

Ofcom

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Broadcasting Code Review

Preparing for Ofcom's new responsibilities for
regulating the BBC

Consultation

Publication date: 15 December 2016

Closing Date for Responses: 9 February 2017

About this document

The role of the BBC is to produce high quality and distinctive programmes and services which educate, inform and entertain.

The new BBC Charter and Agreement requires that the BBC’s UK Broadcasting and On Demand Programme Services¹ comply with the Ofcom Broadcasting Code (“the Code”), and that Ofcom must secure content standards for the BBC. To ensure that viewers and listeners are adequately protected Ofcom will be amending the Code so that it applies to the BBC.

This consultation looks at how we intend to amend and apply the Code and seeks stakeholders’ views.

At the same time, this consultation looks at certain other amendments we intend to make to ensure the Code remains clear and relevant for all broadcasters and on demand programme service providers we regulate.

¹ As at publication (15 December 2016), the iPlayer (both audiovisual and sound programmes).

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Section 1

Introduction

- 1.1 On 15 December 2016 the UK Government published a new Royal Charter and Agreement for the BBC.² They will come into effect on the Effective Date in the Charter, which is 3 April 2017.
- 1.2 The new Charter and Agreement introduce full external regulation of the BBC by Ofcom. Ofcom will be required to regulate content standards for the BBC’s UK Public Broadcasting Services (“BBC broadcasting services”)³ and the BBC’s UK Public On Demand Programme Services (“BBC ODPS”)⁴ to ensure they meet requirements set out in the Ofcom Broadcasting Code (“the Code”).
- 1.3 This document proposes amendments to the Code so that, among other things, it applies in full to BBC broadcasting services and, as relevant, to BBC ODPS. It is one of a series of consultation documents that Ofcom is publishing as it prepares for its new responsibilities for regulating the BBC.

Legal framework

- 1.4 The full statutory background to this consultation is detailed in **Annex 5**. A summary is provided below.

The Communications Act

- 1.5 Ofcom is required under the Communications Act 2003 (“the Act”) to draw up a code for television and radio services, setting such standards as appear to it best calculated to secure a number of standards objectives for the content of programmes. The standards set by Ofcom are contained in the Code.

BBC Charter and Agreement

- 1.6 The Royal Charter is the constitutional basis for the BBC. It sets out the public purposes of the BBC, guarantees its independence, and provides a framework for its funding, governance and regulation. An Agreement between the Secretary of State and the BBC sits alongside the Charter providing detail on many of the topics outlined in the Charter.
- 1.7 Under the current Charter and Agreement,⁵ regulatory oversight of the BBC’s output is shared by the BBC Trust and Ofcom. There is an overlap of responsibilities in most areas of editorial standards, such as: protecting the

² <https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>

³ The BBC’s UK Public Broadcasting Services are the BBC’s licence-fee funded broadcasting services (other than the World Service). The proposed amendments do not affect BBC commercial services licensed by Ofcom which are already subject to full editorial standards regulation by Ofcom.

⁴ As at publication (15 December 2016), the iPlayer (both audiovisual and sound programmes).

⁵ http://www.bbc.co.uk/bbctrust/governance/regulatory_framework/charter_agreement.html

- under-eighteens; harm and offence; and crime. However, the enforcement of editorial standards in the areas of due impartiality and due accuracy; elections and referendums; commercial references in television programmes; and commercial communications in radio programmes are the responsibility solely of the BBC Trust.
- 1.8 Under Article 46(7) of the new Charter, Ofcom must secure the observance of content standards in the relevant BBC UK Public Services, in accordance with the Code. Schedule 3, paragraphs 3 and 4 of the new Agreement together provide that BBC broadcasting services must comply with the requirements of the Code and BBC ODPS must also comply with the requirements of the Code so far as Ofcom determines them relevant to the provision of those services.
- 1.9 The Code therefore needs updating so that it applies to the BBC in accordance with the Agreement.
- 1.10 The regulatory obligations in Schedule 3 of the Agreement are binding on the BBC and enforceable by Ofcom.⁶

Purpose of this document

- 1.11 In this document, we are consulting on:
- Amendments to the Code so that it applies in full to BBC broadcasting services. This includes updating certain Sections of the Code which do not currently apply to BBC broadcasting services; and
 - Amendments to the Code so that the rules of the Code apply, so far as we determine them relevant, to BBC ODPS.
- 1.12 Ofcom considers it appropriate also to propose certain other amendments designed to provide clarity for all broadcasting and on demand programme services we regulate. We welcome stakeholder views on:
- A proposal to move the published statutory rules that currently apply to all other regulated UK on demand programme services into the same document as the Code, so that they are available alongside the Code; and
 - Minor amendments to reflect Ofcom’s duties under the Equality Act 2010 and Northern Ireland Act 1998.
- 1.13 The remainder of this document is structured as follows:
- Section 2 sets out proposed amendments to the Code so that it applies in full to **BBC UK Public Broadcasting Services**;

⁶ With the exception of paragraph 2, Schedule 3 (BBC editorial guidelines) which is not enforceable by Ofcom.

- Section 3 sets out proposed amendments to the Code for **BBC UK Public On Demand Programme Services**; and
- Section 4 sets out **other proposed revisions to the Code** including moving the published statutory rules that currently apply to all other regulated UK on demand programme services into the same document as the Code, and minor amendments to make clear Ofcom’s duties under the Equality Act 2010 and Northern Ireland Act 1998.

1.14 The full proposed amendments to the Code are set out in **Annex 6**.

Next steps

1.15 Ofcom will regulate the BBC from the Effective Date in the Charter, which is 3 April 2017. To ensure the revised Code is in place by this date, we invite comments on the proposals set out by **no later than 5pm on 9 February 2017**.

1.16 Following our review of stakeholder responses, we plan to issue a statement and revised Code in March 2017, which will come into effect on 3 April 2017⁷.

Other relevant consultations

1.17 On 10 November 2016 Ofcom published its first consultation to prepare for its new duties for regulating BBC editorial standards⁸. This is part of a wider consultation to review the suitability of the list of ‘larger parties’ as part of the Code and Ofcom’s rules on party political and referendum broadcasts (“PPRB Rules”). The consultation is asking for stakeholders’ views on:

- our proposed approach for regulating BBC editorial content in the areas of due impartiality, due accuracy, elections and referendums (Sections Five and Six of the Code and the PPRB Rules); and
- our proposal to remove the list of ‘larger parties’ from our rules in the area of elections. This is an issue that will affect all Ofcom broadcasters regulated by Ofcom, including the BBC.

1.18 Ofcom has published its proposals on the matters set out in paragraph 1.17 ahead of our proposals in other areas, mindful of the fact that broadcasters and political parties will need to plan ahead for the various elections taking place in May 2017. The closing date for responses is 16 January 2017.

⁷ As part of the transitional arrangements for Ofcom to take on its responsibilities in relation to the BBC, Sections Five (due impartiality) and Six (elections and referendums) of the revised Code, and Ofcom’s PPRB Rules, will apply to the BBC from 22 March 2017, the date when the first election period for the May 2017 elections commences.

⁸ <https://www.ofcom.org.uk/consultations-and-statements/category-2/broadcast-impartiality-accuracy-and-elections-rules-review>

- 1.19 Early in 2017, Ofcom will be separately consulting on proposed procedures for investigating potential breaches by the BBC of the Code and for the consideration of sanctions.

Impact assessment and Equality Impact Assessment

- 1.20 This document does not contain a separate impact assessment. Instead the document as a whole assesses the impact of our proposals. Under the Agreement Ofcom must impose certain requirements on the BBC. Where we have discretion to impose requirements, or to determine the form of the requirement, we have assessed the need for such a requirement, in line with our statutory duties. Some specific points to note are provided below.
- 1.21 The regulatory regime for the BBC is currently fragmented as Ofcom shares responsibility for securing content standards in BBC programmes with the BBC Trust. The new Charter and Agreement introduces full external regulation of the BBC by Ofcom. This provides a simpler approach to content regulation of the BBC for audiences and will provide consistency in the application of content standards across the industry. The proposed changes to the Code will provide audiences, broadcasters and other interested stakeholders with greater clarity on Ofcom’s duties and responsibilities to regulate the BBC.
- 1.22 Under the Agreement, BBC ODPS⁹ are subject to the rules of the Code, so far as Ofcom considers them relevant. The Code rules, which we propose will apply to BBC ODPS unless expressly stated otherwise, are more prescriptive and cover more standards areas than the statutory rules for other regulated ODPS, thereby providing a greater level of protection to audiences.
- 1.23 Ofcom is required by statute to have due regard to any potential impacts our proposals may have on particular “equality groups” i.e. persons sharing a protected characteristic, such as: sex, disability or race¹⁰. In relation to equality (whether in Northern Ireland or the rest of the UK), we consider that the proposals in this document are likely to affect all citizens and consumers in the same way, and would not have any particular implications for the different equality groups. Our equality duties in Northern Ireland, under section 75 of the Northern Ireland Act 1998, require us to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. We consider that our proposals are consistent with these duties.
- 1.24 In reviewing and revising the Code, Ofcom has had due regard to the matters specified in section 149(1) of the Equality Act 2010 (“the public sector equality duty”) and section 75 of the Northern Ireland Act 1998. In particular, the protected characteristics listed in Rule 2.3 have been broadened in reflection of the relevant legislation. The rule now explicitly references age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership.

⁹ As at publication (15 December 2016), the iPlayer (both audiovisual and sound programmes).

¹⁰ See the Equality Act 2010.

Section 2

Proposed amendments to the Code so that it applies in full to BBC UK Public Broadcasting Services

Introduction

- 2.1 In this Section, we set out Ofcom’s proposed approach to regulating BBC UK Public Services under the Broadcasting Code (“the Code”).
- 2.2 As outlined above at paragraph 1.7, not all Sections of the Code currently apply to BBC UK Public Services funded by the licence fee. Under Schedule 3, paragraphs 3 and 4 of the new Agreement, the BBC UK Public Broadcasting Services (“BBC broadcasting services”) are required to fully comply with the requirements of the Code, and the BBC UK Public On Demand Programme Services (“BBC ODPS”) must comply with the rules of the Code so far as Ofcom determines them relevant. The application of the rules to BBC ODPS is considered in detail in Section 3 of this document.

Legislative Background / How to use the Code

- 2.3 The Code contains two introductory sections: “Legislative Background to the Code”; and “How to use the Code”.
- 2.4 For the BBC, those introductory sections will be updated with reference to the new Charter and Agreement. The sections will explain that the Code applies in full to BBC broadcasting services i.e. radio and television content (other than the BBC World Service), and to BBC ODPS¹¹, unless expressly stated otherwise.
- 2.5 The proposed amendments to these sections are laid out in full at **Annex 6**.

Sections One, Two, Three and Four

- 2.6 Sections One to Four of the Code contain rules relating to: Protecting the Under Eighteens; Harm and Offence; Crime, Disorder, Hatred and Abuse; and Religion. Under the current Charter and Agreement these sections all apply to BBC broadcasting services and will continue to do so under the new Charter & Agreement.
- 2.7 Section 3 of this document outlines the changes proposed to these sections of the Code so that the rules apply, so far as Ofcom determines them relevant, to BBC ODPS.

¹¹ As at publication (15 December 2016), the iPlayer (both audiovisual and sound programmes).

Sections Five and Six: Due Accuracy, Due Impartiality, elections and referendums

- 2.8 Section Five of the Code covers due accuracy and due impartiality; Section Six covers elections and referendums. Under the current 2006 Charter and Agreement, these two sections do not apply to BBC UK Public Services and the BBC Trust has sole regulatory responsibility for editorial standards in these areas. Under the new Charter and Agreement, in these areas Ofcom’s Code will apply.
- 2.9 Ofcom has published its proposed approach for regulating editorial content on BBC broadcasting services and BBC ODPS in the areas of due accuracy, due impartiality, elections and referendums in a consultation published on 10 November 2016,¹² along with a proposal to remove the list of ‘larger parties’ from our election rules (which affects all broadcasters). This consultation has been published slightly earlier as we are mindful that broadcasters and political parties will need to plan ahead for the various elections taking place in May 2017. We have invited representations from interested stakeholders on the matters set out in that particular consultation by no later than **5pm on 16 January 2017**.

Sections Seven and Eight: Fairness and Privacy

- 2.10 Sections Seven and Eight of the Code contain Fairness and Privacy rules in accordance with Ofcom’s “fairness code” set under section 107 of the Broadcasting Act 1996. The purpose of these rules is to ensure that broadcasters avoid unjust or unfair treatment of individuals or organisations in programmes and any unwarranted infringement of privacy in programmes and in connection with obtaining material included in programmes.
- 2.11 Under the Broadcasting Act 1996 and the current 2006 Charter and Agreement, these sections of the Code already apply to BBC broadcasting services and will continue to apply under the new arrangements. The new Charter and Agreement will extend this provision to BBC ODPS (see Section 3 of this document).

Sections Nine and Ten: commercial references and commercial communications

- 2.12 Section Nine of the Code sets out the rules that apply to commercial references in television programming. Section Ten of the Code sets out the rules that apply to commercial communications in radio programming (i.e. references to brands, trademarks, products and services that are subject to commercial arrangements).
- 2.13 Currently, the rules in these sections do not apply to BBC broadcasting services which are funded by the licence fee¹³. The new Agreement requires that all BBC

¹² <https://www.ofcom.org.uk/consultations-and-statements/category-2/broadcast-impartiality-accuracy-and-elections-rules-review>

¹³ With the limited exception that the product placement rules set out in Section Nine apply to programmes the BBC acquires or those produced/commissioned by its commercial services or any connected entities.

broadcasting services must observe the Code: this includes the rules set out in Sections Nine and Ten. BBC ODPS must observe the Code so far as Ofcom determines the standards are relevant.

- 2.14 Although the new BBC Charter and Agreement place a general prohibition on the BBC entering into commercial arrangements that result in on-air references to products and services (e.g. advertising, sponsorship and product placement), Clause 49 of the Agreement makes provision for such services to be partially funded by certain alternative means of finance in some circumstances, which may include such types of funding. We are therefore proposing to amend the introduction to both Sections Nine and Ten of the Code to make clear that if those circumstances ever arise, such that the BBC makes commercial arrangements of a type covered by our Code, these sections will apply to BBC broadcasting services (funded by the licence fee) and BBC ODPS, including content partially funded by alternative means of finance, as well as commercial BBC services licensed by Ofcom under the current regulatory regime.
- 2.15 The proposed revisions to Sections Nine and Ten can be found in the revised Code in Annex 6 of this consultation document.

Question 1: Do you agree with the proposed changes to the Ofcom Broadcasting Code in relation to our application of the Code to regulate the content standards on BBC broadcasting services? If not, please explain why.

Section 3

Proposed amendments to the Code for BBC On Demand Programme Services

Introduction

- 3.1 In this Section, we set out Ofcom’s proposed approach to regulating BBC UK Public On Demand Programme Services (“BBC ODPS”)¹⁴ under the Broadcasting Code (“the Code”).
- 3.2 The general requirement for BBC ODPS to comply with editorial standards set by Ofcom is set out in Schedule 3, paragraph 3(2) of the Agreement, which states that “[i]n providing the UK Public On Demand Programme Services, the BBC must observe the Standards Code so far as Ofcom determine the standards are relevant to the provision of those on-demand programme services”. Paragraph 4(2) of Schedule 3 extends the requirements of the Fairness Code to BBC ODPS, so far as Ofcom determines the standards are relevant.

Legislative Background / How to use the Code

- 3.3 The amendments to these sections set out Ofcom’s proposal that the Broadcasting Code will apply to BBC ODPS unless expressly stated otherwise. We propose to clarify that, throughout the Code, “broadcaster” includes the BBC as provider of BBC ODPS; “broadcast” and “broadcasting” include making programmes available on BBC ODPS; and “programmes” includes programmes made available on BBC ODPS.
- 3.4 These sections also make clear that we have made specific provision in certain rules for BBC ODPS, where interpretation of a rule is particularly affected by the on demand nature of BBC ODPS (for example where the rule relates to scheduling). This is relevant primarily for Sections One (Protection of under-18s) and Two (Harm and Offence) (see further detail below).
- 3.5 However, we have not sought to make specific provision for every case that could arise relating to BBC ODPS. The on demand nature of BBC ODPS should be taken into account in applying the Code to this type of content.

All sections

- 3.6 We propose to make clear in footnotes within each Section that unless expressly stated otherwise, the rules in that Section apply to BBC ODPS.

