to sexual material. In our view this positioning of the rule in relation to material equivalent to the BBFC R18-rating would reduce the likelihood of compliance failures in the future, by setting it in the context of a clear and cohesive set of rules in relation to material of a sexual nature.
- 4.50 New guidance for this rule would be provided, which would also be used for former Rule 1.25.
- 4.51 We anticipate that the new guidance would clarify the criteria for the BBFC R18-rating and would also discuss the prohibition on broadcast references promoting websites that provide unrestricted access to R18-rated material or its equivalent (i.e. websites without appropriate mechanisms in place to protect minors).

Stakeholder questions

- 4.52 Ofcom invites stakeholders' comments on this proposal.

Question 3

- a) *Do you consider that the rule in relation to material equivalent to the BBFC R-18 rating needs to be separated from the rule in relation to R-18 rated works?*
- b) *Do you agree with our proposed rule on material equivalent to the BBFC R-18 rating (proposed Rule 1.17)?*
- c) *If you do not agree with our proposed new rule, please explain why and suggest alternative wording where appropriate.*

Proposed new Rule 1.20

Proposal

- 4.53 Ofcom proposes that new Rule 1.20 should state:

²⁰ Video Recordings Act, 1984

²¹ http://www.ofcom.org.uk/consult/condocs/Broadcasting_code/bcstat/

1.20 Representations of sexual intercourse must not occur before the watershed (in the case of television), or when children are particularly likely to be listening (in the case of radio), unless there is a serious educational purpose. Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the watershed, or when children are particularly likely to be listening, and must be appropriately limited.

4.54 This was previously Rule 1.17 which stated:

“Representations of sexual intercourse must not occur before the watershed, or when children are particularly likely to be listening, unless there is a serious educational purpose. Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the watershed, or when children are particularly likely to be listening, and must be appropriately limited and inexplicit.”

Reasons for proposed revision and impact on stakeholders

4.55 We propose clarifying the distinction between “the watershed”, in relation to television, and “when children are particularly likely to be listening” in relation to radio by inserting references to television and radio in brackets.

4.56 We propose removing the words “*and inexplicit*” from the end of the current rule. In our view the reference to “*appropriately limited*” adequately explains the requirements in relation to material broadcast before the watershed.

4.57 These changes do not represent any change in the interpretation of this rule and are proposed only to enhance its clarity and reduce the likelihood of future compliance failures.

Stakeholder questions

4.58 Ofcom invites stakeholders’ comments on this proposal.

Question 4

- a) *Do you consider that the rule in relation to pre-watershed material needs to be clarified?*
- b) *Do you agree with our proposed amendments to the rule on pre-watershed material (proposed Rule 1.20 to replace Rule 1.17)?*
- c) *If you do not agree with our proposed amendments, please explain why and suggest alternative wording where appropriate.*

Associated revisions

Proposed re-ordering of Section One from Rule 1.17 onwards

Proposal

4.59 The current relevant headings in Section One are ordered as follows:

- ‘Sex’;

- ‘Nudity’;
- ‘Exorcism, the occult and the paranormal’;
- ‘Films, premium subscription film services, pay per view services, adult-sex material on premium subscription services’; and
- ‘The involvement of people under eighteen in programmes’.

4.60 Ofcom proposes re-ordering so that ‘Exorcism, the occult and the paranormal’ is repositioned after ‘Films, premium subscription film services, pay per view services, adult-sex material on premium subscription services’.

Reasons for proposed revision and impact on stakeholders

4.61 This new order should provide greater cohesion and clarity by grouping rules that deal with similar content more closely together.

Grouping of rules in relation to material of a sexual nature in Section One

Proposal

4.62 As discussed above, Ofcom is proposing to group together the rules regarding sexual material under an expanded set of rules in relation to sexual material in Section One of the Code. This would incorporate existing rules (that have been repositioned from other areas of Section One) and new rules. Some of the old rules relating specifically to sexual material, such as those that deal with material equivalent to BBFC R18-rated films, and ‘adult-sex’ material, would be re-worded and their guidance updated.

Reasons for proposed revision and impact on stakeholders

4.63 This change would provide a clear and comprehensive section of the Code relating to sexual material.

4.64 We consider that this change would aid all stakeholders. It would clearly identify the range of sexual material (from material equivalent to R18-rated works, through to material that is broadcast before the watershed); it would place the rules in relation to sexual material in context; and, it would clarify information to stakeholders who wish to transmit such material, by providing rules and guidance on the range of material of a sexual nature.

Amendment to heading ‘Films, premium subscription film services, pay per view services, adult-sex material on premium subscription services’ in Section One

Proposal

4.65 Ofcom proposes amending the heading ‘Films, premium subscription film services, pay per view services, adult-sex material on premium subscription services’ within Section One so that it reads ‘Films, premium subscription film services, pay per view services’

Reasons for proposed revision

- 4.66 We propose to remove the reference to “adult-sex material on premium subscription services” in the heading as the rules relating to this will be incorporated into a separate set of rules in relation to sexual material.

Amendment to other rules in Section One which refer to “the watershed” and “when children are likely to be listening”.

- 4.67 We propose clarifying the distinction between “*the watershed*”, in relation to television, and “*when children are particularly likely to be listening*” in relation to radio, by inserting references to television and radio in each of the relevant rules in Section One (as above in new Rule 1.20).
- 4.68 This affects the following rules: 1.6, 1.10, 1.11, 1.12, 1.13, 1.14, 1.16, 1.17 and 1.19.

Stakeholder questions

- 4.69 Ofcom invites stakeholders’ comments on the associated revisions.

Question 5

- a) *Do you consider that the associated revisions are appropriate following the other rule revisions outlined above?*
- b) *Do you agree with our proposed associated revisions in Section One?*
- c) *If you do not agree with our proposed revisions, please explain why and suggest alternative wording where appropriate.*

Alternative approaches

- 4.70 We invite stakeholders to offer any alternative approaches to the proposed set of rules in relation to sexual material.
- 4.71 Stakeholders should be aware that any alternative approaches must secure Ofcom’s statutory objectives under the Communications Act 2003, and the European Convention on Human Rights (See Part 3).

Question 6

- a) *Do you wish to suggest an alternative approach to the proposed set of rules in relation to sexual material? If so, please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003 and the European Convention on Human Rights).*

Part 5

Competition and Voting Rules (Code Section Two)

Introduction

- 5.1 As set out in paragraphs 2.27 to 2.30, no revisions are proposed to Section Two except in relation to competitions (current Rule 2.11).
- 5.2 High-profile investigations carried out by Ofcom over the last three years have highlighted serious consumer protection issues that can potentially result from the unfair or misleading conduct of broadcast competitions and voting.

Current position and overview of proposals

- 5.3 The purpose of this part of the consultation document is to propose some changes and additions to the current rule in Section Two that applies to the conduct of audience competitions (Rule 2.11, please see Annex 6 for reference).
- 5.4 Three proposed rules would replace Rule 2.11 and appear in the revised Section Two as Rules 2.11 to 2.13.
- 5.5 As consumers have suffered financial detriment as a result of participating in broadcast competitions and voting, we are proposing new rules in the revised Section Nine (commercial references in television programming) and Section Ten (commercial references in radio programming) of the Code (see Rules 9.10 to 9.11 and Rules 10.11 and 10.12) to cover this particular issue. Voting has been included in these rules, as investigations have raised similar issues to some of those concerning broadcast competitions.
- 5.6 We intend the proposed new rules in Sections Nine and Ten to remind broadcasters of their duty to protect audiences from the risk of financial harm²² when paying to enter broadcast competitions and voting. The proposed rules in Section Two would protect audiences from broader types of harm (such as unfair or misleading conduct) that can result from audience competitions and voting.
- 5.7 The proposed rules for Section Two reflect and complement the scope and wording of the new proposed rules in Sections Nine and Ten applying to audience competitions and voting. There are also proposed meanings to accompany the proposed rules in Section Two, as set out below.
- 5.8 In addition associated revisions (for example, re-numbering of rules which otherwise remain unchanged, re-ordering or revised grouping of rules) are also proposed (see paragraph 5.29).

²² Please see paragraphs 6.80 and 7.145 in relation to the proposed application of these rules to BBC services funded by the licence fee.

Overview of the impact of these proposals

- 5.9 We are not proposing any significant rule revisions in Section Two, as discussed at paragraph 2.58 above (i.e. revisions which would result in a change to the current regulatory framework, and therefore compliance procedures). Instead we have set out the rule revisions, or new rules, which are designed for the purpose of clarifying the existing rules and which reflect our published findings on compliance issues in order to help broadcasters ensure that they comply with the Code.
- 5.10 Therefore, our assessment of the impact of these proposals on stakeholders is that broadcasters would have a better understanding of the regulatory principles already in place, and so be helped to avoid future compliance failures. Viewers and listeners would also benefit in that the revised rules are intended to provide greater clarity for broadcasters and therefore minimise the risks of broadcast competitions and voting resulting in audiences being harmed or misled.
- 5.11 In relation to equality (whether in Northern Ireland or the rest of the UK) including gender, disability or ethnicity, our approach to regulation would remain unchanged and therefore we consider that our proposals would not have any particular implications for people to whom these considerations relate.

Proposed new Competitions and Voting section in Section Two of the Code

- 5.12 The new Competitions and Voting section proposed for inclusion in Section Two of the Code is as follows (please refer to it in responding to the stakeholder questions which follow each proposal below):

Competitions and Voting

- 2.11 Broadcast competitions and voting must be fairly promoted and conducted and broadcasters must not materially mislead viewers or listeners.
- 2.12 Broadcast competition rules must be clear and appropriately made known.
- 2.13 Broadcast competition prizes must be described accurately. (See also [current Rule 1.28] in Section One: Protecting the Under-Eighteens.)

Meaning of “broadcast competition”:

A competition featured in a programme in which viewers or listeners are invited to enter for the opportunity to win a prize.

Meaning of “voting”:

Features in a programme in which viewers or listeners are invited to register a vote to decide or influence the outcome of a contest (at any stage).

Note to stakeholders:

For ease of reference, we have adopted different styles in this document:

- all proposed rules appear in light grey boxes;

- all current rules appear in *italics* and without shading; and
- all stakeholder questions appear in **dark grey boxes**.

Rule revisions, or new rules, for the purpose of clarification

Proposed new Rules 2.11 to 2.13

Proposal

5.13 The proposed new Rules 2.11 to 2.13 will state:

Competitions and Voting

- 2.11 Broadcast competitions and voting must be fairly promoted and conducted and broadcasters must not materially mislead viewers or listeners.
- 2.12 Broadcast competition rules must be clear and appropriately made known.
- 2.13 Broadcast competition prizes must be described accurately. (See also [current Rule 1.28] in Section One: Protecting the Under-Eighteens.)

5.14 These rules are proposed to replace the current Rule 2.11, which states:

Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known.

5.15 The rules are also proposed to complement Rule 2.2, which will continue to state:

Factual programmes or items or portrayals of factual matters must not materially mislead the audience.

Reasons for proposed revision and impact on stakeholders

5.16 The proposed rules above are intended to clarify the scope of current Rules 2.2 and 2.11 in relation to competitions and voting.

5.17 The current Rule 2.11 states that “*competitions should be conducted fairly...*” and the reference to conduct includes a requirement for the promotion of competitions to be fair. However, in our view it would benefit stakeholders for this to be clarified by referring specifically to the requirement for competitions and voting to be both “fairly promoted and conducted”.

5.18 Rule 2.2 states (and will continue to state) that “*...portrayals of factual matters must not materially mislead the audience*”. The reference to factual matters includes a requirement for the promotion of both competitions and voting not to mislead. However, in our view it would benefit stakeholders for this to be clarified by specifically referring to the requirement that “broadcasters must not materially mislead viewers or listeners” with regard to competitions and voting.

5.19 The proposed rules would cover potential general harm that may result from the conduct of broadcast competitions or voting and would complement rules in Sections Nine and Ten, which would cover potential financial harm.

- 5.20 The proposed rules would therefore serve to clarify Ofcom’s position rather than increase regulation with regard to broadcast competitions and voting. As discussed above, this would benefit broadcasters in assisting them in both understanding, and complying with, the Code. The proposed rules would also benefit consumers in ensuring that competitions and voting are fairly promoted and conducted and that viewers and listeners are not misled by broadcasters.
- 5.21 The existing guidance to current Rules 2.2 and 2.11 would be divided, as required, under the appropriate proposed rules - for example, those concerning solutions and methodology, free entry routes and repeat broadcasts.
- 5.22 It is likely that we may provide some additional guidance to accompany the new rules in Section Two - in particular, to help clarify the scope of these, in relation to relevant rules in Sections Nine and Ten.

Stakeholder questions

- 5.23 Ofcom invites stakeholders’ comments on this proposal.

Question 7

- a) *Do you consider that the introduction of new rules in relation to competitions and voting is appropriate?*
- b) *Do you agree with our proposed new rules in relation to competitions and voting (proposed Rules 2.11 to 2.13 to replace Rule 2.11)?*
- c) *If you do not agree with our proposed new rules, please explain why and suggest alternative wording where appropriate.*

Proposed new meanings

Proposal

- 5.24 Ofcom proposes the introduction of the new meanings for “broadcast competitions” and “voting” which would state:

Meaning of “broadcast competition”:

A competition featured in a programme in which viewers or listeners are invited to enter for the opportunity to win a prize.

Meaning of “voting”:

Features in a programme in which viewers or listeners are invited to register a vote to decide or influence the outcome of a contest (at any stage).

- 5.25 Currently there are no meanings in the Code in relation to broadcast competitions and voting.

Reasons for proposed revision and impact on stakeholders

- 5.26 These new meanings are proposed to clarify the scope of the new rules in Section Two. In addition, we propose to introduce the same new meanings to the revised

Sections Nine and Ten of the Code, to appear alongside related rules that would protect viewers or listeners who participate in broadcast competitions or voting, specifically from the risk of financial harm.

- 5.27 Stakeholders should note that the meaning of voting does not include opinion polls – that is schemes in which viewers are asked to express a point of view by choosing a preference on a topic but where the outcome is confined to gauging a balance of opinion. Stakeholders should also note that the meaning of broadcast competitions refers to viewer or listener participation and does not therefore generally include contests or gameshows.

Stakeholder questions

- 5.28 Ofcom invites stakeholders' comments on this proposal.

Question 8

- a) *Do you consider that the introduction of new meanings in relation to competitions and voting are appropriate?*
- b) *Do you agree with our proposed new meanings in relation to competitions and voting?*
- c) *If you do not agree with our proposed new meanings, please explain why and suggest alternative wording where appropriate.*

Associated revisions

Re-numbering Rules

- 5.29 The rules which follow Rule 2.11 in Section Two would be re-numbered to accommodate the proposed additional rules.

Alternative approaches

- 5.30 We invite stakeholders to offer any alternative approaches to the proposed set of rules in relation to competitions and voting.
- 5.31 Stakeholders should be aware that any alternative approaches must secure Ofcom's regulatory objectives under the Communications Act 2003, the Audiovisual Media Services Directive, the AVMS Directive (Implementation) Regulations 2009 and Article 10 of the European Convention on Human Rights

Question 9

- a) *Do you wish to suggest an alternative approach to the proposed set of rules in relation to competitions and voting? If so, please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003, the Audiovisual Media Services Directive, the AVMS Directive (Implementation) Regulations 2009 and Article 10 of the European Convention on Human Rights.*

Part 6

Commercial References in Television Programming Rules (Code Section Nine)

Introduction

- 6.1 Ofcom recognises that the statutory framework in which television operates differs from radio. In particular, television broadcasts must comply with the AVMS Directive (please see above at paragraphs 2.11 to 2.13). There is no such requirement for radio (for example, there are no limits on advertising minutage).
- 6.2 We are therefore proposing to structure the revised Section Nine to deal with television only, incorporating the relevant elements of current Code Sections Nine and Ten. We consider that the proposed revised structure would better reflect the statutory framework relating to the regulation of commercial references in television programming.
- 6.3 In addition to our proposal to re-structure the Code in this way, Ofcom will need to reflect the requirements of the AVMS Directive (please see below at paragraph 6.16).
- 6.4 We are also asking stakeholders whether it may be appropriate to introduce new rules in Section Nine that would enable non-commercial, not-for-profit entities (e.g. public services) to fund Public Information Programming that may also refer to the interests and/or activities of the funder. This follows requests for advice from both broadcasters and from non-commercial, not-for-profit organizations (please see below at paragraphs 6.30 to 6.45). Clearly there would need to be sufficient safeguards in place to prevent potential misuse (particularly in relation to surreptitious advertising, editorial independence and due impartiality). This Part of the consultation document puts forward some possible drafting for such rules, for discussion. As the introduction of Public Information Programming is also being considered for radio (see Part 7 of this document), Ofcom is likely to reach a decision on the matter that will apply to both television and radio. Therefore responses in relation to Public Information Programming on television will be considered alongside those relating to radio (please see below in Part 7 of this document).

Current position and overview of proposals

- 6.5 Section Nine of the current Code contains rules that apply to sponsorship on radio and television. Section Ten currently contains rules that apply to commercial references and other matters on both television and radio.
- 6.6 We are proposing to replace these sections with two new sets of rules that would separate, and be tailored specifically for, radio and television. Section Nine of the revised Code would contain the rules applying to all commercial references in television programming and Section Ten would contain the rules applying to all commercial references in radio programming.
- 6.7 In addition to separating the radio and television rules, we also propose to amalgamate the relevant sponsorship rules in relation to television into the revised Section Nine. We are proposing this because we have noted that, in general, there is a risk of broadcasters focusing on either the current Sections Nine or Ten of the

Code, rather than both. This can result in the significance of overarching rules (e.g. undue prominence) being diminished. The proposed integration of the sponsorship rules, into Section Nine in relation to television, would emphasise that sponsorship is just one way in which commercial references feature in programming, and that it is subject to the same broad principles and overarching rules as other commercial references.

- 6.8 The new Section Nine would include:
- **Principles** that help stakeholders understand the relevant standards objectives;
 - **General rules** that apply to all commercial references within programming;
 - **Specific rules** that apply to the different types of commercial references, such as sponsorship.
- 6.9 We propose to provide introductory text throughout the revised Section Nine. This would explain the objectives of the rules and set out how they enable adherence to the relevant principles. Where appropriate, the introductions would also give meanings of terms.
- 6.10 We believe that our proposal to re-structure these Code sections in this way would provide stakeholders with a more user-friendly means of assessing the acceptability of commercial references in programming and would enable a better understanding of the purpose and spirit of the rules.
- 6.11 Set out below are the proposed revisions and additions to the current definitions, principles and rules that apply to commercial references in television programming.
- 6.12 We are considering the potential introduction of a significant set of new rules in Section Nine (i.e. revisions which, if adopted, would result in a change to current regulatory framework, and therefore compliance procedures, as discussed above at paragraph 2.58). These rules are in relation to Public Information Programming (please see below at paragraphs 6.30 to 6.45).
- 6.13 We are also proposing rule revisions and new rules that are designed to clarify the current rules in relation to commercial references in television. These are aimed at avoiding future compliance failures by clarifying the regulatory principles already in place.
- 6.14 There are also proposals for minor rule revisions where the wording of a rule has undergone a minor change as a result of other rule revisions and associated revisions (for example, re-numbering of rules which otherwise remain unchanged, re-ordering or revised grouping of rules, and modifications of section sub-heading titles) are also set out.
- 6.15 The current Code Section Nine is attached at Annex 7, for ease of reference.
- 6.16 Please note that, as discussed at paragraphs 2.11 to 2.13 above, the full rules in relation to product and prop placement will be determined by the requirements of the AVMS Directive (Implementation) Regulations which will not be published until later this year by the DCMS. Ofcom will have a duty to ensure broadcasters comply with the new statutory requirements relating to product and prop placement. Given that the requirements will be set out in legislation, Ofcom will have no discretion to draft its own rules. We therefore propose to replicate the wording adopted in the new

legislative provisions within the revised Code, and we seek stakeholders' views on this approach.

- 6.17 Stakeholders should also be aware that proposed rules relating to the promotion of premium rate services within programming are included in the proposed Section Nine but will be subject to Ofcom's consultation on Participation Television planned for autumn 2009.

Overview of the impact of these proposals

- 6.18 As discussed above there is one significant set of draft rules in Section Nine, as defined in the second bullet point of paragraph 2.58 (i.e. new rules which, if adopted, would result in a change to current regulatory framework, and therefore compliance procedures). This is in relation to Public Information Programming, which relates to both radio and television, and a specific assessment of potential impact including equality, and related stakeholder questions, therefore form part of this discussion (below).
- 6.19 No other significant rule revisions are raised for stakeholder consideration in Section Nine (i.e. revisions which would result in a change to current regulatory framework, and therefore compliance procedures). Instead we have set out the rule revisions, or new rules, which are designed to clarify the existing rules. These are aimed at avoiding future compliance failures by clarifying the regulatory principles already in place.
- 6.20 Therefore, our assessment of the impact of these proposals on stakeholders is that broadcasters would have a better understanding of the 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.
- 6.21 Impact assessments in relation to equality are discussed separately under the significant set of draft rule revisions in Section Nine. In relation to the revisions proposed for clarification, in our view there would be no need for formal assessments in relation to equality (whether in Northern Ireland or the rest of the UK) including gender, disability or ethnicity, as our approach to regulation would remain unchanged and therefore we consider that our proposals would not have any particular implications for people to whom these considerations relate.

Proposed new Section Nine of the Code: Commercial References in Television Programming

- 6.22 The proposed Section Nine of the Code is as follows (please refer to it in responding to the stakeholder questions which follow each proposal below):

Section Nine: Commercial references in television programming

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

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

television programming.

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

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

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

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

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

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

Principles

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

Rules

General Rules

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

9.1 Broadcasters must maintain independent editorial control over programming.

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

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

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

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

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

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

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

Product and prop placement

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

[Note to stakeholders:

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

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

Premium rate services

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

[Note to stakeholders:

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

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

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

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

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

Broadcast competitions and voting

The following rules apply to:

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

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

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

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

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

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

Programme-related material

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

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

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

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

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

Cross-promotions

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

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

Sponsorship on television

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

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

programming forming part of a sponsorship arrangement. The rules enable references to the sponsor within a sponsor credit, not within the sponsored content.

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

Content that may not be sponsored on television

9.14 News and current affairs programmes must not be sponsored.

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

Prohibited and restricted sponsors on television

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

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

Content of sponsored output on television

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

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

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

Sponsorship credits on television

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

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

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

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

encourage the purchase or rental of the products or services of the sponsor or a third party.

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

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

Public Information Programming

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

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

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

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

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

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

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

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

9.30 Public Information Programming must be identified as such by reference to the name and/or logo of the funder in credits at the start and end of the

programming, and also at the start and end of any commercial break. There must be no other information and/or message included in such credits.

- 9.31 The relationship between the funder and the Public Information Programming must be transparent to viewers.
- 9.32 Public Information Programming must not relate to, or refer to, any commercial activities of the funder and/or any connected person.
- 9.33 References to non-commercial activities of the funder are permitted within the Public Information Programming **only** where they are in the public interest. All such references must be editorially justified and must not be unduly prominent.

Charity appeals

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

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

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

Financial promotions and investment recommendations

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

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

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

- 9.36 When broadcasting financial promotions and investment recommendations

broadcasters must comply with the relevant provisions in Appendix 4 to this Code.

Appeals for funds for programming or services

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

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

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

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

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

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

Virtual advertising

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

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

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

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

Note to stakeholders:

For ease of reference, we have adopted different styles in this document:

- all proposed rules appear in light grey boxes;
- all current rules appear in *italics* and without shading; and

- all stakeholder questions appear in **dark grey boxes**.

Section re-structure

Proposed new Section Nine

Proposal

- 6.23 As discussed above we are proposing to replace the current Section Nine of the Code (Sponsorship) with a new Section Nine which would contain the rules applying to all commercial references in television programming.

Reasons for proposed revision and impact on stakeholders

- 6.24 This proposal is based on our recognition that the statutory framework within which television operates differs from radio. In particular, by 19 December 2009, the AVMS Directive must be implemented into UK legislation and new statutory requirements will be inserted into the Communications Act by the AVMS Directive (Implementation) Regulations (as discussed above at paragraphs 2.11 to 2.13).
- 6.25 We are therefore proposing to structure the revised Section Nine to reflect this statutory framework in order to best serve the regulation of commercial references in television programming. Our proposal to re-structure these Code sections in this way aims to help provide stakeholders with a more user-friendly means of assessing the acceptability of commercial references in programming. We believe the proposed re-structuring would also enable a better understanding of the purpose and spirit of the rules.

Stakeholder questions

- 6.26 Ofcom invites stakeholders' comments on this proposal.

Question 10

- a) *Do you consider that the rules on commercial television would benefit from being separated from those for radio?*
- b) *Do you agree with the introduction of the proposed new Section Nine on commercial references in television programming?*
- c) *If you do not agree with the proposed new Section Nine, please explain why and suggest alternative wording where appropriate.*

Mandatory rule revisions

Product and prop placement

- 6.27 As discussed above at paragraphs 2.11 to 2.13, in July 2008 the Department for Culture, Media and Sport ("DCMS") consulted on its proposals to implement the AVMS Directive, including the enforceable requirements relating to product and prop placement²³. On 11 March 2009 a Ministerial Statement included the Government's decision to prohibit product placement on television. The DCMS consultation and

²³ The DCMS public consultation on implementing the AVMS Directive can be found at: http://www.culture.gov.uk/reference_library/consultations/5309.aspx.

statement can be found at

http://www.culture.gov.uk/reference_library/minister_speeches/5932.aspx

- 6.28 The enforceable requirements of the AVMS Directive relating to product and prop placement, will be set out directly in amendments to the Act by new AVMS Directive (Implementation) Regulations (“the Regulations”). The draft Regulations are expected to be laid before Parliament in October 2009. Ofcom will have a duty to ensure broadcasters comply with the new statutory requirements relating to product and prop placement. Given that the requirements will be set out in legislation, Ofcom will have no discretion to draft its own rules. We therefore propose to replicate the wording adopted in the new legislative provisions within the revised Code.

Stakeholder questions

- 6.29 Ofcom invites stakeholders’ comments on this proposal.

Question 11

- a) *Do you consider that it is appropriate for Ofcom to include the enforceable provisions relating to product and prop placement, replicated from the AVMS Directive (Implementation) Regulations 2009, as rules in the revised Code?*
- b) *If you do not consider this to be appropriate, please explain why.*

Significant potential new rules for consideration

Public Information Programming

Outline of potential new rules for consideration

- 6.30 We are considering the potential introduction of Rules 9.26 to 9.33 to allow Public Information Programming (programming that seeks to educate or inform the audience on matters in the public interest) that is funded by non-commercial, not-for-profit entities and that may refer to the interests and/or activities of the funder.
- 6.31 There are no current rules specifically concerning Public Information Programming. Funded programming on matters in the public interest that refers to the interests or activities of the funder is currently viewed as sponsored programming. A sponsored programme is a programme that has been funded by an undertaking with a view to promoting itself or its interests. The sponsorship rules limit the promotional benefits a sponsor gains from funding a programme to the sponsor’s association with the content. The rules prevent a sponsor using sponsorship to promote itself through editorial content by placing restrictions on references to the sponsor or its interests within the programme.
- 6.32 We believe the intention of the legislation, upon which the sponsorship rules are based, is to prevent surreptitious advertising by stopping a programme funder using sponsorship as a means to promote *itself* or its products or services through editorial content. However, we believe it is worth considering the introduction of rules that would facilitate the funding – by non-commercial, not-for-profit entities – of programming that is in the public interest and that may also refer to the interests or activities of the funder, provided the function of such references is to serve a public interest and **not** to promote the funder. For example, references to services offered

by local GPs in a programme funded by the NHS about the prevention and/or treatment of a specific medical condition.