¹⁴ As at publication (15 December 2016), the iPlayer (both audiovisual and sound programmes).

- 3.7 We also propose to amend individual rules where there is a specific reference to television and/or radio services to add clarity on how that rule will apply to BBC ODPS.

Section One: Protecting the Under-18s

- 3.8 Ofcom has proposed changes to certain rules in Section One of the Code where the interpretation of the rule is particularly affected by the on demand nature of BBC ODPS, for example rules relating to scheduling and the application of the watershed. We have set out details of our proposed approach below.
- 3.9 Rule 1.3 states: *“Children must be protected by appropriate scheduling from material that is unsuitable for them.”* For the avoidance of doubt, we have proposed an amendment to Rule 1.3 to clarify that while scheduling requirements are not relevant to the provision of BBC programmes on demand, the BBC must put in place appropriate measures on BBC ODPS that provide equivalent protection for children.
- 3.10 Section One contains specific requirements on information provision and the scheduling of certain types of content. For example:
- Rule 1.7 states: *“Television broadcasters must observe the watershed.”*
- Rule 1.14 states: *“The most offensive language 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).”*
- 3.11 Where the Code currently refers to ‘scheduling before the watershed’ (in the case of television) or ‘when children are particularly likely to be listening’ (in the case of radio), in the case of BBC ODPS we propose the equivalent protection to be ‘when content is likely to be accessed by children’. This has been applied to all relevant rules in Section One of the Code.
- 3.12 We propose to define the meaning of ‘likely to be accessed by children’ in the Code by reference to a non-exhaustive list of factors including:
- the nature of the content – whether it is aimed at or has particular appeal to children;
 - the nature of access to the content e.g. whether there are measures in place intended to prevent children from viewing and/or listening to the content;
 - the prominence and position of the content within the BBC ODPS; and/or
 - the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information.
- 3.13 These factors are indicative of those which we expect the BBC to take into account when deciding appropriate protection for children, equivalent to the watershed and other scheduling requirements.

3.14 The full proposed revisions to the Code can be found at **Annex 6**.

Section Two: Harm and Offence

3.15 The Code requires broadcasters to take into account the context in which certain types of content appears. Section Two defines the meaning of ‘context’:

“Context includes (but is not limited to):

- *the editorial content of the programme, programmes or series;*
- *the service on which the material is broadcast;*
- *the time of broadcast*
- *what other programmes are scheduled before and after the programme or programmes concerned*
- *the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description;*
- *the likely size and composition of the potential audience and likely expectation of the audience;*
- *the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information; and*
- *the effect of the material on viewers or listeners who may come across it unawares.”*

3.16 We propose that this definition is expanded to take account of BBC on demand viewing and listening circumstances, as follows:

“Time and scheduling of broadcast are not relevant to the provision of programmes on demand but, for programmes made available on BBC ODPS, context also includes (but is not limited to):

- *the nature of access to the content e.g. whether there are measures in place intended to prevent children from viewing and/or listening to the content;*
- *the prominence and position of the content within the BBC ODPS.”*

Sections Three, Four, Seven and Eight

3.17 As stated at paragraph 3.5 our proposed approach to applying the Code to BBC ODPS is not to detail or address each and every case that could arise relating to BBC ODPS, but to emphasise that the on demand nature of BBC ODPS should be taken into account.

3.18 However, where a rule makes specific reference to television and/or radio services we have proposed amendments to add how a rule also applies to BBC ODPS so as to avoid it being read to exclude BBC ODPS.

3.19 We propose to clearly set out in a footnote in these Code Sections that the rules apply to BBC ODPS unless expressly stated otherwise.

Sections Five and Six: Due accuracy, due impartiality, elections and referendums

- 3.20 We have set out our proposed amendments to Sections Five and Six of the Code covering due accuracy, due impartiality, elections and referendums in a separate consultation available here: <https://www.ofcom.org.uk/consultations-and-statements/category-2/broadcast-impartiality-accuracy-and-elections-rules-review>

Sections Nine and Ten: commercial references and commercial communications

- 3.21 As stated in paragraph 3.3 we have set out Ofcom’s intention to apply the Code rules to BBC ODPS except where expressly stated otherwise. Section 2 of this document explains that under the new Agreement the BBC must observe Sections Nine and Ten of the Code covering commercial references and commercial communications.
- 3.22 We propose to make clear at the beginning of the Sections that Section Nine (commercial references in television programming) applies to audio visual content made available by BBC ODPS and Section Ten (commercial communications in radio programming) applies to the audio-only content made available by BBC ODPS.

Question 2: Do you agree with the proposed changes to the Ofcom Broadcasting Code in relation to our application of the Code to regulate content standards on BBC ODPS? If not, please explain why.

Section 4

Other proposed revisions to the Code

Introduction

- 4.1 In this Section we set out other proposed changes to Ofcom’s Broadcasting Code (“the Code”), including a proposed revision to the layout of the document in which we publish the Code to include, as a separate part, the statutory rules applicable to On Demand Programme Service (ODPS) providers that are regulated by Ofcom.

Name and overall structure of the Broadcasting Code

- 4.2 As we are reviewing the Code to make amendments to reflect Ofcom’s new duties for regulating the BBC, we consider it appropriate to also make certain other amendments to ensure it remains clear and relevant for all broadcasters we regulate.

- 4.3 The Code will continue to be called ‘The Ofcom Broadcasting Code’. However, to reflect the proposed incorporation of the statutory rules for ODPS in the same document, we are proposing to broaden the main title of the document as follows:

‘The Ofcom Broadcasting Code

(with the Cross-promotion Code and the On Demand Programme Services rules)’

- 4.4 We are proposing to structure the Code into three parts: Sections One to Ten (i.e. the Broadcasting Code) will be Part 1; the Cross-promotion Code will become Part 2; and the statutory rules for On Demand Programme Services will be Part 3.

- 4.5 We have also taken the opportunity to make it clearer in Section Nine that the definition of “sponsorship” is not limited by the definition of “commercial reference” in the Code, and to delete a note which could have caused ambiguity because it used different words to describe the meaning of rules that already exist. These changes are proposed for the purposes of clarity and certainty.

The Cross-promotion Code

- 4.6 The Cross-promotion Code allows television broadcasters to promote programmes, channels and other broadcasting-related services without such promotions being considered advertising and included in the calculation of advertising minutage. These rules are currently incorporated at the back of the Broadcasting Code. As stated above, this code will be moved into Part 2 of the document containing the Broadcasting Code.

- 4.7 The Cross-promotion Code applies to television services licensed by Ofcom. It does not apply to the BBC. The new Agreement (clause 63) makes separate provision for how the BBC must deal with promotion of any of its output on the UK Public Services.

On Demand Programme Service Rules

- 4.8 As set out above, we propose to include in a separate part of the document containing the Code (Part 3) the statutory requirements placed upon UK on demand programme service providers.
- 4.9 ODPS are regulated in the UK under rules in Part 4A of the Communications Act 2003 (“the Act”). The rules reflect requirements set out in the Audiovisual Media Services Directive¹⁵ (“AVMS Directive”).
- 4.10 At present, the ODPS rules are available in a separate document on Ofcom’s website and this document also contains guidance notes to assist ODPS providers in their understanding of how Ofcom interprets the rules.¹⁶ Our proposal is to include in Part 3 the ODPS statutory rules only and not to transfer any guidance.
- 4.11 The statutory rules applying to ODPS would not change as a result of this proposal. The guidance notes would continue to be available in the current ‘Rules and Guidance’ document on the Ofcom website.
- 4.12 As a result of the proposed change to add the existing statutory rules for ODPS as a separate part alongside the Code, the rules for all UK broadcasters and ODPS providers would be available in the same complete document. A new ‘Introduction’ and ‘Legislative Background’ to the ODPS rules is proposed to precede the rules in Part 3.
- 4.13 The relevant proposed changes can be found in Part 3 at **Annex 6**. We have indicated in square brackets that the guidance notes for each rule have not been carried over from the current Rules and Guidance document but will remain available separately on the Ofcom website. We have also proposed to include the statutory definition of ‘Product placement’ in Rule 13 and new footnotes to reflect which rules do not apply to BBC ODPS, and these appear in grey underlined highlight.
- 4.14 As stated above, we propose to amend the full title of the document to reflect the addition of these statutory rules.

¹⁵ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC

¹⁶ ‘Rules and Guidance - Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services (ODPS)’

https://www.ofcom.org.uk/_data/assets/pdf_file/0022/54922/rules_and_guidance.pdf

Ofcom’s compliance with the public sector equality duty (PSED)

- 4.15 Ofcom is proposing minor amendments to the Code in compliance with its equality duties under section 149(1) of the Equality Act 2010 (“the 2010 Act”) and section 75 of the Northern Ireland Act 1998 (“the 1998 Act”):
- The “legislative background” section of the Code has been updated to note that Ofcom has had due regard to the relevant sections of the 2010 Act and the 1998 Act when drafting, reviewing and revising its Code; and
 - Rule 2.3 (material which may cause offence must be justified by the context) has been updated to include a specific reference to all protected characteristics under the 2010 Act. The rule now explicitly references age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership.
- 4.16 Ofcom will continue to have regard to its public sector equality duty and its obligations under the 1998 Act when applying the rules of the Code.

Question 3: Do you agree with the proposal to include the rules for on demand programme services? Do you think the other changes are helpful and make clear the full range of Ofcom’s regulatory responsibilities? If not, please explain why.

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 9 February 2017**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <https://www.ofcom.org.uk/consultations-and-statements/category-1/amendments-to-ofcoms-broadcasting-code>, 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 - particularly those with supporting charts, tables or other data - please email BBCCodeConsultation@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- BBC Code Consultation
Content, Standards, Licensing and Enforcement
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 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 BBCCodeConsultation@ofcom.org.uk.

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/terms-of-use/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in March 2017.
- 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/email-updates/>

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 Steve Gettings, Secretary to the Corporation, who is Ofcom’s consultation champion:

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Broadcasting Code Review – preparing for Ofcom's new responsibilities for regulating the BBC

Tel: 020 7981 3601

Email steve.gettings@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, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the ‘Consultations’ section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- 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 an Ofcom consultation

BASIC DETAILS	
Consultation title:	
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 <input type="checkbox"/>	Name/contact details/job title <input type="checkbox"/>
Whole response <input type="checkbox"/>	Organisation <input type="checkbox"/>
Part of the response <input type="checkbox"/>	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.	<input type="checkbox"/>
Name	Signed (if hard copy)

Annex 4

Consultation questions

Question 1: *Do you agree with the proposed changes to the Ofcom Broadcasting Code in relation to our application of the Code to regulate the content standards on BBC broadcasting services? If not, please explain why.*

Question 2: *Do you agree with the proposed changes to the Ofcom Broadcasting Code in relation to our application of the Code to regulate content standards on BBC On Demand Programmes Services? If not, please explain why.*

Question 3: *Do you agree with the proposal to include the rules for on demand programme services? Do you think the other changes are helpful and make clear the full range of Ofcom’s regulatory responsibilities? If not, please explain why.*

Annex 5

Statutory background

- A5.1 Under section 3(1) of the Communications Act 2003 (“the Act”), it is the principal duty of Ofcom, in carrying out its functions to:
- a) further the interests of citizens in relation to communications matters; and
 - b) further the interests of consumers in relevant markets, where appropriate by promoting competition.
- A5.2 Further, section 3(2)(e) of the Act requires that, in particular and among other things, in carrying out its functions Ofcom must secure the application, in the case of all television and radio services, of standards that:
- a) provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services; and
 - b) provide adequate protection to members of the public and all other persons from both unfair treatment in programmes and unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.
- A5.3 As part of its duties and functions in relation to broadcasting, under section 319 of the Act, Ofcom is required to draw up a code for television and radio services, setting such standards as appear to it best calculated to secure a number of standards objectives for the content of programmes. The standards Ofcom has set are contained in the Ofcom Broadcasting Code (“the Code”).
- A5.4 Under section 198 of the Act, it is a function of Ofcom, to the extent that provision for them to do so is contained in the BBC Charter and Agreement, the Act and Part 5 of the Broadcasting Act 1996 to regulate the provision of the BBC’s services.¹⁷
- A5.5 The Royal Charter is the constitutional basis for the BBC. It sets out the public purposes of the BBC, guarantees its independence, and provides a framework for its funding, governance and regulation. The current Royal Charter¹⁸ was granted in 2006 and is due to expire at the end of 2016.

¹⁷ The Government has, in the Digital Economy Bill currently before Parliament, proposed amendments to section 198. In particular, it has proposed that, rather than referring to the provision of the BBC’s services, section 198(1) will state that it is a function of Ofcom ‘to regulate the BBC’.

¹⁸ See https://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf

- A5.6 The Agreement between the Secretary of State and the BBC sits alongside the Charter. It provides detail on many of the topics outlined in the Charter. The current Agreement¹⁹ was also made in 2006.
- A5.7 Under the current Charter and Agreement, regulatory oversight of the BBC’s output is shared by the BBC Trust and Ofcom. There is an overlap of responsibilities in most areas of editorial standards, such as: protecting the under-eighteens; harm and offence; and crime. However, the enforcement of editorial standards in the areas of due impartiality and due accuracy; elections and referendums; commercial references in television programmes; and commercial communications in radio programmes are the responsibility solely of the BBC Trust.

The new Charter and Framework Agreement

- A5.8 A new Charter and Framework Agreement were published by the UK Government on 15 December 2016²⁰ and will come into effect on the Effective Date in the Charter, which is 3 April 2017. For the period to 3 April 2017, transitional arrangements will apply. Sections Five (due impartiality) and Six (elections and referendums) of the revised Broadcasting Code, and Ofcom’s rules on party political and referendum broadcasts, will apply to the BBC from 22 March 2017.
- A5.9 The new Charter and Agreement will introduce full external regulation of the BBC by Ofcom. This means that Ofcom will be required to regulate all areas of editorial standards for the BBC to ensure it meets requirements.
- A5.10 By virtue of article 46(7) of the Royal Charter, Ofcom “must secure the observance of standards in the content in the relevant UK Public Services which must be in accordance with the Standards and Fairness Codes”. UK Public Services are the BBC licence-fee funded services (other than the World Service). They do not include BBC commercial services licensed by Ofcom which are already subject to its editorial standards regulation.
- A5.11 The general requirement to comply with editorial standards set by Ofcom is set out in Schedule 3, paragraph 3 of the Agreement which states

“3. Content Standards

(1) In providing the UK Public Broadcasting Services, the BBC must observe the standards set under section 319 of the Communications Act 2003 (Ofcom’s ‘Standards Code’). For the purposes of the requirements in the Standards Code which give effect to section 320 of that Act (special impartiality requirements), the UK Public Services which are radio services will be treated as national radio services.

¹⁹ See http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/agreement.pdf

²⁰ See <https://www.gov.uk/government/publications/draft-bbc-charter-and-draft-framework-agreement>

(2) In providing the UK Public On Demand Programme Services, the BBC must observe the Standards Code so far as Ofcom determine the standards are relevant to the provision of those on-demand programme services”.

A5.12 The requirement to comply with the Fairness Code is set out in Schedule 3, paragraph 4 of the Agreement which states

“4. The Fairness Code

(1) The BBC must observe the code in force under section 107 of the Broadcasting Act 1996-

- (a) in connection with the provision of the UK Public Broadcasting Services; and*
- (b) in relation to the programmes included in those services.*

(2) In providing the UK Public On Demand Programme Services, the BBC must observe the same code so far as Ofcom determine the standards are relevant to the provision of those on-demand programme services.

[...]

A5.13 These requirements will be set out in Ofcom’s Broadcasting Code which, for the first time, will apply in full to the BBC. In particular, as well as applying to BBC UK Public Broadcasting Services, the Code will apply, as relevant, to BBC UK Public On Demand Programme Services (“BBC ODPS”).

Annex 6

Proposed amendments to the Ofcom Broadcasting Code (with the Cross-promotion Code and the On Demand Programme Service Rules)

[Proposed additions are shown in **bold with grey highlight and underlined**. Proposed retractions are shown in **~~bold strikethrough~~**].

[Title page]

The Ofcom Broadcasting Code

(Incorporating with the Cross-promotion Code and the On Demand Programme Service Rules)

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Part One: Broadcasting Code

The Legislative Background to the Code²¹

Ofcom is required under the Communications Act 2003 (as amended) (“the Act”) and the Broadcasting Act 1996 (as amended) (“the 1996 Act”) to draw up a code for television and radio, covering standards in programmes, sponsorship, product placement in television programmes, fairness and privacy. This Code is to be known as the Ofcom Broadcasting Code (“the Code”).

Broadcasters are reminded of the legislative background that has informed the rules, of the principles that apply to each section, the meanings given by Ofcom and of the guidance issued by Ofcom, all of which may be relevant in interpreting and applying the Code. No rule should be read in isolation but within the context of the whole Code including the headings, cross-references and other linking text.

In setting these standards, Ofcom must secure the standards objectives set out in the Act. This not only involves setting minimum standards but also such other standards as may be appropriate. (See sections 3(1)(a) and (b), (2)(e) and (f) and (4)(b)(g)(h)(j)(k) and (l), 319, 320, 321, 325, 326 and Schedule 11A of the Act and sections 107(1) of the 1996 Act. These extracts can be found in Appendix 1 of the Code.)

The Code also gives effect to a number of requirements relating to television in EC Directive 2010/13/EU (“The Audiovisual Media Services Directive”). Extracts can be found in Appendix 2 of the Code.

The Code has also been drafted in the light of the Human Rights Act 1998 and the European Convention on Human Rights (“the Convention”). In particular, the right to freedom of expression, as expressed in Article 10 of the Convention, encompasses the audience’s right to receive creative material, information and ideas without interference but subject to restrictions prescribed by law and necessary in a democratic society. This Article, together with Article 8 regarding the right to a person’s private and family life, home and correspondence; Article 9, the right to freedom of thought, conscience and religion; and Article 14, the right to enjoyment of human rights without discrimination on grounds such as sex, race and religion, can be found in Appendix 3 of the Code.

In drafting, reviewing and revising the Code, Ofcom has had due regard to the matters specified in section 149(1) of the Equality Act 2010 (“the public sector equality duty”) and section 75 of the Northern Ireland Act 1998.

Unless expressly stated otherwise, the Code applies to radio and television content **(with certain exceptions in the case of the British Broadcasting Corporation (“the BBC”)—see below)** in services licensed by Ofcom, **to UK broadcasting** services funded by the licence fee provided by the **British Broadcasting Corporation (“the BBC”), to BBC UK On Demand Programme Services funded by the licence fee**

²¹ In this Broadcasting Code, where the context admits, references to any legislative provisions, whether in primary or secondary legislation, include a reference to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time; any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision.

“BBC ODPS”²² and to Sianel Pedwar Cymru (“S4C”).

Broadcasters are required by the terms of their Ofcom licence to observe the Standards Code and the Fairness Code, which are to be interpreted as references to this Code. Observance of this Code is also required in the case of the BBC by the BBC Agreement²³ and, in the case of S4C, by statute. Except where the Code states otherwise, the term “television broadcasters” refers to providers of television programme services (including any local services such as restricted television services), the BBC and S4C; ~~and~~ “radio broadcasters” refers to providers of radio programme services (including local and community radio services and community digital sound programme services) and the BBC; **“broadcaster” includes the BBC as provider of BBC ODPS; and “broadcast” and “broadcasting” include making programmes available on BBC ODPS. Sections Five, Six, Nine, with the exception of the relevant product placement rules (see Section Nine), and Ten of the Code do not apply to BBC services funded by the licence fee.** No part of the Code applies to the BBC World Service ~~funded by grant in aid.~~

Under the Act, the provider of a service is the person with “general control” over which programmes and other facilities and services are comprised in the service (section 362(2) of the Act).

General control is wider than editorial control in that it includes control over services and facilities to which access is provided (for example through the inclusion in the main service of a link or facility to interactive features) and over which the broadcaster may not have editorial control.

Although a link included in the service may lead to features outside of that service which are not regulated by Ofcom, the provision of access to those features by, for instance, the inclusion of a link, is within the control of the broadcaster and so within Ofcom’s remit. Ofcom may therefore require such a link or facility to be removed where Ofcom has concerns, in the light of its statutory duties and, in particular, the standards objectives set out in section 319 of the Act, about the material to which it leads. In any event, the transition from broadcaster to third-party control must be clear to the viewer, so as to manage both audience expectations regarding the material to which they are being led and the risk to the broadcaster of being found in breach of this Code (for example Rules 1.2 and 2.1).

Where the Code has been breached, Ofcom will normally publish a finding and explain why a broadcaster has breached the Code (these findings are available in Ofcom’s Broadcast **and On Demand** Bulletins at www.ofcom.org.uk). When a broadcaster breaches the Code deliberately, seriously, ~~or~~ repeatedly **or recklessly**, Ofcom may impose statutory sanctions against the broadcaster.²⁴ Ofcom’s procedures for investigating cases (following the receipt of a complaint or otherwise) and applying statutory sanctions to broadcasters are also on the website. Members of the public who have no access to the web can ask Ofcom to send them a copy of the procedures by post.

²² **Currently the BBC iPlayer (both audiovisual and sound programmes).**

²³ The BBC Agreement is the Agreement dated ~~November 2016~~ **July 2006** between Her Majesty’s Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation as may be amended from time to time.

²⁴ **In the case of the BBC, Ofcom’s power to impose sanctions is set out in the BBC Charter.**

Broadcasting Code Review – preparing for Ofcom’s new responsibilities for regulating the BBC

The Code is divided into sections which are primarily drawn from the objectives as set out in section 319(2) of the Act and section 107(1) of the 1996 Act, as well as the Representation of the People Act 1983 (as amended).

How to Use the Code

The Code is set out in terms of principles, meanings and rules and, for Sections Seven (Fairness) and Eight (Privacy), also includes a set of “practices to be followed” by broadcasters. The principles are there to help readers understand the standards objectives and to apply the rules. Broadcasters must ensure that they comply with the rules as set out in the Code. The meanings help explain what Ofcom intends by some of the words and phrases used in the Code. The most relevant broadcasting legislation is noted under each section heading so readers can turn to the legislation if they wish.

When applying the Code to content, broadcasters should be aware that the context in which the material appears is key. In setting this Code, Ofcom has taken into account (as required by section 319(4) of the Act) the following:

- (a) the degree of harm and offence likely to be caused by the inclusion of any particular sort of material in programmes generally or in programmes of a particular description;
- (b) the likely size and composition of the potential audience for programmes included in television and radio services generally or in television and radio services of a particular description;
- (c) the likely expectation of the audience as to the nature of a programme’s content and the extent to which the nature of a programme’s content can be brought to the attention of potential members of the audience;
- (d) the likelihood of persons who are unaware of the nature of a programme’s content being unintentionally exposed, by their own actions, to that content;
- (e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section;
- (f) the desirability of maintaining the independence of editorial control over programme content.

These criteria have informed Ofcom’s approach to setting the Code and therefore must be taken into account by broadcasters when interpreting the rules.

The Code does not seek to address each and every case that could arise. Broadcasters may face a number of individual situations which are not specifically referred to in this Code. Examples included in the Code are not exhaustive. However, the principles, as outlined in the following sections, should make clear what the Code is designed to achieve and help broadcasters make the necessary judgements.

In applying the Code to BBC ODPS, the on demand nature of the service should be taken into account. Specific provision is made in certain rules for BBC ODPS.

To assist further those who work in broadcasting, as well as viewers and listeners who wish to understand broadcasting standards, guidance to accompany the Code will also be issued by Ofcom on the Ofcom website and will be reviewed regularly.

Broadcasters should be familiar with their audiences and ensure that programme content can always be justified by the context and the editorial needs of the programme. (In the Code, the word ‘programmes’ is taken to mean both television programmes and radio programming, **and programmes made available on BBC ODPS.**)

Broadcasters may make programmes about any issue they choose, but it is expected that broadcasters will ensure at all times that their programmes comply with the general law, as well as the Code.

General guidance on the Code

It is the responsibility of the broadcaster to comply with the Code. Programme makers who require further advice on applying this Code should, in the first instance, talk to those editorially responsible for the programme and to the broadcaster’s compliance and legal officers.

Ofcom can offer general guidance on the interpretation of the 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.

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 27 of the Audiovisual Media Services Directive, **and Article 10 of the European Convention on Human Rights, and the BBC Charter and Agreement.**)

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

Principle

To ensure that people under eighteen are protected.

Rules²⁵

Scheduling and content information

- 1.1 Material that might seriously impair the physical, mental or moral development of people under eighteen must not be broadcast.
- 1.2 In the provision of services, broadcasters must take all reasonable steps to protect people under eighteen. For television services, this is in addition to their obligations resulting from the Audiovisual Media Services Directive (in particular, Article 27, see Appendix 2).
- 1.3 Children must also be protected by appropriate scheduling from material that is unsuitable for them. **Although scheduling requirements in this section are not relevant to the provision of programmes on demand, the BBC must put in place appropriate measures on BBC ODPS that provide equivalent protection for children.**

Meaning of “children”:

Children are people under the age of fifteen years.

Meaning of “appropriate scheduling”:

Appropriate scheduling should be judged according to:

- the nature of the content;
- the likely number and age range of children in the audience, taking into account school time, weekends and holidays;
- the start time and finish time of the programme;
- the nature of the channel or station and the particular programme; and
- the likely expectations of the audience for a particular channel or station at a particular time and on a particular day.

- 1.4 Television broadcasters must observe the watershed.

Meaning of “the watershed”:

The watershed only applies to television. The watershed is at 2100. Material unsuitable for children should not, in general, be shown before 2100 or after 0530.

On premium subscription film services which are not protected as set out in Rule 1.24 the watershed is at 2000. There is no watershed on premium subscription film services

²⁵ **Unless expressly stated otherwise, this section also applies to BBC on demand programme services (“BBC ODPS”). Scheduling requirements in Rules 1.3, 1.4, 1.5 and 1.6 do not apply to BBC ODPS.**

or pay per view services which are protected as set out in Rules 1.24 and 1.25 respectively.

1.5 Radio broadcasters must have particular regard to times when children are particularly likely to be listening.

Meaning of “when children are particularly likely to be listening”:

This phrase particularly refers to the school run and breakfast time, but might include other times.

1.6 The transition to more adult material must not be unduly abrupt at the watershed (in the case of television) or after the time when children are particularly likely to be listening (in the case of radio). For television, the strongest material should appear later in the schedule.

1.7 For television programmes broadcast before the watershed, or for radio programmes broadcast when children are particularly likely to be listening, **or for BBC ODPS content that is likely to be accessed by children**, clear information about content that may distress some children should be given, if appropriate, to the audience (taking into account the context).

(For the meaning of “context” see Section Two: Harm and Offence.)

Meaning of “likely to be accessed by children”

Factors affecting whether content is likely to be accessed by children include (but are not limited to):

- **the nature of the content – whether it is aimed at or has particular appeal to children;**
- **the nature of access to the content e.g. whether there are measures in place that are intended to prevent children from viewing and/or listening to the content;**
- **the prominence and position of the content within the BBC ODPS; and/or**
- **the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information.**

The coverage of sexual and other offences in the UK involving under-eighteens

1.8 Where statutory or other legal restrictions apply preventing personal identification, broadcasters should also be particularly careful not to provide clues which may lead to the identification of those who are not yet adult (the defining age may differ in different parts of the UK) and who are, or might be, involved as a victim, witness, defendant or other perpetrator in the case of sexual offences featured in criminal, civil or family court proceedings:

- by reporting limited information which may be pieced together with other information available elsewhere, for example in newspaper reports (the ‘jigsaw effect’);

- inadvertently, for example by describing an offence as “incest”; or
- in any other indirect way.

(Note: Broadcasters should be aware that there may be statutory reporting restrictions that apply even if a court has not specifically made an order to that effect.)

- 1.9 When covering any pre-trial investigation into an alleged criminal offence in the UK, broadcasters should pay particular regard to the potentially vulnerable position of any person who is not yet adult who is involved as a witness or victim, before broadcasting their name, address, identity of school or other educational establishment, place of work, or any still or moving picture of them. Particular justification is also required for the broadcast of such material relating to the identity of any person who is not yet adult who is involved in the defence as a defendant or potential defendant.

Drugs, smoking, solvents and alcohol

- 1.10 The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:
- must not be featured in programmes made primarily for children unless there is strong editorial justification;
 - must generally be avoided and in any case must not be condoned, encouraged or glamorised in other programmes broadcast before the watershed (in the case of television), ~~or~~ when children are particularly likely to be listening (in the case of radio), **or when content is likely to be accessed by children (in the case of BBC ODPS)** unless there is editorial justification;
 - must not be condoned, encouraged or glamorised in other programmes likely to be widely seen, ~~or~~ heard **or accessed** by under-eighteens unless there is editorial justification.

Violence and dangerous behaviour

- 1.11 Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed (in the case of television), ~~or~~ when children are particularly likely to be listening (in the case of radio) **or when content is likely to be accessed by children (in the case of BBC ODPS)** and must also be justified by the context.
- 1.12 Violence, whether verbal or physical, that is easily imitable by children in a manner that is harmful or dangerous:
- must not be featured in programmes made primarily for children unless there is strong editorial justification;
 - 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), **or when content is likely to be accessed by children (in the case of BBC ODPS)**, unless there is editorial justification.
- 1.13 Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful:

- must not be featured in programmes made primarily for children unless there is strong editorial justification;
- 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), **or when content is likely to be accessed by children (in the case of BBC ODPS)**, unless there is editorial justification.

(Regarding Rules 1.11 to 1.13 see Rules 2.4 and 2.5 in Section Two: Harm and Offence.)

Offensive language

- 1.14 The most offensive language 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), **or when content is likely to be accessed by children (in the case of BBC ODPS)**.
- 1.15 Offensive language must not be used in programmes made for younger children except in the most exceptional circumstances.
- 1.16 Offensive language 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), **or when content is likely to be accessed by children (in the case of BBC ODPS)**, unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed.

(Regarding Rules 1.14 to 1.16 see Rule 2.3 in Section Two: Harm and Offence.)

Sexual Material

- 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’ - material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation - must not be broadcast at any time other than between 2200 and 0530 on premium subscription services and pay per view/night services which operate with mandatory restricted access.

In addition, measures must be in place to ensure that the subscriber is an adult.

Meaning of “mandatory restricted access”:

Mandatory restricted access means there is a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view.

- 1.19 Broadcasters must ensure that material broadcast after the watershed, **or made available on BBC ODPS**, which contains images and/or language of a strong or explicit sexual nature, but is not ‘adult sex material’ as defined in Rule 1.18 above, is justified by the context.

(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), **or when content is likely to be accessed by children (in the case of BBC ODPS)**, 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, **or when content is likely to be accessed by children on BBC ODPS**, and must be appropriately limited.

Nudity

1.21 Nudity before the watershed, or when content is likely to be accessed by children **(in the case of BBC ODPS)**, must be justified by the context.

Films, premium subscription film services, pay per view services

1.22 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.

1.23 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.

1.24 Premium subscription film services may broadcast up to BBFC 15-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2000 and post-0530.

In addition, those security systems which are in place to protect children must be clearly explained to all subscribers.

(See meaning of “mandatory restricted access” under Rule 1.18 above.)

1.25 Pay per view services may broadcast up to BBFC 18-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2100 and post-0530.

In addition:

- information must be provided about programme content that will assist adults to assess its suitability for children;
- there must be 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 must be clearly explained to all subscribers.

(See meaning of “mandatory restricted access” under Rule 1.18 above.)

1.26 BBFC R18-rated films must not be broadcast.

Exorcism, the occult and the paranormal

1.27 Demonstrations of exorcisms, occult practices and the paranormal (which purport to be real), must not be shown before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), **or when content is likely to be accessed by children (in the case of BBC ODPS).**

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, **or when content is likely to be accessed by children (in the case of BBC ODPS).** (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.)

The involvement of people under eighteen in programmes

1.28 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*.

1.29 People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes.

1.30 Prizes aimed at children must be appropriate to the age range of both the target audience and the participants.

(See Rule 2.16 in Section Two: Harm and Offence.)

Section Two: Harm and Offence

(Relevant legislation includes, in particular, sections 3(4)(g) and 319(2)(a),(f) and (l) of the Communications Act 2003, **and** Articles 10 and 14 of the European Convention on Human Rights, **and the BBC Charter and Agreement.**)

This section must be read in conjunction with Section One: Protecting the Under-Eighteens. The rules in this section are designed not only to provide adequate protection for adults but also to protect people under eighteen.

Principle

To ensure 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 inclusion in such services of harmful and/or offensive material.

Rules²⁶

Generally Accepted Standards

- 2.1 Generally accepted standards must be applied to the contents of television and radio services **and BBC ODPS** so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.
- 2.2 Factual programmes or items or portrayals of factual matters must not materially mislead the audience.