- 6.33 We are seeking views from stakeholders on whether it is appropriate for Ofcom to introduce such rules. We have drafted the following rules to assist stakeholders' consideration:

Public Information Programming

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

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

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

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

- 9.26 Public Information Programming is programming which has as its purpose a public interest benefit. Public Information Programming may not be funded with a view to promoting the name, trade mark, image, activities or products of the funder. It may be funded **only** by a non-commercial, not-for-profit entity.
- 9.27 Public Information Programming must not be funded by an individual or organisation that is prohibited from advertising on television.
- 9.28 The funder of Public Information Programming must not influence the content and/or scheduling of the programming in such a way as to impair the responsibility and editorial independence of the broadcaster.
- 9.29 Public Information Programming must not cover matters relating to political, industrial or public controversy. Similarly, Public Information Programming must not seek to influence the policies or decisions of local, regional or national governments, whether in the UK or elsewhere.
- 9.30 Public Information Programming must be identified as such by reference to the name and/or logo of the funder in credits at the start and end of the programming, and also at the start and end of any commercial break. There must be no other information and/or message included in such credits.
- 9.31 The relationship between the funder and the Public Information Programming

must be transparent to viewers.

- 9.32 Public Information Programming must not relate to, or refer to, any commercial activities of the funder and/or any connected person.
- 9.33 References to non-commercial activities of the funder are permitted within the Public Information Programming **only** where they are in the public interest. All such references must be editorially justified and must not be unduly prominent.

Potential impact on stakeholders

- 6.34 We are interested to receive views from stakeholders on whether allowing this type of programming would offer benefits to viewers by 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.
- 6.35 While there may be benefits for allowing Public Information Programming of this nature, Ofcom recognises that there are potential risks as well. In particular, if the rules are not drawn sufficiently tightly, this form of funding could risk giving rise to programming that may be viewed as a form of propaganda. Any rules would therefore need to ensure that funders do not use such programming to circumvent current rules which prevent surreptitious advertising, ensure editorial independence and due impartiality, or prohibit political advertising.
- 6.36 We have developed the potential rules (as stated above) to include a comprehensive range of safeguards to prevent the potential misuse of Public Information Programming. For example:
- to ensure that viewers are made fully aware of the funding arrangement and the identity of the funder;
 - to limit appropriately the types of subjects covered by such programming; and
 - to ensure funding is provided with a view to public interest – not commercial gain.
- 6.37 If any such rules were adopted, we would also provide detailed guidance for broadcasters on a number of issues including:
- the appropriateness of the subject matter, including examples of broad subject areas that would fall foul of the “political, industrial or public controversy” limitations;
 - the status of the potential programme funder;
 - identifying the funder’s relationship with the programme;
 - cross references to other relevant sections of the Code (in particular those relating to matters of harm and offence and religion) and the advertising rules prohibiting political advertising; and
 - the acceptability of references to the funder’s activities to ensure that Public Information Programming is distinct from sponsored programming and not used as a platform to promote the sponsor.

- 6.38 We are also aware there is a risk that this type of programming could replace existing public interest programming, and therefore potentially reduce the variety of public interest content. In addition, broadcasters may 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.
- 6.39 In terms of economic impact, we have noted a clear appetite amongst broadcasters and potential funders for this type of programming over recent years. During this time we have received several requests for advice on this issue from both broadcasters and from non-commercial, not-for-profit organisations (such as the Central Office of Information (COI) – the government department responsible for government publicity programmes, which is interested in funding programmes of this nature).
- 6.40 We are interested to receive views from stakeholders as to whether allowing this type of programming would be likely to have a positive economic impact on broadcasters, giving them additional means of raising revenue (at a time that television advertising revenues are declining²⁴). However, it is important to note that the extent of any benefit would depend on how much of the revenue raised as a result of the new rules would be new revenue, and how much would simply be displaced (e.g. from spot advertising).
- 6.41 The potential rules could also have a negative economic impact on other forms of media, if non-commercial, not-for-profit organisations divert spending from other media in favour of Public Information Programming on television.
- 6.42 We do not believe that there are sufficient data currently available to conduct a detailed cost-benefit analysis of allowing this type of Public Information Programming and therefore invite consultation responses on the potential economic impacts.
- 6.43 Regarding the impact on equality (whether in Northern Ireland or the rest of the UK), including gender, disability or ethnicity, we have considered whether our approach in this area would have any particular implications for people to whom these considerations relate. The potential rules would have equal application, that is, the basis for not permitting a programme to be funded in this way would not be connected with equality issues. Therefore, we do not consider that our approach would have any particular equality implications.
- 6.44 We invite consultation responses on the potential impact in relation to matters of equality.

Stakeholder questions

- 6.45 Ofcom invites stakeholders' comments on these potential rules.

Questions 12

- a) *Would you consider that it appropriate for Ofcom to introduce rules that would allow Public Information Programming (as described above)? If so please explain why. If not, please explain why not.*
- b) *If Ofcom were to introduce rules in relation to Public Information Programming:*

²⁴ The Advertising Forecast published in 2009 by World Advertising Research Council states that there has been an 8% decline in television advertising revenues from 2003 to 2008.

- i. *Are there any potential programmes that you believe could comply with the potential rules but that you consider would be undesirable or arguably not in the public interest? If so, please give details.*
- ii. *What impact (e.g. social, economic, equality) do you think the potential rules would have on viewers, the television industry and any other parties?*
- iii. *Do you consider that the potential rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection? If not, please explain why.*
- iv. *Do you consider that additional or alternative safeguards to those included in the draft potential rules are necessary? If so, please provide details.*
- v. *Specifically, should there be any restriction on the type of non-commercial, not-for-profit entities permitted to fund Public Information Programming, and if so, what restrictions?*
- vi. *Do you consider it would be appropriate for Ofcom to review these rules two years after their introduction? If not, please explain why.*

Rule revisions, or new rules, for the purpose of clarification

New introductory section to Section Nine

Proposal

- 6.46 We propose to begin Section Nine with an introductory section explaining the purpose of Section Nine and the meaning of terms used (see new section above).
- 6.47 We propose to include definitions of “programming”, “commercial references”, and “products and services” in this introductory section to Section Nine.

Reasons for proposed revision and impact on stakeholders

- 6.48 We propose to introduce these meanings to provide Code users with clarity on the scope of Section Nine. We do not intend the proposed meanings to result in this section of the Code applying more widely than the current Sections Nine and Ten.
- 6.49 We are proposing to introduce the term “programming” to highlight that the Code covers content other than traditional programmes (e.g. Cross-promotions, sponsorship credits, programme-trails). Many of the commercial references covered by Section Nine are broadcast outside of programmes and therefore we consider that “programming” is a more appropriate term to use in this section of the Code.
- 6.50 Further, the Code has, to date, contained no clear definition of what we consider to be a commercial reference within programming. Nor does it define clearly how broadly the term “products and services” is interpreted. Currently, Section Ten of the Code expands the definition of products and services only in relation to the undue prominence rule (which states that a product or service includes “company names, brand names, logos”). Section Nine of the current Code (sponsorship) contains rules pertaining to sponsor references within programmes. Based on the definition of “sponsorship” and a “sponsor”, we have interpreted a sponsor reference to mean a reference to the sponsor’s name, trademark, image, activities, services, products or any other direct or indirect interest of the sponsor.

- 6.51 We propose to include meanings of “commercial reference” and “products and services” at the beginning of new Section Nine of the Code to give clarity on what would be deemed to be a commercial reference in programming. The same meaning would also be given to sponsor references (see paragraph 6.97 to 6.100 below) to ensure consistency throughout this section of the Code.
- 6.52 The proposed meaning is consistent with what we have to date considered to be a reference to a product or service and does not extend the scope of the Code.
- 6.53 In our view the proposed introduction to Section Nine would help broadcasters better understand the rules in this section and thereby help them to avoid compliance failures. Viewers in turn would benefit from appropriate protection in relation to commercial references on television and reduced exposure to material which could breach the Code.

Stakeholder questions

- 6.54 Ofcom invites stakeholders’ comments on these proposals.

Question 13

- a) *Do you consider that the proposed new Section Nine would benefit from the introduction of new meanings?*
- b) *Do you agree with our proposed new meanings for Section Nine?*
- c) *If you do not agree with our proposed new meanings, please explain why and suggest alternative wording where appropriate.*

Principles

Proposal

- 6.55 We propose replacing the existing Principles in Section Nine (sponsorship) and Section Ten (Commercial matters) with Principles for the revised Section Nine in relation to television. The proposed new principles are:

Principles

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

- 6.56 The existing principles for Section Nine (sponsorship) are as follows:

“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.*
- *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”...”

6.57 The existing principles for Section Ten (Commercial references and other matters):

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.

Reasons for proposed revision and impact on stakeholders

6.58 There is some duplication of the principles that apply to the existing Sections Nine and Ten of the Code. As we are proposing to combine the rules for television that are included in these Code sections, we have created a single combined set of principles that apply to all television programming that contains commercial references.

6.59 The proposed principles would broadly replicate those that are included in Sections Nine and Ten of the current Code. However, we are proposing to add a new principle relating to the importance of ensuring that viewers are afforded the appropriate level of financial protection. This principle is in line with Ofcom’s duty to ensure that generally accepted standards are applied to programming to ensure audiences are protected from harm. We are proposing to introduce specific rules in Section Nine of the Code relating to viewer interaction with programming that has the potential to result in financial harm (see paragraphs 6.76 to 6.85).

Stakeholder questions

6.60 Ofcom invites stakeholders’ comments on these proposals.

Question 14

- a) *Do you consider that the introduction of new Principles in relation to Section Nine is appropriate?*
- b) *Do you agree with the proposed new Principles for Section Nine?*
- c) *If you do not agree with our proposed new Principles, please explain why and suggest alternative wording where appropriate.*

General rules

Proposal

- 6.61 We propose replacing existing Rules 10.1 to 10.4 and 10.12 with Rules 9.1 to 9.5. We also propose including the following introductory explanation, new Rule 9.6 and concluding explanation:

General Rules

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

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

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

- 6.62 The existing Rules 10.1 to 10.4 and 10.12 are as follows:

“Broadcasters must maintain the independence of editorial control over programme content” (10.1).

“Broadcasters must ensure that the advertising and programme elements of a service are kept separate” (10.2).

“Products and services must not be promoted in programmes. This rule does not apply to programme-related material (see Rule 10.6)” (10.3).

“No undue prominence may be given in any programme to a product or service.”
(10.4).

“Undue prominence” may result from:

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

“Advertising must be clearly separated from programmes. Advertisements must not appear in programme time, unless editorially justified” (10.12).

Reasons for proposed revision and impact on stakeholders

- 6.63 Within Rules 9.1 to 9.5 we are proposing to amend or add wording to clarify the existing rules. These changes are not intended to alter the impact of these rules on programming.
- 6.64 We are proposing to introduce Rule 9.6 in tandem with the proposed principle on consumer protection as a means of ensuring viewers are protected appropriately when responding to on-air solicitations by or on behalf of the broadcaster. As with the corresponding principle, this rule 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 do not intend the introduction of this rule to increase the regulatory burden on broadcasters, as existing Rules 2.2 and 2.11 of the Code currently incorporate these requirements. The rule would be introduced in line with our proposal to site specific rules regarding viewer protection from financial harm when participating in broadcast competitions and voting in Section Nine, whilst retaining the rules for the broader areas of harm under Section Two.
- 6.65 In relation to Rule 9.3, we propose to issue additional guidance on how “undue prominence” will be determined based on the context and manner of the commercial reference (e.g. an editorial based reference, a sponsor reference in a sponsor credit).
- 6.66 In relation to Rule 9.6, we propose to issue guidance on the fair and consistent treatment of viewers’ communications, following on-air solicitations by or on behalf of the broadcaster.

Stakeholder questions

- 6.67 Ofcom invites stakeholders’ comments on these proposals.

Question 15

- a) *Do you consider that the proposed Rules 9.1 to 9.5 are broadly the same, in terms of both scope and intent, of current Rules 10.1, 10.2, 10.3, 10.4 and 10.12?*
- b) *If you do not consider the proposed rules are broadly the same as the current rules in this area, please explain why and suggest alternative wording where appropriate*
- c) *Do you agree with the introduction of the proposed new Rule 9.6?*

d) *If you do not agree with the proposed new Rule 9.6, please explain why and suggest alternative wording where appropriate.*

Premium Rate Services

Proposal

6.68 We propose replacing existing rules for Premium Rate Services (“PRS”) within programming with the following rules and introduction:

Premium rate services

The definition of Premium Rate Services in this section is based on PhonepayPlus’ definition.

[Note to stakeholders:

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

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

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

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

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

6.69 The existing Rules 10.9 and 10.10 are as follows:

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

- *they form part of the editorial content of the programme; or*
- *they fall within the meaning of programme-related material (see above)” (10.9).*

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

Reasons for proposed revision and impact on stakeholders

6.70 Stakeholders should note that Rule 9.7, as stated above (which reflects the current Rule 10.9), is to be consulted on as part of a separate Ofcom consultation on Participation Television which is planned for autumn 2009, and therefore may be subject to further revision.

6.71 In addition to including the current rules in the new Code, we propose to add the following Rule 9.9:

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

6.72 We consider that, in line with our proposed principle on consumer protection, it is appropriate to include a new rule that requires broadcasters to ensure that PRS cost information is made clear to viewers.

6.73 The current Rule 10.10 requires all PRS in programming to comply with the PhonepayPlus Code²⁵, which requires service providers to ensure that users of PRS are fully informed of the cost of using some services. In addition to this rule we are proposing to introduce Rule 9.9 which would place a responsibility on broadcasters to do the same for all PRS. We believe this rule would provide an important level of consumer protection for viewers.

6.74 It is our understanding that, in addition to PhonepayPlus' requirements, it is current industry best practice for television broadcasters to make PRS cost information clear to viewers. Therefore this rule does not change current best practice.

Stakeholder questions

6.75 Ofcom invites stakeholders' comments on these proposals.

Question 16

- a) *Do you consider it appropriate to introduce the proposed new Rule 9.9?*
- b) *If you do not consider it appropriate to introduce the proposed new Rule 9.9, please explain why and suggest alternative wording where appropriate.*

Broadcast competitions and voting

Proposal

6.76 There are no existing rules in Sections Nine and Ten regarding broadcast competitions and voting. We are proposing the following introduction and rules:

Broadcast competitions and voting

The following rules apply to:

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

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

The rules reflect the fact that viewer participation has the potential to result in

²⁵ PhonepayPlus is the organisation that regulates phone-paid (premium rate telephony) services in the UK.

financial harm. Broadcasters should be particularly mindful of the need to ensure adequate consumer protection when inviting viewers to participate in broadcast competitions and voting.

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

- 9.10 Broadcast competitions and voting must be fairly promoted and conducted and broadcasters must not materially mislead viewers so as to cause financial harm.
- 9.11 Terms and conditions of entry or participation must be drawn up by broadcasters and be appropriately brought to the attention of viewers. In particular, significant conditions that may affect a viewer's decision to participate must be made clear at the time an invitation to participate is broadcast.

- 6.77 There are currently no specific rules relating to the potential for financial detriment resulting from audience participation in competitions and voting. However, current Rules 2.2 and 2.11 are relevant (see paragraphs 5.14 and 5.15).

Reasons for proposed revision and impact on stakeholders

- 6.78 Currently, unfair or misleading conduct in competitions and voting is covered by Rules 2.2 (misleadingness resulting from the portrayal of factual matters) and 2.11 (fair conduct of competitions).
- 6.79 High-profile investigations carried out by Ofcom over the last three years have highlighted serious consumer protection issues that can potentially result from the unfair or misleading conduct of broadcast competitions or voting. Ofcom has a statutory duty to ensure that broadcasters apply generally accepted standards to programming so as to provide audiences with adequate protection from harmful and/or offensive material.
- 6.80 This standards objective applies to all broadcasters, including BBC services funded by the licence fee. We therefore propose that the rules for broadcast competitions and voting within Section Nine will also apply to BBC services funded by the licence fee.
- 6.81 The proposed rules are intended to protect viewers from potential financial harm as a result of their participation in broadcast competitions or voting.
- 6.82 They would provide a clearer framework of consumer protection and clarify Ofcom's regulation of this type of content, rather than reflect any material increase in the regulation of broadcast competitions and voting.
- 6.83 In addition to the proposed introduction of Rules 9.8 and 9.9, we have drafted proposed revisions²⁶ to the existing Rule 2.11 to complement the proposed new rules.
- 6.84 Existing guidance to Rules 2.2 and 2.11 will be divided, as required, under the appropriate proposed rules. It is likely that we may provide some additional guidance

²⁶ These can be found in Part 5 of this document.

to accompany the new rules in Section Nine – in particular, to help clarify the scope of these, in relation to relevant rules in Section Two.

Stakeholder questions

6.85 Ofcom invites stakeholders' comments on these proposals.

Question 17

- a) *Do you consider that the introduction of a new competition and voting section is appropriate?*
- b) *Do you agree with the proposed new competition and voting section for Section Nine?*
- c) *If you do not agree with our proposed new competition and voting section, please explain why and suggest alternative wording where appropriate.*
- d) *Do you agree that it is appropriate to apply these rules to BBC services funded by the licence fee?*
- e) *If you do not agree that it is appropriate to apply these rules to BBC services funded by the licence fee, please explain why*

Programme-related material

Proposal

6.86 We propose replacing existing rules on programme-related material with the following:

Programme-related material

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

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

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

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

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

6.87 The existing Rules 10.6 to 10.8 state:

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

“The broadcaster must retain responsibility for all programme-related material” (10.7).

“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” (10.8).

“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”.

Reasons for proposed revision and impact on stakeholders

- 6.88 The current programme-related material rules provide a limited exemption to the general prohibition on the promotion of products and services in programming. We are proposing to amend the definition of programme-related material slightly to clarify that only products and services that fulfil the dual condition of being directly derived from a programme and specifically intended to allow viewers to benefit fully from the programme may be promoted as programme-related material.
- 6.89 We are proposing to expand the rule relating to the promotion of programme-related material within programming to provide greater clarity. The proposed rule incorporates information on the promotion of programme-related material that is currently included in guidance to the current Rule 10.6. We do not believe that the new proposed rules will therefore add to the regulatory burden on broadcasters.
- 6.90 We are also proposing to amend the rule that requires broadcasters to retain responsibility for programme-related material to reflect the current guidance on this rule. This guidance acknowledges that broadcasters are not required to have editorial responsibility for the content of programme-related material itself. However they are responsible for the inclusion of, or any reference to, material that is promoted as programme-related material. 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.
- 6.91 For consistency, we are proposing to include the rule relating to the sponsorship of programme-related material with the other sponsorship rules.

Stakeholder questions

- 6.92 Ofcom invites stakeholders’ comments on these proposals.

Question 18

- a) *Do you consider that the rules in relation to programme-related material would benefit from clarification?*
- b) *Do you agree with the introduction of the proposed programme-related material section for Section Nine?*
- c) *If you do not agree with the proposed programme-related material section, please explain why and suggest alternative wording where appropriate.*

Cross-promotions

Proposal

- 6.93 We propose inserting the following explanatory section cross-referring to the Cross-promotion Code.

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.

- 6.94 For reference, the Cross-promotion Code is attached at Annex 10 of this consultation document.

Reasons for proposed revision and impact on stakeholders

- 6.95 We are proposing to include a cross-reference to the Cross-promotion Code which since October 2008 has been incorporated into the Broadcasting Code. In our view this would act as a signpost for broadcasters and also remind broadcasters of the need to apply the relevant rules from the Broadcasting Code to Cross-promotions.

Stakeholder questions

- 6.96 Ofcom invites stakeholders' comments on these proposals.

Question 19

- a) *Do you consider that the proposed cross-reference to the Cross-promotion Code would assist stakeholders?*
- b) *If you do not consider that the proposed cross reference to the Cross-promotion Code would assist stakeholders, please explain why and suggest alternative wording where appropriate.*

Television Sponsorship

Proposal

- 6.97 We propose to include a section on Sponsorship in television with the following introductory explanation:

Sponsorship on television

- *Sponsored programming (which may include a programme, channel, programme segment or block of programmes) is programming that has had some or all of its costs met by a sponsor.*
- *A sponsor is any public or private undertaking or natural person (other than the broadcaster or programme producer) who is funding the programming with a*

view to promoting its products, services, logos, images, name, trade marks and/or its activities.

- *A sponsor reference means any reference to the sponsor’s products, services, logos, images, names, trade marks and/or its activities.*
- *“Costs” means any part of the costs connected to the production or broadcast of the programming.*
- *An advertiser-funded programme is sponsored programming and therefore subject to the following rules.*

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

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

6.98 Existing sponsorship definitions are as follows:

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

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

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

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

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

Reasons for proposed revision

6.99 We propose to amend the meanings to reflect more closely the definition of “sponsorship” as set out in the AVMS Directive (see Article 1(k)).

Stakeholder questions

6.100 Ofcom invites stakeholders’ comments on these proposals.

Question 20

- a) *Do you consider that the meanings in relation to sponsorship of television would benefit from revision?*
- b) *Do you agree that the revised meanings are consistent with those currently used, but more accurately reflect the definition of sponsorship as set out in the AVMS Directive?*
- c) *If not please explain why, suggesting drafting changes where appropriate.*

Content of sponsored output

Proposal

6.101 We propose replacing existing Rules 9.4 and 9.5 with the following proposed Rules 9.17 to 9.19:

Content of sponsored output on television

- 9.17 A sponsor must not influence the content and/or scheduling of a channel or programming in such a way as to impair the responsibility and editorial independence of the broadcaster.
- 9.18 Sponsorship arrangements must not result in sponsor references being included within the editorial of sponsored programming.
- 9.19 Sponsor references within the editorial of sponsored programming that do not result from the sponsorship arrangement must be non-promotional, editorially justified and incidental. This requirement extends to generic references.

6.102 The existing Rules 9.4 to 9.5 state that:

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

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

“Meaning of “promotional reference”:

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

Reasons for proposed revision and impact on stakeholders

6.103 The current Rule 9.5 has led to misunderstanding amongst some stakeholders regarding the acceptability of sponsor references within programmes. While sponsorship allows a sponsor the opportunity to promote itself, such promotion is limited to any benefits the sponsor gains from its association with the programme (which is conveyed through sponsor credits broadcast around the sponsored content). Sponsorship does not provide the opportunity for the inclusion of any references to the sponsor within or during the sponsored content itself.

- 6.104 Notwithstanding this, we accept that there are still certain circumstances in which it may be editorially justified for incidental, non-promotional references to be made to a sponsor (or its products/services etc.) during editorial content. We have drafted the new rules which we believe would provide greater clarity on the acceptability of such sponsor references in editorial content.
- 6.105 The proposed rules are not intended to affect the way in which the existing rule is currently applied. However, in our view, the proposed rules would be clearer and therefore avoid broadcasters misunderstanding the acceptability of sponsor references within programmes. The reason for making these proposals is to help avoid breaches as a result of a misunderstanding of the rules and thereby benefit viewers by affording them more effective protection in this area.
- 6.106 Further guidance on the appearance of sponsor references in programme would be provided. In particular, in relation to advertiser-funded programmes.

Stakeholder questions

- 6.107 Ofcom invites stakeholders' comments on these proposals.

Question 21

- a) *Do you consider that the rules in relation to the content of sponsored output would benefit from clarification?*
- b) *Do you agree with the introduction of the proposed new rules on the content of sponsored output in Section Nine?*
- c) *If you do not agree with the proposed new rules on the content of sponsored output, please explain why and suggest alternative wording where appropriate.*

Sponsorship credits on television

Proposal

- 6.108 We propose replacing existing Rule 9.13 with the following Rule 9.23:

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

- 6.109 The existing Rule 9.13 states:

"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".

Reasons for proposed revision and impact on stakeholders

- 6.110 Sponsorship credits are treated as part of the sponsored programming and, as stated in Ofcom’s published guidance to the current Rule 9.13, do not count towards the amount of airtime a broadcaster is allowed to use for advertising. The purpose of the current Rule 9.13 is to prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted. This current rule is derived from the TWF Directive, which limits the amount of advertising a broadcaster can transmit (Article 18) and requires that advertising is kept separate from other parts of the programme service (Article 10). The Directive also requires that sponsorship “must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services” (Article 17).
- 6.111 We propose adding a sentence to the existing rule to provide greater clarity on the acceptability of references to the sponsor’s products and services in sponsorship credits. The addition of this sentence is not intended to change the interpretation and application of the current Rule 9.13.
- 6.112 We intend to provide further guidance on the content of sponsor credits with particular reference to the type of content that is likely to be deemed to constitute advertising messages.

Stakeholder questions

- 6.113 Ofcom invites stakeholders’ comments on these proposals.

Question 22

- a) *Do you consider that the rules in relation to sponsorship credits would benefit from clarification?*
- b) *Do you agree with the introduction of the proposed rule?*
- c) *If you do not agree with the proposed rule, please explain why and suggest alternative wording where appropriate.*

Appeals for funds for programmes or services

Proposal

We are proposing to replace Rule 10.15 with the following introduction and rules:

Appeals for funds for programming or services

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

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

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

- 9.38 All donations must be separately accounted for and used for the purpose for which they were donated.
- 9.39 Broadcasters must not offer any additional benefits or other incentives to donors.
- 9.40 Appeals for funds for programming or services must not be given undue prominence.

6.114 The existing Rule 10.15 states that:

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

Reasons for proposed revision and impact on stakeholders

- 6.115 The proposed division of existing Rule 10.5 into two separate rules is for the purpose of clarity and ease of application.
- 6.116 We are proposing to introduce Rule 9.39 to help ensure that appeals for funds are not used as a means to circumvent the prohibition on the promotion of products and services in programming by, for example, offering goods and services (other than the provision of programmes or the service) in return for donations.
- 6.117 Proposed Rule 9.40 is designed to ensure that output does not consist predominantly of appeals for funds.
- 6.118 We do not intend the proposed rules to increase the regulatory burden on broadcasters. Rule 10.3 of the current Code prevents broadcasters offering products/services in return for donations and Rule 10.4 (undue prominence) applies to all programmes. We are proposing tailored rules for appeals for funds simply to provide greater clarity for broadcasters when considering the acceptability of appeals for funds.

Stakeholder questions

6.119 Ofcom invites stakeholders' comments on these proposals.

Question 23

- a) *Do you consider that the rules in relation to appeals for funds would benefit from clarification?*
- b) *Do you agree with the introduction of the proposed Rule 9.29 and the section on appeals for funds for programming or services?*
- c) *If you do not agree with the proposals, please explain why and suggest alternative wording where appropriate.*

Associated revisions

6.120 We are proposing to make the following revisions, which simplify and/or clarify current rules and/or reflect the proposed new division of those rules for television or radio:

Current Rule Number	Current Rule	Proposed Rule Number	Proposed Rule
9.1	<i>The following may not be sponsored:</i> <ul style="list-style-type: none"> • <i>news bulletins and news desk presentations on radio;</i> and • <i>news and current affairs programmes on television.</i> 	9.14	News and current affairs programmes must not be sponsored.
9.2	<i>No channel or programme may be sponsored by a sponsor that is not allowed to advertise on the relevant medium.</i>	9.15	Programming (including a channel) may not be sponsored by a sponsor who is prohibited from advertising on television.
9.3	<i>Sponsorship on radio and television must comply with both the advertising content and scheduling rules that apply to that medium.</i>	9.16	Sponsorship must comply with both the content and scheduling rules that apply to television advertising.
9.6	<i>Sponsorship must be clearly identified as such by reference to the name and/or logo of the sponsor. For programmes, credits must be broadcast at the beginning and/or end of the programme.</i>	9.20	Sponsorship must be clearly identified as such by reference to the name and/or logo of the sponsor (the sponsorship credit). For sponsored programmes, credits must be broadcast at the beginning and/or end of the programme.
9.7	<i>The relationship between the sponsor and the sponsored channel or programme must be transparent.</i>	9.21	The relationship between the sponsor and the sponsored content must be clear.
9.12	<i>Sponsorship credits must be clearly separated from programmes by temporal or spatial means.</i>	9.22	Sponsorship credits must be clearly separated from programming by temporal or spatial means.
9.14	<i>Where a programme trail contains a reference to the sponsor of the programme, the sponsor reference must</i>	9.24	Where a sponsor credit is included in a programme trail, the credit must remain brief and secondary.