(Note to Rule 2.2: News is regulated under Section Five of the Code.)
- 2.3 In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of “context” below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender **reassignment, pregnancy and maternity**, race, religion, **or beliefs, sex** and sexual orientation, **and marriage and civil partnership**). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.

Meaning of “context”:

Context includes (but is not limited to):

- the editorial content of the programme, programmes or series;
- the service on which the material is broadcast;
- the time of broadcast
- what other programmes are scheduled before and after the programme or programmes concerned
- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description;
- the likely size and composition of the potential audience and likely expectation of

²⁶ **Unless expressly stated otherwise, this section also applies to BBC on demand programme services (“BBC ODPS”).**

- the audience;
- the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information; and
- the effect of the material on viewers or listeners who may come across it unawares.

Time and scheduling of broadcast are not relevant to the provision of programmes on demand but, for programmes made available on BBC ODPS, context also includes (but is not limited to):

- **the nature of access to the content e.g. whether there are measures in place that are intended to prevent children from viewing and/or listening to the content:**
- **the prominence and position of the content within the BBC ODPS.**

Violence, dangerous behaviour and suicide

2.4 Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour.

(See Rules 1.11 to 1.13 in Section One: Protecting the Under-Eighteens.)

2.5 Methods of suicide and self-harm must not be included in programmes except where they are editorially justified and are also justified by the context.

(See Rule 1.13 in Section One: Protecting the Under-Eighteens.)

Exorcism, the occult and the paranormal

2.6 Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these that purport to be real (as opposed to entertainment) must be treated with due objectivity.

(See Rule 1.27 in Section One: Protecting the Under-Eighteens, concerning scheduling restrictions.)

2.7 If a demonstration of exorcism, the occult, the paranormal, divination, or practices related to any of these is for entertainment purposes, this must be made clear to viewers and listeners.

2.8 Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these (whether such demonstrations purport to be real or are for entertainment purposes) must not contain life-changing advice directed at individuals.

(Religious programmes are exempt from this rule but must, in any event, comply with the provisions in Section Four: Religion. Films, dramas and fiction generally are not bound by this rule.)

Meaning of “life-changing”:

Life-changing advice includes direct advice for individuals upon which they could reasonably act or rely about health, finance, employment or relationships.

Hypnotic and other techniques, simulated news and photosensitive epilepsy

- 2.9 When broadcasting material featuring demonstrations of hypnotic techniques, broadcasters must exercise a proper degree of responsibility in order to prevent hypnosis and/or adverse reactions in viewers and listeners. The hypnotist must not broadcast his/her full verbal routine or be shown performing straight to camera.
- 2.10 Simulated news (for example in drama or in documentaries) must be broadcast in such a way that there is no reasonable possibility of the audience being misled into believing that they are listening to, or watching, actual news.
- 2.11 Broadcasters must not use 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.
- 2.12 Television broadcasters must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance (see the Ofcom website), and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item.

Broadcast competitions and voting

- 2.13 Broadcast competitions and voting must be conducted fairly.
- 2.14 Broadcasters must ensure that viewers and listeners are not materially misled about any broadcast competition or voting.
- 2.15 Broadcasters must draw up rules for a broadcast competition or vote. These rules must be clear and appropriately made known. In particular, significant conditions that may affect a viewer’s or listener’s decision to participate must be stated at the time an invitation to participate is broadcast.
- 2.16 Broadcast competition prizes must be described accurately.
(See also Rule 1.30 in Section One: Protecting the Under-Eighteens, which concerns the provision of appropriate prizes for children.)

Note:

For circumstances in which audience participation or interaction with programming (including broadcast competitions and voting) may involve a cost to the viewer, television broadcasters should also refer to Rules 9.26 to 9.30. Radio broadcasters should refer to Rules 10.9 and 10.10.

Meaning of “broadcast competition”:

A competition or free prize draw featured in a programme in which viewers or listeners are invited to enter by any means 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 by any means to decide or influence, at any stage, the outcome of a contest.

Section Three: Crime, Disorder, Hatred and Abuse

(Relevant legislation includes, in particular, sections 3(4)(j) and 319(2)(b) and (f) of the Communications Act 2003, Article 6 of the Audiovisual Media Services Directive, **and Article 10 of the European Convention on Human Rights, and the BBC Charter and Agreement.**)

Foreword

This section of the Code covers material that is likely to incite crime or disorder, reflecting Ofcom’s duty to prohibit the broadcast of this type of programming.

There are also rules in this section covering material containing hatred, abusive and derogatory treatment, and portrayals of crime and criminal proceedings. These are relevant to Ofcom’s duty to provide adequate protection for members of the public from the inclusion in television and radio services of offensive and harmful material. (See also Section Two: Harm and Offence).

The rules in this section are intended to reflect broadcasters’ right to freedom of expression and audiences’ right to receive information and ideas. For example, broadcasters may wish to report on or interview people or organisations with extreme or challenging views in news and current affairs coverage, which is clearly in the public interest. There are various editorial approaches broadcasters can take to provide context when featuring extreme and/or offensive views in broadcast material, some of which are set out below.

As with other sections of the Code, no rule should be read in isolation but in the context of the whole Code and the supporting notes provided. Broadcasters should also refer to Ofcom’s published guidance for more information on complying material under this Section.

Principle

To ensure that material likely to encourage or incite the commission of crime or to lead to disorder is not included in television or radio services or BBC ODPS.

Rules²⁷

Incitement of crime and disorder

3.1 Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services or BBC ODPS.

Note:

Under Rule 3.1, “material” may include but is not limited to:

- content which directly or indirectly amounts to a call to criminal action or disorder;

²⁷ **Unless expressly stated otherwise, this section also applies to BBC on demand programme services (“BBC ODPS”).**

- material promoting or encouraging engagement in terrorism or other forms of criminal activity or disorder; and/or
- hate speech which is likely to encourage criminal activity or lead to disorder.

Meaning of “terrorism”: see the definition in section 1 of the Terrorism Act 2000, which is also summarised in Ofcom’s guidance to this section of the Code.

Meaning of “hate speech”: all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation.

Meaning of “crime”: this may relate to any offence under law that is punishable by imprisonment or by a fine.

Meaning of “disorder”: this includes but is not limited to the criminal offence of civil disorder.

Meaning of “likely to encourage or to incite the commission of crime or to lead to disorder”:

A portrayal of crime, or of incitement to crime, will not necessarily result in a breach of Rule 3.1. The likelihood of content inciting crime or leading to disorder will depend on the nature of the material as well as the context in which it is presented to the audience.

Significant contextual factors under Rule 3.1 may include (but are not limited to):

- the editorial purpose of the programme;
- the status or position of anyone featured in the material; and/or
- whether sufficient challenge is provided to the material.

For example, there may be greater potential for material to encourage or incite the commission of crime if a programme sets out to influence the audience on a subject or theme, or provides an uncritical platform for an authoritative figure to advocate criminal activity or disorder.

There may be less potential for a breach of Rule 3.1 if opposing viewpoints and sufficient challenge are provided to people or organisations who advocate criminal activity or disorder, or where a programme seeks to provide an examination of or commentary on criminal activity or disorder in the public interest.

Other examples of contextual factors are provided in Ofcom’s guidance to this Section of the Code.

Hatred and Abuse

Note:

Rules 3.2 and 3.3 reflect the standards objective on the provision of adequate protection for members of the public from the inclusion of offensive and harmful material (section 319(2)(f) of the Communications Act 2003).

3.2 Material which contains hate speech must not be included in television and radio programmes **or BBC ODPS** except where it is justified by the context.

Broadcasters’ attention is drawn to sections 22 and 29F of the Public Order Act 1986, which sets out criminal offences arising from the broadcast of material stirring up hatred relating to race, religion, or sexual orientation.

3.3 Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services **or BBC ODPS** except where it is justified by the context. (See also Rule 4.2).

Meaning of “context” under Rule 3.2 and Rule 3.3:

Key contextual factors may include, but are not limited to:

- the genre and editorial content of the programme, programmes or series and the likely audience expectations. For example, there are certain genres such as drama, comedy or satire where there is likely to be editorial justification for including challenging or extreme views in keeping with audience expectations, provided there is sufficient context. The greater the risk for the material to cause harm or offence, the greater the need for more contextual justification;
- the extent to which sufficient challenge is provided;
- the status or position of anyone featured in the material;
- the service on which the material is broadcast; and
- the likely size and composition of the potential audience and likely expectation of the audience.

Portrayals of crime and criminal proceedings

3.4 While criminal proceedings are active, no payment or promise of payment may be made, directly or indirectly, to any witness or any person who may reasonably be expected to be called as a witness. Nor should any payment be suggested or made dependent on the outcome of the trial. Only actual expenditure or loss of earnings necessarily incurred during the making of a programme contribution may be reimbursed.

3.5 Where criminal proceedings are likely and foreseeable, payments should not be made to people who might reasonably be expected to be witnesses unless there is a clear public interest, such as investigating crime or serious wrongdoing, and the payment is necessary to elicit the information. Where such a payment is made it will be appropriate to disclose the payment to both defence and prosecution if the person becomes a witness in any subsequent trial.

3.6 Broadcasters must use their best endeavours so as not to broadcast material that could endanger lives or prejudice the success of attempts to deal with a hijack or kidnapping.

Section Four: Religion

(Relevant legislation includes, in particular, sections 319(2)(e) and 319(6) of the Communications Act 2003, **and** Articles 9, 10 and 14, of the European Convention on Human Rights, **and the BBC Charter and Agreement.**)

The rules in this section apply to religious programmes.

Principles

To ensure that broadcasters exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes.

To ensure that religious programmes do not involve any improper exploitation of any susceptibilities of the audience for such a programme.

To ensure that religious programmes do not involve any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.

Rules²⁸

4.1 Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes.

Meaning of a “religious programme”:

A religious programme is a programme which deals with matters of religion as the central subject, or as a significant part, of the programme.

- 4.2 The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment.
- 4.3 Where a religion or religious denomination is the subject, or one of the subjects, of a religious programme, then the identity of the religion and/or denomination must be clear to the audience.
- 4.4 Religious programmes must not seek to promote religious views or beliefs by stealth.
- 4.5 Religious programmes on television services **or BBC ODPS** must not seek recruits. This does not apply to specialist religious television services. Religious programmes on radio services may seek recruits.

Meaning of “seek recruits”:

Seek recruits means directly appealing to audience members to join a religion or religious denomination.

4.6 Religious programmes must not improperly exploit any susceptibilities of the audience.

(Regarding charity appeals in programming and appeals for funds by broadcasters, television broadcasters should refer to Rules 9.33 and 9.34, and 9.36 to 9.39. Radio broadcasters should refer to Rules 10.11 and 10.12).

²⁸ **Unless expressly stated otherwise, this section also applies to BBC on demand programme services (“BBC ODPS”).**

4.7 Religious programmes that contain claims that a living person (or group) has special powers or abilities must treat such claims with due objectivity and must not broadcast such claims when significant numbers of children may be expected to be watching (in the case of television), or when children are particularly likely to be listening (in the case of radio), **or when content is likely to be accessed by children (in the case of BBC ODPS).**

(For the meaning of “likely to be accessed by children” see Section One: Protecting the Under-Eighteens.)

**OFCOM’S PROPOSED CHANGES TO SECTION FIVE
(DUE IMPARTIALITY AND DUE ACCURACY) AND
SECTION SIX (ELECTIONS AND REFERENDUMS) ARE
INCLUDED IN A SEPARATE CONSULTATION.**

https://www.ofcom.org.uk/data/assets/pdf_file/0024/93840/Larger-parties-and-BBC-impartiality.pdf

Section Seven: Fairness

(Relevant legislation includes, in particular, sections 3(2)(f) and 326 of the Communications Act 2003 and sections 107(1) and 130 of the Broadcasting Act 1996 (as amended), Article 28 of the Audiovisual Media Services Directive, ~~and~~ Article 10 of the European Convention on Human Rights, and the BBC Charter and Agreement.)

Foreword

This section and the following section on privacy are different from other sections of the Code. They apply to how broadcasters treat the individuals or organisations directly affected by programmes, rather than to what the general public sees and/or hears as viewers and listeners.

As well as containing a principle and a rule this section contains “practices to be followed” by broadcasters when dealing with individuals or organisations participating in or otherwise directly affected by programmes as broadcast. Following these practices will not necessarily avoid a breach of this section of the Code (Rule 7.1). *However, failure to follow these practises will only constitute a breach where it results in unfairness to an individual or organisation in the programme.* Importantly, the Code does not and cannot seek to set out all the “practices to be followed” in order to avoid unfair treatment.

The following provisions in the next section on privacy are also relevant to this section:

- the explanation of public interest that appears in the meaning of “warranted” under Rule 8.1 in Section Eight: Privacy;
- the meaning of surreptitious filming or recording that appears under “practices to be followed” 8.13 in Section Eight: Privacy.

Principle

To ensure that broadcasters avoid unjust or unfair treatment of individuals or organisations in programmes.

Rule²⁹

7.1 Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes.

Practices to be followed (7.2 to 7.14 below)

Dealing fairly with contributors and obtaining informed consent

7.2 Broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise.

7.3 Where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage:

²⁹ **Unless expressly stated otherwise, this section also applies to BBC on demand programme services (“BBC ODPS”).**

- be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast;
- be told what kind of contribution they are expected to make, for example live, pre-recorded, interview, discussion, edited, unedited, etc.;
- be informed about the areas of questioning and, wherever possible, the nature of other likely contributions;
- be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness;
- be told the nature of their contractual rights and obligations and those of the programme maker and broadcaster in relation to their contribution; and
- be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

Taking these measures is likely to result in the consent that is given being ‘informed consent’ (referred to in this section and the rest of the Code as “consent”).

It may be fair to withhold all or some of this information where it is justified in the public interest or under other provisions of this section of the Code.

- 7.4 If a contributor is under sixteen, consent should normally be obtained from a parent or guardian, or other person of eighteen or over *in loco parentis*. In particular, persons under sixteen should not be asked for views on matters likely to be beyond their capacity to answer properly without such consent.
- 7.5 In the case of persons over sixteen who are not in a position to give consent, a person of eighteen or over with primary responsibility for their care should normally give it on their behalf. In particular, persons not in a position to give consent should not be asked for views on matters likely to be beyond their capacity to answer properly without such consent.
- 7.6 When a programme is edited, contributions should be represented fairly.
- 7.7 Guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity, should normally be honoured.
- 7.8 Broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create unfairness. This applies both to material obtained from others and the broadcaster’s own material.

Opportunity to contribute and proper consideration of facts

- 7.9 Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that:
- material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation; and
 - anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.
- 7.10 Programmes – such as dramas and factually-based dramas – should not portray

facts, events, individuals or organisations in a way which is unfair to an individual or organisation.

- 7.11 If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.
- 7.12 Where a person approached to contribute to a programme chooses to make no comment or refuses to appear in a broadcast, the broadcast should make clear that the individual concerned has chosen not to appear and should give their explanation if it would be unfair not to do so.
- 7.13 Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

Deception, set-ups and ‘wind-up’ calls

- 7.14 Broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception. (Deception includes surreptitious filming or recording.) However:
- it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means;
 - where there is no adequate public interest justification, for example some unsolicited wind-up calls or entertainment set-ups, consent should be obtained from the individual and/or organisation concerned before the material is broadcast;
 - if the individual and/or organisation is/are not identifiable in the programme then consent for broadcast will not be required;
 - material involving celebrities and those in the public eye can be used without consent for broadcast, but it should not be used without a public interest justification if it is likely to result in unjustified public ridicule or personal distress. (Normally, therefore such contributions should be pre-recorded.)
- (See “practices to be followed” 8.11 to 8.15 in Section Eight: Privacy.)

Section Eight: Privacy

(Relevant legislation includes, in particular, sections 3(2)(f) and 326 of the Communications Act 2003, sections 107(1) and 130 of the Broadcasting Act 1996 (as amended), ~~and~~ Articles 8 and 10 of the European Convention on Human Rights, and the BBC Charter and Agreement.)

Foreword

This section and the preceding section on fairness are different from other sections of the Code. They apply to how broadcasters treat the individuals or organisations directly affected by programmes, rather than to what the general public sees and/or hears as viewers and listeners.

As well as containing a principle and a rule this section contains “practices to be followed” by broadcasters when dealing with individuals or organisations participating or otherwise directly affected by programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of this section of the Code (Rule 8.1). *However, failure to follow these practises will only constitute a breach where it results in an unwarranted infringement of privacy.* Importantly, the Code does not and cannot seek to set out all the “practices to be followed” in order to avoid an unwarranted infringement of privacy.

The Broadcasting Act 1996 (as amended) requires Ofcom to consider complaints about unwarranted infringement of privacy in a programme or in connection with the obtaining of material included in a programme. This may call for some difficult on-the-spot judgments about whether privacy is unwarrantably infringed by filming or recording, especially when reporting on emergency situations (“practices to be followed” 8.5 to 8.8 and 8.16 to 8.19). We recognise there may be a strong public interest in reporting on an emergency situation as it occurs and we understand there may be pressures on broadcasters at the scene of a disaster or emergency that may make it difficult to judge at the time whether filming or recording is an unwarrantable infringement of privacy. These are factors Ofcom will take into account when adjudicating on complaints.

Where consent is referred to in Section Eight it refers to informed consent. Please see “practice to be followed” 7.3 in Section Seven: Fairness.

Principle

To ensure that broadcasters avoid any unwarranted infringement of privacy in programmes and in connection with obtaining material included in programmes.

Rule³⁰

8.1 Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

Meaning of “warranted”:

In this section “warranted” has a particular meaning. It means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to

³⁰ **Unless expressly stated otherwise, this section also applies to BBC on demand programme services (“BBC ODPS”).**

demonstrate why in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

Practices to be followed (8.2 to 8.22)

Private lives, public places and legitimate expectation of privacy

Meaning of “legitimate expectation of privacy”:

Legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy. People under investigation or in the public eye, and their immediate family and friends, retain the right to a private life, although private behaviour can raise issues of legitimate public interest.

- 8.2 Information which discloses the location of a person’s home or family should not be revealed without permission, unless it is warranted.
- 8.3 When people are caught up in events which are covered by the news they still have a right to privacy in both the making and the broadcast of a programme, unless it is warranted to infringe it. This applies both to the time when these events are taking place and to any later programmes that revisit those events.
- 8.4 Broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted.

Consent

- 8.5 Any infringement of privacy in the making of a programme should be with the person’s and/or organisation’s consent or be otherwise warranted.
- 8.6 If the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. (Callers to phone-in shows are deemed to have given consent to the broadcast of their contribution.)
- 8.7 If an individual or organisation’s privacy is being infringed, and they ask that the filming, recording or live broadcast be stopped, the broadcaster should do so, unless it is warranted to continue.
- 8.8 When filming or recording in institutions, organisations or other agencies, permission should be obtained from the relevant authority or management, unless it is warranted to film or record without permission. Individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required.
 - However, in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before filming or recording and for broadcast from those in sensitive situations (unless

not obtaining consent is warranted). If the individual will not be identifiable in the programme then separate consent for broadcast will not be required.

Gathering information, sound or images and the re-use of material

8.9 The means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

8.10 Broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the broadcaster’s own material.

8.11 Doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep. However, normally broadcasters may, without prior warning interview, film or record people in the news when in public places.

(See “practice to be followed” 8.15).

Meaning of “doorstepping”:

Doorstepping is the filming or recording of an interview or attempted interview with someone, or announcing that a call is being filmed or recorded for broadcast purposes, without any prior warning. It does not, however, include vox-pops (sampling the views of random members of the public).

8.12 Broadcasters can record telephone calls between the broadcaster and the other party if they have, from the outset of the call, identified themselves, explained the purpose of the call and that the call is being recorded for possible broadcast (if that is the case) unless it is warranted not to do one or more of these practices. If at a later stage it becomes clear that a call that has been recorded will be broadcast (but this was not explained to the other party at the time of the call) then the broadcaster must obtain consent before broadcast from the other party, unless it is warranted not to do so.

(See “practices to be followed” 7.14 and 8.13 to 8.15.)

8.13 Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

- there is *prima facie* evidence of a story in the public interest; and
- there are reasonable grounds to suspect that further material evidence could be obtained; and
- it is necessary to the credibility and authenticity of the programme.

See “practices to be followed” 7.14, 8.12, 8.14 and 8.15.)

Meaning of “surreptitious filming or recording”:

Surreptitious filming or recording includes the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing a recording when the other party thinks that it has come to an

end.

8.14 Material gained by surreptitious filming and recording should only be broadcast when it is warranted.

(See also “practices to be followed” 7.14 and 8.12 to 8.13 and 8.15.)

8.15 Surreptitious filming or recording, doorstepping or recorded ‘wind-up’ calls to obtain material for entertainment purposes may be warranted if it is intrinsic to the entertainment and does not amount to a significant infringement of privacy such as to cause significant annoyance, distress or embarrassment. The resulting material should not be broadcast without the consent of those involved. However if the individual and/or organisation is not identifiable in the programme then consent for broadcast will not be required.

(See “practices to be followed” 7.14 and 8.11 to 8.14.)

Suffering and distress

8.16 Broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy, unless it is warranted or the people concerned have given consent.

8.17 People in a state of distress should not be put under pressure to take part in a programme or provide interviews, unless it is warranted.

8.18 Broadcasters should take care not to reveal the identity of a person who has died or of victims of accidents or violent crimes, unless and until it is clear that the next of kin have been informed of the event or unless it is warranted.

8.19 Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes.

- In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past.

People under sixteen and vulnerable people

8.20 Broadcasters should pay particular attention to the privacy of people under sixteen. They do not lose their rights to privacy because, for example, of the fame or notoriety of their parents or because of events in their schools.

8.21 Where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from:

- a parent, guardian or other person of eighteen or over *in loco parentis*; and
- wherever possible, the individual concerned;
- unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

8.22 Persons under sixteen and vulnerable people should not be questioned about private matters without the consent of a parent, guardian or other person of eighteen or over *in loco parentis* (in the case of persons under sixteen), or a person with primary responsibility for their care (in the case of a vulnerable person), unless it is warranted to proceed without consent.

Meaning of “vulnerable people”:

This varies, but may include those with learning difficulties, those with mental health problems, the bereaved, people with brain damage or forms of dementia, people who have been traumatised or who are sick or terminally ill.

Section Nine: Commercial References in Television Programming

(Relevant legislation includes, in particular, sections 319(2)(fa), (i) and (j) and 319(4) (a), (c), (e) and (f), section 321(1) and (4) and section 324(3) of the Communications Act 2003; section 202 of the Broadcasting Act 1990 (paragraph 3 in Part 1 of Schedule 2), Articles 9, 10, 11, and Chapter VII (Articles 19 to 26) of the Audiovisual Media Services Directive; regulation 3(4)(d) of the Consumer Protection From Unfair Trading Regulations 2008; section 21(1) of the Financial Services and Markets Act 2000; paragraph 3 of the Investment Recommendation (Media) Regulations Act 2005; ~~and Article 10 of the European Convention on Human Rights~~; and the BBC Charter and Agreement).

Clause 49 of the BBC Agreement makes provision for licence fee-funded BBC services to be partially funded by certain alternative means of finance. As this section applies to BBC UK broadcasting services funded by the licence fee and BBC on demand programme services (“BBC ODPS”), such content must comply with the rules in this Section.

This section of the Code covers all **commercial references that feature within television programming (including audiovisual programming on BBC ODPS).** **Section Ten of the Code concerns radio only.**³¹

~~Section Ten of the Code concerns radio only. Commercial references on t~~The two media are subject to varying legislative requirements. Therefore where similar terminology is used in Sections Nine and Ten of the Code, it does not necessarily have the same meaning. Broadcasters should refer to the specific meanings provided in each section.

Note:

This section of the Code contains **a set of principles and general, overarching rules** that apply to ~~all commercial references in~~ television programming. It also contains **specific rules** for different types of commercial ~~references activity~~ (e.g. product placement, programme-related material, sponsorship), **whether it is carried out on behalf of commercial or non-commercial entities.**

The rules ensure that the principles of editorial independence; distinction between advertising and editorial content; transparency of commercial arrangements; and consumer protection are maintained.

~~This section does not apply to BBC services funded by the licence fee, with the exception of the relevant product placement rules (see the additional note on the BBC that accompanies the product placement rules).~~

Meaning of “programming”:

³¹ **Including audio-only content on BBC ODPS.**

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

Meaning of “commercial reference”:

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

Meaning of “trade mark”:

In relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.

Principles

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

To ensure that there is distinction between editorial content and advertising (distinction).

To protect audiences from surreptitious advertising (transparency).

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

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

Rules

General rules

Note:

Rules 9.1 to 9.5 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 Broadcasters must ensure that editorial content is distinct from advertising.

Note:

For the definition of “advertising”, see Ofcom’s Code on the scheduling of television advertising (“COSTA”).

9.3 Surreptitious advertising is prohibited.

Meaning of “surreptitious advertising”:

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

9.4 Products, services and trade marks must not be promoted in programming.

Note:

For specific exemptions to this rule, see rules on premium rate services (Rules 9.26 to 9.30) and rules on programme-related material (Rules 9.31 and 9.32).

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

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

Product placement (and prop placement)

Broadcasters should note that the meanings set out below are statutory definitions included in UK legislation (unless indicated otherwise, the Communications Act 2003, as amended).

Meaning of “product placement”:

The inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider, and is not prop placement.

Meaning of “prop placement”:

The inclusion in a programme of, or of a reference to, a product, service or trade mark where the provision of the product, service or trade mark has no significant value, and no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trade mark, or a reference to it, in the programme.

Prop placement involving the supply of products or services that are of “significant value” will be treated as product placement and must comply with Rules 9.6 to 9.14.

Meaning of “significant value”:

A residual value that is more than trivial.

Meaning of “residual value”:

Any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trade mark, or a reference to it, in a programme.

Meaning of “relevant provider”:

The provider of the television programme service in which the programme is included or the producer of the programme.

Meaning of “connected person”:

Connected person has the same meaning as it has in section 202 of the Broadcasting Act 1990 (paragraph 3 in Part 1 of Schedule 2). The full definition is reproduced in Appendix 1 of the Code (Relevant UK Legislation). In summary, the following persons are connected with a particular person (‘person’ includes an individual as well as a body corporate and other incorporated and unincorporated legal entities):

- (a) a person who controls that person;
- (b) an associate of that person or of the person in (a); and
- (c) a body which is controlled by that person or an associate of that person.

Control and associate have the meanings set out in paragraph 1, Part 1, Schedule 2 of the 1990 Act. The full definition is reproduced in Appendix 1 of the Code (Relevant UK Legislation).

Notes:

- 1) ~~The BBC is prohibited from accepting most types of commercial revenue in relation to services funded by the licence fee. However, the Act’s product placement requirements apply to programmes the BBC acquires or those produced/commissioned by its commercial services or any connected entities. The Code rules required by the Act apply to the BBC in those respects.~~
- 2) 1) The following rules also apply to paid-for references to products, services or trade marks that are included in a programme for a non-commercial purpose.
- 3) 2) ~~The rules do not permit the inclusion in programmes of paid-for references to other interests of third party funders (e.g. their aims, objectives or beliefs).~~ Broadcasters should also refer to Rule 9.1 and Section Five of the Code.

Rules 9.6 to 9.11 apply to all programmes

9.6 Product placement is prohibited except in the following programme genres:

- a) films;
- b) series made for television (or other audiovisual media services);
- c) sports programmes; and
- d) light entertainment programmes.

Meaning of “films”:

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

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

9.7 Programmes that fall within the permitted genres must not contain product placement if they are:

- a) news programmes; or
- b) children’s programmes.

Meaning of a “children’s programme”:

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

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

Note:

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

9.9 References to placed products, services and trade marks must not be promotional.

9.10 References to placed products, services and trade marks must not be unduly prominent.

Note:

Broadcasters should refer to the guidance accompanying Section Nine of the Code for further information on how to apply Rules 9.9 and 9.10.

9.11 The product placement of the following products, services or trade marks is prohibited:

- a) cigarettes or other tobacco products;
- b) placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products;
- c) prescription-only medicines; or
- d) electronic cigarettes or refill containers.

Meaning of “electronic cigarette”:

An electronic cigarette is a product that (i) can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether it is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges), and (ii) is not a medical product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002.

Meaning of “refill container”:

A refill container is a receptacle that (i) contains a nicotine-containing liquid, which can be used to refill an electronic cigarette; and (ii) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002.

In addition to Rules 9.6 to 9.11, Rules 9.12 to 9.13 also apply to product placement included in all programmes produced under UK jurisdiction:

Meaning of “programmes produced under UK jurisdiction”:

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

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

9.12 Product placement is not permitted in the following:

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

Meaning of “current affairs programme”:

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

9.13 The product placement of the following is prohibited:

- a) alcoholic drinks;
- b) foods or drinks high in fat, salt or sugar (“HFSS”);
- c) gambling;
- d) infant formula (baby milk), including follow-on formula;
- e) all medicinal products
- f) cigarette lighters, cigarette papers, or pipes intended for smoking; or

- g) any product, service or trade mark that is not allowed to be advertised on television.

Note:

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

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

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

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

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

Note:

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

Acquired programmes and signalling:

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

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

Sponsorship

Meaning of “sponsored programming”:

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

Meaning of “sponsor”:

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

Meaning of “sponsor reference”:

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

Meaning of “costs”:

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

Note:

- 1) The rules seek to ensure editorial independence is preserved and a distinction is maintained between editorial and advertising. They also aim to protect against unsuitable sponsorship, and to ensure that sponsorship arrangements adhere to the principle of transparency.
- 2) With the exception of the sponsorship credits, any reference to a sponsor, **its products, services or trade marks**, that appears in a sponsored programme as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement and must comply with Rules 9.6 to 9.14.

Content that may not be sponsored

9.15 News and current affairs programmes must not be sponsored.

Meaning of “current affairs programme”:

See meaning under Rule 9.12.

Prohibited and restricted sponsors

9.16 Programming (including a channel) may not be sponsored by any sponsor that is prohibited from advertising on television. This rule does not apply to electronic cigarettes and refill containers which are subject to Rule 9.16(a).

- a) Sponsored programming with the aim or direct or indirect effect of promoting electronic cigarettes and/or refill containers is prohibited.

(See meaning of “electronic cigarette” and “refill container” under Rule 9.11 above.)

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

Content of sponsored output

9.18 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.

Note:

This rule should be read in conjunction with Rules 9.1 to 9.5.

Sponsorship arrangements should not lead to the creation or distortion of editorial content so that it becomes a vehicle for the purpose of promoting the sponsor or its interests.

There are limited circumstances in which a sponsor (or its products, services or trade marks) may be referred to during a programme it is sponsoring as a result of a commercial arrangement with the broadcaster or programme-maker. For example, in the case of a product placement arrangement (see Rules 9.6 to 9.14) or when the sponsorship arrangement is identified (see Rules 9.19 to 9.25).

Where an incidental reference to the sponsor **(or its products, services, trade marks)** (i.e. a reference that does not result from a commercial arrangement between the sponsor and the broadcaster and/or programme maker or a connected person) appears in a sponsored programme, it must comply with Rules 9.1 to 9.5.

Sponsorship credits

9.19 Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:

- a) the identity of the sponsor by reference to its name or trade mark; and
- b) the association between the sponsor and the sponsored content.

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

Note:

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

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

9.21 Sponsorship credits must be distinct from editorial content.

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

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

trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.

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

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

9.24 Where a sponsorship 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.

Use of Controlled Premium Rate Services

Note:

Controlled Premium Rate Services are a subset of Premium Rate Services which are regulated by PhonepayPlus. Licensees should refer to the guidance for further details about the terms used in this section.

9.26 Where a broadcaster invites viewers to take part in or otherwise interact with its programmes, it may only charge for such participation or interaction by means of controlled premium rate telephone services or other telephony services for which the revenue generated is shared between relevant parties.

9.27 Controlled premium rate telephony services will normally be regarded as products or services, and must therefore not appear in programmes, except where:

- a) they enable viewers to participate directly in or otherwise contribute directly to the editorial content of the programme; or
- b) they fall within the meaning of programme-related material.

Note:

Each of the above exceptions is subject to the undue prominence rule.

- 9.28 Where a controlled premium rate telephony service is featured in a programme, the primary purpose of the programme must continue to be clearly editorial. Promotion of the featured service must be clearly subsidiary to that primary purpose.
- 9.29 Any use of controlled premium rate telephone numbers must comply with the Code of Practice issued by PhonepayPlus.

Non-geographic call costs

- 9.30 The cost to viewers for using non-geographic telephony services must be made clear to them and broadcast as appropriate.

Note:

Non-geographic telephony services are those telephone numbers that are not linked to a specific location. Licensees should refer to the guidance for further details on the application of this rule, as well as guidance to relevant associated rules (see in particular, the guidance to Rules 2.13 to 2.16).