	<i>remain brief and secondary.</i>		
10.13	<p><i>Charity appeals that are broadcast free of charge are allowed in programmes provided that the broadcaster has taken reasonable steps to satisfy itself that:</i></p> <ul style="list-style-type: none"> <i>• 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</i> <i>• the organisation concerned is not prohibited from advertising on the relevant medium.</i> 	9.34	<p>Charity appeals that are broadcast free of charge are allowed in programming provided that the broadcaster has taken reasonable steps to satisfy itself that:</p> <ul style="list-style-type: none"> • the organisation concerned can produce satisfactory evidence of charitable status, or, in the case of an emergency appeal, that a responsible public fund has been set up to deal with it; and • the organisation concerned is not prohibited from advertising on television.
10.14	<p><i>Where possible, the broadcast of charity appeals, either individually or taken together over time, should benefit a wide range of charities.</i></p>	9.35	<p>Where possible, the broadcast of charity appeals, either individually or taken together over time, should benefit a wide range of charities.</p>
10.17	<p><i>The use of electronic imaging systems during broadcast coverage of an event must comply with the following requirements:</i></p> <ul style="list-style-type: none"> <i>• broadcasters and viewers must be informed in advance of the presence of virtual images;</i> <i>• 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;</i> <i>• rules relating to prohibited advertisers also apply to virtual advertising; and the broadcaster may not trade in virtual advertising.</i> 	9.41	<p>The use of electronic imaging systems during broadcast coverage of an event must comply with the following requirements:</p> <ul style="list-style-type: none"> • 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.

Stakeholder questions

6.121 Ofcom invites stakeholders' comments on the proposed revisions set out in the table above.

Question 24

- a) *Do you consider that the proposed rule revisions are appropriate and would remain consistent with current rule requirements?*
- b) *If you not, please explain why and suggest alternative wording where appropriate.*

Alternative approaches

6.122 We invite stakeholders to offer any alternative approaches to the proposed changes to the regulation of commercial references on television.

6.123 Stakeholders should be aware that any alternative approaches must secure Ofcom's regulatory objectives under the Communications Act 2003, the Audiovisual Media Services Directive, the AVMS Directive (Implementation) Regulations 2009 and Article 10 of the European Convention on Human Rights.

Question 25

- a) *Do you wish to suggest an alternative approach to the proposed revisions in relation to the regulation of commercial references on television?*
- b) *If so, please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003, the Audiovisual Media Services Directive, the AVMS Directive (Implementation) Regulations 2009 and Article 10 of the European Convention on Human Rights).*

Part 7

Commercial References in Radio Programming Rules (Code Section Ten)

Introduction

- 7.1 Ofcom recognises that the statutory framework within which radio operates differs from television. In particular, radio broadcasts are not subject to the requirements of the AVMS Directive discussed above at paragraph 2.11 to 2.13 (since this applies only to audiovisual media services). As a result there are, for example, no limits on advertising minutage on radio.
- 7.2 We are proposing to structure the revised Section Ten to deal with radio only, incorporating the relevant elements of current Code Sections Nine and Ten. We consider that the proposed revised structure would better reflect the statutory framework relating to the regulation of commercial references in radio programming.
- 7.3 In considering our approach in relation to commercial references in radio programming, we have conducted deliberative and qualitative research into listeners' attitudes towards commercial references on radio²⁷.
- 7.4 Having taken into account the findings of this research, and Ofcom's duty²⁸ to review regulation that may present an unnecessary burden on stakeholders, we are consulting on a range of proposals relating to commercial references on radio. The research findings are discussed separately in relation to the proposals below.
- 7.5 We believe the proposed rules would reduce regulatory burdens that may be unnecessary or unnecessarily restrictive. The proposals would also enable broadcasters to offer programming of increased interest and relevance to listeners. At the same time, we believe that the proposed rules would offer the radio industry an additional income source, while maintaining editorial independence and adequate consumer protection.
- 7.6 In particular, where we are proposing rules that would allow radio programming to be subject to a commercial arrangement with a third party, our proposals have taken into account The Consumer Protection from Unfair Trading Regulations 2008. Schedule 1(11) of these Regulations states that the following is considered unfair: "Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer..."
- 7.7 In addition we are also asking stakeholders whether it may be appropriate to introduce new rules into Section Ten that would enable non-commercial, not-for-profit entities (e.g. public services) to fund Public Information Programming that may also refer to the interests and/or activities of the funder. This follows requests for advice from both broadcasters and from non-commercial, not-for-profit organizations (please see paragraphs 7.91 to 7.106, below). Clearly there would need to be sufficient safeguards in place to prevent potential misuse (particularly in relation to surreptitious advertising, editorial independence and due impartiality). This Part of the consultation

²⁷ [Commercial References within Radio Programming - Research Report](#)

²⁸ Communications Act 2003, Section 6 (1)(b).

document puts forward some possible drafting for such rules, for discussion. As the introduction of Public Information Programming is also being considered for television (see Part 6 of this document), Ofcom is likely to reach a decision on the matter that will apply to both radio and television. Therefore responses in relation to Public Information Programming on radio will be considered alongside those relating to television (please see above in Part 6 of this document).

Current position and overview of proposals

- 7.8 Section Nine of the current Code contains rules that apply to sponsorship on radio and television. Section Ten contains rules that apply to commercial references and other matters on both television and radio.
- 7.9 We are proposing to replace these sections with two new sets of rules that will separate, and be tailored specifically for, radio and television. Section Nine of the revised Code would contain the rules applying to all commercial references in television programming and Section Ten would contain the rules applying to all commercial references in radio programming.
- 7.10 In addition to separating the radio and television rules, we also propose to amalgamate the relevant sponsorship rules in relation to radio into the revised Section Ten. We are proposing this because we have noted that, in general, there is a risk of broadcasters focusing on either the current Sections Nine or Ten of the Code, rather than both. This can result in the significance of overarching rules (e.g. undue prominence) being diminished. Similarly, the proposed integration of the sponsorship rules, into Section Ten in relation to radio, would emphasise that sponsorship is just one way in which commercial references feature in programming, and that it is subject to the same broad principles and overarching rules as other commercial references.
- 7.11 The new Section Ten would include:
- **Principles** that help stakeholders understand the relevant standards objectives;
 - **General rules** that apply to all commercial references within programming; and
 - **Specific rules** that apply to the different types of commercial references, such as sponsorship.
- 7.12 We propose to provide introductory text (indicated by the use of italics) throughout the revised Section Ten. This would explain the objectives of the rules and set out how they enable adherence to the relevant principles. Where appropriate, the introductions would also give meanings of terms.
- 7.13 We believe that our proposal to re-structure this Code section in this way would provide stakeholders with a more user-friendly means of assessing the acceptability of commercial references in programming and enable a better understanding of the purpose and spirit of the rules.
- 7.14 Set out below are the proposed revisions and additions to the current definitions, principles and rules that apply to commercial references in radio programming.
- 7.15 There are three significant rule revisions proposed in Section Ten (i.e. revisions which, if adopted, would result in a change to current regulatory framework, and

therefore compliance procedures, as defined in the second bullet point of paragraph 2.58). The three areas are as follows:

- **Content-related promotions** - proposals to allow a brief offer of further information or offer for sale of a product or service that is directly associated with specific content and funded by a third party.
- **Venue-sponsored outside broadcasts** - proposals to allow the sponsorship of outside broadcasts by the venue or venue owner.
- **Sponsored listener competitions features** - proposals to allow sponsor references to form part of listener competition features.

- 7.16 In addition to these proposals, we are considering the potential introduction of a significant set of new rules in Section Ten (i.e. revisions which, if adopted, would result in a change to current regulatory framework, and therefore compliance procedures, as defined in the second bullet point of paragraph 2.58). These rules are in relation to Public Information Programming (see paragraphs 7.91 to 7.106).
- 7.17 We are also proposing rule revisions and new rules that are designed to clarify the current rules in relation to commercial references in radio. These are aimed at avoiding future compliance failures by clarifying the regulatory principles already in place.
- 7.18 There are also proposals for minor rule revisions where the wording of a rule has undergone a minor change as a result of other rule revisions and associated revisions (for example, re-numbering of rules which otherwise remain unchanged, re-ordering or revised grouping of rules, and modifications of section sub-heading titles).
- 7.19 The current Code Section Ten is attached at Annex 8, for ease of reference.
- 7.20 Stakeholders should be aware that proposed rules relating to the promotion of premium rate services within programming are included in the proposed Section Ten but will be subject to Ofcom's consultation on Participation Television planned for autumn 2009.

Overview of the impact of these proposals

- 7.21 As discussed above, there are three significant sets of draft rules proposed in Section Ten in relation to radio, and one set of draft rules in relation to Public Information Programming which relates to both television and radio. If adopted, these rules would result in a change to the current regulatory framework, and therefore compliance procedures, as defined in the second bullet point of paragraph 2.58. Specific impact assessments and related stakeholder questions therefore form part of each discussion below (in relation to content-related promotions, sponsored outside broadcasts, sponsored listener competitions features and Public Information Programming). We have assessed the impact of these significant proposals relative to the option of not making the proposed allowances in each of these four areas.
- 7.22 No other significant rule revisions are raised for stakeholder consideration in Section Ten (i.e. revisions which would result in a change to current regulatory framework, and therefore compliance procedures). Instead we have set out rule revisions, or new rules, which are designed to clarify the existing rules. These proposals are aimed at helping to avoid future compliance failures by clarifying the regulatory principles already in place.

- 7.23 Therefore, our assessment of the impact of these proposals on stakeholders is that broadcasters would have a better understanding of the regulatory principles already in place, with regard to the particular statutory framework in relation to radio. Listeners would also benefit from appropriate protection in relation to commercial references on radio.
- 7.24 Impact assessments in relation to equality are discussed separately under each of the significant rule revisions in Section Ten. In relation to the revisions proposed for the purpose of clarification, in our view there would be no need for formal assessments in relation to equality (whether in Northern Ireland or the rest of the UK) including gender, disability or ethnicity, as our approach to regulation would remain unchanged and therefore we consider that our proposals would not have any particular implications for people to whom these considerations relate.

Proposed new Section Ten of the Code: Commercial references in radio programming

- 7.25 The proposed new Section Ten of the Code is as follows (please refer to it in responding to the stakeholder questions which follow each proposal below):

Section Ten: Commercial References in Radio Programming

Relevant legislation includes, in particular, sections 319(2)(i) and (j) and 319(4)(e) and (f) of the Communications Act 2003, Article 10 of the European Convention on Human Rights, Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008 and The Community Radio Order 2004.

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

Examples of radio programming include programmes, features, trails and sponsorship credits. “Programming” does not include advertisements.

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

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

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

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

With the exception of Rules 10.11 and 10.12, this section does not apply to BBC radio services funded by the licence fee.

Principles

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

Rules

General Rules

Rules 10.1 to 10.6 apply to all commercial references included within radio programming. They reflect the fact that the inclusion of commercial references in radio programming creates a particular risk that the key principles may be, or appear to be, undermined.

- 10.1 Broadcasters must maintain independent editorial control over programming.
- 10.2 Products and services must not be promoted in programming, unless permitted by specific rules in this section of the Code (e.g. programming-related material).
- 10.3 No undue prominence may be given in programming to a product or service. Undue prominence may result from:
- the presence of, or reference to, a product or service in programming where there is no editorial justification; or
 - the manner in which a product or service appears or is referred to in programming.
- 10.4 Broadcasters must ensure that advertising and programming are kept separate (see Rule 10.5 for limited exemptions that apply to the use of advertisements as part of programming).
- 10.5 Advertisements must not appear as part of programming, unless editorially justified. Where advertisements are featured as part of programming, their presence must not be unduly prominent.
- 10.6 All listeners' 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 10.8 to 10.10). In all cases, however, it is important that broadcasters should also consider carefully the provisions in Section Two of the Code.

Product placement

Product placement is the inclusion of, or reference to, a product or a service so that it is featured within programming, in return for payment or for similar consideration.

10.7 Product placement is prohibited.

For limited variations to this rule see:

- Rules 10.17 to 10.24 (content-related promotions); and
- Rules 10.31 to 10.34 (specific sponsorship arrangements).

Premium rate services

The definition of Premium Rate Services (“PRS”) in this section is based on PhonepayPlus’ definition.

[Note to stakeholders:

The rules for the promotion of premium rate services (“PRS”) within programming will be determined after, and will be consistent with, the outcome of Ofcom’s consultation on Participation Television planned for autumn 2009. Rules 10.8 and 10.9 which follow are the current rules relating to PRS].

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

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

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

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

Broadcast competitions and voting

The following rules apply to:

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

They apply to all radio broadcasters, including BBC services funded by the licence fee, and should be read in conjunction with Rules 2.2 and 2.11 to 2.13 of the Code.

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

For competitions and voting that involve the use of PRS, broadcasters should also refer to Rules 10.8 to 10.10.

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

10.12 Terms and conditions of entry or participation must be drawn up by the broadcaster and be appropriately brought to the attention of listeners. In particular, significant conditions that may affect a listener's decision to participate must be made clear at the time an invitation to participate is broadcast.

Programming-related material

Programming-related material consists of products or services:

- *that are specifically intended to allow listeners to benefit more fully from the programming to which they are related; and*
- *the promotion of which **should not be funded by, or otherwise dependent on a commercial arrangement with, a third party.***

The following rules address the potential for the promotion of programming-related material on radio to undermine the key principle of transparency.

10.13 Programming-related material may be promoted in programming only where it is editorially justified and the promotion must not be unduly prominent. References to programming-related material should be brief and confined to the name of the item, a basic description, its cost and/or availability.

10.14 The promotion of programming-related material must be presenter-read (live or pre-recorded).

10.15 The broadcaster must retain responsibility for ensuring the appropriateness of all programming-related material.

- 10.16 No reference must be made on air to any third party involved in funding the production of programming-related material.

Content-related promotions

*A content-related promotion is the offer of further information, or the offer for sale, of a product or service that is directly associated with specific editorial content and **is funded by, or otherwise dependent on a commercial arrangement with, a relevant third party.***

The limited promotional references in programming afforded by the following rules are intended to enable radio broadcasters to offer added benefit to the listening experience. Radio broadcasters are therefore required to ensure that content-related promotions remain distinct from advertisements.

The rules therefore require radio broadcasters to pay particular attention to editorial justification and the presentation of the promotions, so as to maintain editorial integrity. The rules also seek to ensure transparency, consumer protection and distinction from advertising.

- 10.17 A content-related promotion may only be broadcast in or around the content with which it is directly associated.
- 10.18 Content-related promotions must not be unduly prominent, and must not give undue prominence to products, services or any third party.
- 10.19 Content-related promotions may include **only** the offer of information or the offer for sale of a product or service, and may contain **only** the name of the item, its most basic description, its cost and/or availability. They may not contain any advertising messages other than a basic invitation to purchase or a call to action.
- 10.20 Content-related promotions must be clearly identifiable as such and must remain distinguishable from the surrounding content and from full advertisements. They must be pre-recorded and brief. They must not be (or appear to be) read by a presenter of the programme.
- 10.21 A content-related promotion may only be subject to a commercial arrangement with a third party that is not prohibited from advertising on radio.
- 10.22 Content-related promotions must comply with both the content and scheduling rules that apply to radio advertising.
- 10.23 Content-related promotions must be cleared for broadcast in the same way as advertisements.
- 10.24 Content-related promotions must not be broadcast in or around news bulletins or news-desk presentations.

Radio sponsorship

- *Sponsored programming (which may include a radio service, programmes or features) 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 programming producer) who is funding the programming with a view to promoting its products, services, logos, image, name, and/or activities.*
- *A sponsor reference means any reference to the sponsor's products, services, logos, image, names and/or activities.*
- *"Costs" means any part of the costs connected to the production or broadcast of the programming.*
- *Advertiser-funded programming is sponsored programming and therefore subject to the following rules.*

*The following rules enable the inclusion of restricted promotional references in **some** sponsored radio programming but limit the extent of these references to ensure sponsorship remains distinct from advertising. The rules also reflect the importance of maintaining editorial integrity, transparency and consumer protection.*

Content that may not be sponsored on radio

10.25 News bulletins and news desk presentations must not be sponsored.

Prohibited and restricted sponsors on radio

10.26 Programming (including a radio service) may not be sponsored by any sponsor that is prohibited from advertising on radio.

10.27 Sponsorship must comply with both the content and scheduling rules that apply to radio advertising.

Content of sponsored output on radio

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

10.29 Sponsorship arrangements must not result in sponsor references being included within the editorial of sponsored programming, unless permitted under:

- Rules 10.17 to 10.24 (content-related promotions); or
- Rules 10.31 to 10.32 (venue-sponsored outside broadcasts); or
- Rules 10.33 to 10.34 (sponsored listener competition features).

10.30 Sponsor references within the editorial of sponsored programming (including generic references) that do not result from the sponsorship arrangement must be editorially justified, non-promotional and incidental.

Venue-sponsored radio outside broadcasts

A radio outside broadcast (“OB”) is radio programming broadcast from a remote (i.e. non-studio) location. It is usually a live broadcast. However, a live report or interview fed back to the radio station as part of a studio-based programme is not an OB (e.g. a presenter phoning into the studio with a report from a sports game).

An OB is characterised by the lead presenter(s) hosting a programme from a location outside the studio, although various components which make up a typical clock-hour, such as advertisements, travel reports, news and/or music tracks may be ‘driven’ from the studio or elsewhere.

*The following rules apply **only** when the sponsor of an outside broadcast is the venue (or owner of the venue).*

- 10.31 Sponsorship arrangements for outside broadcasts may result in sponsor references being included within the sponsored programming. Such references must be editorially justified and must not be overtly promotional or unduly prominent.
- 10.32 Sponsor references in an outside broadcast must not directly encourage the purchase or rental of the sponsor’s products or services unless they are broadcast as content-related promotions (see Rules 10.17 to 10.24).

Sponsored listener competition features on radio

Most ‘promotions’ arranged by radio sales and promotions (“S&P”) teams are sponsored listener competition features. Sponsor references may form part of the sponsorship arrangement in listener competition features.

- 10.33 The sponsor of a listener competition feature (and/or the sponsor’s products or services) may form an integral part of the competition itself (e.g. by involvement in its execution or as the subject of a question). Sponsor references made in a listener competition feature may contain brief, legitimate advertising messages (including claims that require objective substantiation), but must remain distinguishable from full advertisements.
- 10.34 Advertising messages included in a sponsored listener competition feature must be cleared for broadcast in the same way as advertisements.

Sponsorship credits on radio

- 10.35 Sponsorship must be clearly identified as such by reference to the name of the sponsor. Credits must be broadcast at the beginning and/or end of the programming concerned.
- 10.36 The relationship between the sponsor and the sponsored service or programming must be transparent. During longer sponsored output, credits must be broadcast as appropriate to create the degree of transparency required.
- 10.37 Credits must be short branding statements. They may contain brief, legitimate advertising messages (including claims that require objective substantiation) but must remain distinguishable from full advertisements.

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

10.39 Programming trails for sponsored programming are subject to sponsorship rules.

Public Information Programming

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

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

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

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

10.40 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.

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

10.42 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.

10.43 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.

10.44 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.

- 10.45 The relationship between the funder and the Public Information Programming must be transparent to listeners.
- 10.46 Public Information Programming must not relate to, or refer to, any commercial activities of the funder and/or any connected person.
- 10.47 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.

Service Level Agreements (Community Radio only)

As part of a Service Level Agreement, Community Radio broadcasters may accept funding to deliver programming of social benefit.

The following rules seek to ensure the broadcaster's editorial integrity is maintained. They are not intended to allow the broadcast of material that would otherwise be prohibited directly under the terms of its licence.

- 10.48 A Community Radio broadcaster may agree a service contract to fund programming only with a statutory or voluntary sector organisation, and only where the funded content contributes towards the delivery of the social gain objectives that form part of its licence.
- 10.49 Programming made under a service contract with a statutory or voluntary sector organisation must not give undue prominence to the organisation's products, services, logos, image, name or activities.

Charity appeals

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

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

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

Financial promotions and investment recommendations

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

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

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

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

Appeals for funds for programming or services

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

Rules 10.53 to 10.56 reflect the potential for financial harm when broadcasters appeal for funds from listeners (consumer protection) and ensure editorial integrity and transparency.

10.53 Listeners must be told the purpose of the donation for which an appeal is made and how much it raises.

10.54 All donations must be separately accounted for and used for the purpose for which they are donated.

10.55 Broadcasters must not offer any additional benefits or other incentives to donors. This Rule does not apply to Community Radio broadcasters conducting on air society lotteries that are managed and run by broadcasters for the sole purpose of raising funds for making programming or running their specific services.

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

Note to stakeholders:

For ease of reference, we have adopted different styles in this document:

- all proposed rules appear in **light grey boxes**;
- all current rules appear in *italics* and without shading; and

- all stakeholder questions appear in dark grey boxes.

Proposed section re-structure

Proposed new Section Ten

Proposal

- 7.26 As discussed above we are proposing to replace the current Section Ten of the Code (Commercial References and Other Matters) with a new Section Ten which would contain the rules applying to all commercial references in radio programming.

Reasons for proposed revision and impact on stakeholders

- 7.27 This proposal is based on our recognition that the statutory framework within which radio operates differs from television. In particular, radio broadcasts are not subject to the requirements of the AVMS Directive and the new statutory requirements that will be inserted into the Communications Act by the AVMS Directive (Implementation) Regulations (as discussed above at paragraphs 2.11 to 2.13).
- 7.28 We are therefore proposing to structure the revised Section Ten to reflect this statutory framework in order to better serve the regulation of commercial references in radio programming. Our proposal to re-structure these Code Sections in this way aims to help provide stakeholders with a more user-friendly means of assessing the acceptability of commercial references in programming and would enable a better understanding of the purpose and spirit of the rules.

Stakeholder questions

- 7.29 Ofcom invites stakeholders' comments on the proposal to set out rules concerning commercial references (including sponsorship) in a dedicated section of the Code – Section Ten.

Question 26

- a) *Do you consider that the rules on commercial radio would benefit from being separated from those for television?*
- b) *Do you agree with the introduction of the proposed new Section Ten on commercial references in radio programming?*
- c) *If you do not agree with the proposed new Section Ten, please explain why and suggest alternative wording where appropriate.*

Proposed significant new rules

Content-related promotions

Proposal

- 7.30 A content-related promotion is a brief pre-recorded offer of further information, or of a product or service for sale, that is both directly associated with specific editorial content and dependent on a commercial arrangement with a third party. For example, immediately after a music track is played, listeners could be offered the opportunity to download that track from a third party website, with basic details of the cost of the track and the website address.
- 7.31 We propose introducing the following Rules 10.17 to 10.24 in relation to content-related promotions, together with an introductory explanation:

Content-related promotions

*A content-related promotion is the offer of further information, or the offer for sale, of a product or service that is directly associated with specific editorial content and **is funded by, or otherwise dependent on a commercial arrangement with, a relevant third party.***

The limited promotional references in programming afforded by the following rules are intended to enable radio broadcasters to offer added benefit to the listening experience. Radio broadcasters are therefore required to ensure that content-related promotions remain distinct from advertisements.

The rules therefore require radio broadcasters to pay particular attention to editorial justification and the presentation of the promotions, so as to maintain editorial integrity. The rules also seek to ensure transparency, consumer protection and distinction from advertising.

- 10.17 A content-related promotion may only be broadcast in or around the content with which it is directly associated.
- 10.18 Content-related promotions must not be unduly prominent, and must not give undue prominence to products, services or any third party.
- 10.19 Content-related promotions may include **only** the offer of information or the offer for sale of a product or service, and may contain **only** the name of the item, its most basic description, its cost and/or availability. They may not contain any advertising messages other than a basic invitation to purchase or a call to action.
- 10.20 Content-related promotions must be clearly identifiable as such and must remain distinguishable from the surrounding content and from full advertisements. They must be pre-recorded and brief. They must not be (or appear to be) read by a presenter of the programme.
- 10.21 A content-related promotion may only be subject to a commercial arrangement with a third party that is not prohibited from advertising on radio.

- 10.22 Content related promotions must comply with both the content and scheduling rules that apply to radio advertising.
- 10.23 Content-related promotions must be cleared for broadcast in the same way as advertisements.
- 10.24 Content-related promotions must not be broadcast in or around news bulletins or news-desk presentations.

Reasons for proposed revision and impact on stakeholders

- 7.32 There are currently no rules permitting content-related promotions (sample material that would constitute a content-related promotion is described in Annex 13). Such promotions are not permitted under current rules (in particular Rule 10.2), which require separation between programming and advertising. Further, if a broadcaster currently places a brief traditional spot advertisement next to content to which it is directly related, Ofcom would also be likely to consider it inadequately separated.
- 7.33 Following proposals from the commercial radio industry for a review of rules concerning commercial references in programming, Ofcom has taken into account its duty to remove unnecessary regulation, while maintaining adequate consumer protection.
- 7.34 Ofcom's research (see Annex 12) on the views of radio listeners appears to support the introduction of this type of limited promotional material within programming. The research findings show that listeners:
- find traditional spot advertisements intrusive;
 - value a seamless flow of editorial content as far as possible;
 - are able to identify easily from a pre-recorded promotional clip that there is a commercial arrangement in place;
 - tend to consider a promotion to be beneficial to them if it is related to the editorial content they have been listening to; and
 - are keen that the frequency of commercial references is controlled and the broadcaster's - and presenters' - editorial integrity is maintained.
- 7.35 We consider that the proposed rules would enable broadcasters to offer listeners information that is directly related and therefore relevant to the programming to which they have just been listening, while maintaining editorial independence and adequate consumer protection. Therefore, Ofcom considers that the proposed rules would enable content that would be of value to listeners.
- 7.36 We have also noted that commercial radio revenues from advertising, sponsorship and promotions have fallen 16% in real terms between 2003 and 2008²⁹.
- 7.37 Taking these different factors into account, we are proposing the introduction of some promotional material within programming, with a view to allowing the promotion of goods or services that offer added benefit to the listening experience, in return for payment, whilst ensuring an appropriate level of consumer protection.