Programme-related material (PRM)

Meaning of “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, or to interact with, that programme.

Notes:

- 1) Broadcasters may refer to the availability of programme-related material without such references counting towards the amount of advertising they are permitted to transmit (as specified in Ofcom’s Code on the scheduling of television advertising (“COSTA”). The following rules support the key principle of editorial independence by ensuring that references to programme-related material are made primarily for editorial and not advertising reasons.
 - 2) Programme-related material may be sponsored (see Rule 9.25).
- 9.31 Programme-related material may be promoted only during or around the programme from which it is directly derived and only where it is editorially justified.

Note:

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

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

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

Cross-promotions

Note:

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

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

Charity appeals

Note:

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

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

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

Financial promotions and investment recommendations

Meaning of “financial promotion”:

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

Meaning of an “investment recommendation”:

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

Note:

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

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

Appeals for funds for programming or services

Note:

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

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

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

Section Ten: Commercial Communications in Radio Programming

(Relevant legislation includes, in particular, sections 319(2)(f), (i) and (j), 319(4)(e) and (f) and 321 of the Communications Act 2003, regulation 3(4)(d) of the Consumer Protection From Unfair Trading Regulations 2008, section 21(1) of the Financial Services and Markets Act 2000, paragraph 3 of the Investment Recommendation (Media) Regulations Act 2005, ~~and Article 10 of the European Convention on Human Rights~~, and the BBC Charter and Agreement).

~~This section of the Code does not apply to BBC services funded by the licence fee, which are regulated on these matters by the BBC Trust. Clause 49 of the BBC Agreement makes provision for licence fee-funded BBC services to be partially funded by certain alternative means of finance. As this section applies to BBC UK broadcasting services funded by the licence fee and BBC on demand programme services (“BBC ODPS”), such content must comply with the rules in this Section. This section of the Code applies to radio only (including audio-only programming on BBC ODPS).~~

Code Section Nine (Commercial References in Television Programming) applies to television only.³² Radio and television are subject to different legislative requirements and terminology is therefore specific to radio in this Code section.

Principle

To ensure the transparency of commercial communications as a means to secure consumer protection.

Rules

General Rules

- 10.1 Programming that is subject to, or associated with, a commercial arrangement must be appropriately signalled, so as to ensure that the commercial arrangement is transparent to listeners.
- 10.2 Spot advertisements must be clearly separated from programming.
- 10.3 No commercial reference, or material that implies a commercial arrangement, is permitted in or around news bulletins or news desk presentations.

This rule does not apply to:

- reference to a news supplier for the purpose of identifying that supplier as a news source;

³² Including audiovisual programming on BBC ODPS.

- specialist factual strands that are not news bulletins or news desk presentations, but may be featured in or around such programming;
- the use of premium rate services (e.g. for station/broadcaster surveys); and
- references that promote the station/broadcaster’s own products and/or services (e.g. the programme/station/broadcaster’s website or a station/broadcaster’s event).

10.4 No commercial reference, or material that implies a commercial arrangement, is permitted on radio services primarily aimed at children or in children’s programming included in any service.

This rule does not apply to:

- credits for third party association with either programming or broadcast competition prize donation;
- the use of premium rate services (e.g. for broadcast competition entry); and
- references that promote the station/broadcaster’s own products and/or services (e.g. the programme/station/broadcaster’s website or a station/broadcaster’s event).

10.5 No commercial arrangement that involves payment, or the provision of some other valuable consideration, to the broadcaster may influence the selection or rotation of music for broadcast.

10.6 No programming may be subject to a commercial arrangement with a third party that is prohibited from advertising on radio. This rule does not apply to electronic cigarettes and refill containers which are subject to Rule 10.6(a).

10.6(a) Sponsored programming with the aim or direct or indirect effect of promoting electronic cigarettes and/or refill containers is prohibited.

10.7 Commercial references in programming must comply with the advertising content and scheduling rules that apply to radio broadcasting.

10.8 Commercial references that require confirmation or substantiation prior to broadcast must be cleared for broadcast in the same way as advertisements.

Programming

Programming comprises all broadcast material other than spot advertisements.

Spot advertisements

Spot advertisements comprise advertising broadcast in commercial breaks.

Commercial arrangement

A commercial arrangement is a contract, or any other formal understanding, between a broadcaster (or any agent or employee of the broadcaster) and a third party (or third parties).

Examples of a commercial arrangement include programming sponsorship, competition prize donation and premium rate service provision. Programming that is subject to a commercial arrangement will therefore generally include payment and/or the provision of some other valuable consideration in return for a commercial reference (whether promotional or not).

Commercial reference

For the purposes of this section of the Code, a commercial reference is a reference in programming to a brand, trademark, product and/or service that:

- is subject to a commercial arrangement; or
- promotes the station/broadcaster’s own products or services.

Meaning of “sponsor” (see Rule 10.6(a))

“Sponsor” means any public or private undertaking or individual (other than a broadcaster or programme producer) who contributes to the costs of programming with a view to promoting the name, image, products, services, trade marks or activities of that undertaking or individual.

Meaning of “sponsored programming” (see Rule 10.6(a))

“Sponsored programming” means programming (including a programme, channel, programme segment or block of programmes) that has had some or all of its costs met by a sponsor and includes advertiser-funded programmes.

Meaning of “electronic cigarette” (see Rules 10.6 and 10.6(a))

A product that (i) can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether it is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges), but (ii) is not a medical product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002.

Meaning of “refill container” (see Rules 10.6 and 10.6(a))

A receptacle that (i) contains a nicotine-containing liquid, which can be used to refill an electronic cigarette, but (ii) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002.

Transparency

Listeners should know when material is broadcast in return for payment or other valuable consideration. Signalling is the means by which transparency is achieved.

Transparency of a commercial arrangement should be achieved through the appropriate signalling of a brand, trademark, product and/or service of a third party (or third parties) that has paid for broadcast exposure – by, for example: including a sponsorship credit; reference to the donor of a prize; the promotion of a premium rate number for listener interaction in programming.

Signalling

Broadcasters are required to give, at appropriate times, clear information within programming, to inform listeners of any commercial arrangement affecting that programming.

Appropriate signalling is therefore essential in complying with Rule 10.1. There are four aspects to consider when assessing what signalling is appropriate, to ensure compliance:

- Wording – this must be clear, to ensure immediate transparency of the commercial arrangement;
- Positioning – transparency of the commercial arrangement generally requires signalling at the outset of each instance of broadcast material subject to it;
- Frequency – longer output that is subject to a commercial arrangement may require signalling at appropriate intervals;
- Identity (of the third party) – transparency of the commercial arrangement requires the third party’s relevant title to be stated on air.

Broadcasters should ensure that broadcast material appearing either to be a station campaign or to provide any independent assessment of products/services is genuinely independent and not subject to a commercial arrangement. Signalling commercial references in, for example, consumer advice/affairs programming therefore requires particular care, as it is essential that the broadcast of paid-for promotions of goods and services is not presumed to be independent observation/comment.

Specialist factual strands

Specialist factual strands in or around news bulletins or news desk presentations might include, for example, travel, sport, finance and weather.

Factual programming, including matters of political or industrial controversy and matters relating to current public policy

Broadcasters should note that all programming must comply with Section Five of the Code. Commercial references broadcast under such an arrangement are also subject to Section 7 of The Broadcasting Committee of Advertising Practice UK Code of Broadcast

Advertising. In addition, broadcasters are reminded that Rule 2.2 applies to **all** factual programming (i.e. factual items must not materially mislead the audience).

Commercial references that require confirmation or substantiation

Examples include, but are not limited to: complex factual claims (including those that are capable of objective substantiation); market leadership claims; special offer prices; comparisons with competitors; superlative claims; claims and offers involving significant limitations and exclusions; “free” claims; testimonials; endorsements; and claims that may be of particular interest to children.

Controlled Premium Rate and similar services

Note:

Controlled Premium Rate Services are a subset of Premium Rate Services which are regulated by PhonepayPlus. Licensees should refer to the guidance for further details about the terms used in this section.

10.9 Any use of controlled premium rate telephony services in programming must comply with the Code of Practice and any additional broadcast-related requirements issued by PhonepayPlus.

10.10 The cost to listeners for using controlled premium rate telephony services, or other communications services for which the revenue generated is shared between relevant parties, must be made clear to them and broadcast as appropriate.

Note:

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

Charity appeals

10.11 Fund-raising activity broadcast on behalf of a charity (or emergency appeal) is only permitted if:

- it is broadcast free of charge;
- it does not contain any commercial reference that is subject to a commercial arrangement with the relevant charity (or emergency appeal); and
- 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 radio.

Appeals for funds for programming or services

10.12 Broadcasters may broadcast appeals for donations to make programming or fund their service. Listeners must be told the purpose of the appeal and how much it raises. All donations must be separately accounted for and used for the purpose for which they were donated.

Financial promotions and investment recommendations

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

Financial promotion

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

Investment recommendation

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

Appendix 1

Extracts from Relevant UK Legislation

Communications Act 2003 (as amended)

Section 3: General duties of OFCOM

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

Section 319: OFCOM’s standards code

- (1) It shall be the duty of OFCOM to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives.
- (2) The standards objectives are:
 - (a) that persons under the age of eighteen are protected;
 - (b) that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;
 - (c) that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;
 - (d) that news included in television and radio services is reported with due accuracy;
 - (e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;
 - (f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;
 - (fa) that the product placement requirements referred to in section 321(3A) are met in relation to programmes included in a television programme service (other than advertisements);
 - (g) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;
 - (h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;
 - (i) that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with;
 - (j) that the unsuitable sponsorship of programmes included in television and radio services is prevented;
 - (k) that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services; and
 - (l) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.
- (3) The standards set by OFCOM under this section must be contained in one or more codes.
- (4) In setting or revising any standards under this section, OFCOM must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of the following matters:
 - (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;

- (b) the likely size and composition of the potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;
 - (c) the likely expectation of the audience as to the nature of a programme’s content and the extent to which the nature of a programme’s content can be brought to the attention of potential members of the audience;
 - (d) the likelihood of persons who are unaware of the nature of a programme’s content being unintentionally exposed, by their own actions, to that content;
 - (e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
 - (f) the desirability of maintaining the independence of editorial control over programme content.
- (5) OFCOM must ensure that the standards from time to time in force under this section include:
- (a) minimum standards applicable to all programmes included in television and radio services; and
 - (b) such other standards applicable to particular descriptions of programmes, or of television and radio services, as appear to them appropriate for securing the standards objectives.
- (6) Standards set to secure the standards objective specified in subsection (2)(e) shall, in particular, contain provision designed to secure that religious programmes do not involve:
- (a) any improper exploitation of any susceptibilities of the audience for such a programme; or
 - (b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- (7) In setting standards under this section, OFCOM must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this section.
- (8) In this section “news” means news in whatever form it is included in a service.
- (9) Subject to subsection (10), subsection (2)(fa) applies only in relation to programmes the production of which begins after 19th December 2009.
- (10) So far as relating to product placement falling within paragraph 4(ba) of Schedule 11A (electronic cigarettes and electronic cigarette refill containers), subsection (2)(fa) applies only in relation to programmes the production of which begins after 19th May 2016.

Section 320: Special impartiality requirements³³

- (1) The requirements of this section are:
 - (a) the exclusion, in the case of television and radio services (other than a restricted service within the meaning of section 245), from programmes included in any of those services of all expressions of the views or opinions of the person providing the service on any of the matters mentioned in subsection (2);
 - (b) the preservation, in the case of every television programme service, teletext service, national radio service and national digital sound programme service, of due impartiality, on the part of the person providing the service, as respects all of those matters;
 - (c) the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on any of those matters.
- (2) Those matters are:
 - (a) matters of political or industrial controversy; and
 - (b) matters relating to current public policy.
- (3) Subsection (1)(a) does not require:
 - (a) the exclusion from television programmes of views or opinions relating to the provision of programme services; or
 - (b) the exclusion from radio programmes of views or opinions relating to the provision of programme services.
- (4) For the purposes of this section:
 - (a) the requirement specified in subsection (1)(b) is one that (subject to any rules under subsection (5)) may be satisfied by being satisfied in relation to a series of programmes taken as a whole;
 - (b) the requirement specified in subsection (1)(c) is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole.
- (5) OFCOM’s standards code shall contain provision setting out the rules to be observed in connection with the following matters:
 - (a) the application of the requirement specified in subsection (1)(b);
 - (b) the determination of what, in relation to that requirement, constitutes a series of programmes for the purposes of subsection (4)(a);
 - (c) the application of the requirement in subsection (1)(c).
- (6) Any provision made for the purposes of subsection (5)(a) must, in particular, take account of the need to ensure the preservation of impartiality in relation to the following matters (taking each matter separately):
 - (a) matters of major political or industrial controversy, and

³³ **Section 320(1)(c) does not apply to BBC radio services. See Appendix 5.**

- (b) major matters relating to current public policy, as well as of the need to ensure that the requirement specified in subsection (1)(b) is satisfied generally in relation to a series of programmes taken as a whole.
- (7) In this section “national radio service” and “local radio service” mean, respectively, a sound broadcasting service which is a national service within the meaning of section 245 and a sound broadcasting service which is a local service within the meaning of that section.

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

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

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

- (1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes conditions for securing:
 - (a) that standards set under section 319 are observed in the provision of that service; and

- (b) that procedures for the handling and resolution of complaints about the observance of those standards are established and maintained.

Section 326: Duty to observe fairness code

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

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

SCHEDULE 11A: Restrictions on product placement

Introductory

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

Prohibitions of product placement

- 3.—(1) Product placement falls within this paragraph if it is in a children’s programme.
- (2) In sub-paragraph (1) “children’s programme” means a programme made—
- (a) for a television programme service or for an on-demand programme service, and

- (b) for viewing primarily by persons under the age of sixteen.
- 4. Product placement falls within this paragraph if it is—
 - (a) of cigarettes or other tobacco products;
 - (b) by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products;
 - (ba) of electronic cigarettes or electronic cigarette refill containers; or
 - (c) of prescription-only medicines.
- 5. Product placement of alcoholic drinks falls within this paragraph if—
 - (a) it is aimed specifically at persons under the age of eighteen; or
 - (b) it encourages immoderate consumption of such drinks.
- 6.—(1) Product placement falls within this paragraph if it is in a programme to which this paragraph applies and—
 - (a) the programme is a religious, consumer affairs or current affairs programme;
 - (b) the product placement is of anything within sub-paragraph (2); or
 - (c) the product placement is otherwise unsuitable.
- (2) The following are within this sub-paragraph—
 - (a) cigarette lighters, cigarette papers or pipes intended for smoking;
 - (b) medicinal products;
 - (c) alcoholic drinks;
 - (d) infant formulae or follow-on formulae;
 - (e) a food or drink high in fat, salt or sugar;
 - (f) gambling services.
- (3) This paragraph applies to—
 - (a) a programme that has been produced or commissioned by the provider of the television programme service in which it is included, or by a person connected with that provider, and that is not a film made for cinema; and
 - (b) a programme that has been produced or commissioned by any other person with a view to its first showing taking place in a television programme service which is provided by a person under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive.

Conditions applying to product placement

- 7.— (1) These are the conditions referred to in paragraph 2(b).
- (2) Condition A is that the programme in which the product, service or trademark, or the reference to it, is included is—
 - (a) a film made for cinema;
 - (b) a film or series made for a television programme service or for an on-demand programme service;

- (c) a sports programme; or
 - (d) a light entertainment programme.
- (3) Condition B is that the product placement has not influenced the content or scheduling of the programme in a way that affects the editorial independence of the provider of the television programme service in which the programme is included.
- (4) Condition C is that the product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.
- (5) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned.
- (6) Condition E is that the product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.
- (7) Condition F is that the way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not—
- (a) prejudice respect for human dignity;
 - (b) promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (c) encourage behaviour prejudicial to health or safety;
 - (d) encourage behaviour grossly prejudicial to the protection of the environment;
 - (e) cause physical or moral detriment to persons under the age of eighteen;
 - (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
 - (g) exploit the trust of such persons in parents, teachers or others; or
 - (h) unreasonably show such persons in dangerous situations.
- 8.—** (1) This paragraph applies where the programme featuring the product placement has been produced or commissioned by the provider of the television programme service in which it is included or by a person connected with that provider.
- (2) The condition referred to in paragraph 2(c) is that the television programme service in which the programme is included signals appropriately the fact that product placement is contained in a programme no less frequently than—
- (a) at the start and end of such a programme; and
 - (b) in the case of a television programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.

Minor definitions

9. In this Schedule—

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

- “electronic cigarette” has the meaning given in section 368R;
- “electronic cigarette refill container” has the meaning given in section 368R;
- “film made for cinema” means a film made with a view to its being shown to the general public first in a cinema;
- “follow-on formulae” has the meaning given in Article 2 of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC;
- “infant formulae” has the meaning given in Article 2 of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC;
- “medicinal product” has the meaning given in section 130 of the Medicines Act 1968;
- “prescription-only medicine” means a medicinal product of a description or falling within a class specified in an order made under section 58 of the Medicines Act 1968;
- “producer”, in relation to a programme, means the person by whom the arrangements necessary for the making of the programme are undertaken;
- “programme” does not include an advertisement;
- “relevant provider”, in relation to a programme, means—
- (a) the provider of the television programme service in which the programme is included; and
 - (b) the producer of the programme;
- “residual value” means any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trademark, or a reference to it, in a programme;
- “significant value” means a residual value that is more than trivial;
- “tobacco product” has the meaning given in section 1 of the Tobacco Advertising and Promotion Act 2002;
- “trade mark”, in relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.”

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

1

(1) In this Schedule—

- “the 1996 Act” means the Broadcasting Act 1996;
- “advertising agency” means an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an advertising agent, and

any reference to an advertising agency includes a reference to an individual who—

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

“associate”—

- (a) in relation to a body corporate, shall be construed in accordance with paragraph (1A), and
- (b) in relation to an individual, shall be construed in accordance with subparagraph (2);

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

“control”—

- (a) in relation to a body corporate, shall be construed in accordance with subparagraph (3), and
- (b) in relation to any body other than a body corporate, means the power of a person to secure, by whatever means and whether directly or indirectly, that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person;

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

“local authority”—

- (a) in relation to England ... , means any of the following, that is to say, the council of a county, district or London borough, the Common Council of the City of London and the Council of the Isles of Scilly;
- (aa) in relation to Wales, means a county council or county borough council;
- (b) in relation to Scotland, means a council constituted under section 2 of the Local Government etc (Scotland) Act 1994; and
- (c) in relation to Northern Ireland, means a district council;

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

- (1A) For the purpose of determining the persons who are the associates of a body corporate for the purposes of this Schedule—
 - (a) an individual shall be regarded as an associate of a body corporate if he is a director of that body corporate, and
 - (b) a body corporate and another body corporate shall be regarded as associates of each other if one controls the other or if the same person controls both.

- (2) For the purpose of determining the persons who are an individual's associates for the purposes of this Schedule, the following persons shall be regarded as associates of each other, namely—
- (a) any individual and that individual's husband or wife or civil partner and any relative, or husband or wife or civil partner of a relative, of that individual or of that individual's husband or wife or civil partner;
 - (b) any individual and any body corporate of which that individual is a director;
 - (c) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;
 - (d) persons carrying on business in partnership and the husband or wife or civil partner and relatives of any of them;
 - (e) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets; and in this sub-paragraph “relative” means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild or illegitimate child of any person, or anyone adopted by a person, whether legally or otherwise, as his child, being regarded as a relative or taken into account to trace a relationship in the same way as that person's child); and references to a wife or husband shall include a former wife or husband and a reputed wife or husband and references to a civil partner shall include a former civil partner and a reputed civil partner.
- (3) For the purposes of this Schedule a person controls a body corporate if—
- (a) he holds, or is beneficially entitled to, more than 50 per cent of the equity share capital in the body, or possesses more than 50 per cent of the voting power in it; or
 - (b) although he does not have such an interest in the body, it is reasonable, having regard to all the circumstances, to expect that he would (if he chose to) be able in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the body are conducted in accordance with his wishes; or
 - (c) he holds, or is beneficially entitled to, 50 per cent of the equity share capital in that body, or possesses 50 per cent of the voting power in it, and an arrangement exists between him and any other participant in the body as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power.
- (3A) For the purposes of sub-paragraph (3)(c)—
- (a) “arrangement” includes any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable, and
 - (b) a person shall be treated—
 - (i) as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which he controls or to which such a body corporate is beneficially entitled, and

(ii) as possessing any voting power possessed by such a body corporate.

- (4) ...
- (5) For the purposes of any provision of this Schedule which refers to a body controlled by two or more persons or bodies of any description taken together, the persons or bodies in question shall not be regarded as controlling the body by virtue of paragraph (b) of sub-paragraph (3) unless they are acting together in concert.
- (6) In this Schedule any reference to a participant with more than a 5 per cent interest in a body corporate is a reference to a person who—
- (a) holds or is beneficially entitled to more than 5 per cent of the shares in that body, or
 - (b) possesses more than 5 per cent of the voting power in that body.
- (7) Sub-paragraph (6) shall have effect subject to the necessary modifications in relation to other references in this Schedule—
- (a) to an interest of more than a specified percentage in a body corporate, or
 - (b) to an interest of a specified percentage or more in a body corporate.

2

- (1) Subject to sub-paragraph (1A) any reference in paragraph 1 above to a person—
- (a) holding or being entitled to shares, or any amount of the shares or equity share capital, in a body corporate, or
 - (b) possessing voting power, or any amount of the voting power, in a body corporate,
 - (c) is a reference to his doing so, or being so entitled, whether alone or jointly with one or more other persons and whether directly or through one or more nominees.
- (1A) For the purposes of this Schedule, a person's holding of shares, or possession of voting power, in a body corporate shall be disregarded if, or to the extent that—
- (a) he holds the shares concerned—
 - (i) as a nominee,
 - (ii) as a custodian (whether under a trust or by a contract), or
 - (iii) under an arrangement pursuant to which he has issued, or is to issue, depositary receipts, . . . , in respect of the shares concerned, and
 - (b) he is not entitled to exercise or control the exercise of voting rights in respect of the shares concerned.
- (1AA) In sub-paragraph (1A)(a)(iii), “depository receipt” means a certificate or other record (whether or not in the form of a document)—
- (a) which is issued by or on behalf of a person who holds shares or who holds evidence of the right to receive shares, or has an interest in shares, in a particular body corporate; and

- (b) which evidences or acknowledges that another person is entitled to rights in relation to those shares or shares of the same kind, which shall include the right to receive such shares (or evidence of the right to receive such shares) from the person mentioned in paragraph (a).
- (1B) For the purposes of sub-paragraph (1A)(b)—
- (a) a person is not entitled to exercise or control the exercise of voting rights in respect of shares if he is bound (whether by contract or otherwise) not to exercise the voting rights, or not to exercise them otherwise than in accordance with the instructions of another, and
 - (b) voting rights which a person is entitled to exercise or of which he is entitled to control the exercise only in certain circumstances shall be taken into account only when those circumstances have arisen and for as long as they continue to obtain.

3

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

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

Broadcasting Act 1996 (as amended)

Chapter 55

Unjust or unfair treatment or unwarranted infringement of privacy

Section 107

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

Appendix 2

Extracts from the EU Audiovisual Media Services Directive (Directive 2010/13/EU)

Article 1

For the purposes of this Directive, the following definitions shall apply:

- (a) ‘audiovisual media service’ means:
 - (i) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union 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 point (a) of Article 2 of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph;
 - (ii) 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 the form and content of which are 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 for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business,

craft or profession in order to promote the supply of goods 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 trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration;
- (k) ‘sponsorship’ means any contribution made by public or private undertakings or natural person not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or 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 6

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 9

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 communications, 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 10

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 a appropriate way for programmes at the beginning, during and/or at 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 11

1. Paragraphs 2, 3 and 4 shall apply only to programmes produced after 19 December 2009.
2. Product placement shall be prohibited.
3. By way of derogation from paragraph 2, product placement shall be admissible in the following cases unless a Member State decides otherwise:

- (a) in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes;
- (b) 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 point (a) 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.

4. In any event programmes shall not contain product placement of:

- (a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;
or
- (b) specific medicinal products or medical treatments available only on prescription in the Member State under whose jurisdiction the media service provider falls.

Television advertising and teleshopping

Article 19

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 20

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 concerned, 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 30 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 23

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 25

The 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.

However, Chapter VI as well as Articles 20 and 23 shall not apply to these channels.

Protection of minors in television broadcasting

Article 27

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. In addition, when such programmes are broadcast in unencoded 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 28

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.

Appendix 3

European Convention on Human Rights: Articles 8, 9, 10 and 14

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such 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.

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are 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 or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 14

1. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Appendix 4

Financial Promotions and Investment Recommendations

(Television broadcasters should refer to Code Section Nine Rule 9.35, above. Radio broadcasters should refer to Code Section Ten Rule 10.13, above).

Financial Promotions

1. Section 21 of the Financial Services and Markets Act 2000 prohibits anyone, in the course of business, from communicating an invitation or inducement to engage in investment activity. This is commonly referred to as “the financial promotion restriction”. There are a number of exemptions to the financial promotion restriction and these are set out in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.³ Two of these exemptions are of particular relevance to broadcasters: Article 20 of that Order contains an exemption in respect of communications by journalists, and Article 20A of that Order contains an exemption in respect of promotions broadcast by a company director or employee of a company. This note sets out binding guidance on how broadcasters can take advantage of the exemptions to the financial promotion restriction.

Meaning of “financial promotion”:

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

Exemption in respect of communications by journalists (Article 20 exemption)

2. The exemption for communications by journalists applies to any non-real time financial promotion they prepare while acting as journalists. For the exemption to apply to broadcast journalists the financial promotion must be in either:
 - a regularly updated news or information service (such as a website or teletext service); or
 - a television or radio broadcast or transmission,and the main purpose of the broadcast must not be to advise on, or lead or enable people to buy or sell, securities or contractually-based investments.
3. Where the subject matter of the financial promotion is shares and the financial promotion identifies directly a person who issues or provides the shares, journalists must also fulfil a disclosure requirement to benefit from the exemption.

Meaning of “share”:

Share means any share in a company and includes a derivative on such a share (including traded options).

Disclosure requirement:

A financial interest would be subject to disclosure where the journalist (or a close family member) would be likely to get a financial benefit or avoid a financial loss if people acted in line with the financial promotion. Where that is the case, the journalist or editor responsible for the financial promotion must declare the nature of any financial interest they (or their close family member) hold.

Note: The disclosure requirement is subject to certain exceptions, set out in paragraphs 4 to 6 below.

Meaning of “close family member”:

Close family member means a spouse and children under eighteen years of age.

4. The exceptions to the disclosure requirement are where the financial promotion is in either:
 - a service or broadcast which has proper systems and procedures which prevent the publication of communications without disclosure of financial interests; or
 - a service or broadcast which falls within the remit of:
 - the Code of Practice issued by the Press Complaints Commission;
 - the Ofcom Broadcasting Code; or
 - the Producer’s Guidelines issued by the BBC.
5. If a broadcaster wishes to take advantage of the Article 20 exemption for journalists, it has a choice. The broadcaster can either:
 - comply with the disclosure requirement; or
 - put in place proper systems and procedures which prevent the broadcast of financial promotions without disclosure of financial interests.
6. The Financial Services Authority (the “FSA”) suggests that the second option in paragraph 5 above could be achieved by, for example, the broadcaster requiring people working on financial programmes to declare and register their share ownership. This register would be available to the most senior editorial staff who can ensure that self-interested promotions are not broadcast by the person concerned. The FSA would also expect relevant staff to be required to be made aware of the existence of this register and of their obligations to disclose financial interests, and to confirm their acceptance of these obligations in writing.

Promotion broadcast by company director etc (Article 20A exemption)

7. The main purpose of the exemption for promotions broadcast by company directors is to guard against the possibility that, during the course of a broadcast interview or a live website presentation, a financial promotion is made inadvertently by a director or employee of a company or other business undertaking when that person is not acting as a journalist.
8. Provided that the financial promotion made is not made as part of an organised marketing campaign, the exemption applies where the financial promotion:
 - comprises words which are spoken by the director or employee and not broadcast, transmitted or displayed in writing; or
 - is displayed in writing only because it is part of an interactive dialogue to which the director or employee is a party and in the course of which that person is expected to respond immediately to questions put by a recipient of the communication.

The exemption also requires that the director or employee is identified as such in the

financial promotion before it is communicated.

Investment recommendations

9. The Investment Recommendation (Media) Regulations came into force on 1 July 2005. They impose standards on those who are, through the media, producing investment recommendations or disseminating investment recommendations produced by a third party. The standards require that the information is fairly presented, and there is disclosure of significant interests in an investment someone is recommending or of any conflicts of interest. If someone is regulated by the FSA because of their activity in producing investment recommendations or disseminating investment recommendations produced by a third party, they will be subject instead to rules of the FSA.

Meaning of “investment recommendation”:

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

10. There are exemptions from the Regulations for those producing or disseminating regulations in the media where self-regulation is in place, including where the Ofcom Broadcasting Code applies.
11. The Regulations are interpreted by Ofcom to apply to its licensees and S4C as follows. Where people working on programmes make an investment recommendation themselves, the broadcaster must ensure that:
 - the identity of the person making the recommendation is clear;
 - the investment recommendation is presented fairly; and
 - any financial interest that may reasonably be expected to impair the objectivity of that recommendation is disclosed.

Meaning of “presented fairly”:

This means that reasonable care should be taken that:

- facts are distinguished from non-factual information (for example opinions and estimates);
 - where there is doubt whether a source is reliable this is indicated; and
 - all projections, forecasts and price targets are described as such.
12. Where people working on programmes disseminate an investment recommendation made by a third party the broadcaster must ensure:
 - the identity of the company making the programme is clear; and
 - where a summary of a recommendation is produced, it is clear and not misleading and a reference is made to the producer of the recommendation.
 13. In addition, where people working on programmes either recommend an investment recommendation or disseminate a recommendation made by a third party, the broadcaster must ensure that a clear reference is made during the programme to the fact that it is regulated by the Ofcom Broadcasting Code. This requirement would be fulfilled, for example, by including such a reference in the credits at the end of the programme.

Meaning of “people working on programmes”:

This means people employed by the broadcaster or working for or as an independent producer who makes a programme for the broadcaster.

Note:

Where a television or radio programme features someone regulated by the FSA who makes an investment recommendation, that person’s compliance with the FSA rules is the

responsibility of that person and not the broadcaster. If a person working on a programme interviews someone who is not regulated by the FSA who makes an investment recommendation, responsibility again lies with the interviewee not the broadcaster to ensure his/her compliance with the Regulations.

Appendix 5

Extracts from the BBC Charter and Agreement³⁴

Article 46(7) of the Charter

Ofcom must secure the observance of standards in the content in the relevant UK Public Services which must be in accordance with the Standards and Fairness Codes.

Schedule 3, paragraphs 3 and 4 of the Agreement

3. Content standards

(1) In providing the UK Public Broadcasting Services, the BBC must observe the standards set under section 319 of the Communications Act 2003 (Ofcom’s “Standards Code”). For the purposes of the requirements in the Standards Code which give effect to section 320 of that Act (special impartiality requirements), the UK Public Services which are radio services will be treated as national radio services.

(2) In providing the UK Public On Demand Programme Services, the BBC must observe the Standards Code so far as Ofcom determine the standards are relevant to the provision of those on-demand programme services.

4. The Fairness Code

(1) The BBC must observe the code in force under section 107 of the Broadcasting Act 1996-

(a) in connection with the provision of the UK Public Broadcasting Services; and

(b) in relation to the programmes included in those services.

(2) In providing the UK Public On Demand Programme Services, the BBC must observe the same code so far as Ofcom determine the standards are relevant to the provision of those on-demand programme services.

(3) By virtue of Part 5 of the Broadcasting Act 1996, Ofcom must consider and adjudicate on complaints which are made to them and relate-

(a) to unjust or unfair treatment in any programme broadcast by the BBC; or

(b) to unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes.

(4) Ofcom must treat complaints which relate to any programme included in a UK Public On Demand Programme Service in the same manner as programmes broadcast by the BBC.

³⁴ The BBC Charter and Agreement is available at:

<https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>

Part Two: The Cross-promotion Code

[Ofcom is not proposing any changes to the Cross-promotion Code other than its re-positioning as ‘Part Two’ in the document containing the Ofcom Broadcasting Code.]

The full Cross-promotion Code can be viewed here:

https://www.ofcom.org.uk/data/assets/pdf_file/0022/86404/bc2015-17-cross-promotion.pdf

[This part is new and is proposed to contain the existing statutory rules for UK on demand programme service (ODPS) providers. See Section 4 of the consultation document.]