²⁹ Source: The Advertising Forecast, World Advertising Research Council, March 2009

- 7.38 To ensure consumer protection, broadcasters would be required to clear content-related promotions for broadcast in the same way as advertisements must currently be cleared. Ofcom considers that radio broadcast advertising regulations offer the most appropriate consumer protection available. The proposed rules would therefore result in increased demands on the Radio Advertising Clearance Centre (RACC), the radio industry's body that approves advertising for broadcast.
- 7.39 As with advertising, only 'special categories' of promotion would require approval by the RACC³⁰. However, it is possible that broadcasters may request the RACC to clear other content-related promotions. A previous change to the sponsorship rules (which allowed sponsorship credits to contain advertising messages) had a relatively small impact on the RACC. Given the limited nature of the type of promotion proposed – a specific direct offer of information or offer for sale – our expectation is that the introduction of the additional clearance burden may also have limited impact.
- 7.40 In any event, in our view, if this proposal was adopted, the impact of any additional burden on the RACC would be likely to be balanced by the additional revenues earned by the commercial radio industry as a result of the proposal.
- 7.41 While the regulation of broadcast advertising is carried out on Ofcom's behalf by the Advertising Standards Authority (ASA), we have maintained responsibility for the regulation of sponsorship (including the advertising content of sponsor credits on radio, which must comply with BCAP Radio Advertising Standards Code requirements³¹), due to its intrinsic connection with programming.
- 7.42 We acknowledge that the intrinsic link between content-related promotions and programming has an impact on the traditional separation of programming and advertising. Nevertheless, the proposed rules would seek to ensure that the promotions are identifiable as such within programming and remain clearly distinct from advertisements.
- 7.43 Guidance would be provided for clarification; in particular, with regard to:
- how to interpret "directly associated" and "specific content", when determining whether material is appropriate to broadcast as a content-related promotion;
 - the ways in which programming, content-related promotions and advertisements can be kept sufficiently distinct to comply with proposed Rules 10.19 and 10.20;
 - how to interpret the specific due prominence requirements for content-related promotions (see proposed Rule 10.18); and
 - why presenter-read content-related promotions are prohibited – The Consumer Protection from Unfair Trading Regulations 2008 (see proposed Rule 10.20).
- 7.44 The adoption of these rules would be likely to have a positive economic impact on the commercial radio industry, giving it both more flexibility in the way it raises revenue and a potential new source of revenue. The size of the latter benefit would depend on how much of the revenue raised as a result of the new rules would be new revenue, and how much would simply be displaced (e.g. from spot advertising). Nevertheless,

³⁰ Section 1, Rules 4.6 and 4.7 of the BCAP Radio Advertising Standards Code, at:

<http://www.asa.org.uk/NR/rdonlyres/41D3786B-1B9A-4C6A-B2E9-09C6C5EB928C/0/BCAPRadioAdCode.pdf>

³¹ http://www.asa.org.uk/asa/codes/radio_code/

submissions to Ofcom from the radio industry indicate that this area of promotion could be an important revenue source.

- 7.45 The proposed rules could have an adverse effect on other forms of media if the newly allowed promotions were to draw existing revenue sources to radio. In economic terms, radio has typically been considered a separate advertising market from other advertising media, such as television and cinema, although there has been recognition that there could be an overlap between local radio advertising and local newspaper advertising. It is therefore possible that these proposals could result in some substitution between the two media. However, it is our expectation that this substitution effect is likely to be limited. The proposed rules state that a content-related promotion must be directly associated with the content in or around which it is broadcast, and limit the information and advertising messages that can be included in a content-related promotion. The rules therefore allow for some additional flexibility but at the same time impose constraints on the type of promotion permitted. Therefore, on the basis of information currently available to us, we expect that the proposed rules would be likely to have minimal impact on other forms of media.
- 7.46 Often, when assessing impacts, we also look at competition effects. In this case, we do not think there would be any significant competition issues resulting from this proposal, as all commercial radio broadcasters would be equally enabled, and non-commercial radio broadcasters would not be disadvantaged. As stated above, we do not think that there would be a significant impact on competition between commercial radio and other media for advertising revenues.
- 7.47 At this stage we have not been able to quantify the costs and benefits of this proposal given the inherent difficulty (and lack of relevant data) in estimating the costs and benefits of a new area of promotion. However, based on the qualitative information currently available to us, we think there would be an overall benefit of allowing content-related promotions (relative to the option of not allowing content-related promotions).
- 7.48 In particular, the consumer research suggests that listeners would benefit from such promotions, while the proposed rules would mitigate the risk of consumer harm.
- 7.49 Regarding the impact on equality (whether in Northern Ireland or the rest of the UK), including gender, disability or ethnicity, we do not consider that our proposed approach in this area would have any particular implications for people to whom these considerations relate.
- 7.50 We invite consultation responses on the potential impact in relation to matters of equality.

Stakeholder questions

- 7.51 Ofcom invites stakeholders' views on the impact of the proposed content-related promotions rules set out in this section.

Question 27

- a) *Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning content-related promotions? If so, please explain why.*
- b) *If not, please explain why.*

- c) *Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer.*
- d) *Do you consider that the proposed rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection?*
- e) *If not, please explain why, suggesting drafting changes where appropriate.*

Venue-sponsored radio outside broadcasts

Proposal

- 7.52 We propose introducing the following Rules 10.31 and 10.32 in relation to outside broadcasts on radio, together with an introductory explanation:

Venue-sponsored radio outside broadcasts

A radio outside broadcast (“OB”) is radio programming broadcast from a remote (i.e. non-studio) location. It is usually a live broadcast. However, a live report or interview fed back to the radio station as part of a studio-based programme is not an OB (e.g. a presenter phoning into the studio with a report from a sports game).

An OB is characterised by the lead presenter(s) hosting a programme from a location outside the studio, although various components which make up a typical clock-hour, such as advertisements, travel reports, news and/or music tracks may be ‘driven’ from the studio or elsewhere.

*The following rules apply **only** when the sponsor of an outside broadcast is the venue (or owner of the venue).*

- 10.31 Sponsorship arrangements for outside broadcasts may result in sponsor references being included within the sponsored programming. Such references must be editorially justified and must not be overtly promotional or unduly prominent.
- 10.32 Sponsor references in an outside broadcast must not directly encourage the purchase or rental of the sponsor’s products or services unless they are broadcast as content-related promotions (see Rules 10.17 to 10.24).

Reasons for proposed revision and impact on stakeholders

- 7.53 There are currently no rules specific to any sponsored outside broadcasts. However, references to a sponsor in programming are currently restricted (under Rule 9.5) to editorially justified references that are non-promotional and incidental. Sponsorship of outside broadcasts by the venue are therefore effectively prohibited, as references to the sponsoring venue from where the outside broadcast is being produced could not be incidental and are likely to be promotional.
- 7.54 Following proposals from the commercial radio industry for a review of rules concerning commercial references in programming, Ofcom has taken into account its duty to remove unnecessary regulation, while maintaining adequate consumer protection. As discussed above we have also considered that commercial radio revenues from advertising, sponsorship and promotions have fallen 16% in real terms

between 2003 and 2008³². Outside broadcasts are expensive to produce, but the industry wants to produce them because they provide interesting events that appeal to listeners. The proposed rules therefore would enable radio broadcasters to produce outside broadcasts that the industry argues would otherwise be unaffordable. They would allow limited promotional references in programming to the venue of an outside broadcast, where the venue is the sponsor of the outside broadcast.

7.55 Ofcom's research (see Annex 12) with radio listeners appears to support the introduction of limited non-promotional and promotional references to the sponsor (if the venue) within outside broadcasts. The research findings show that outside broadcasts are:

- familiar and popular events;
- recognised as promotional but also as bringing interest and variety to a station's broadcasting; and
- regarded as programming content, not advertising;

However, the findings indicate listeners are keen that:

- the frequency of commercial references is not intrusive to the point where the quality of the listening experience is compromised;
- presenter endorsement is limited, genuine and does not compromise listeners' trust; and
- broadcasters' – and presenters' – editorial integrity is maintained.

7.56 This research highlighted listeners' concern about broadcasts that primarily promoted the sponsor and/or its products and services through, for example, a presenter's apparently excessive and/or inauthentic enthusiasm. Ofcom therefore proposes to limit the nature of references to the venue (as sponsor) that can be included in the sponsored programming itself (see Rule 10.31). Outside broadcasts are clearly programming (not advertising) and the way in which such programming generally features references to the sponsor or its products/services is, and should remain, factual, informative and not overtly promotional. (See paragraph 7.59, below, concerning proposed guidance)

7.57 We consider that, alongside the proposed rules, adequate consumer protection is afforded by the existing requirement that all sponsored programming complies with advertising scheduling and content regulations (see current Rule 9.3).

7.58 We propose to restrict the inclusion of more promotional references to the venue/sponsor by requiring that they occur only in the form of content-related promotions (see Rule 10.32). This restriction would also prevent promotional presenter endorsement to the sponsor/venue (as content-related promotions must not be presenter-read).

7.59 Guidance would be provided for clarification, in particular, with regard to:

³² Source: The Advertising Forecast, World Advertising Research Council, March 2009

- the type and nature of sponsor references likely to be considered as overtly promotional (see proposed Rule 10.31); and
 - how to interpret the specific requirement to avoid undue prominence with regard to the sponsor (see proposed Rule 10.31).
- 7.60 While research shows that listeners are tolerant to the idea of sponsor references to a venue as the sponsor of an outside broadcast, they see such sponsored outside broadcasts as contained events. In this particular context, they view such references as logical and relevant. We do not consider that there is sufficient evidence that listeners would be as tolerant to sponsor references in other types of programming (research findings on representative output were far less positive overall).
- 7.61 Subject to ensuring transparency and editorial integrity (see Rules 10.36 and 10.28), Ofcom believes that the proposed rules are likely to enable substantial scope for creative development while maintaining adequate consumer protection.
- 7.62 We believe the adoption of the proposed rules would be likely to have a positive economic impact on the commercial radio industry, giving it both more flexibility in the way it raises revenue, and a potential new source of revenue. The size of the latter benefit would depend on how much of the sponsorship revenue that would be raised as a result of the new rules would be new revenue, and how much would simply be displaced (e.g. from spot advertising). Nevertheless, submissions to Ofcom from the radio industry indicate that this area of promotion could make an important revenue contribution.
- 7.63 The proposed rules could have an adverse effect on other forms of media if the newly allowed sponsor references were to draw existing revenues to radio. However, we consider that, in practice, the increased promotional benefit to venues sponsoring outside broadcasts would be limited and the scale of outside broadcast adoption would be unlikely to increase dramatically as a result of the proposed rules. Also, the substitution effect is likely to be limited to the extent that different sponsors target different media. Therefore, on the basis of information currently available to us, we expect the proposed rules to have a minimal impact on other forms of media.
- 7.64 Often, when assessing impacts, we also look at competition effects. In this case, we do not think there would be any significant competition issues resulting from this proposal as all commercial radio broadcasters would be equally enabled, and non-commercial radio broadcasters would not be disadvantaged. As stated above, we do not think that there would be a significant impact on competition between commercial radio and other forms of media.
- 7.65 We have not quantified the costs and benefits of this proposal given the inherent difficulty (and lack of relevant data) in estimating the costs and benefits of a limited extension to legitimate sponsorship in this case. However, on the basis of the qualitative information currently available to us, we think there would be an overall benefit of allowing outside broadcasts sponsored by the venue (relative to the option of not allowing outside broadcasts sponsored by the venue).
- 7.66 Regarding the impact on equality (whether in Northern Ireland or the rest of the UK), including gender, disability or ethnicity, we do not consider that our proposed approach in this area would have any particular implications for people to whom these considerations relate.

- 7.67 We invite consultation responses on the potential impact in relation to matters of equality.

Stakeholder questions

- 7.68 Ofcom invites stakeholders' views on the impact of the proposed outside broadcast rules set out in this section.

Question 28

- a) *Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning outside broadcasts sponsored by the venue? If so, please explain why.*
- b) *If not, please explain why.*
- c) *Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer.*
- d) *Do you consider that the proposed rules would provide adequate consumer protection, subject to the maintenance of full transparency concerning sponsorship arrangements?*
- e) *If not, please explain why, suggesting drafting changes where appropriate.*

Sponsored listener competition features on radio

Proposal

- 7.69 We propose introducing the following Rules 10.33 and 10.34 in relation to sponsored listener competition features on radio, together with an introductory explanation:

Sponsored listener competition features on radio

Most 'promotions' arranged by radio sales and promotions (S&P) teams are sponsored listener competition features. Sponsor references may form part of the sponsorship arrangement in listener competition features.

10.33 The sponsor of a listener competition feature (and/or the sponsor's products or services) may form an integral part of the competition itself (e.g. by involvement in its execution or as the subject of a question). Sponsor references made in a listener competition feature may contain brief, legitimate advertising messages (including claims that require objective substantiation), but must remain distinguishable from full advertisements.

10.34 Advertising messages included in a sponsored listener competition feature must be cleared for broadcast in the same way as advertisements.

Reasons for proposed revision and impact on stakeholders

- 7.70 There are currently no rules specific to sponsored listener competition features. However, references to a sponsor in programming are currently restricted (under Rule 9.5) to editorially justified references that are non-promotional and incidental. This effectively limits any reference to the sponsor of a listener competition feature to

a passing reference as a prize donor or as the prize itself. The competition question or structure therefore cannot currently include any reference to the sponsor. For example, currently, if a listener competition is sponsored by a mobile phone company, the question that listeners have to answer for the opportunity to win should not refer to, for instance, the mobile phones the company sells, the phones' features or any of the phone packages it provides.

- 7.71 Following proposals from the commercial radio industry for a review of rules concerning commercial references in programming, Ofcom has taken into account its duty to remove unnecessary regulation, while maintaining adequate consumer protection.
- 7.72 Ofcom's research (see Annex 12) with radio listeners also appears to support scope for additional sponsor references and involvement in sponsored listener competition features. The research findings show that listeners:
- tend to welcome sponsored listener competition features as entertaining programming that offer interaction between listeners and the station;
 - view sponsored listener competition features as programming (rather than advertising), even though they are aware that there is a clear commercial agenda;
 - generally expect promotional references to the sponsor (especially as part of the competition mechanic) in sponsored competitions (even though it is currently prohibited);
 - believe that sponsors should be allowed to have listener competition content structured around their product(s)/service(s) or brand (when told it is currently prohibited); and
 - value the competition itself remaining the main focus of a sponsored listener competition feature, to avoid the risk of it being a contrived sales mechanism, resulting in cynicism and a lack of trust.
- 7.73 As discussed above we have also considered that commercial radio revenues from advertising, sponsorship and promotions have fallen 16% in real terms between 2003 and 2008³³.
- 7.74 Taking these different factors into account, we are proposing the introduction of rules that enable radio broadcasters to feature a sponsor and/or its products or services in the mechanic of a sponsored listener competition feature.
- 7.75 Subject to ensuring transparency and editorial integrity in this area (see Rules 10.36 and 10.28), we consider that the proposed rules would enable broadcasters to offer added benefit to the listening experience, while maintaining editorial independence and adequate consumer protection.
- 7.76 To ensure consumer protection, broadcasters would be required to clear advertising messages included in sponsored listener competition features in the same way as advertisements must currently be cleared. Ofcom considers that radio broadcast advertising regulations offer the most appropriate consumer protection available. The

³³ Source: The Advertising Forecast, World Advertising Research Council, March 2009

proposed rules therefore result in increased demands on the Radio Advertising Clearance Centre (RACC), the radio industry's body that approves advertising for broadcast.

- 7.77 As with advertisements, only 'special categories' of advertising messages would require approval by the RACC³⁴. However, it is possible that broadcasters could request the RACC to clear additional material. A previous change to the sponsorship rules (which allowed sponsorship credits to contain advertising messages) had a relatively small impact on the RACC. Given the ring-fenced nature of sponsored listener competition features, we consider that the introduction of this additional clearance burden would be likely to have an increased but limited impact.
- 7.78 In any event, in our view, if the proposal was adopted, the impact of any additional burden on the RACC would be likely to be balanced by the additional revenues earned by the commercial radio industry as a result of the proposal.
- 7.79 While the regulation of broadcast advertising is carried out on Ofcom's behalf by the Advertising Standards Authority (ASA), we have maintained responsibility for the regulation of sponsorship (including the advertising content of sponsor credits on radio, which must comply with BCAP Radio Advertising Standards Code requirements³⁵), due to its intrinsic connection with programming.
- 7.80 The intrinsic link between the material promoted in a sponsored listener competition feature and the sponsor is similar to that currently promoted under most sponsorship arrangements as part of the credit, with its specific requirement not to sound like an advertisement. It therefore appears to us that the regulation of such output would appropriately remain under Ofcom and not transfer to the ASA.
- 7.81 We acknowledge that the intrinsic link between promotional references to the sponsor in listener competition features has an impact on the traditional separation of programming and advertising. However, as we currently require with sponsor credits, the proposed rules would ensure a clear distinction between the sponsor references allowed within sponsored listener competition features and advertising.
- 7.82 Guidance would be provided for clarification, in particular, with regard to:
- clarification with regard to the nature of a sponsored listener competition feature – as opposed to, for example, an extended listener competition programme;
 - the ways in which a sponsor and/or its products/services can be integrated into a listener competition (see proposed Rule 10.33); and
 - how to achieve the distinction required between sponsored listener competition features and advertisements – e.g. the need to make it apparent to the listener that the broadcaster has retained editorial control of the competition (see proposed Rule 10.33).
- 7.83 Adoption of the proposed rules would be likely to have a positive economic impact on the commercial radio industry, giving it both more flexibility in the way it raises revenue, and a potential new source of revenue. The size of the latter benefit would

³⁴ Section 1 Rules 4.6 and 4.7 of the BCAP Radio Advertising Standards Code, at: <http://www.asa.org.uk/NR/rdonlyres/41D3786B-1B9A-4C6A-B2E9-09C6C5EB928C/0/BCAPRadioAdCode.pdf>

³⁵ http://www.asa.org.uk/asa/codes/radio_code/

depend on how much of the sponsorship revenue that would be raised as a result of the new rules would be new revenue, and how much would simply be displaced (e.g. from spot advertising). Nevertheless, submissions to Ofcom from the radio industry indicate that this area of promotion would be a valuable revenue source.

- 7.84 The proposed rules could have an adverse effect on other forms of media if the newly allowed sponsor references were to draw existing revenues to radio. However, the scale of this substitution effect is likely to be limited to the extent that different sponsors target different media. Therefore, on the basis of information currently available to us, we expect that the proposed rules would be likely to have minimal impact on other forms of media.
- 7.85 Often, when assessing impacts, we also look at competition effects. In this case, we do not think there will be any significant competition issues resulting from this proposal as all commercial radio broadcasters would be equally enabled, and non-commercial radio broadcasters would not be disadvantaged. As stated above, we do not think that there would be a significant impact on competition between commercial radio and other media for advertising revenues.
- 7.86 We have not quantified the costs and benefits of this proposal given the inherent difficulty (and lack of relevant data) in estimating the costs and benefits of a limited extension to permitted sponsor references in this case. However, on the basis of the (qualitative) information currently available to us, we think there would be an overall benefit of allowing greater scope for sponsor references in sponsored listener competition features (relative to the option of maintaining the current position on this type of programming, in which such references are not permitted).
- 7.87 In particular, the consumer research suggests that listeners would benefit from such promotions, while the proposed rules would mitigate the risk of consumer harm.
- 7.88 Regarding the impact on equality (whether in Northern Ireland or the rest of the UK), including gender, disability or ethnicity, we do not consider that our proposed approach in this area would have any particular implications for people to whom these considerations relate.
- 7.89 We invite consultation responses on the potential impact in relation to matters of equality.

Stakeholder questions

- 7.90 Ofcom invites stakeholders' views on the impact of the proposed rules concerning sponsored listener competition features set out in this section.

Question 29

- a) *Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning sponsored listener competition features? If so, please explain why.*
- b) *If not, please explain why.*
- c) *Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer.*

- d) *Do you agree that the proposed rules would provide adequate consumer protection, subject to the maintenance of full transparency concerning sponsorship arrangements?*
- e) *If not, please explain why suggesting drafting changes where appropriate.*

Significant potential new rules for consideration

Public Information Programming

Outline of potential new rules for consideration

- 7.91 We are considering the potential introduction of Rules 10.40 to 10.47 to allow Public Information Programming (programming that seeks to educate or inform the audience on matters in the public interest) that is funded by non-commercial, not-for-profit entities and that may refer to the interests and/or activities of the funder.
- 7.92 There are no current rules specifically concerning Public Information Programming. Funded programming on matters in the public interest that refers to the interests or activities of the funder is currently viewed as sponsored programming. A sponsored programme is a programme that has been funded by an undertaking with a view to promoting itself or its interests. The sponsorship rules limit the promotional benefits a sponsor gains from funding a programme to the association with the content. The rules prevent a sponsor using sponsorship to promote itself through editorial content by placing restrictions on references to the sponsor or its interests within the programme.
- 7.93 We believe the intention of the legislation, upon which the sponsorship rules are based, is to prevent surreptitious advertising by stopping a programme funder using sponsorship as a means to promote *itself* or its products or services through editorial content. However, we believe it is worth considering the introduction of rules that would facilitate the funding – by non-commercial, not-for-profit entities – of programming that is in the public interest and that may also refer to the interests or activities of the funder, provided the function of such references is to serve a public interest, **not** to promote the funder. For example, references to services offered by local GPs in a programme funded by the NHS about the prevention and/or treatment of a specific medical condition.
- 7.94 We are seeking views from stakeholders on whether it is appropriate for Ofcom to introduce such rules. We have drafted the following rules to assist stakeholders' consideration:

Public Information Programming

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

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

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

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

- 10.40 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.
- 10.41 Public Information Programming must not be funded by an individual or organisation that is prohibited from advertising on radio.
- 10.42 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.
- 10.43 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.
- 10.44 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.
- 10.45 The relationship between the funder and the Public Information Programming must be transparent to listeners.
- 10.46 Public Information Programming must not relate to, or refer to, any commercial activities of the funder and/or any connected person.
- 10.47 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.

Potential impact on stakeholders

- 7.95 We are interested to receive stakeholders' views on whether allowing this type of programming would offer benefits to listeners by 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.
- 7.96 While there may be clear benefits for allowing Public Information Programming of this nature, Ofcom recognises that there are potential risks as well. In particular, if the rules are not drawn sufficiently tightly, this form of funding could risk giving rise to programming that may be viewed as a form of propaganda. Any rules would therefore need to ensure that funders do not use such programming to circumvent current rules which prevent surreptitious advertising, ensure editorial independence and due impartiality, and prohibit political advertising.
- 7.97 We have developed the potential rules (as stated above) to include a comprehensive range of safeguards to prevent the potential misuse of Public Information Programming, for example:
- to ensure that listeners are made fully aware of the funding arrangement and the identity of the funder;
 - to limit appropriately the types of subjects covered by such programming; and
 - to ensure funding is provided with a view to public interest – not commercial gain.
- 7.98 In addition to specific rules, if they were adopted, we would also provide detailed guidance for broadcasters on a number of issues including:
- the appropriateness of the subject matter, including examples of broad subject areas that would fall foul of the “political, industrial or public controversy” limitations;
 - the status of the potential programme funder;
 - identifying the funder’s relationship with the programme;
 - cross references to other relevant sections of the Code (in particular those relating to matters of harm and offence and religion) and the rules prohibiting political advertising; and
 - the acceptability of references to the funder’s activities to ensure that Public Information Programming is distinct from sponsored programming and not used as a platform to promote the sponsor.
- 7.99 We are also aware there is a risk that this type of programming could replace existing public interest programming, and therefore potentially reduce the variety of public interest content. In addition, broadcasters may 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.

- 7.100 In terms of the economic impact, we have noted a clear appetite amongst broadcasters and potential funders for this type of programming over recent years. During this time we have received several requests for advice on this issue from both broadcasters and from non-commercial, not-for-profit organisations (such as the Central Office of Information (COI) – the government department responsible for government publicity programmes, which is interested in funding programming of this nature).
- 7.101 We are interested to receive views from stakeholders on whether allowing this type of programming would be likely to have a positive economic impact on broadcasters, giving them additional means of raising revenue (at a time when commercial radio revenues from advertising, sponsorship and promotions are declining³⁶). However, it is important to note that the extent of any benefit would depend on how much of the revenue raised as a result of the new rules would be new revenue, and how much would simply be displaced (e.g. from spot advertising).
- 7.102 The potential rules could also have a negative economic impact on other forms of media, if non-commercial, not-for-profit organisations divert spending from other forms of media in favour of Public Information Programming on radio.
- 7.103 We do not believe that there are sufficient data currently available to conduct a detailed cost-benefit analysis of allowing this type of Public Information Programming and therefore invite consultation responses on the potential economic impacts.
- 7.104 Regarding the impact on equality (whether in Northern Ireland or the rest of the UK), including gender, disability or ethnicity, we have considered whether our approach in this area would have any particular implications for people to whom these considerations relate. The potential rules would have equal application, that is, the basis for not permitting a programme to be funded in this way would not be connected with equality issues. Therefore, we do not consider that our approach would have any particular equality implications.
- 7.105 Again, we invite consultation responses on the potential impact in relation to matters of equality.

Stakeholder questions

- 7.106 Ofcom invites stakeholders' comments on the Code potential rules set out in this section.

Question 30

- a) *Would you consider that it is appropriate for Ofcom to introduce rules that would allow Public Information Programming (as described above)? If so, please explain why. If not, please explain why not.*
- b) *If Ofcom were to introduce rules in relation to Public Information Programming:*
- i. *Are there any potential programmes that you believe could comply with the potential rules but that you consider would be undesirable or arguably not in the public interest? If so, please give details.*

³⁶ The Advertising Forecast published in 2009 by World Advertising Research Council states that there has been a 16% decline in commercial radio revenues from advertising, sponsorship and promotions between 2003 and 2008.

- ii. *What impact (e.g. social, economic, equality) do you think the potential rules would have on listeners, the radio industry and any other parties? Please provide any evidence or data to support your answer.*
- iii. *Do you consider that the potential rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection? If not, please explain why.*
- iv. *Do you consider that additional or alternative safeguards to those included in the draft proposed rules are necessary? If so, please provide details.*
- v. *Specifically, should there be any restriction on the type of non-commercial, not-for-profit entities permitted to fund Public Information Programming, and if so, what restrictions?*
- vi. *Do you consider that it would be appropriate for Ofcom to review these rules two years after their introduction? If not, please explain why.*

Rule revisions, or new rules, for the purpose of clarification

New introductory section to Section Ten

Proposal

- 7.107 We propose to begin Section Ten with a new introductory section explaining the purpose of Section Ten and the meaning of terms used (see new section above).
- 7.108 We propose to include definitions of “programming”, “commercial references”, and “products and services” in this introductory section to Section Ten.

Reasons for proposed revision and impact on stakeholders

- 7.109 We are proposing to introduce these meanings to provide Code users with clarity on the scope of Section Ten. We do not intend the proposed meanings to result in this section of the Code applying more widely than the current Sections Nine and Ten.
- 7.110 The term “programming” refers to the current interpretation of “programmes” when radio broadcasters refer to the current Code (i.e. “...the word ‘programmes’ [in the current Code] is taken to mean ... radio programmes/programming.”).
- 7.111 Further, the Code has, to date, contained no clear definition of what we consider to be a commercial reference within programming. Nor does it define clearly how broadly the term “products and services” is interpreted. Currently, Section Ten of the Code expands the definition of products and services only in relation to the undue prominence rule (which states that a product or service includes “company names, brand names, logos”). Section Nine of the current Code (sponsorship) contains rules pertaining to sponsor references within programmes. Based on the definition of “sponsorship” and a “sponsor”, we have interpreted a sponsor reference to mean a reference to the sponsor’s name, trademark, image, activities, services, products or any other direct or indirect interest of the sponsor.
- 7.112 We propose to include meanings of “commercial reference” and “products and services” at the beginning of new Section Ten of the Code to give clarity on what will

be deemed to be commercial reference in programming. The same meaning would also be given to sponsor references (see paragraph 7.161) to ensure consistency throughout this section of the Code.

7.113 The proposed meaning is consistent with what we have to date considered to be a reference to a product or service.

7.114 In our view the proposed introduction to Section Ten would help broadcasters better understand the rules in this section and thereby help them to avoid compliance failures. Listeners in turn would benefit from appropriate protection in relation to commercial references on radio and reduced exposure to material which could breach the Code.

Stakeholder questions

7.115 Ofcom invites stakeholders' comments on the Code proposals set out in this section.

Question 31

- a) *Do you consider that the proposed new Section Ten would benefit from the introduction of new meanings?*
- b) *Do you agree with our proposed new meanings for Section Ten?*
- c) *If you do not agree with our proposed new meanings, please explain why and suggest alternative wording where appropriate.*

Principles

Proposal

7.116 We propose replacing the existing Principles in Section Nine (sponsorship) and Section Ten (Commercial matters) with Principles for the revised Section Ten in relation to radio. The proposed new principles are:

Principles

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

7.117 The existing principles for Section Nine (sponsorship) are as follows:

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.*
- *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”...

7.118 The existing principles for Section Ten (Commercial references and other matters)

- *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.*

Reasons for proposed revision and impact on stakeholders

7.119 There is some duplication of the principles that apply to the existing Sections Nine and Ten of the Code. As we are proposing to combine the rules for radio that are included in these Code sections, we have created a single combined set of principles that apply to all radio programming that contains commercial references.

7.120 The proposed principles would broadly replicate those that are included in Sections Nine and Ten of the current Code. However, we are proposing to add a new principle relating to the importance of ensuring that listeners are afforded the appropriate level of financial protection. This principle is in line with Ofcom’s duty to ensure that generally accepted standards are applied to programming to ensure audiences are protected from harm. We are proposing to introduce specific rules in Section Ten of the Code relating to listener interaction with programming that has the potential to result in financial harm (see paragraphs 7.141 to 7.149).

Stakeholder questions

7.121 Ofcom invites stakeholders’ comments on the Code proposals set out in this section.

Question 32

- a) *Do you consider that the introduction of new Principles in relation to Section Ten is appropriate?*
- b) *Do you agree with the proposed new Principles for Section Ten?*
- c) *If you do not agree with our proposed new Principles, please explain why and suggest alternative wording where appropriate.*

General rules

Proposal

7.122 We propose replacing existing Rules 10.1 to 10.4 and 10.12 with the following Rules 10.1 to 10.5, together with a new Rule 10.6 and explanatory information:

General Rules

Rules 10.1 to 10.6 apply to all commercial references included within radio programming. They reflect the fact that the inclusion of commercial references in radio programming creates a particular risk that the key principles may be, or appear to be, undermined.

10.1 Broadcasters must maintain independent editorial control over programming.

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

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

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

10.4 Broadcasters must ensure that advertising and programming are kept separate (see Rule 10.5 for limited exemptions that apply to the use of advertisements as part of programming).

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

10.6 All listeners' 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 10.8 to 10.10). In all cases, however, it is important that broadcasters should also consider carefully the provisions in Section Two of the Code.

7.123 The existing Rules 10.1 to 10.4, “undue prominence” and 10.12 state that:

“Broadcasters must maintain the independence of editorial control over programme content” (10.1).

“Broadcasters must ensure that the advertising and programme elements of a service are kept separate” (10.2).

“Products and services must not be promoted in programmes. This rule does not apply to programme-related material (see Rule 10.6)” (10.3).

“No undue prominence may be given in any programme to a product or service” (10.4).

“Undue prominence” may result from:

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

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

Reasons for proposed revision and impact on stakeholders

- 7.124 Within Rules 10.1 to 10.5 we are proposing to amend or add wording to clarify the existing rules. These changes are not intended to alter the impact of these rules on programming.
- 7.125 We are proposing to introduce Rule 10.6 in tandem with the proposed new principle on consumer protection as a means of ensuring listeners are protected appropriately when responding to on-air solicitations by or on behalf of the broadcaster. As with the corresponding principle, this rule has been included in line with Ofcom’s duty to ensure that broadcasters apply generally accepted standards to programmes so as to protect audiences from harm. We do not intend the introduction of this rule to increase the regulatory burden on broadcasters, as existing Rules 2.2 and 2.11 of the Code currently incorporate these requirements. The rule has been introduced in line with our proposal to site specific rules regarding listener protection from financial harm when participating in broadcast competitions and voting in Section Ten, whilst retaining the rules for the broader areas of harm under Section Two.
- 7.126 In relation to Rule 10.3, we propose to issue additional guidance on how “undue prominence” will be determined based on the context and manner of the commercial reference (e.g. an editorial based reference, a sponsor reference in a sponsor credit).
- 7.127 In relation to Rule 10.6, we propose to issue guidance on the fair and consistent treatment of listeners’ communications, following on-air solicitations by or on behalf of the broadcaster.

Stakeholder questions

- 7.128 Ofcom invites stakeholders’ comments on the Code proposals set out in this section.

Question 33

- a) Do you consider that the proposed Rules 10.1 to 10.5 are broadly the same, in terms of both scope and intent, as current Rules 10.1, 10.2, 10.3, 10.4, and 10.12?*
- b) If you do not consider the proposed rules are broadly the same as the current rules in this area, please explain why and suggest alternative wording where appropriate.*
- c) Do you agree with the introduction of the proposed new Rule 10.6?*

d) *If you do not agree with the proposed new Rule 10.6, please explain why and suggest alternative wording where appropriate.*

Product placement

Proposal

7.129 We propose replacing the existing meaning of product placement with the following:

Product placement

Product placement is the inclusion of, or reference to, a product or a service so that it is featured within programming, in return for payment or for similar consideration.

7.130 The existing meaning of product placement (under current Rule 10.5) is as follows:

Product placement is the inclusion of, or a reference to, a product or service within a programme in return for payment or other valuable consideration to the programme maker or broadcaster (or any representative or associate of either). For the purposes of this rule, the following are not considered to be product placement:

- *References to products or services acquired at no, or less than full, cost, where their inclusion within the programme is justified editorially. On television, a brief, basic text acknowledgement of the provider of these products or services may be included within the end credits of the programme. This is permitted only where the identity of the product is not otherwise apparent from the programme itself.*
- *For television, arrangements covering the inclusion of products or services in a programme acquired from outside the UK and films made for cinema provided that no broadcaster regulated by Ofcom and involved in the broadcast of that programme or film directly benefits from the arrangement.*

Reason for proposed revision and impact on stakeholders

7.131 The proposed meaning of product placement for radio is based on the definition for product placement on television, as set out in the Government's draft AVMS Directive (Implementation) Regulations. Although the AVMS Directive does not apply to radio, Ofcom considers it appropriate to use consistent definitions of product placement for both radio and television. Ofcom does not consider there is a substantive difference between the current and proposed meanings of product placement for radio and therefore believes there would be no impact on stakeholders.

Stakeholder questions

7.132 Ofcom invites stakeholders' comments on the Code proposal set out in this section.

Question 34

- Do you consider it appropriate to introduce the proposed new meaning of product placement, to reflect the definition required for television?*
- If not please explain why, suggesting drafting changes where appropriate.*

Premium Rate Services

Proposal

7.133 We propose replacing existing rules for Premium Rate Services (“PRS”) within programming with the following rules and introduction:

Premium Rate Services

The definition of Premium Rate Services (“PRS”) in this section is based on PhonepayPlus’ definition.

[Note to stakeholders:

The rules for the promotion of premium rate services (“PRS”) within programming will be determined after, and will be consistent with, the outcome of Ofcom’s consultation on Participation Television planned for autumn 2009. Rules 10.8 and 10.9 which follow are the current rules relating to PRS].

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

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

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

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

7.134 The existing Rules 10.9 and 10.10 are as follows:

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

- *they form part of the editorial content of the programme; or*
- *they fall within the meaning of programme-related material (see above) (10.9).*

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

Reasons for proposed revision and impact on stakeholders

7.135 Stakeholders should note that Rule 10.8, as stated above (which is the current Rule 10.9), is to be consulted on as part of a separate Ofcom consultation on Participation Television planned for autumn 2009, and is therefore likely to be subject to further revision.

7.136 In addition to including the current rules in the new Code, we propose to add the following Rule 10.10:

10.10 The cost to listeners for using premium rate services must be made clear to

them and broadcast as appropriate.

7.137 We consider that, in line with our proposed principle on consumer protection, it would be appropriate to include a new rule that would require broadcasters to ensure that PRS cost information is made clear to listeners.

7.138 The current Rule 10.10 requires all PRS in programming to comply with the PhonepayPlus Code³⁷ which requires service providers to ensure that users of PRS are fully informed of the cost of using some services. In addition to this rule we are proposing to introduce Rule 10.10 to place a responsibility on broadcasters to do the same for all PRS. We believe this rule would provide an important level of consumer protection for listeners.

7.139 It is our understanding that, in addition to PhonepayPlus' requirements, it is current industry best practice for broadcasters to make PRS cost information clear to listeners. Therefore this rule would not change current best practice.

Stakeholder questions

7.140 Ofcom invites stakeholders' comments on the Code proposals set out in this section.

Question 35

- a) *Do you consider it appropriate to introduce the proposed new Rule 10.10?*
- b) *If not please explain why, suggesting drafting changes where appropriate.*

Broadcast competitions and voting

Proposal

7.141 There are no existing rules in Sections Nine and Ten regarding broadcast competitions and voting. We are proposing the following introduction and rules:

Broadcast competitions and voting

The following rules apply to:

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

They apply to all radio broadcasters, including BBC services funded by the licence fee, and should be read in conjunction with Rules 2.2 and 2.11 to 2.13 of the Code.

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

For competitions and voting that involve the use of PRS, broadcasters should also

³⁷ PhonepayPlus is the organisation that regulates phone-paid (premium rate telephony) services in the UK.

refer to Rules 10.8 to 10.10.

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

10.12 Terms and conditions of entry or participation must be drawn up by the broadcaster and be appropriately brought to the attention of listeners. In particular, significant conditions that may affect a listener's decision to participate must be made clear at the time an invitation to participate is broadcast.

7.142 There are currently no specific rules relating to the potential for financial detriment resulting from audience participation in competition and voting. However, current Rules 2.2 and 2.11 are relevant (see paragraphs 5.14 and 5.15).

Reasons for proposed revision and impact on stakeholders

7.143 Currently, unfair or misleading conduct in competitions and voting is covered by Rules 2.2 (misleadingness resulting from the portrayal of factual matters) and 2.11 (fair conduct of competitions).

7.144 High-profile investigations carried out by Ofcom over the last three years have highlighted serious consumer protection issues that can potentially result from the unfair or misleading conduct of broadcast competitions or voting. Ofcom has a statutory duty to ensure that broadcasters apply generally accepted standards to programming so as to provide audiences with adequate protection from harmful and/or offensive material.

7.145 This standards objective applies to all broadcasters, including BBC services funded by the licence fee. We therefore propose that the rules for broadcast competitions and voting within Section Ten would also apply to BBC services funded by the licence fee.

7.146 The proposed rules are intended to protect listeners from potential financial harm as a result of their participation in broadcast competitions and voting.

7.147 In addition to the proposed introduction of Rules 10.11 and 10.12, we have drafted proposed revisions³⁸ to the existing Rule 2.11 to complement the proposed new rules.

7.148 Existing guidance to Rules 2.2 and 2.11 would be divided, as required, under the appropriate proposed rules. It is likely that we would have to provide some additional guidance to accompany the new rules in Section Ten – in particular, to help clarify the scope of these, in relation to relevant rules in Section Two.

Stakeholder questions

7.149 Ofcom invites stakeholders' comments on the Code proposals set out in this section.

Question 36

³⁸ These can be found under Part 5 of the consultation document, relating to Section Two of the Code.

- a) *Do you consider that the introduction of a new competition and voting section is appropriate?*
- b) *Do you agree with the proposed new competition and voting section for Section Ten?*
- c) *If you do not agree with our proposed new competition and voting section, please explain why and suggest alternative wording where appropriate.*
- d) *Do you agree that it is appropriate to apply these rules to BBC services funded by the licence fee?*
- e) *If you do not agree that it is appropriate to apply these rules to BBC services funded by the licence fee, please explain why and suggest drafting changes where appropriate.*

Programming-related material

Proposal

7.150 We propose replacing existing Rules 10.6 to 10.8 with the following new Rules 10.13 to 10.16, together with an introductory explanation:

Programming-related material

Programming-related material consists of products or services:

- *that are specifically intended to allow listeners to benefit more fully from the programming to which they are related; and*
- *the promotion of which **should not be funded by, or otherwise dependent on a commercial arrangement with, a third party.***

The following rules address the potential for the promotion of programming-related material on radio to undermine the key principle of transparency.

- 10.13 Programming-related material may be promoted in programming only where it is editorially justified and the promotion must not be unduly prominent. References to programming-related material should be brief and confined to the name of the item, a basic description, its cost and/or availability.
- 10.14 The promotion of programming-related material must be presenter-read (live or pre-recorded).
- 10.15 The broadcaster must retain responsibility for ensuring the appropriateness of all programming-related material.
- 10.16 No reference must be made on air to any third party involved in funding the production of programming-related material.

7.151 Existing Rules 10.6 and 10.8, and meaning of “programme-related material” state:

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

“The broadcaster must retain responsibility for all programme-related material” (10.7).

“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” (10.8).

“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 listeners to benefit fully from, or to interact with, that programme.”

Reasons for proposed revision and impact on stakeholders

- 7.152 The proposed rules concerning programming-related material would provide greater clarity and incorporate information on the promotion of programming-related material that is included in guidance to the current Rule 10.6. We do not believe that the new proposed rules would therefore add to the regulatory burden on broadcasters.
- 7.153 We are also proposing to amend the rule that requires broadcasters to retain responsibility for programming-related material to reflect the current guidance on this rule. This guidance acknowledges that broadcasters are not expected to have editorial responsibility of the content of programming-related material itself. However they are responsible for the inclusion of, or any reference to, material that is promoted as programming-related material. 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.
- 7.154 The existing rules are focused primarily on television, including requirements and restrictions particularly relevant to that medium. The inclusion of programming-related material in broadcast output does not appear to have been widely adopted by radio broadcasters. The proposed rules reflect a less restrictive demand on the intrinsic connection between the information or product/service on offer and the relevant programming. We consider that this would complement the proposed new rules concerning content-related promotions (see Rules 10.17 to 10.24, below).
- 7.155 Ofcom’s research with radio listeners (see Annex 12) has found that they highly value their trust in the independence of presenters. As the promotion of programming-related material is not to be funded by a third party, we propose that it should be presenter-read, to act as a signpost to listeners that the promotion has not been paid-for.
- 7.156 Given the new opportunities afforded to radio broadcasters by the introduction of content-related promotions (see Rules 10.17 to 10.24, above), Ofcom is not proposing to allow on-air references to third parties involved in funding the production of programming-related material (which includes sponsors of the material itself). This is intended to avoid any confusion to listeners concerning paid-for commercial messaging. Also, Ofcom is unaware of any programme-related material currently promoted on radio that has been credited on air as sponsored material.
- 7.157 The proposed rules, together with those for content-related promotions (see Rules 10.17 to 10.24, above), therefore seek to ensure that paid-for commercial messaging in programming is transparent and distinct, and we believe would be unlikely to erode listeners’ trust in presenters’ independence.

7.158 Please note, while changes have been made to the existing rules concerning programming-related material, Ofcom considers an impact assessment unnecessary in isolation, in view of the proposed introduction of content-related promotions, above.

Stakeholder questions

7.159 Ofcom invites stakeholders' comments on the Code proposals set out in this section.

Question 37

- a) *Do you consider that the rules in relation to programming-related material would benefit from clarification?*
- b) *Do you agree with the introduction of the proposed programming-related material section for Section Ten?*
- c) *If you do not agree with the proposed programming-related material section, please explain why and suggest alternative wording where appropriate.*

Radio sponsorship

Proposal

7.160 We propose including the following introductory explanation regarding radio sponsorship before Rules 10.25 to 10.39:

Radio sponsorship

- *Sponsored programming (which may include a radio service, programmes or features) 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 programming producer) who is funding the programming with a view to promoting its products, services, logos, image, name, and/or activities.*
- *A sponsor reference means any reference to the sponsor's products, services, logos, image, names and/or activities.*
- *"Costs" means any part of the costs connected to the production or broadcast of the programming.*
- *Advertiser-funded programming is sponsored programming and therefore subject to the following rules.*

*The following rules enable the inclusion of restricted promotional references in **some** sponsored radio programming but limit the extent of these references to ensure sponsorship remains distinct from advertising. The rules also reflect the importance of maintaining editorial integrity, transparency and consumer protection.*

7.161 The existing definitions related to Radio sponsorship are as follows:

Meaning of "sponsored programme", "sponsored channel" and "sponsor":
A sponsored programme, which includes an advertiser-funded programme, is a

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

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

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

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

Reasons for proposed revision and impact on stakeholders

7.162 The proposed meanings are consistent with those proposed for television and seek to clarify information regularly sought by radio broadcasters over recent years. They propose no significant change to our current definitions, rather they would benefit stakeholders through increased clarity in relation to the rules that follow.

Stakeholder questions

7.163 Ofcom invites stakeholders' comments on the Code proposals set out in this section.

Question 38

- a) *Do you consider that the meanings in relation to sponsorship of radio would benefit from revision?*
- b) *Do you agree that it is appropriate for Ofcom to introduce the proposed meanings in relation to radio sponsorship?*
- c) *If not please explain why, suggesting drafting changes where appropriate.*

Content of sponsored output on radio

Proposal

7.164 We propose replacing existing Rules 9.4 and 9.5 with the following proposed new Rules 10.28 to 10.30:

Content of sponsored output on radio

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

10.29 Sponsorship arrangements must not result in sponsor references being included within the editorial of sponsored programming, unless permitted

under:

- Rules 10.17 to 10.24 (content-related promotions); or
- Rules 10.31 to 10.32 (venue-sponsored outside broadcasts); or
- Rules 10.33 to 10.34 (sponsored listener competition features).

10.30 Sponsor references within the editorial of sponsored programming (including generic references) that do not result from the sponsorship arrangement must be editorially justified, non-promotional and incidental.

7.165 Existing Rules 9.4 to 9.5 state that:

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

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

“Meaning of “promotional reference”:

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

Reasons for proposed revision and impact on stakeholders

7.166 These proposed rules reflect that sponsorship does not generally provide the opportunity for the inclusion of any references to the sponsor within or during the sponsored content. However, we propose specific exemptions, which follow (see proposed Rules 10.31 to 10.34, above).

7.167 The proposed rules acknowledge that sponsor references within programming that do not result from the sponsorship arrangement must be editorially justified, non-promotional and incidental. We have drafted these rules which we believe would provide greater clarity on the acceptability of such sponsor references in editorial content. The proposed rules are not intended to affect the way in which the existing Rule 9.5 is currently interpreted and applied, except where they cross-refer to specific exemptions (see proposed Rules 10.31 and 10.34, above).

7.168 Further guidance on the appearance of sponsor references in programming would be provided – in particular, in relation to advertiser-funded programmes.

7.169 For our assessment of impact on stakeholders please see discussions in relation to the proposed rules on content-related promotions (see paragraphs 7.30 to 7.51, above), outside broadcasts sponsored by the venue (see paragraphs 7.52 to 7.68, above) and sponsored listener competitions (see paragraphs 7.69 to 7.90), above.

Stakeholder questions

7.170 Ofcom invites stakeholders’ comments on the Code proposals set out in this section.

Question 39

- a) *Do you consider that the rules in relation to the content of sponsored output would benefit from clarification?*
- b) *Do you agree with the introduction of the proposed new rules on the content of sponsored output in Section Ten?*
- c) *If you do not agree with the proposed new rules on the content of sponsored output, please explain why and suggest alternative wording where appropriate.*

Service Level Agreements (Community Radio only)

Proposal

7.171 There are currently no existing rules concerning service level agreements. We propose introducing the following new Rules 10.48 to 10.49, together with an introductory explanation:

Service Level Agreements (Community Radio only)

As part of a Service Level Agreement, Community Radio broadcasters may accept funding to deliver programming of social benefit.

The following rules ensure the broadcaster's editorial integrity is maintained. They are not intended to allow the broadcast of material that would otherwise be prohibited directly under the terms of its licence.

10.48 A Community Radio broadcaster may agree a service contract to fund programming only with a statutory or voluntary sector organisation, and only where the funded content contributes towards the delivery of the social gain objectives that form part of its licence.

10.49 Programming made under a service contract with a statutory or voluntary sector organisation must not give undue prominence to the organisation's products, services, logos, image, name or activities.

Reasons for proposed revision and impact on stakeholders

7.172 Community Radio broadcasters commonly agree service contracts with statutory and voluntary sector organisations to publicise advice and services that contribute towards the delivery of their social gain objectives. These can involve both broadcast and non-broadcast activities. The proposed rules would provide clarity on the acceptability of such contracts for broadcast content, particularly for those services unable under their licences to accept paid-for advertising and sponsorship. The content broadcast could be promotional (e.g. the introduction of a reading scheme by a local library service), while the main emphasis would remain principally philanthropic.

7.173 The proposed rules would therefore recognise that the remit of Community Radio broadcasters, which are not-for-profit organisations, is to benefit the communities they serve in meeting their specific social gain objectives. As such, listeners would generally expect (and currently receive) broadcast material (including promotional references), that is paid-for by relevant statutory or voluntary sector organisations. This material often complements associated non-broadcast activities designed to provide social gain that is specific to the community concerned. Potentially

questionable under current Code requirements, the proposed rules would clarify the legitimacy of broadcast material fundamental to the provision of Community Radio.

- 7.174 To date, the broadcast on a Community Radio service of material that forms part of a Service Level Agreement has not been considered under the Code but under the Community Radio Order 2004, which allows such arrangements³⁹. As the proposed rules do not represent any new broadcasting opportunities for Community Radio broadcasters, Ofcom does not consider the proposed rules would have a significant impact on any stakeholders.
- 7.175 We propose to issue guidance to clarify the status of Service Level Agreements as principally philanthropic and in support of social benefit.

Stakeholder questions

- 7.176 Ofcom invites stakeholders' comments on the Code proposals set out in this section.

Question 40

- a) *Do you consider that introduction of rules in relation to Service Level Agreements is appropriate?*
- b) *Do you agree with Ofcom's proposed rules on Service Level Agreements?*
- c) *If not please explain why, suggesting drafting changes where appropriate.*

Appeals for funds for programmes or services

Proposal

- 7.177 We propose to replace existing Rule 10.15 with the following new Rules 10.53 to 10.56, together with an introductory explanation:

Appeals for funds for programming or services

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

Rules 10.50 to 10.53 reflect the potential for financial harm when broadcasters appeal for funds from listeners (consumer protection) and ensure editorial integrity and transparency.

- 10.53 Listeners must be told the purpose of the donation for which an appeal is made and how much it raises.
- 10.54 All donations must be separately accounted for and used for the purpose for which they are donated.
- 10.55 Broadcasters must not offer any additional benefits or other incentives to donors. This Rule does not apply to Community Radio broadcasters conducting on air society lotteries that are managed and run by broadcasters for the sole purpose of raising funds for making programming or running their

³⁹ The Community Radio Order 2004, Schedule, Part 1, s.5(8).

specific services.

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

7.178 Existing Rule 10.15 states:

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

Reasons for proposed revision and impact on stakeholders

7.179 We are proposing to split the existing rule into two separate rules for the purpose of clarity and ease of application.

7.180 We are proposing to introduce Rule 10.55 to ensure that appeals for funds are not used as a means to circumvent the prohibition on the promotion of products and services in programming by, for example, offering goods and services (other than the provision of programmes or the service) in return for donations. This rule would not apply to Community Radio broadcasters conducting society lotteries on air that are managed and run by broadcasters for the sole purpose of raising funds for making programming or running their specific services. This exemption would recognise that the remit of Community Radio broadcasters is to benefit the communities they serve in meeting their social gain objectives.

7.181 Rule 10.56 ensures that output does not consist predominantly of appeals for funds.

Stakeholder questions

7.182 Ofcom invites stakeholders' comments on the Code proposals set out in this section.

Question 41

- a) *Do you consider that the rule in relation to appeals for funds would benefit from clarification?*
- b) *Do you agree with the introduction of the proposed Rule 10.55 and the section on appeals for funds for programming or services?*
- c) *If you do not agree with the proposals, please explain why and suggest alternative wording where appropriate.*

Associated revisions

7.183 We are proposing to make the following revisions, which simplify and/or clarify current rules and/or reflect the proposed new division of those rules for television or radio:

Current Rule	Current Rule	Proposed Rule	Proposed Rule
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Number		Number	
9.1	<i>The following may not be sponsored:</i> <ul style="list-style-type: none"> • <i>news bulletins and news desk presentations on radio;</i> and • <i>news and current affairs programmes on television.</i> 	10.25	News bulletins and news desk presentations must not be sponsored.
9.2	<i>No channel or programme may be sponsored by a sponsor that is not allowed to advertise on the relevant medium.</i>	10.26	Programming (including a radio service) may not be sponsored by a sponsor that is prohibited from advertising on radio.
9.3	<i>Sponsorship on radio and television must comply with both the advertising content and scheduling rules that apply to that medium.</i>	10.27	Sponsorship must comply with both the content and scheduling rules that apply to radio advertising.
9.6	<i>Sponsorship must be clearly identified as such by reference to the name and/or logo of the sponsor. For programmes, credits must be broadcast at the beginning and/or end of the programme.</i>	10.35	Sponsorship must be clearly identified as such by reference to the name of the sponsor. Credits must be broadcast at the beginning and/or end of the programming concerned.
9.7	<i>The relationship between the sponsor and the sponsored channel or programme must be transparent.</i>	10.36	The relationship between the sponsor and the sponsored service or programming must be transparent. During longer sponsored output, credits must be broadcast as appropriate to create the degree of transparency required.
9.8	<i>During longer sponsored output, credits must be broadcast as appropriate to create the degree of transparency required.</i>		
9.9	<i>Credits must be short branding statements. However, credits may contain legitimate advertising messages.</i>	10.37	Credits must be short branding statements. They may contain brief, legitimate advertising messages (including claims that require objective substantiation) but must remain distinguishable from full advertisements.
9.11	<i>Programme trails are treated as programmes and the same sponsorship rules</i>	10.39	Programming trails for sponsored programming are subject to sponsorship rules.

	<i>apply.</i>		
10.5	<i>Product placement is prohibited.</i>	10.7	Product placement is prohibited. For limited variations to this rule see: <ul style="list-style-type: none"> • Rules 10.17 to 10.24 (content-related promotions); and • Rules 10.31 to 10.34 (specific sponsorship arrangements).

Stakeholder questions

7.184 Ofcom invites stakeholders' comments on the proposed revisions set out in the table above.

Question 42

- a) *Do you consider that the proposed rule revisions are appropriate and would remain consistent with current rule requirements?*
- b) *If you not, please explain why and suggest alternative wording where appropriate.*

Alternative approaches

7.185 We invite stakeholders to offer any alternative approaches to the proposed changes to the regulation of commercial references on radio.

7.186 Stakeholders should be aware that any alternative approaches must comply with relevant legislation including the Communications Act 2003, Article 10 of the European Convention on Human Rights, Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008 and The Community Radio Order 2004.