Part Three : On Demand Programme Service Rules

Introduction

This part applies only to On Demand Programme Services (“ODPS”). It sets out the statutory requirements with which providers of ODPS must comply (“the ODPS Rules”).

Ofcom publishes guidance to assist ODPS providers in their understanding of how Ofcom interprets the ODPS Rules. This guidance is available on the Ofcom website³⁵.

Ofcom also publishes separate guidance on what constitutes an ODPS and who needs to notify an ODPS to Ofcom³⁶.

The statutory requirements for advertising in ODPS are not included here. Ofcom has designated the Advertising Standards Authority as co-regulator in relation to advertising in ODPS with effect from 1 September 2010³⁷.

Legislative Background to the ODPS Rules

The ODPS Rules reflect Part 4A of the Communications Act 2003, which in turn implements the Audiovisual Media Services Directive³⁸ (“AVMS Directive”). The Rules include footnoted references to the underlying statutory provisions. Where an ODPS provider breaches a Rule, that means it has breached the relevant statutory provision. In the event of any unintended conflict in meaning or interpretation between the Rules and the Act, the Act shall prevail. Ofcom’s procedures for investigating potential breaches of the ODPS Rules are available on its website³⁹.

Statutory definitions are provided where appropriate. Note that the legislation uses the term “appropriate regulatory authority”. Other than in relation to advertising, which is not covered by these Rules, that means Ofcom because no other body is designated under section 368B at present.

Rules

³⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0022/54922/rules_and_guidance.pdf

³⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0028/71839/guidance_on_who_needs_to_notify.pdf

³⁷ The relevant advertising rules can be found at: <https://www.cap.org.uk/Advertising-Codes/Non-Broadcast/CodeItem.aspx?cscid={aa7bc9c1-4ca6-4c00-b580-a9b01fe5f00f}#.VnF2IEqLTGg>

³⁸ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC

³⁹ <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/on-demand/rules-guidance>. Separate procedures apply to BBC ODPS.

Administrative rules

Rule 1: Notification of intention to provide an ODPS⁴⁰

A person must not provide an ODPS unless, before beginning to provide it, that person has given a notification to Ofcom of the person’s intention to provide that service.

A notification must be sent to Ofcom in such manner, and including such information, as Ofcom may require

[The guidance for this rule has not been carried over to this document but will remain available on the Ofcom website]

Rule 2: Notification of intention to make significant changes to a notified service⁴¹

A person who has given a notification must, before providing the notified service with any significant differences, give a notification to Ofcom of the differences.

A notification must be sent to Ofcom in such manner, and including such information, as Ofcom may require.

[The guidance for this rule has not been carried over to this document but will remain available on the Ofcom website]

Rule 3: Notification of intention to cease providing a notified service⁴²

A person who has given a notification must, before ceasing to provide it, give a notification to Ofcom of the intention to cease to provide the service.

A notification must be sent to Ofcom in such manner, and including such information, as Ofcom may require.

[The guidance for this rule has not been carried over to this document but will remain available on the Ofcom website]

Rule 4: Payment of required fee⁴³

The provider of an ODPS must pay to Ofcom such fee as Ofcom may require under section 368NA of the Act.

[The guidance for this rule has not been carried over to this document but will remain available on the Ofcom website]

Rule 5: Retention of programmes for at least 42 days⁴⁴

The provider of an ODPS must retain a copy of every programme included in the service for at least 42 days after the day on which the programme ceases to be available for viewing.

⁴⁰ Section 368BA of the Act. **This Rule does not apply to BBC ODPS**

⁴¹ Section 368BA of the Act. **This Rule does not apply to BBC ODPS**

⁴² Section 368BA of the Act. **This Rule does not apply to BBC ODPS**

⁴³ Section 368D(3)(za) of the Act. **This Rule does not apply to BBC ODPS**

⁴⁴ Section 368D(3)(zb) of the Act. **This Rule does not apply to BBC ODPS**

A copy of a programme retained must be of a standard and in a format which allows the programme to be viewed as it was made available for viewing.

[The guidance for this rule has not been carried over to this document but will remain available on the Ofcom website]

Rule 6: Provision of information⁴⁵

The provider of an ODPS must comply with any requirement to provide information under section 368O of the Act. “Information” includes copies of programmes.

Ofcom may require a person who appears to it to be or to have been a provider of an ODPS and to have information that Ofcom requires for the purpose of securing compliance with the obligations of the United Kingdom under the Audiovisual Media Services Directive to provide all such information as Ofcom considers necessary for that purpose.

Ofcom may not require the provision of information under section 368O unless it has given the person from whom it is required an opportunity of making representations about the matters appearing to Ofcom to provide grounds for making the request.

Ofcom must not require the provision of information under section 368O except by a demand for the information contained in a notice served on the person from whom the information is required that describes the required information and sets out Ofcom’s reasons for requiring it.

A person who is required to provide information under this section must provide it in such manner and within such reasonable period as may be specified by Ofcom in the demand for information.

[The guidance for this rule has not been carried over to this document but will remain available on the Ofcom website]

Rule 7: Co-operation⁴⁶

The provider of an ODPS must co-operate fully with Ofcom for any purpose within section 368O(2) or (3).

[The guidance for this rule has not been carried over to this document but will remain available on the Ofcom website]

Rule 8: Compliance with enforcement notifications⁴⁷

An ODPS provider to whom an enforcement notification has been given must comply with it.

Rule 9: Supply of Information⁴⁸

ODPS providers must supply the following information to users of the service—

- (a) the provider’s name;

⁴⁵ Section 368D(3)(a) of the Act. **This Rule does not apply to BBC ODPS**

⁴⁶ Section 368D(3)(b) of the Act. **This Rule does not apply to BBC ODPS**

⁴⁷ Section 368I of the Act. **This Rule does not apply to BBC ODPS**

⁴⁸ Section 368D(2) of the Act. ODPS providers (**other than the BBC**) should also note the obligation to provide information under section 368O of the Act

- (b) the provider’s address;
- (c) the provider’s electronic address⁴⁹ ; and
- (d) Ofcom’s name, address and electronic address (and that of the ASA in relation to advertising content).

[The guidance for this rule has not been carried over to this document but will remain available on the Ofcom website]

Editorial rules

Rule 10: Harmful Material: Material Likely to Incite Hatred⁵⁰

An ODPS must not contain any material likely to incite hatred based on race, sex, religion or nationality.

[The guidance for this rule has not been carried over to this document but will remain available on the Ofcom website]

Rule 11: Harmful Material: Protection of Under-18s (Specially Restricted Material)⁵¹

An ODPS must not contain any specially restricted material unless the material is made available in a manner which secures that persons under the age of 18 will not normally see or hear it.

“Specially restricted material” means—

- (a) a video work in respect of which the video works authority⁵² has issued a R18 classification certificate;
- (b) material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would issue a R18 classification certificate; or
- (c) other material that might seriously impair the physical, mental or moral development of persons under the age of 18.

In determining whether any material falls within (b), regard must be had to any guidelines issued by the video works authority as to its policy in relation to the issue of classification certificates.

⁴⁹ Defined by section 368D(4) of the Act as, “an electronic address to which users may send electronic communications, and includes any number or address used for the purposes of receiving such communications”.

⁵⁰ Section 368E(1) of the Act

⁵¹ Section 368E(4) and (5) of the Act

⁵² The British Board of Film Classification (“BBFC”) is currently designated as the ‘video works authority’

Statutory definitions relevant to Rule 11 - section 368E(7)

“the 1984 Act” means the Video Recordings Act 1984;

“classification certificate” has the same meaning as in the 1984 Act (see section 7 of that Act⁵³);

“R18 classification certificate” means a classification certificate containing the statement mentioned in section 7(2)(c) of the 1984 Act that no video recording containing the video work is to be supplied other than in a licensed sex shop;

“the video works authority” means the person or persons designated under section 4(1) of the 1984 Act as the authority responsible for making arrangements in respect of video works other than video games;

“video work” has the same meaning as in the 1984 Act (see section 1(2) of that Act).”

[The guidance for this rule has not been carried over to this document but will remain available on the Ofcom website]

Rule 12: Sponsorship⁵⁴

(1) An ODPS or a programme included in an on-demand programme service must not be sponsored—

- (a) for the purpose of promoting cigarettes or other tobacco products, or
- (b) by an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products.

(1A) An ODPS or a programme included in an ODPS must not be sponsored for the purpose of promoting electronic cigarettes or electronic cigarette refill containers.

(2) An ODPS or a programme included in an ODPS must not be sponsored for the purpose of promoting a prescription-only medicine.

(3) An ODPS may not include a news programme or current affairs programme that is sponsored.

(4) Paragraphs 11.22 to (11.28) apply to an ODPS that is sponsored or that includes any programme that is sponsored.

(5) The sponsoring of a service or programme must not influence the content of that service or programme in a way that affects the editorial independence of the provider of the service.

(6) Where a service or programme is sponsored for the purpose of promoting goods or services, the sponsored service or programme and sponsorship announcements relating to it

⁵³ <http://www.legislation.gov.uk/ukpga/1984/39/section/7>

⁵⁴ **Section 368G of the Act. This Rule does not apply to BBC ODPS, but note that sections 9 and 10 of the Broadcasting Code do apply to BBC ODPS and contain rules relating to sponsorship.**

must not directly encourage the purchase or rental of the goods or services, whether by making promotional reference to them or otherwise.

(7) Where a service or programme is sponsored for the purpose of promoting an alcoholic drink, the service or programme and sponsorship announcements relating to it must not—

- (a) be aimed specifically at persons under the age of eighteen; or
- (b) encourage the immoderate consumption of such drinks.

(8) A sponsored service must clearly inform users of the existence of a sponsorship agreement.

(9) The name of the sponsor and the logo or other symbol (if any) of the sponsor must be displayed at the beginning or end of a sponsored programme.

(10) Techniques which exploit the possibility of conveying a message subliminally or surreptitiously must not be used in a sponsorship announcement.

(11) A sponsorship announcement must not—

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

Statutory definition of ‘sponsored programme’ - section 368G(12) and (13)

A programme included in an on-demand programme service is “sponsored” if a person (“the sponsor”) other than:

- (a) the provider of that service, or
- (b) the producer of that programme,

has met some or all of the costs of the programme for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or of another person.

A programme is not sponsored if it falls within this definition only by virtue of the inclusion of product placement⁵⁵ or prop placement⁵⁶ (see Guidance on Rule 13).

Statutory definition of sponsored on-demand programme service - section 368G(15) and (16)

An on-demand programme service is “sponsored” if a person (“the sponsor”) other than the provider of the service has met some or all of the costs of providing the service for the purpose of promoting the name, trademark, image, activities, services or products of the sponsor or another person.

A person is not to be taken to have met some or all of the costs of providing a service only because a programme included in the service is sponsored by that person.

Statutory definition of a “sponsorship announcement” – section 368G(17)

A “sponsorship announcement” means:

- (a) anything included for the purpose of complying with the requirements to clearly inform users of the existence of a sponsorship agreement and to display at the beginning or end of a sponsored programme the name of the sponsor and the logo or other symbol (if any) of the sponsor ; and
- (b) anything included at the same time as or otherwise in conjunction with anything within paragraph (a).

Statutory definition of “tobacco product” – section 1 of the Tobacco Advertising and Promotion Act 2002

“Tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.

Statutory definitions of an “electronic cigarette” and an “electronic cigarette refill container” – section 368R(1) of the Act

“Electronic cigarette” means a product that:

- (a) can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether it is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges), and

⁵⁵ See section 368H(1) of the Act.

⁵⁶ See section 368H(2) of the Act.

- (b) is not a medical product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002.

“Electronic cigarette refill container” means a receptacle that:

- (a) contains a nicotine-containing liquid, which can be used to refill an electronic cigarette; and
- (b) is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002.

[The guidance for this rule has not been carried over to this document but will remain available on the Ofcom website]

Rule 13: Prohibition of Product Placement and Exceptions⁵⁷

Note:

Paragraphs 11.29 to 11.32 apply only in relation to programmes the production of which began after 19 December 2009. The prohibition of product placement of electronic cigarettes and electronic cigarette refill containers applies only in relation to programmes the production of which began after 19 May 2016.

Prohibited Product Placement

Product placement is prohibited in children’s programmes included in ODPS.

Product placement is prohibited in ODPS if—

- (a) it is of cigarettes or other tobacco products,
- (b) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products, or
- (c) it is of prescription-only medicines; or
- (d) it is of electronic cigarettes or refill containers.

Product placement of alcoholic drinks must not—

- (a) be aimed specifically at persons under the age of eighteen;
- (b) encourage immoderate consumption of such drinks.

Permitted Product Placement

Subject to the above, product placement is otherwise permitted in programmes included in on-demand programme services provided that—

⁵⁷ Section 368H of the Act

- (a) conditions A to F below are met, and
- (b) where the programme featuring the product placement has been produced or commissioned by the ODPS provider or any connected person, condition G is also met.

[The guidance for this rule has not been carried over to this document but will remain available on the Ofcom website]

Conditions A to F

Condition A:

The programme in which the product, service or trademark, or the reference to it, is included is—

- a) a film made for cinema;
- b) a film or series made for a television programme service or for an on-demand programme service;
- c) a sports programme; or
- d) a light entertainment programme.

Condition B

The product placement has not influenced the content of the programme in a way that affects the editorial independence of the provider of the service.

[The guidance for this condition has not been carried over to this document and will be provided in a separate guidance document]

Condition C

The product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.

[The guidance for this condition has not been carried over to this document and will be provided in a separate guidance document]

Condition D

The programme does not give undue prominence to the products, services or trade marks concerned.

[The guidance for this condition has not been carried over to this document and will be provided in a separate guidance document]

Condition E

The product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.

Condition F

The way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not—

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

Condition G

The ODPS in question signals appropriately the fact that product placement is contained in a programme, no less frequently than—

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

Note: Condition G applies only where the programme featuring the product placement has been produced or commissioned by the provider of the service or any connected person.

Statutory definition of “Product placement”⁵⁸

“Product placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark, where the inclusion—

- (a) is for a commercial purpose,**
- (b) is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any connected person, and**
- (c) is not prop placement.**

Statutory definition of “Prop placement”⁵⁹

⁵⁸ Section 368H(1) of the Act.

⁵⁹ Section 368H(2) of the Act.

“Prop placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where:

- (a) the provision of the product, service or trade mark has no significant value; and
- (b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.

Statutory definition of “Children’s programme”⁶⁰

“Children’s programme” means a programme made:

- (a) for a television programme service or for an on-demand programme service; and
- (b) for viewing primarily by persons under the age of sixteen

Statutory definition of “tobacco product” – section 1 of the Tobacco Advertising and Promotion Act 2002

“Tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.

Statutory definitions of an “electronic cigarette” and an “electronic cigarette refill container” – section 368R(1) of the Act

“Electronic cigarette” means a product that:

- (a) can be used for the consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank (regardless of whether it is disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges), and
- (b) is not a medical product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002.

⁶⁰ Section 368R(1) of the Act.

“Electronic cigarette refill container” means a receptacle that:

- (a) contains a nicotine-containing liquid, which can be used to refill an electronic cigarette; and

is not a medicinal product within the meaning of regulation 2 of the Human Medicines Regulations 2012 or medical device within the meaning of regulation 2 of the Medical Devices Regulations 2002.

Other Statutory definitions for Rule 13

“Film made for cinema” means:

a film made with a view to its being shown to the general public first in a cinema.

“Relevant provider”, in relation to a programme, means:

- (a) the provider of the on-demand programme service in which the programme is included; and
- (b) the producer of the programme.

“Residual value” means:

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

“Significant value” means:

a residual value that is more than trivial.

“Trade mark”, in relation to a business, includes:

any image (such as a logo) or sound commonly associated with that business or its products or services.

Rule 14: Harmful Material: Prohibited material⁶¹

An ODPS must not contain any prohibited material.

“Prohibited material” means:

- (a) a video work which the video works authority has determined for the purposes of the 1984 Act⁶² not to be suitable for a classification certificate to be issued in respect of it, or
- (b) material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification

⁶¹ Section 368E(2) and (3) of the Act

⁶² The Video Recordings Act 1984

certificate, the video works authority would determine for those purposes that the video work was not suitable for a classification certificate to be issued in respect of it.

In determining whether any material falls within (b), regard must be had to any guidelines issued by the video works authority (the British Board of Film Classification) as to its policy in relation to the issue of classification certificates.

[The guidance for this rule has not been carried over to this document but will remain available on the Ofcom website]