Question 43

- a) *Do you wish to suggest an alternative approach to the proposed revisions in relation to the regulation of commercial references on radio?*
- b) *If so please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003, Article 10 of the European Convention on Human Rights, Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008 and The Community Radio Order 2004).*

Part 8

Sections of the Code where no revisions are proposed

Introduction

- 8.1 Ofcom has reviewed the entire Code and decided that only certain areas require changes at present. Therefore Ofcom is only proposing changes to four main areas of the Code in this consultation document. No revision requirements have been identified in Section One (other than in relation to the broadcast of material of a sexual nature discussed in Part 4 of this consultation document); nor in Section Two (other than in relation to the conduct of competitions and voting as discussed in Part 5 of this document); nor in Sections Three to Eight.
- 8.2 Ofcom is therefore proposing no changes in these sections, although it is proposing that issues raised by stakeholders in pre-consultation discussions will be considered in relation to guidance (discussed below at paragraph 8.4).

Impact on stakeholders

- 8.3 Our assessment of the impact on stakeholders of this targeted approach is that it represents a proportionate and justified response to those rules which have been identified as requiring revision.
- 8.4 However, in addition to this targeted approach to reviewing the Code, guidance to all sections will be reviewed to provide up-to-date amendments or clarification on an on-going basis. This would provide broadcasters, viewers and listeners with a continuing opportunity to seek improvements to the guidance, in particular in relation to those sections where the rules were not identified, during this review of the Code, as requiring change.

Stakeholder questions

- 8.5 Ofcom invites stakeholders' comments on the proposed targeted approach to the Code review.

Question 44

- a) *Do you agree with the proposed approach which only proposes changes to Section One of the Code in relation to material of a sexual nature; only proposes changes to Section Two in relation to Competitions and Voting; and proposes no changes to Sections Three to Eight.*
- b) *If you do not agree with our approach, please explain which other sections of the Code you consider should be reviewed and why.*
- c) *Do you agree with Ofcom's approach which will be to provide, and update, guidance to all sections on an on-going basis? If so, are there particular areas where you consider an updating of guidance would be helpful?*

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on 4 September 2009.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/bcode09/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses please email broadcastingcodereview@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- Sara Winter
Ofcom
Content and Standards
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted by email or by using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact 020 7981 3924.

Confidentiality

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

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

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in December 2009.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:
- A1.16 Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW
- Tel: 0141 229 7401
- Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

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

Before the consultation

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

During the consultation

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

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

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

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

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

After the consultation

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

Annex 3

Consultation response cover sheet

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

COVER SHEET FOR RESPONSE TO CONSULTATION: BASIC DETAILS

Consultation title: Broadcasting Code Review

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name

Contact details

Job title

Organisation

Whole response

Part of the response

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

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

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

Sexual Material Rules (Code Section One)

Question 1

- a) *Do you consider that the rule in relation to 'adult-sex' material needs to be clarified?*
- b) *Do you agree with our proposed amendments to the rule on 'adult-sex' material (Proposed Rule 1.18 to replace Rule 1.24)?*
- c) *If you do not agree with our proposed amendments, please explain why and suggest alternative wording where appropriate.*

Question 2

- a) *Do you consider that the introduction of a new rule in relation to material of a strong sexual nature is appropriate?*
- b) *Do you agree with our proposed rule on material of a strong sexual nature (proposed Rule 1.19)?*
- c) *If you do not agree with our proposed new rule, please explain why and suggest alternative wording where appropriate.*

Question 3

- a) *Do you consider that the rule in relation to material equivalent to the BBFC R-18 rating needs to be separated from the rule in relation to R-18 rated works?*
- b) *Do you agree with our proposed rule on material equivalent to the BBFC R-18 rating (proposed Rule 1.17)?*
- c) *If you do not agree with our proposed new rule, please explain why and suggest alternative wording where appropriate.*

Question 4

- a) *Do you consider that the rule in relation to pre-watershed material needs to be clarified?*
- b) *Do you agree with our proposed amendments to the rule on pre-watershed material (proposed Rule 1.20 to replace Rule 1.17)?*
- c) *If you do not agree with our proposed amendments, please explain why and suggest alternative wording where appropriate.*

Question 5

- a) *Do you consider that the associated revisions are appropriate following the other rule revisions outlined above?*

- b) *Do you agree with our proposed associated revisions in Section One?*
- c) *If you do not agree with our proposed revisions, please explain why and suggest alternative wording where appropriate.*

Question 6

- a) *Do you wish to suggest an alternative approach to the proposed set of rules in relation to sexual material? If so, please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003 and the European Convention on Human Rights).*

Competitions and Voting Rules (Code Section Two)

Question 7

- a) *Do you consider that the introduction of new rules in relation to competitions and voting is appropriate?*
- b) *Do you agree with our proposed new rules in relation to competitions and voting (proposed Rules 2.11 to 2.13 to replace Rule 2.11)?*
- c) *If you do not agree with our proposed new rules, please explain why and suggest alternative wording where appropriate.*

Question 8

- a) *Do you consider that the introduction of new meanings in relation to competitions and voting are appropriate?*
- b) *Do you agree with our proposed new meanings in relation to competitions and voting?*
- c) *If you do not agree with our proposed new meanings, please explain why and suggest alternative wording where appropriate.*

Question 9

- a) *Do you wish to suggest an alternative approach to the proposed set of rules in relation to competitions and voting? If so, please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003, the Audiovisual Media Services Directive, the AVMS Directive (Implementation) Regulations 2009 and Article 10 of the European Convention on Human Rights).*

Commercial References in Television Programming Rules (Code Section Nine)

Question 10

- a) *Do you consider that the rules on commercial television would benefit from being separated from those for radio?*

- b) *Do you agree with the introduction of the proposed new Section Nine on commercial references in television programming?*
- c) *If you do not agree with the proposed new Section Nine, please explain why and suggest alternative wording where appropriate.*

Question 11

- a) *Do you consider that it is appropriate for Ofcom to include the enforceable provisions relating to product and prop placement, replicated from the AVMS Directive (Implementation) Regulations, as rules in the revised Code?*
- b) *If you do not consider this to be appropriate, please explain why.*

Questions 12

- a) *Would you consider that it appropriate for Ofcom to introduce rules that would allow Public Information Programming (as described above)? If so please explain why. If not, please explain why not.*
- b) *If Ofcom were to introduce rules in relation to Public Information Programming:*
 - i. *Are there any potential programmes that you believe could comply with the potential rules but that you consider would be undesirable or arguably not in the public interest? If so, please give details.*
 - ii. *What impact (e.g. social, economic, equality) do you think the potential rules would have on viewers, the television industry and any other parties?*
 - iii. *Do you consider that the potential rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection? If not, please explain why.*
 - iv. *Do you consider that additional or alternative safeguards to those included in the draft potential rules are necessary? If so, please provide details.*
 - v. *Specifically, should there be any restriction on the type of non-commercial, not-for-profit entities permitted to fund Public Information Programming, and if so, what restrictions?*
 - vi. *Do you consider it would be appropriate for Ofcom to review these rules two years after their introduction? If not, please explain why.*

Question 13

- a) *Do you consider that the proposed new Section Nine would benefit from the introduction of new meanings?*
- b) *Do you agree with our proposed new meanings for Section Nine?*
- c) *If you do not agree with our proposed new meanings, please explain why and suggest alternative wording where appropriate.*

Question 14

- a) *Do you consider that the introduction of new Principles in relation to Section Nine is appropriate?*
- b) *Do you agree with the proposed new Principles for Section Nine?*
- c) *If you do not agree with our proposed new Principles, please explain why and suggest alternative wording where appropriate.*

Question 15

- a) *Do you consider that the proposed Rules 9.1 to 9.5 are broadly the same, in terms of both scope and intent, of current Rules 10.1, 10.2, 10.3, 10.4 and 10.12?*
- b) *If you do not consider the proposed rules are broadly the same as the current rules in this area, please explain why and suggest alternative wording where appropriate.*
- c) *Do you agree with the introduction of the proposed new Rule 9.6?*
- d) *If you do not agree with the proposed new Rule 9.6, please explain why and suggest alternative wording where appropriate.*

Question 16

- a) *Do you consider it appropriate to introduce the proposed new Rule 9.9?*
- b) *If you do not consider it appropriate to introduce the proposed new Rule 9.9, please explain why and suggest alternative wording where appropriate.*

Question 17

- a) *Do you consider that the introduction of a new competition and voting section is appropriate?*
- b) *Do you agree with the proposed new competition and voting section for Section Nine?*
- c) *If you do not agree with our proposed new competition and voting section, please explain why and suggest alternative wording where appropriate.*
- d) *Do you agree that it is appropriate to apply these rules to BBC services funded by the licence fee?*
- e) *If you do not agree that it is appropriate to apply these rules to BBC services funded by the licence fee, please explain why.*

Question 18

- a) *Do you consider that the rules in relation to programme-related material would benefit from clarification?*
- b) *Do you agree with the introduction of the proposed programme-related material section for Section Nine?*
- c) *If you do not agree with the proposed programme-related material section, please explain why and suggest alternative wording where appropriate.*

Question 19

- a) *Do you consider that the proposed cross reference to the Cross-promotion Code would assist stakeholders?*
- b) *If you do not consider that the proposed cross reference to the Cross-promotion Code would assist stakeholders, please explain why and suggest alternative wording where appropriate.*

Question 20

- a) *Do you consider that the meanings in relation to sponsorship of television would benefit from revision?*
- b) *Do you agree that the revised meanings are consistent with those currently used, but more accurately reflect the definition of sponsorship as set out in the AVMS Directive?*
- c) *If not please explain why, suggesting drafting changes where appropriate.*

Question 21

- a) *Do you consider that the rules in relation to the content of sponsored output would benefit from clarification?*
- b) *Do you agree with the introduction of the proposed new rules on the content of sponsored output in Section Nine?*
- c) *If you do not agree with the proposed new rules on the content of sponsored output, please explain why and suggest alternative wording where appropriate.*

Question 22

- a) *Do you consider that the rules in relation to sponsorship credits would benefit from clarification?*
- b) *Do you agree with the introduction of the proposed rule?*
- c) *If you do not agree with the proposed rule, please explain why and suggest alternative wording where appropriate.*

Question 23

- a) *Do you consider that the rules in relation to appeals for funds would benefit from clarification?*
- b) *Do you agree with the introduction of the proposed Rule 9.29 and the section on appeals for funds for programming or services?*
- c) *If you do not agree with the proposals, please explain why and suggest alternative wording where appropriate.*

Question 24

- a) *Do you consider that the proposed rule revisions are appropriate and would remain consistent with current rule requirements?*
- b) *If you not, please explain why and suggest alternative wording where appropriate.*

Question 25

- a) *Do you wish to suggest an alternative approach to the proposed revisions in relation to the regulation of commercial references on television?*
- b) *If so, please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003, the Audiovisual Media Services Directive, the AVMS Directive (Implementation) Regulations 2009 and Article 10 of the European Convention on Human Rights).*

Commercial References in Radio Programming Rules (Code Section Ten)

Question 26

- a) *Do you consider that the rules on commercial radio would benefit from being separated from those for television?*
- b) *Do you agree with the introduction of the proposed new Section Ten on commercial references in radio programming?*
- c) *If you do not agree with the proposed new Section Ten, please explain why and suggest alternative wording where appropriate.*

Question 27

- a) *Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning content-related promotions? If so, please explain why.*
- b) *If not, please explain why.*
- c) *Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer.*
- d) *Do you consider that the proposed rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection?*
- e) *If not, please explain why, suggesting drafting changes where appropriate.*

Question 28

- a) *Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning outside broadcasts sponsored by the venue? If so, please explain why.*
- b) *If not, please explain why.*

- c) *Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer.*
- d) *Do you consider that the proposed rules would provide adequate consumer protection, subject to the maintenance of full transparency concerning sponsorship arrangements?*
- e) *If not, please explain why, suggesting drafting changes where appropriate.*

Question 29

- a) *Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning sponsored listener competition features? If so, please explain why.*
- b) *If not, please explain why.*
- c) *Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer.*
- d) *Do you agree that the proposed rules would provide adequate consumer protection, subject to the maintenance of full transparency concerning sponsorship arrangements?*
- e) *If not, please explain why suggesting drafting changes where appropriate.*

Question 30

- a) *Would you consider that it is appropriate for Ofcom to introduce rules that would allow Public Information Programming (as described above)? If so, please explain why. If not, please explain why not.*
- b) *If Ofcom were to introduce rules in relation to Public Information Programming:*
 - i. *Are there any potential programmes that you believe could comply with the potential rules but that you consider would be undesirable or arguably not in the public interest? If so, please give details.*
 - ii. *What impact (e.g. social, economic, equality) do you think the potential rules would have on listeners, the radio industry and any other parties? Please provide any evidence or data to support your answer.*
 - iii. *Do you consider that the potential rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection? If not, please explain why.*
 - iv. *Do you consider that additional or alternative safeguards to those included in the draft proposed rules are necessary? If so, please provide details.*
 - v. *Specifically, should there be any restriction on the type of non-commercial, not-for-profit entities permitted to fund Public Information Programming, and if so, what restrictions?*

- vi. *Do you consider that it would be appropriate for Ofcom to review these rules two years after their introduction? If not, please explain why.*

Question 31

- a) *Do you consider that the proposed new Section Ten would benefit from the introduction of new meanings?*
- b) *Do you agree with our proposed new meanings for Section Ten?*
- c) *If you do not agree with our proposed new meanings, please explain why and suggest alternative wording where appropriate.*

Question 32

- a) *Do you consider that the introduction of new Principles in relation to Section Ten is appropriate?*
- b) *Do you agree with the proposed new Principles for Section Ten?*
- c) *If you do not agree with our proposed new Principles, please explain why and suggest alternative wording where appropriate.*

Question 33

- a) *Do you consider that the proposed Rules 10.1 to 10.5 are broadly the same, in terms of both scope and intent, as current Rules 10.1, 10.2, 10.3, 10.4, and 10.12?*
- b) *If you do not consider the proposed rules are broadly the same as the current rules in this area, please explain why and suggest alternative wording where appropriate.*
- c) *Do you agree with the introduction of the proposed new Rule 10.6?*
- d) *If you do not agree with the proposed new Rule 10.6, please explain why and suggest alternative wording where appropriate.*

Question 34

- a) *Do you consider it appropriate to introduce the proposed new meaning of product placement, to reflect the definition required for television?*
- b) *If not please explain why, suggesting drafting changes where appropriate.*

Question 35

- a) *Do you consider it appropriate to introduce the proposed new Rule 10.10?*
- b) *If not please explain why, suggesting drafting changes where appropriate.*

Question 36

- a) *Do you consider that the introduction of a new competition and voting section is appropriate?*
- b) *Do you agree with the proposed new competition and voting section for Section Ten?*

- c) *If you do not agree with our proposed new competition and voting section, please explain why and suggest alternative wording where appropriate.*
- d) *Do you agree that it is appropriate to apply these rules to BBC services funded by the licence fee?*
- e) *If you do not agree that it is appropriate to apply these rules to BBC services funded by the licence fee, please explain why and suggest drafting changes where appropriate.*

Question 37

- a) *Do you consider that the rules in relation to programming-related material would benefit from clarification?*
- b) *Do you agree with the introduction of the proposed programming-related material section for Section Ten?*
- c) *If you do not agree with the proposed programming-related material section, please explain why and suggest alternative wording where appropriate.*

Question 38

- a) *Do you consider that the meanings in relation to sponsorship of radio would benefit from revision?*
- b) *Do you agree that it is appropriate for Ofcom to introduce the proposed meanings in relation to radio sponsorship?*
- c) *If not please explain why, suggesting drafting changes where appropriate.*

Question 39

- a) *Do you consider that the rules in relation to the content of sponsored output would benefit from clarification?*
- b) *Do you agree with the introduction of the proposed new rules on the content of sponsored output in Section Ten?*
- c) *If you do not agree with the proposed new rules on the content of sponsored output, please explain why and suggest alternative wording where appropriate.*

Question 40

- a) *Do you consider that introduction of rules in relation to Service Level Agreements is appropriate?*
- b) *Do you agree with Ofcom's proposed rules on Service Level Agreements?*
- c) *If not please explain why, suggesting drafting changes where appropriate.*

Question 41

- a) *Do you consider that the rule in relation to appeals for funds would benefit from clarification?*
- b) *Do you agree with the introduction of the proposed Rule 10.55 and the section on appeals for funds for programming or services?*
- c) *If you do not agree with the proposals, please explain why and suggest alternative wording where appropriate.*

Question 42

- a) *Do you consider that the proposed rule revisions are appropriate and would remain consistent with current rule requirements?*
- b) *If you not, please explain why and suggest alternative wording where appropriate.*

Question 43

- a) *Do you wish to suggest an alternative approach to the proposed revisions in relation to the regulation of commercial references on radio?*
- b) *If so please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003, Article 10 of the European Convention on Human Rights, Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008 and The Community Radio Order 2004).*

Sections of the Code where no revisions proposed

Question 44

- a) *Do you agree with the proposed approach which only proposes changes to Section One of the Code in relation to material of a sexual nature; only proposes changes to Section Two in relation to Competitions and Voting; and proposes no changes to Sections Three to Eight.*
- b) *If you do not agree with our approach, please explain which other sections of the Code you consider should be reviewed and why.*
- c) *Do you agree with Ofcom's approach which will be to provide, and update, guidance to all sections on an on-going basis? If so, are there particular areas where you consider an updating of guidance would be helpful?*

Annex 5

Current Broadcasting Code Section One (Rule 1.17 onwards)

Section One: Protecting the Under-Eighteens

Relevant legislation includes, in particular, sections 3(4)(h) and 319(2)(a) and (f) of the Communications Act 2003, Article 22 of the Television Without Frontiers Directive, Article 10 of the European Convention on Human Rights.)

This section must be read in conjunction with Section Two: Harm and Offence.

Principle

To ensure that people under eighteen are protected.

The current Rules 1.1 to 1.16 will remain unchanged.

Sex

- 1.17 Representations of sexual intercourse must not occur before the watershed, or when children are particularly likely to be listening, unless there is a serious educational purpose. Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the watershed, or when children are particularly likely to be listening, and must be appropriately limited and inexplicit.

Nudity

- 1.18 Nudity before the watershed must be justified by the context.

Exorcism, the occult and the paranormal

- 1.19 Demonstrations of exorcisms, occult practices and the paranormal (which purport to be real), must not be shown before the watershed or when children are particularly likely to be listening. Paranormal practices which are for entertainment purposes must not be broadcast when significant numbers of children may be expected to be watching, or are particularly likely to be listening. (This rule does not apply to drama, film or comedy.) (See Rules 2.6 to 2.8 in Section Two: Harm and Offence and Rule 4.7 in Section Four: Religion.)

Films, premium subscription film services, pay per view services, adult-sex material on premium subscription services

- 1.20 No film refused classification by the British Board of Film Classification (BBFC) may be broadcast unless it has subsequently been classified or the BBFC has confirmed that it would not be rejected according to the standards currently operating. Also, no film cut as a condition of classification by the BBFC may be transmitted in a version which includes the cut material unless:

- the BBFC has confirmed that the material was cut to allow the film to pass at a lower category; or
- the BBFC has confirmed that the film would not be subject to compulsory cuts according to the standards currently operating.

1.21 BBFC 18-rated films or their equivalent must not be broadcast before 2100 on any service (except for pay per view services), and even then they may be unsuitable for broadcast at that time.

1.22 Premium subscription film services may broadcast up to BBFC 15-rated films or their equivalent, at any time of day provided:

- there is a protection system (a mandatory PIN or other equivalent protection) pre-2000 and post-0530, that seeks satisfactorily to restrict access solely to those authorised to view when material other than BBFC U-rated or PG-rated or their equivalents is shown; and
- those security systems which are in place to protect children are clearly explained to all subscribers.

1.23 Pay per view services may broadcast up to BBFC 18-rated films or their equivalent, at any time of day provided:

- there is a protection system pre-2100 and post-0530 (a mandatory PIN or other equivalent protection), that seeks satisfactorily to restrict access solely to those authorised to view when material other than BBFC U-rated or PG-rated or their equivalents is shown;
- information is provided about programme content that will assist adults to assess its suitability for children;
- there is a detailed billing system for subscribers which clearly itemises all viewing including viewing times and dates; and
- those security systems which are in place to protect children are clearly explained to all subscribers.

1.24 Premium subscription services and pay per view/night services may broadcast 'adult-sex' material between 2200 and 0530 provided that in addition to other protections mentioned above:

- there is a mandatory PIN protected encryption system, or other equivalent protection, that seeks satisfactorily to restrict access solely to those authorised to view; and
- there are measures in place that ensure that the subscriber is an adult.

1.25 BBFC R18-rated films or their equivalent must not be broadcast.

The involvement of people under eighteen in programmes

1.26 Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis.

1.27 People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes.

1.28 Prizes aimed at children must be appropriate to the age range of both the target audience and the participants.(See Rule 2.11 in Section Two: Harm and Offence.)

Annex 6

Current Broadcasting Code Section Two (Rule 2.11)

All rules except Rule 2.11 would remain unchanged except for re-numbering to accommodate the proposed additional two rules.

2.11 Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known.

(See Rule 1.28 in Section One: Protecting the Under-Eighteens.)

Annex 7

Current Broadcasting Code Section Nine (Sponsorship)

Section Nine: Sponsorship

(Relevant legislation includes, in particular, sections 319(2)(i) and (j) and 319(4)(e) and (f) of the Communications Act 2003, Articles 1(e), 10(1) and 17 of the Television Without Frontiers Directive, and Article 10 of the European Convention on Human Rights.)

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

Principle

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

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

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

Rules

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

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

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

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

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

Content that may not be sponsored

9.1 The following may not be sponsored:

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

Meaning of “current affairs programme(s)”:

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

Prohibited and restricted sponsors

- 9.2 No channel or programme may be sponsored by a sponsor that is not allowed to advertise on the relevant medium.
- 9.3 Sponsorship on radio and television must comply with both the advertising content and scheduling rules that apply to that medium.

The content of sponsored output

- 9.4 A sponsor must not influence the content and/or scheduling of a channel or programme in such a way as to impair the responsibility and editorial independence of the broadcaster.
- 9.5 There must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products or to any of its other direct or indirect interests. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental.

Meaning of “promotional reference”:

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

Sponsorship credits

Television and radio

- 9.6 Sponsorship must be clearly identified as such by reference to the name and/or logo of the sponsor. For programmes, credits must be broadcast at the beginning and/or end of the programme.
- 9.7 The relationship between the sponsor and the sponsored channel or programme must be transparent.

Radio

- 9.8 During longer sponsored output, credits must be broadcast as appropriate to create the degree of transparency required.
- 9.9 Credits must be short branding statements. However, credits may contain legitimate advertising messages.
- 9.10 Credits must be cleared for broadcast in the same way as advertisements.
- 9.11 Programme trails are treated as programmes and the same sponsorship rules apply.

Television

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

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

Annex 8

Current Broadcasting Code Section Ten (Commercial Matters)

Section Ten: Commercial References and Other Matters

Relevant legislation includes, in particular, sections 319(2)(f) and (i) and 319(4)(e) and (f) of the Communications Act 2003, Articles 1(c) and (d), 10(1) and (4) and 18(3) of the Television Without Frontiers Directive, section 21(1) of the Financial Services and Markets Act 2000, and paragraph 3 of the Investment Recommendation (Media) Regulations Act 2005, Article 10 of the European Convention on Human Rights.)

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

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

Principles

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

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

Rules

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

Products or services in programmes

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

Note:

“Undue prominence” may result from:

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

- 10.5 Product placement is prohibited.

Meaning of “product placement”:

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

following are not considered to be product placement:

- References to products or services acquired at no, or less than full, cost, where their inclusion within the programme is justified editorially. On television, a brief, basic text acknowledgement of the provider of these products or services may be included within the end credits of the programme. This is permitted only where the identity of the product is not otherwise apparent from the programme itself.
- For television, arrangements covering the inclusion of products or services in a programme acquired from outside the UK and films made for cinema provided that no broadcaster regulated by Ofcom and involved in the broadcast of that programme or film directly benefits from the arrangement.

Programme-related material

- 10.6 Programme-related material may be promoted in programmes only where it is editorially justified.
- 10.7 The broadcaster must retain responsibility for all programme-related material.
- 10.8 Programme-related material may be sponsored, and the sponsor may be credited when details of how to obtain the material is given. Any credit must be brief and secondary, and must be separate from any credit for the programme sponsor.

Meaning of “programme-related material”:

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

Premium rate numbers

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

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

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

Competitions

10.11 References to brands within competitions must be brief and secondary.

(See Rule 1.28 in Section One: Protecting the Under-Eighteens and Rule 2.11 in Section Two: Harm and Offence.)

Use of advertisements in programmes

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

Charity appeals

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

- the organisation concerned can produce satisfactory evidence of charitable status, or, in the case of an emergency appeal, that a responsible public fund has been set up to deal with it; and

- the organisation concerned is not prohibited from advertising on the relevant medium.

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

Appeals for funds for programmes or services

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

Financial promotions and investment recommendations

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

Meaning of “financial promotion(s)”:

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

Meaning of “investment recommendation(s)”:

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

Virtual advertising

Television

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

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

Meaning of “virtual advertising”:

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

Annex 9

Broadcasting Code revised Appendix 2

Extracts from the Audiovisual Media Services Directive

A9.1 PLEASE NOTE: All references to The Television Frontiers Directive (for example in the opening chapter of the Code 'The Legislative Background to the Code'; in the opening references to relevant legislation at the start of each chapter, and in Rule 1.2) will be replaced with references to the Audiovisual Media Services Directive.

(Directive 89/552/EEC as amended by 97/36/EC and by Directive 2007/65/EC)

For the purposes of this Directive:

- (a) 'audiovisual media service' means:
- a service as defined by Articles 49 and 50 of the Treaty which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of Article 2(a) of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this Article or an on-demand audiovisual media service as defined in point (g) of this Article,

and/or

 - audiovisual commercial communication;
- (b) 'programme' means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and whose form and content is comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama;
- (c) 'editorial responsibility' means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services. Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided;
- (d) 'media service provider' means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;
- (e) 'television broadcasting' or 'television broadcast' (i.e. a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;
- (f) 'broadcaster' means a media service provider of television broadcasts;
- (g) 'on-demand audiovisual media service' (i.e. a non-linear audiovisual media service) means an audiovisual media service provided by a media service provider for the

viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider;

- (h) ‘audiovisual commercial communication’ means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;
- (i) ‘television advertising’ means any form of announcement broadcast whether in return for payment or other similar consideration or broadcast for self-promotional purposes by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;
- (j) ‘surreptitious audio visual commercial communication’ means the representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration;
- (k) ‘sponsorship’ means any contribution made by a public or private undertaking or natural person not engaged in providing audiovisual media services or in the production of audio-visual works, to the financing of audio-visual media services with a view to promoting its name, its trade mark, its image, its activities or its products.
- (l) ‘teleshopping’ means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment;
- (m) ‘product placement’ means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration;

Provisions applicable to all audiovisual media services

Article 3b

Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.

Article 3e

1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:

- (a) audiovisual commercial communications shall be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited;
- (b) audiovisual commercial communications shall not use subliminal techniques;
- (c) audiovisual commercial communications shall not:

- (i) prejudice respect for human dignity;
- (ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- (iii) encourage behaviour prejudicial to health or safety;
- (iv) encourage behaviour grossly prejudicial to the protection of the environment;
- (d) all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited;
- (e) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;
- (f) audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited;
- (g) audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

2. Member States and the Commission shall encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communication, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.

Article 3f

1. Audiovisual media services or programmes that are sponsored shall meet the following requirements:

- (a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;
- (b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;
- (c) viewers shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or the end of the programmes.

2. Audiovisual media services or programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

3. The sponsorship of audiovisual media services or programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

4. News and current affairs programmes shall not be sponsored. Member States may choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes.

Article 3g

1. Product placement shall be prohibited.

2. By way of derogation from paragraph 1, product placement shall be admissible unless a Member State decides otherwise:

- in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, or
- where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme.

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

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

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

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

3. In any event programmes shall not contain product placement of:

- tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products, or
- specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

4. The provisions of paragraphs 1, 2 and 3 shall apply only to programmes produced after 19 December 2009.

Television advertising and teleshopping

Article 10

1. Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.

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

Article 11

1. Member States shall ensure, where television advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme, and the rights of the right holders are not prejudiced.

2. The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least thirty minutes. The transmission of children's programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. No television advertising or teleshopping shall be inserted during religious services.

Article 18

1. The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20%.

2. Paragraph 1 shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.

Article 19

The provisions of this Directive shall apply *mutatis mutandis* to television channels exclusively devoted to advertising and teleshopping as well as to television channels exclusively devoted to self-promotion. Chapter III as well as Article 11 and Article 18 shall not apply to these channels.

Protection of minors in television broadcasting

Article 22

1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.

2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.

3. Furthermore, when such programmes are broadcast in un-encoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

Right of reply in television broadcasting

Article 23

1. Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies. Member States shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply shall be transmitted within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers.

2. A right of reply or equivalent remedies shall exist in relation to all broadcasters under the jurisdiction of a Member State.

3. Member States shall adopt the measures needed to establish the right of reply or the equivalent remedies and shall determine the procedure to be followed for the exercise thereof. In particular, they shall ensure that a sufficient time span is allowed and that the procedures are such that the right of reply or equivalent remedies can be exercised appropriately by natural or legal persons resident or established in other Member States.

4. An application for exercise of the right of reply or the equivalent remedies may be rejected if such a reply is not justified according to the conditions laid down in paragraph 1, would involve a punishable act, would render the broadcaster liable to civil law proceedings or would transgress standards of public decency.

5. Provision shall be made for procedures whereby disputes as to the exercise of the right of reply or the equivalent remedies can be subject to judicial review.

Annex 10

Cross-promotion Code

Effective from 10 July 2006

Introduction

1.1 Subject to this Cross-promotion Code ('the Code'), television broadcasters are able to promote programmes, channels and other broadcasting-related services without such promotions being considered advertising and included in the calculation of advertising minutage.

1.2 The amount of advertising that may be broadcast on a television channel is restricted by the Rules on Amount and Distribution of Advertising ('RADA')⁽¹⁾. RADA imposes a maximum on the amount of advertising that can be shown in a given hour and over any one day. For the purposes of RADA, the term 'advertising' is used to refer to any form of promotional announcement broadcast in return for payment or similar consideration.

1.3 The Code replaces the rules regulating the promotion of programmes, channels and related services on commercial television issued by the ITC in January 2002 and takes effect from 10 July 2006.

1.4 The Code applies to television services regulated by Ofcom. However, it does not apply to BBC services funded by the licence fee or grant in aid. All references to 'licensees' should be interpreted accordingly.

1.5 The Code applies to promotions outside programmes only.

1.6 Within programmes, references to all products and services, including broadcasting-related services, are subject to the rules in Section 10 (Commercial References) of the Broadcasting Code.

1.7 The Ofcom Broadcasting Code applies in the usual way to the content of promotions outside programmes, unless otherwise stated in the guidance on Section 10 of the Broadcasting Code.

Legislative background to the Code

2.1 Under Ofcom's powers to issue broadcasting licences under the Broadcasting Acts 1990 and 1996, broadcasting licences may contain such conditions as Ofcom considers appropriate having regard to the duties imposed on Ofcom under the Broadcasting Acts and Communications Act 2003. Under the Communications Act 2003 Ofcom also has the power to approve codes for the purposes of a provision contained in a licence.

2.2 Under section 316 of the Communications Act 2003 Ofcom has the power to include conditions which Ofcom considers appropriate for ensuring fair and effective competition. All television broadcasting licences currently contain a fair and effective competition licence condition. This condition requires licensees to comply with any code or guidance approved by Ofcom for the purpose of ensuring fair and effective competition.

2.3 Section 319 of the Communications Act 2003 imposes a duty on Ofcom to set standards to secure, amongst other things, that the international obligations of the United Kingdom with respect to advertising in television services are complied with. These international obligations include those contained in the Television without Frontiers Directive, EC Directive 89/552/EEC, as amended by EC Directive 97/36/EC.

2.4 Broadcasters should bear in mind the legislative background that has informed the rules, the principles that apply to each section, the meanings given by Ofcom and the guidance issued by Ofcom, in this Code and in the Broadcasting Code, all of which may be relevant in interpreting and applying the Code.

Principles

3.1 There are two key principles which the Rules contained in Section 4 of the Code are designed to reflect:

- i. ensuring that Cross-promotions on television are distinct from advertising and inform viewers of services that are likely to be of interest to them as viewers; and
- ii. ensuring that promotions on television outside programmes do not prejudice fair and effective competition (and, in particular, ensuring that, as television broadcasting in the United Kingdom switches from analogue to digital transmission, consumers are made aware of the various platforms and digital retail TV services through which they can receive broadcasting services and that this is done in such a way that will avoid the distortion of fair and effective competition).

Rules

Meanings

'Broadcasting-related Services':

include all broadcasting activities licensable by Ofcom, for example television and radio services. They also include other services with a 'broadcasting feel', that is, services which deliver content similar to that delivered on a television or radio service. In addition, a website that provides content clearly and directly related to a Broadcasting-related Service may itself be a Broadcasting-related Service.

'Cross-promotions':

are promotions, on a channel, of programmes and Broadcasting-related Services, that are not Self-promotions.

'Licensees':

are the companies and legal entities which hold a broadcasting licence granted by Ofcom pursuant to the Broadcasting Act 1990 (as amended by the Broadcasting Act 1996 and the Communications Act 2003).

'Promotions':

are Self-promotions and Cross-promotions.

'Self-promotions':

are promotions on a channel for that same channel and/or for programmes broadcast on that channel.

Broadcasting-related services

1.1 All licensees and S4C shall ensure that Cross-promotions are limited to Broadcasting-related Services.

Platform and retail TV service neutrality

2.1 The following rule shall apply to the analogue services of Channel 3, Channel 4 and Channel 5 licensees ('the Main Commercial Terrestrial Broadcasters').

2.2 The Main Commercial Terrestrial Broadcasters shall ensure that Promotions to analogue households for Broadcasting-related Services that mention a digital retail television service and/or digital television broadcasting platform treat all major digital retail television services and/or digital platforms in an equal and impartial manner. In particular:

- a. promotions that refer to a digital retail television service, such as Freeview or Sky, must also name all other digital retail television services on which the Broadcasting-related Service is available;
- b. promotions that refer to a particular digital platform, such as digital terrestrial television ('DTT') or cable, must refer to all other digital platforms on which the Broadcasting-related Service is available. Generic promotions for digital television are permitted if they do not specifically mention any particular platform; and
- c. promotions must treat digital retail television services and/or digital platforms equally in respect of all aspects mentioned, such as pricing, brand names, availability and packages.

Guidance

5.1 This guidance is non-binding and will be reviewed from time to time to reflect Ofcom's experiences with individual cases. It is provided to assist licensees in interpreting and applying the Code. Every complaint or case will be dealt with on a case by case basis according to the individual facts of the case.

Broadcasting-related services

5.2 Ofcom does not wish to be prescriptive in defining the term 'Broadcasting-related Services'. Depending on the individual facts, it may include a service whereby audiovisual content is delivered over a mobile or broadband platform, and video-on-demand. It is distinct from 'programme-related material', which is defined in Section 10 of the Broadcasting Code.

Cross-promotion relationships

5.3 Certain relationships between broadcasters (which are based on shareholdings or voting power) create a rebuttable presumption that there are sufficient incentives for the promoting channel to provide another channel or broadcasting-related service with free airtime without the need for additional consideration. In these specific circumstances Ofcom would not, in the absence of evidence to the contrary, consider these Cross-promotions to be advertising. However, if Ofcom believes that payment or some other consideration has passed or is passing between the parties, these types of arrangements could be investigated under the advertising minutage rules and may be counted as advertising minutage.

5.4 The relevant relationships that create this presumption of sufficient incentives are as follows:

- i. the Licence Holder for the promoting channel has a shareholding of 30% or more (or voting power of 30% or more) in the Licence Holder for the promoted channel;
- ii. the Licence Holder for the promoted channel has a shareholding of 30% or more (or voting power of 30% or more) in the Licence Holder for the promoting channel; or⁽⁻²⁻⁾
- iii. the Actual Licence Holder for the promoted channel and promoting channel are the same.

5.5 For the purposes the relevant relationships outlined in paragraph 5.4⁽⁻³⁻⁾:

'Actual Licence Holder' means: the legal entity or company which holds the broadcasting licence granted by Ofcom pursuant to the Broadcasting Act 1990 (as amended by the Broadcasting Act 1996 and the Communications Act 2003); and

'Licence holder' means: the Actual Licence Holder or any legal entity or company which has a 30% or more shareholding (or 30% or more voting power) in the Actual Licence Holder.

5.6 If there is less than a 30% shareholding (or less than 30% voting power), there may be insufficient incentives for a broadcaster to provide another channel or service with free airtime and broadcasters will need to demonstrate that no consideration has passed between the parties and that Cross-promotion is justified on the basis of other incentives.

5.7 In the case of Cross-promotions between Channel 3 licence holders, there will be a rebuttable presumption that no consideration has passed.

5.8 These presumptions do not apply to public service announcements, charity appeals broadcast free of charge, announcements required by Ofcom and information to viewers broadcast in accordance with an Ofcom requirement, which are already excluded from paid for advertising by RADA. In particular, information to viewers broadcast in accordance with requirements to inform viewers about digital switchover is excluded.

Platform and retail TV service neutrality

5.9 This guidance relates to the platform and retail TV service neutrality requirements that are imposed on Channel 3 licensees, Channel 4 and Five ('the Main Commercial Terrestrial Broadcasters').

5.10 For reasons of practicality and also relevance to viewers, Ofcom considers that it is reasonable to limit the number of platform and retail TV services that need to be mentioned by the Main Commercial Terrestrial Broadcasters. Ofcom considers that a 500,000 customer base ('the materiality threshold') represents an appropriate threshold for these purposes as this captures the major platforms and retail TV services which have wide ranging availability throughout the UK.

5.11 At the time of drafting, Ofcom considers that the retail TV services which are likely to satisfy the materiality threshold are as follows:

- the digital satellite retail TV services operated by Sky
- the digital cable retail TV services operated by NTL/Telewest
- the digital terrestrial retail TV services provided by Freeview

5.12 The Main Commercial Terrestrial Broadcasters will need to review which platform and retail TV services meet the materiality threshold from time to time. Ofcom considers that data

provided in Ofcom's 'Digital Television Update' publications would be one appropriate source of information on customer numbers for these purposes.

5.13 Whilst the materiality threshold does not appear to be met for any particular retail TV services available via the broadband platform, Ofcom still considers that it will be appropriate for the Main Commercial Terrestrial Broadcasters to refer to broadband TV⁽⁻⁴⁻⁾.

5.14 For the avoidance of doubt, the Main Commercial Terrestrial Broadcasters must still comply with the neutrality requirement if, instead of making a generic reference to smaller digital platforms, they refer to the availability of their channels on a specific digital platform or retail TV service which does not satisfy the materiality threshold (e.g. by mentioning a particular brand name). Therefore, the materiality threshold operates in a way which gives the Main Commercial Terrestrial Broadcasters a choice of either referring specifically to all the smaller digital platforms and retail TV services where their channels are available within the relevant reception area or making a generic reference such as "available on other digital platforms".

5.15 Ofcom would recommend that the Main Commercial Terrestrial Broadcasters use the following two phrases when referring to appropriate platforms or retail TV services:

- If the broadcaster only wishes to mention platforms: "available on satellite, cable, digital TV through your aerial, or broadband TV⁽⁻⁵⁻⁾"
- If the broadcaster wishes to mention retail TV service brands: "available on Sky, NTL/Telewest, Freeview or other digital platforms"⁽⁻⁶⁻⁾

General guidance on the Cross-promotion Code

6.1 It is the responsibility of the broadcaster to comply with the Cross-promotion Code.

6.2 Ofcom can offer general guidance on the interpretation of the Cross-promotion Code. However, any such advice is given on the strict understanding that it will not affect Ofcom's discretion to judge cases and complaints after transmission and will not affect the exercise of Ofcom's regulatory responsibilities. Broadcasters should seek their own legal advice on any compliance issues arising. Ofcom will not be liable for any loss or damage arising from reliance on informal guidance.

Footnotes:

1. The Rules on Amount and Distribution of Advertising are available at:

<http://www.ofcom.org.uk/tv/ifi/codes/advertising/?a=87101>

2. Please note that, since publication of the Cross-promotion statement on 9 May 2006, this part of the guidance has been revised by adding the word "or". This amendment has been made to make clear that in order to create the rebuttable presumption explained in paragraph 5.3, a broadcaster only needs to satisfy one of the three relationships which are outlined in paragraph 5.4.

3. Please note that, since publication of the Cross-promotion statement on 9 May 2006, this part of the guidance has been revised by adding the text "For the purposes the relevant relationships outlined in paragraph 5.4". This amendment has been made to make clear that the definitions only apply to the relationships outlined in paragraph 5.4.

4. Please note that, since publication of the Cross-promotion statement on 9 May 2006, this part of the guidance has been revised by adding 'TV' after the word 'broadband' in the last sentence. The amendment has been made to give further clarity.

5. Please note that, since publication of the Cross-promotion statement on 9 May 2006, this part of the guidance has been revised by replacing the text "available on satellite, cable, digital TV through your aerial or over broadband" with "available on satellite, cable, digital TV through your aerial, or broadband TV". This amendment has been made to give further clarity.

6. This phrase is intended to reflect the current branding of the retail TV services which satisfy the materiality threshold. The main commercial terrestrial broadcasters who are subject to the platform neutrality requirement will need to amend such a phrase to reflect any branding changes made to the retail TV services.

Annex 11

Executive Summary⁴⁰ of research findings: “Attitudes to Sexual Material on Television” by Opinion Leader



Background and context

Under the Communications Act 2003, Ofcom has a duty to draw up, and from time to time revise, a code for television and radio services. This is known as the Broadcasting Code (“the Code”) and came into effect in July 2005.

Ofcom has a duty to **protect the under-eighteens** (Section One of the Code). This responsibility is shared with parents, those who look after children and young people, and broadcasters. Ofcom also has a duty to ensure that generally accepted standards are applied to the content of radio and television services to provide adequate protection from the inclusion of harmful or offensive material (Section Two of the Code). In relation to generally accepted standards, including those in relation to sex, Ofcom recognises that these are subject to changes over time and should be underpinned by consumer research.

In carrying out its duties Ofcom seeks to ensure that sexual material is editorially justified, appropriately scheduled and where necessary access is restricted to adults.

Sexual material may appear in general entertainment programmes either, for example, in mainstream dramas or documentaries, or in programmes made specifically for adults which are about, and include, sexual activity. Sexual material also appears in ‘adult-sex’ programming where the primary purpose of the broadcast is to arouse the viewer.

In relation to ‘adult-sex’ material, Ofcom requires all services providing this material to have mandatory PIN protected systems (or other equivalents) in place to restrict access to adults who specifically select and pay to watch them (**mandatory access restrictions**). This is in addition to the provision, by many digital television platforms and device manufacturers, of either protection mechanisms which enable the removal of all channels located in the adult section of the Electronic Programme Guide (“EPG”); or personal PIN protection functions to block access to certain programmes or channels (**voluntary access restrictions**).

⁴⁰ The full findings can be found at <http://www.ofcom.org.uk/consult/condocs/bcode09/sextv.pdf>. A glossary of relevant television broadcasting terms can be found at the end of this executive summary.

In addition, from 20:00 onwards on a range of platforms, some ‘adult-sex’ channels which are otherwise subject to mandatory access restrictions, broadcast long-form promotional trailers (up to fifteen minutes in length) that are free-to-view and which include strong sexual material for the purpose of promoting the channel’s mandatorily restricted ‘adult-sex’ material.

Ofcom conducted consumer research into sexual material in 2005. However, the broadcasting landscape has changed since then: access to the range of sexual content provided both in general programming and via ‘adult-sex’ channels has broadened through a range of either free-to-view channels or pay-TV services. In addition, the platforms that carry these channels – satellite (e.g. Sky, Freesat), cable (e.g. Virgin) and the digital terrestrial platform (Freeview) – have grown and developed.

In addition, during 2007 and 2008 Ofcom received a number of complaints about stronger sexual material broadcast on a range of digital channels. These complaints resulted in six sanction decisions against broadcasters licensed by Ofcom, and 22 published findings regarding the broadcast of strong sexual material. Ofcom found that some recent material, which had been transmitted without any form of access restrictions, had featured nudity of a strong sexual nature, and sustained sex scenes and sexual language, that was not, in some cases, justified by the context in which it was transmitted. In some of these cases Ofcom concluded that some of the material should only have been broadcast with mandatory access restrictions.

In 2009, Ofcom commissioned Opinion Leader to undertake qualitative research amongst the general public as part of its current review of the Code, which is tasked with ensuring that the Code remains fit for purpose. Ofcom seeks to ensure that the application of its rules on sexual material is informed by a detailed understanding of current attitudes towards a range of sexual material that can be viewed on television. This is therefore the specific focus of this research.

Recruitment and methodology

Opinion Leader researchers met with sixteen discussion groups each engaging between 10 and 11 participants, with 169 participants taking part in all. All discussion groups were single gender, and the sample was further segmented to capture the views of younger and older people; parents and non-parents; and, people from different socio-economic groups. The research took place in locations in England, Wales, Northern Ireland and Scotland and included people living in both urban and rural areas. Quotas were set for ethnic minority groups; viewers of analogue terrestrial; digital terrestrial; digital satellite and digital cable television; different television viewing habits (from light to heavy); and, different attitudes to the topics being discussed (self-defined as “liberal” or “conservative” in comparison to other people).

The format of the discussion groups each included the same mix of presentations, discussion sessions and viewing clips. Ofcom selected example clips to demonstrate the range of different types of sexual material that has been available without mandatory access restrictions on television (including some material which Ofcom found to have breached its rules). Individual views in the groups were captured through the use of self-completion questionnaires (at key points of the discussion), which generated some quantitative data to support the qualitative findings.

Note: the quantitative findings should be treated as **indicative** only, given the overall sample size (169) and given that the sample was not selected with the aim of reflecting an exact representation of the population as a whole, rather with the aim of providing enough people in all the groups of interest to conduct qualitative discussion groups.

Key findings

- Television was not the platform of greatest concern to participants – they were more concerned about the content available on the internet. While **sexual content on television was a concern** for participants it was also **not their area of greatest concern**, with violence, sexism and racism also being cited as examples of unacceptable content that were of equal or greater concern.
- Participants found it difficult to discuss their views of sexual content on television in the abstract. When initially asked about their level of concern about sexual content on television, 40% expressed some level of concern. When shown the clips, most thought that there was a place for all of the content shown. The main issue, and the main area where participants differed, was the **degree to which they wanted such content to be regulated** in terms of channel, timing, editorial justification and mandatory access restrictions.
- A wide range of factors appeared to inform participants' levels of concern, with clear differences according to **demographics** (particularly age but also gender), **life-stage** (particularly whether they have children at home) and **attitudes** (liberal or conservative). In particular, older participants (those aged 35-54 and 55+, and particularly older women) and those with children at home (especially those with older children) were more likely to be concerned about sexual material on television. Older participants tended to be more concerned from the perspective of **personal offence**. Those with children (particularly older children, who may actively seek out stronger sexual content), were more concerned about the **protection of under-eighteens**.
- All participants considered that material of a sexual nature on television had increased in recent years, both in terms of the **frequency** and **strength** of sexual material shown. Sexual material is now felt to be found in programmes where viewers would not necessarily expect to find it, e.g. plotlines of a sexual nature in family entertainment programmes such as soaps, which some participants considered were used by the broadcaster as a way of attracting a greater audience share. In the context of a perceived general proliferation of sexual material across a range of media, all participants thought that the strength of the sexual material available on television had increased overall and that stronger material was now being shown earlier in the schedules.
- Most participants believed in general that **there is a place for sexual material on television** for those adults who would choose to watch it. However, participants voiced the need for mandatory access restrictions where appropriate, depending on the type and strength of sexual material, and highlighted the importance of other contextual considerations such as: the channel, time of broadcast and pre-transmission announcements. This was a common finding across demographic categories, although there were differences in the strength of the material participants would consider to be in need of access restrictions.
- Overall, protection of under-eighteens was the main concern with respect to sexual material as this group was seen to be at risk of harm from exposure to such material. Participants raised two issues in particular. Firstly, the need to protect **younger children** from stumbling across sexual content (unintentional viewing) was raised across all demographic groups, including non-parents, although it was a greater concern for parents. Secondly, the need to restrict **older**

children from seeking it out (intentional viewing) was raised, mostly by parents of children in this age group.

- Participants did not pass sole responsibility for protection of under-eighteens over to broadcasters and regulators; stating that **parents should also take responsibility for their children’s viewing**. This was considered particularly with regard to families who chose to have satellite (e.g. Sky) or cable (e.g. Virgin Media) television, which contain channels where most participants expected to see sexual material. However, regulation was felt to help protect those children whose parents may not police television to the same degree as others, and provided a certain level of reassurance for all parents. In addition, the increase in on-demand programmes and PVRs was seen to increase the importance of parental responsibility, as the 21:00 watershed does not apply.
- For most participants, personal offence was less of a concern than protecting the under-eighteens, given that they believed adults could simply choose to switch off the television or change channel. However, there were some exceptions: personal offence was more of an issue for some participants (especially **older viewers** or those with more conservative views) if the sexual content was perceived to be particularly strong. In addition, **stumbling across sexual content** was more of a concern for participants in general when viewing television with others.
- Participants spontaneously identified a range of programmes containing sexual content on television from mild to strong material, and tightly linked levels of acceptability to context. Participants had different individual views on what constituted strong sexual content although most considered that **stronger sexual material required greater editorial justification** and should be subject to a wider range of contextual conditions. For example participants showed less tolerance for images portraying group sex and fetishes. In addition, the **treatment** of the subject matter was seen as important. Key considerations included the length of a scene, how graphic it was, lighting, what sounds accompanied the images, relevance to the plot and whether any images were pixellated. Programmes which included the strongest sexual material incorporated into what was claimed to be a drama or documentary were considered by some to be simply an excuse to show explicit (‘adult-sex’) content. This material was seen by participants to have a place on television but specifically in programmes where broadcasters applied mandatory access restrictions.
- It was apparent that participants considered a wide range of other contextual factors when considering the acceptability of sexual material that was broadcast without mandatory access restrictions. The **context** in which any sexual material was shown was extremely important in determining perceived acceptability. Contextual considerations discussed by participants focused on **three key issues**:
 - Were children likely to stumble across sexual content either unintentionally or intentionally?
 - Would viewers know what to expect from the programme?
 - Did the editorial context justify the content?
- In relation to these three key issues, participants considered the following factors:

- **Strength of material:** how graphic and explicit the broadcast images were;
 - **Time of broadcast:** whether pre- or post-watershed, and how long after the watershed;
 - **Channel:** participants had different expectations of different channels and showed greater tolerance for stronger sexual content on non-public service broadcasting channels, with the strongest acceptance for sexual content on premium subscription adult channels with mandatory access restrictions;
 - **Likely audience:** who would be likely to be watching and how likely were under-eighteens to be exposed to the material, either unintentionally or intentionally;
 - **Signposting and viewer expectations:** would adult viewers know what to expect from the programme? Location on the EPG was also mentioned by some participants. For example, it was felt that viewers would know what to expect from a channel located within the adult section of the EPG;
 - **Access restrictions:** such as PIN protection (both voluntary and mandatory);
 - **Type of programme:** did the editorial context justify the content? Sexual material was seen to have more editorial justification in factual programming, dramas, documentaries and educational programmes, and least in reality television; and;
 - **The programme maker's or broadcaster's motivation:** what was the perceived purpose of the programme? For example was it "porn" for the purpose of arousal or was there a serious 'documentary' purpose?
- **Only a small number of participants did not consider the issue of editorial justification** when evaluating what sexual content they deemed to be acceptable on television. These participants fell into two groups. Firstly, there were those who thought the only issue was exactly what was shown (i.e. that the focus should be on strength of content and that it did not matter whether the purpose of the content was to inform or arouse). Secondly, there was another group of participants who thought that sexual content was never justified, and could nearly always be implied, although some of this group would make an exception in cases where sexual content was presented in a desexualised way (e.g. as part of a documentary).
 - Participants across demographic groups did not seem to distinguish whether the material broadcast was **real sex or simulated sex**. Participants stated that they found it hard to tell whether real sex or representations of sex were being shown unless the images were very close up i.e. with the focus on genitals. In any event, it was the **strength** of the broadcast content that most concerned them, the way in which it was presented and the **purpose** of the broadcast.
 - Participants had an understanding of the **watershed** and believed that it provided some protection for younger children. However, there were concerns that it was not always adhered to, with some sexual material being shown before 21:00. There was also some concern that the watershed might not provide sufficient protection for older children and young people who were likely to be watching television after 21:00 and/or who might actively seek out stronger sex material that is transmitted without mandatory access restrictions. Many participants

suggested that stronger sexual material should be shown much later at night (e.g. from 22:30 or 23:00) and wanted to see greater care applied by broadcasters in relation to sexual content shown before this time.

Response to the clips

Nine clips were selected by Ofcom to illustrate a range of different types of material of a sexual nature that have recently been included in a range of programmes broadcast across different channels and platforms (all of which had been broadcast free-to-view and some of which had been found in breach of Ofcom's Code).

The clips were necessarily brief (up to three minutes each in length) and used for illustration purposes only, as stimulus to discuss in-principle responses to the type of material shown. The clips were chosen to illustrate three different concepts: daytime/pre-watershed programmes; post-watershed programmes; and, material that had some or many of the characteristics of 'adult-sex' material. The three minute clips did not necessarily provide a balanced representation of each individual programme, rather a sample of a particular type of material.

As well as discussing how acceptable each clip was, participants also indicated on a questionnaire using a scale of 1 to 10 how acceptable they thought it was. Scores were grouped as follows: 1-4 'unacceptable', 5-7 'neutral' and 8-10 'acceptable'.

As noted above under 'Recruitment and methodology' quantitative findings should be treated as indicative only, given the overall sample size (169).

Daytime/pre-watershed programmes

Clip 1 was taken from a daytime, general light-entertainment programme not aimed at children. It was broadcast in the mid-afternoon on ITV1 during term time. It featured the programme's resident "sexpert" on a bed with the presenter humorously discussing a range of sex toys including a number of different dildos.

Some participants (42%) thought this clip was unacceptable because, whilst it was not aimed at children, some could have been watching. There was general agreement among these participants that the subject matter of sex toys was unsuitable particularly given that the presenters were on a bed, and given the extent of some of the sexual innuendo that was used. 21% of the participants were neutral and 36% found the material acceptable, for reasons including that they considered the sexual imagery and innuendo to be mild and the purpose of the sex toys would not have been obvious to younger children.

Clip 2 was taken from a one-off documentary about sex education in the UK and compared it to the compulsory sex education system in Holland. It was broadcast on Channel 4 at 20:00. It featured some brief scenes of a sexual nature including naked cartoon characters having sex and masturbating, and anatomical drawings of sex organs.

Most participants thought it was acceptable (46%) or were neutral (27%) given the context, type of programme, the informative title, transmission time and the channel, which contributed to its overall acceptability. The majority of participants considered that the context in which the images were shown, some of which were explicit, justified their inclusion in an educational programme broadcast before the watershed. 27% of participants found the material unacceptable: reasons for this included that they felt 20:00 was too early for this type of content, and that they considered the cartoons to be gratuitous.

Post-watershed programmes

Clip 3 was taken from a serialised historical drama transmitted from 21:00 on BBC Two. The programme featured a scene showing a female character engaged in sexual intercourse with a man to the point of climax.

47% of participants thought it was acceptable, a further 28% were neutral and 24% found the clip unacceptable. Contextual factors including time of broadcast, historical context for accuracy and the perceived tasteful presentation of the images of sex and nudity influenced perceived acceptability.

Clip 4 was taken from a documentary series broadcast from 23:00 on Five exploring attitudes to sex with an educational and entertainment purpose. The programme, presented by a doctor, included contributions from sexual health experts and other medical professionals and material of a strong sexual nature depicting sex acts and discussions about sex. This clip featured the topic of group sex. It showed participants talking about their enjoyment of it and blurred and pixellated images of consensual group sex.

49% of participants considered this clip was acceptable and a further 28% neutral, given that the programme was seen as educational, the programme title signposted that it would feature sexual content, it was shown suitably late at night at 23:00 and was presented by a doctor. 23% found the clip unacceptable, some believed the material was too graphic to be transmitted without some form of access restriction and some considered that the primary purpose of this “educational documentary” was just an excuse to show explicit sexual content.

Clip 5 was taken from an observational or “fly-on-the wall” documentary broadcast after 22:00 on Virgin 1 which took a light-hearted look at the sex industry and included material of a strong sexual nature. This episode focused on the issue of men who are married to actresses who work in the adult film industry. This clip opened with an interview with one of the actresses who removed an anal plug and placed it in her mouth in front of the presenter. There followed an interview with her husband on a film set. In the background, as he and the interviewer looked on, the actress was shown engaged in several sex acts, including anal and oral sex, with three male actors. The images of the actual sex acts were masked and limited so as not to reveal any genital detail, although the nature of the sex was clear to the viewer.

This clip was seen as the least acceptable overall given the perceived strength of the material, with 48% finding it unacceptable. Some participants believed this material should not have been available without mandatory access restrictions. Other participants considered that this would have been acceptable for broadcast, without any mandatory access restrictions, but only after 23:00 in order to ensure sufficient protection for under-eighteens. This was on the basis that the programme title and channel provided, for some, an indication as to the likely content which could serve to manage viewer expectations. Given the transmission time of 22:00, 29% of participants were neutral and 22% found it acceptable, taking into account the humorous approach to the content and that the people featured in the clips were all consenting adults.

Clip 6 was taken from a documentary series broadcast after 23:00 on Virgin 1 which provided commentary and observation on sexual behaviour and fetishes and which included material of a strong sexual nature. This clip featured interviews with a film maker who makes sex films about his stockings fetish. The material included scenes from the making of the films which included women and men performing oral sex on other women wearing stockings. The more graphic images were blurred and pixellated.

Just under half (47%) of participants found this acceptable, given that it was broadcast at a suitable time and the title signposted that it contained sexual content. Those who found it unacceptable (27%) mentioned reasons including a perception that the material was primarily designed as an excuse to show “porn” and was not appropriate for a mainstream channel without any form of mandatory access restrictions. 25% were neutral.

Post-watershed ‘adult-sex’ material and associated trailers

Clip 7 was taken from a TV sex-drama series transmitted from 23:00 on Playboy One (broadcast without mandatory access restrictions). The full programme featured strong and repeated sex scenes, one of which was viewed in the clip shown to the participants. This clip featured a male and female actor engaged in what appeared to be real sex acts including oral sex and full intercourse (although no sexual organs i.e. neither a penis nor vagina, were visible).

All participants considered this material to be “porn”. However they were divided on its acceptability. Some (40%) thought it was acceptable for reasons which included that it was on a channel associated with sexual content, so clearly signposted. Others (29%) thought it unacceptable, considering that the material was gratuitous and had insufficient context. Some considered that because it was “pornographic” material it should have been broadcast only with mandatory access restrictions. 21% were neutral.

Clip 8 was taken from a free-to-view trailer to promote an adult-sex channel (with mandatory access restrictions), broadcast at 20:00 on Spice Extreme. It contained material of a strong sexual theme although did not feature any nudity or sex acts.

Overall 42% of participants considered this clip was unacceptable. Participants voiced general concerns relating to the depiction of men and women in fetish clothing pre-watershed. However some of these participants considered this material would have been acceptable for broadcast after 21:00. 30% were neutral, and 22% found the material acceptable, given that there was no nudity, or scenes of sexual intercourse, in the material and it was broadcast on an adult-sex channel.

Clip 9 was taken from a free-to-view trailer to promote an adult-sex channel (with mandatory access restrictions). The promotional trailer was broadcast at midnight on RedHot 40+. It contained material of a strong sexual nature, including images of what appeared to be real sexual activity.

Just under half (43%) of participants thought the clip was acceptable given that it was shown very late at night. A further 21% were neutral. 26% found the material unacceptable, some were concerned about older children (12 years and above) intentionally seeking out this content, even at midnight.

Conclusion to clip responses

In relation to the daytime/pre-watershed clips, it was clear that respondents understood that the watershed was in place to ensure appropriate scheduling of material for under-eighteens, including material of a sexual nature. In general, participants deemed most sexual content apart from the mildest (e.g. mild innuendo and kissing) to be unsuitable to show before the watershed. The type of sexual content that participants considered should be scheduled after the watershed was material that included representations of **sexual activity or nudity**. However, it was recognised that there would be occasions, for example in a sex education documentary aimed at older children, where representations of sex before the watershed could be shown with the appropriate **editorial justification** for doing so, on

the basis that it was both signposted and timed so that younger children were not likely to stumble across it.

In terms of sexual material broadcast after the watershed, participants considered that stronger sexual material required **stronger editorial justification**. In particular, the purpose of the sexual material and the time of broadcast were key factors in relation to its acceptability, with stronger material becoming more acceptable after 22:00 and especially 23:00. At 21:00 participants said they did not expect to see much more than a brief sex scene or brief nudity. Where sexual material was considered to be “too strong” to be broadcast without mandatory access restrictions in place, it was because it appeared to have a primary purpose of arousing viewers i.e. an excuse to show what participants referred to as “porn” and not to be justified in terms of plot, character development or editorial context.

In considering post-watershed ‘adult-sex’ material, participants were divided on their views on Clip 7. While all considered the material to be “porn”, some considered that it was appropriate to broadcast without mandatory access restrictions, given the **channel and transmission time**. Others did not believe that the material was editorially justified which led them to say it should have been subject to **mandatory access restrictions** as it clearly contained ‘adult-sex’ material.

With regard to free-to-view promotional trailers broadcast on adult-sex channels, (Clips 8 and 9) most participants did not object **in principle** to these trailers being broadcast without any form of access restriction. This was however conditional on them only being available (in the case of Sky) in the adult section of the EPG and, for other platforms, if parental controls (voluntary protection systems) could remove them from view, thereby restricting access by under-eighteens. Participants also thought that such promotional trailers should only show content that was no stronger than that which would be shown on non adult-sex channels at the same time.

Glossary of Terms

Adult section of the EPG: Category on an EPG which groups together channels which are exclusively aimed at over-eighteens.

Adult-sex channels: Premium subscription/pay per view channels which transmit ‘adult-sex’ material under mandatory access restrictions. Such channels also broadcast long-form promotional trailers free-to-view (and therefore without mandatory access restrictions) from 20:00, for the purpose of promoting the premium subscription/pay per view adult-sex channels.

‘Adult-sex’ material: Programmes that contain images and/or language of a strong sexual nature which are broadcast for the primary purpose of sexual arousal or stimulation. This material must only be broadcast on premium subscription/pay per view services between 22:00 and 05:30 and only when mandatory access restrictions are in place.

Analogue terrestrial broadcasters: BBC One, BBC Two, ITV1, Channel 4, Five and S4C.

Digital cable: A term used in the UK to refer to the digital cable television platform. For example, Virgin Media.

Digital satellite: A term used in the UK to refer to the digital satellite television platform. For example, Sky or Freesat.

Digital terrestrial: A term used in the UK to refer to the digital terrestrial television platform. This is currently most commonly delivered through Freeview.

EPG: Electronic Programme Guide. A programme schedule, typically broadcast alongside digital television or radio services, to provide information on the content and scheduling of current and future programmes.

Free-to-view: For the purposes of this document free-to-view means broadcast content that is generally available i.e. it excludes any channels and/or programmes which have mandatory access restrictions. However, what determines free-to-view material will depend on whether consumers have or subscribe to ‘pay-basic’ or ‘pay-premium’ channels or continue only to have access to the five main public service channels (see below).

General entertainment programmes: For the purposes of this research ‘general entertainment programmes’ refer to mainstream programming with a widespread appeal.

Generally accepted standards: Standards which broadcasters licensed by Ofcom must apply to the content of their television services to provide adequate protection to viewers from harmful and/or offensive material. Ofcom’s Broadcasting Code Guidance states that generally accepted standards will change over time and will also vary according to the context. It also states the understanding of what are generally accepted standards should be underpinned by relevant research.

Mandatory access restrictions: A broadcaster must have in place access restrictions on ‘adult-sex’ material to limit access to adults authorised to view the material. This includes a Personal Identification Number (“PIN”) protected system and measures to ensure that the subscriber is an adult.

On-demand television/Video-on-demand (VoD): A service or technology that enables TV viewers to watch programmes or films whenever they choose to, not restricted by a linear schedule.

Pay per view services: A service which the viewer can pay for separately, without a long term subscription. For example, a one-off payment for a sporting event or a film, or a pay-per-night subscription relevant to adult-sex channels.

Pay-TV services: Television services predominantly paid for by the viewer through subscription or other payment for service. This includes subscription television and pay per view (e.g. Sky).

Personal Video Recorders (PVRs): Also known as digital video recorders (DVRs), are devices that record TV onto a hard drive in digital format. Unlike video and DVD recorders, there is no need for tapes or discs.

PIN Protection: A Personal Identification Number (“PIN”) which users must enter in order to access programmes or services. PIN protection can in some cases be implemented by the broadcaster as a form of a mandatory access restriction (imposed by the regulator) or by the householder as a voluntary access restriction.

Platform: The distribution system that enables consumers to receive digital broadcasts. For example, Sky on digital satellite or Virgin Media on digital cable.

Premium subscription services: Additional channels to which viewers can subscribe, over and above the basic package. For example, films, sport and adult-sex channels.

Public service broadcasters: BBC One, BBC Two, ITV1, Channel 4, Five and S4C.

Voluntary access restrictions: Protection to restrict access which can be utilised by the householder usually via the set-top handset, for example a Personal Identification Number (“PIN”).

Watershed: The watershed is at 21:00 and only applies to television. Material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

Annex 12

Executive Summary⁴¹ of research findings: “Commercial References within Radio Programming” by Essential



Background and context

As part of Ofcom’s review of its Broadcasting Code, research was commissioned to explore public views on the regulation of commercial references within radio programming. Specifically, the research was commissioned to understand **listener tolerance of promotional activity within editorial content** (i.e. the degree to which radio listeners are prepared to accept references that are subject to commercial arrangements being included *within* programming).

Ofcom currently applies three key principles to its regulation of commercial references within programming: **transparency, separation** and **editorial independence**. The key objective of the research was to understand how listeners evaluate such commercial references in programming, and how far these three key criteria remain relevant to radio listeners in today’s media climate.

At the time the research was conducted, the three principles were reflected in the following requirements (among others) of Ofcom’s Broadcasting Code:

- Radio advertising and programming must be kept separate;
- Independent editorial control of programming must remain with the broadcaster;
- Products and services must not be promoted, or given undue prominence, in programming;
- Sponsors of programming must not influence it in a way that impairs the broadcaster’s responsibility and editorial independence;

⁴¹ The full findings can be found at <http://www.ofcom.org.uk/consult/condocs/bcode09/radioresearch.pdf>

- In sponsored programming, promotional references to the sponsor (or its products/services) are prohibited and non-promotional references must be incidental; and
- Any programming sponsorship arrangement must be clear to listeners.

A glossary of relevant radio broadcasting terms can be found at the end of this executive summary.

Recruitment and methodology

The complexity and relative unfamiliarity of the subject matter necessitated a deliberative approach, consisting of spontaneous discussion and considered response to an Ofcom presentation and a range of audio stimulus clips prepared by Ofcom. The format of the sessions included a mix of facilitated table discussions and self-completion questionnaires.

Following an exploration of generic attitudes towards commercial radio, and in particular commercial messages, the discussions focussed on responses to a set of audio stimulus clips representing a range of examples of commercial references in programming that are not allowed under current rules but which Ofcom is interested in exploring. For each clip, respondents were asked to record their spontaneous responses and then, after further discussion, to indicate which one of a set of three or four future regulatory scenarios they felt to be most appropriate. A 'Summary of responses to audio examples', recorded individually at each session, can be found at the end of this Executive summary.

Research sessions were conducted at five locations across the UK: London, Belfast, Stirling, Liverpool and Cardiff. Each session involved 31-32 respondents (total sample size: 156). Each session comprised an even mix of male and female respondents, and a spread of ages from 18-60yrs old.

In terms of attitudes and behaviours, a range of radio listening types and listening consumption patterns were included for each session, as follows:

- 50% light/medium commercial radio listeners (5 – 14 hrs per week);
- 50% heavy commercial radio listeners (14+ hrs per week);
- 10 x commercial speech radio listeners per session; and
- 10 x digital radio listeners per session.
- All with active enjoyment of radio;
- All familiar with more than one commercial station;
- No rejectors of ads/commercial activity on radio; and
- No rejectors of ads/commercial activity on any other media.

Key Findings

- Commercial radio is a medium through which most listeners expect to be 'sold to', or receive commercial messages from, whether by spot ads or within

programming; the majority understand that this is how commercial radio is funded and accept that this is the 'trade-off' for receiving a free service.

- Among listeners, traditional spot advertising has an immediate association with commercial radio, and is its main defining characteristic. However, spot ad breaks also tend to be regarded negatively; they are considered:
 - to be intrusive / interrupt programme content;
 - to be loosely targeted to a mainstream audience; consequently often irrelevant;
 - to have an overt sales agenda;
 - often to have low production or tonal values; and
 - to be repetitive.
- Commercial references in programming are widely considered to be preferable to spot advertising. As such, sponsor credits are often well-received on the grounds of their brevity, relatively low level of intrusiveness and less overt sales agenda.
- Levels of regulatory awareness in the commercial radio domain are low; most listeners are aware only of programme content-related regulation, driven by recent high-profile cases such as the Russell Brand / Jonathan Ross controversy and TV phone-in scandals. Ofcom's activity and remit in the area of commercial radio regulation is largely unknown and most listeners have never given consideration to whether or how commercial radio advertising is regulated.
- Participants showed a clear appetite for some relaxation of Ofcom's rules concerning commercial references in programming and sponsorship. When asked, in response to audio stimulus, the majority of respondents opted for a change to the status quo. Nevertheless, their openness to any relaxation of Ofcom Broadcasting Code rules was subject to certain caveats, based on the preservation of their **listening experience** and their **listener principles**.
- Of prime importance to listeners is the quality of the listening experience itself. Commercial activity which is deemed to impair the listening experience tends to fall into one of two main camps:
 - it is not relevant to the listening context; and/or
 - it intrudes on the listening experience;
- Alongside the listener experience, listeners hold dear two broad 'listener principles' which demand that any piece of commercial activity:
 - is clearly understood as being commercial in nature; and
 - does not threaten listener trust.
- These listener principles could be summarised as 'clarity and integrity'; and, as acceptance criteria, are broadly in line with Ofcom's three principles of

separation, transparency and editorial independence, although with some important exceptions and variations noted in the following paragraphs.

- The main exception is the principle of **separation**. For many, separation represents a barrier to the more integrated type of commercial activity which this research indicates many listeners are welcoming on radio. Listeners are, however, aware of the potential for surreptitious/covert messaging if the principle of separation is not applied. While few consider themselves to be susceptible to this form of advertising, it is felt that more vulnerable members of society such as children or the elderly may be more at risk.
- For this reason, the principle of **transparency** is of paramount importance to listeners; where there is transparency, separation becomes a less important principle. Listeners want to know whether what they are listening to has a commercial agenda or not; this is a fundamental requirement among listeners, if trust in the broadcaster – and indeed the advertiser – is to be retained. Equally, without transparency, the concept of listener choice is felt to be compromised, since there is no clear signpost to switch station (or off) if desired.
- **Editorial independence** is considered to be the most important principle among listeners for a number of reasons. Commercial radio audiences often have long-standing, trusted relationships with their presenters and if they are felt to be delivering ‘scripted opinion’, listeners feel irritated and let down, or in some cases object to the presenter’s role being compromised. The idea that presenter opinion or playlist selection might be directly influenced by a commercial third party is unpalatable for many, particularly if this is not made clear.

Response to audio stimulus

Six audio stimulus clips were prepared by Ofcom. These presented a range of examples of commercial references in programming, grouped under four key headings as follows:

- 1) Commercial references
- 2) Sponsored competitions
- 3) Sponsored feature
- 4) Outside broadcasts

In their assessment of each of the stimulus examples, respondents were asked to indicate:

- how far they personally felt concerned about what they had listened to; on a scale of 1-5, where 1 represented not at all bothered and 5 represented extremely bothered; and
- which of a number of future promotional scenarios they would find acceptable.

Tables presenting this data are included at the end of this Executive Summary. Full data are presented in the Appendix section of the full report, which can be found at:

<http://www.ofcom.org.uk/consult/condocs/bcode09/radioresearch.pdf> .

Brief summaries of overall responses to each set of stimulus are as follows:

Commercial references in programming:

'Song Download'

Respondents were played an audio clip representative of a contemporary rock music station. After a music track ended, there was a very brief offer to buy the song as a download.

The offer was pre-recorded.

Details of the offer included the web address from which to access the download.

- This example was well received, largely because of the brevity of the format, which enabled listeners easily to ignore or overlook it, if it was considered irrelevant to them. The issue of separation was not considered a key concern among listeners, as they were able to identify that the offer was subject to a commercial arrangement - particularly as it was pre-recorded and not voiced by the presenter (as a presenter's voice might suggest endorsement of a particular song or company).
- The main concern raised by this sample was that of quality control, i.e. frequency of commercial references. To this end it was suggested that such promotions be restricted, for example to new music releases only, to avoid accusations of intrusiveness/interference with the listening experience.
- There was also some concern relating to the issue of playlist (editorial) control; it was strongly felt that this should be retained by the station i.e. sponsors should not be permitted to dictate which songs should be played and how often.

Sponsored competitions:

'Bond DVD'

Respondents were played an audio clip representative of a contemporary chart music station.

The clip was a listener competition.

The competition was sponsored by a James Bond DVD, to celebrate the release of the DVD. The competition included extracts from, and questions about, the James Bond film (that had just been released on DVD).

'Department store'

Respondents were played an audio clip representative of a local contemporary chart music station.

The clip was a listener competition.

The competition was sponsored by a well-known department store, to promote one of the store's customer services.

The competition included an interview with a store representative and a question concerning the price of the customer service discussed in the interview.

- Sponsored competitions tended to be welcomed by listeners as they were regarded as entertaining content that offered interaction between listeners and the station – so that the listener 'gets something back'. Where prizes are provided by a commercial third party, most felt that the organisation should be provided with a more extensive promotional opportunity than regulations currently allow. The Bond DVD level of factual reference was regarded as a logical and appropriate example of this.

- Sponsor references within competitions were accepted as long as the quality of overall listening experience was not felt to be compromised. While promotional references were acceptable to many - even to the point of specific sales offers - it was felt that the sponsorship arrangement should not be permitted to overtake the competition itself (as was felt to be the case in the department store example).
- Transparency was again a key concern here. In the department store example respondents felt the feature was too long, contrived, overtly promotional and deliberately designed to blur the line between commercial and editorial content. This was reinforced through perceived presenter involvement/endorsement, which raised questions as to the authenticity of the competition and integrity of the presenters.

Sponsored feature:

'Travel agency'

Respondents were played an audio clip representative of a speech-led local radio station. The clip was a travel feature.

The travel feature was sponsored by a local travel agency.

The feature included an extended interview with a travel agency representative (in the capacity of an independent expert), at the end of which he promoted in detail a range of the agency's holiday offers.

- In response to this stimulus, the main concern was again that of transparency. It was felt that clear signposting of the promotional nature of the feature upfront would be critical. While it was clear that the specific references to travel deals were promotional, it was felt that the speaker's unexpected transition from 'independent expert' to 'sales representative' occurred in a somewhat devious manner, without prior warning at the start of the feature. This lack of transparency was considered unacceptable; not least because the representative was felt to use the 'report' section of his feature as a means of building listener trust and interest, heightening the likely impact of his later sales piece.
- The issue of presenter endorsement also emerged through this example. It was widely felt that the involvement of the presenters in endorsing the sponsor's products was inappropriate. This was for two reasons: their interaction with the sponsor representative was felt to mask the commercial nature of the communication and also to compromise their integrity as presenters to some extent, since listeners questioned the authenticity of their views.

Sponsored outside broadcasts:

'St Patrick's Day'

Respondents were played an audio clip representative of an alternative/modern rock music station.

The clip was the opening segment of the station's breakfast show.

To celebrate St Patrick's Day, the breakfast show was an outside broadcast from a brewery.

The outside broadcast was sponsored by the brewer.

The presenters – accompanied by a crowd of their supporters – mentioned the location and the link with St Patrick's day.

'Theme park'

Respondents were played an audio clip representative of an 'adult contemporary' music station.

The clip was the opening segment of the station's breakfast show (sponsored by an airline).

The breakfast show was an outside broadcast from an international theme park.

The outside broadcast was sponsored by the theme park.

The presenters referred to the theme park and its features a number of times, and introduced a song associated with the theme park owner.

It is important to note that the following observations are based on audience assessment of a short illustrative clip from an outside broadcast that would potentially last several hours; during the deliberative sessions the need to focus on this context (i.e. beyond the example clips played) was emphasised to the respondents.

- Outside broadcasts were regarded as a popular form of programming among listeners; they were recognised as bringing interest and variety to a station's broadcasting and seen as self-contained events.
- There was widespread surprise across the sample at the revelation that the St Patrick's Day example was not permitted under current regulations. It was felt that such venues should be allowed to pay for their brand, products or services to be mentioned in outside broadcasts that they are sponsoring, and that presenters' endorsement is acceptable as long as it reflects their genuine views.
- Response to the theme park example tended to be less tolerant overall, for two reasons. The frequency of commercial references throughout the clip (which indicated clearly the nature of the entire broadcast) was felt to be too intrusive, to the point where the quality of the listening experience was compromised. It was also felt that the presenter endorsement in this case was inauthentic and contrived; the idea that the sponsor had paid for these views to be expressed by the presenter was felt to be unpalatable and compromised trust in him.
- It was felt that the theme park example lacked transparency, and the line between editorial and commercial interests lacked sufficient clarity for most.

Summary of responses to audio examples

1) Summary of levels of concern relating to each example

The following table illustrates the degree to which respondents indicated concern over the examples they listened to during the research session. These responses were captured at an individual, spontaneous level, prior to any group discussion.

1 = *not at all bothered*; 5 = *extremely bothered*⁴²

'Bothered' scale: mean scores	
Song download	1.6
Bond	1.8
Department store	2.7
Travel agency	3.2
St Patrick's Day	1.5
Theme Park	2.6

NB: Base size 156 – treat as indicative only

The examples of the department store competition, travel agency feature and theme park outside broadcast emerged as the most problematic.

2) Summary of preferred future scenarios

For three of the four types of stimulus played to respondents (i.e. commercial references in programming, sponsored listener competitions and outside broadcasts sponsored by the venue) we asked them to select one of a number of possible future scenarios (i.e. regulatory options) that Ofcom could consider in its Code review. (NB. For the sponsored feature stimulus, no future scenario options were presented to respondents, as Ofcom was not considering changes to all types of sponsorship on radio, but sought respondents' attitudes to specific issues highlighted in the sample clip.)

In the table below, the 'number of respondents' column contains the overall score for each future scenario option – i.e. number of respondents from a total sample size of 156 (While this is a sufficiently robust figure from which to draw conclusions about the results, it should be noted that these data were gathered as part of a qualitative process and should be seen as indicative of the weight of feeling towards certain scenarios):

⁴² Based on a total sample of 156 respondents

Output (stimulus)	Option number	Scenario description	Number of respondents
Commercial Reference	1	current rules continue to apply	35
	2	promotions directly relevant to content are permitted	87
	3	promotions relevant to the station audience are permitted	22
	4	promotions unrelated to station content are permitted	12
Sponsored competition	1	current rules continue to apply	18
	2	sponsor references as a feature of the competition are permitted	81
	3	highly promotional sponsor references are permitted	57
Venue-sponsored outside broadcast	1	current rules continue to apply	2
	2	factual references to the sponsor/venue and its products and services are permitted	94
	3	factual and promotional references to the sponsor/venue and its products and services are permitted	35
	4	factual and highly promotional references to the sponsor/venue and its products and services are permitted	25

NB: Base size 156 – treat as indicative only

Glossary of radio broadcasting terms

Editorial	See Programming .
Editorial Independence	(A regulatory principle) To ensure that programming is not distorted for commercial or other purposes. To this end, the broadcaster must maintain editorial control over <u>all programming</u> (i.e. including sponsored programming).
Outside broadcast	Programming broadcast from a remote location. It is usually live and is characterised by the lead presenter(s) hosting it from a venue other than the studio.
Principles	Ofcom's regulatory principles are enforced through current rules. The principles concerning commercial references in programming (including sponsored programming) are transparency, separation and editorial independence .
Programming	Sometimes referred to as 'editorial', programming is all radio output (including sponsorship, programme trails etc.) apart from advertisements. It comprises programmes (e.g. a Breakfast Show), music, and features (e.g. weather).
Separation	(A regulatory principle) Advertising should be kept separate and distinct from programming . To this end, sponsor credits should also be clearly identifiable as such around (and sometimes within) programming .
Sponsor	Any body that gives payment (or equivalent) to the broadcaster to be associated with specific programming , with a view to promoting itself through that association.
Sponsor credit	Sometimes referred to as a 'sponsorship credit', this is a brief branding statement that lets the listener know a sponsor has a commercial association with specific programming (i.e. a specific show or a specific feature). A sponsor credit may include phrases such as "brought to you by....." or "in association with..." to identify the sponsorship arrangement.
Sponsored competition	Sometimes referred to as a 'radio promotion' (by the radio industry), this is an example of a sponsored feature. Generally, the sponsor not only pays to be associated with the competition but also donates the prize(s) on offer.
Sponsored programming	A programme (or set of programmes) or a feature (or set of features) that has received funding for its production from a sponsor .
Spot Advertisement	Sometimes referred to as a 'commercial' or 'spot ad', this is an advertisement found in an advertising break.
Transparency	(A regulatory principle) Any commercial association with programming (generally sponsorship) should be made clear to listeners (e.g. in the case of sponsorship, transparency is achieved by the inclusion of sponsor credits).