
Ofcom broadcasting codes: proposed amendments to the Broadcasting Code and the Code on the Scheduling of Television Advertising

CONSULTATION:

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Contents

Section

1. Overview	3
2. Legislative Background	4
3. Broadcasting Code: Proposed revisions	6
4. Code on the Scheduling of Television Advertising: Proposed Revisions	11
5. Summary	14

Annex

A1. The Revised Broadcasting Code	15
A2. The Revised Code on the Scheduling of Television Advertising	74
A3. Responding to this consultation	82
A4. Ofcom's consultation principles	84
A5. Consultation coversheet	85
A6. Consultation questions	86

2. Legislative Background

The Broadcasting (Amendment) (EU Exit) Regulations 2019

- 2.1 Broadcast regulation in the UK is currently governed by the AVMS Directive, which is based on the 'Country of Origin' principle. This enables linear TV service providers to broadcast services across the EU, provided they comply with the rules of the country which has jurisdiction over the service.
- 2.2 The UK Government has made changes to the law that applies to broadcasting in and to the UK. The changes are made by The Broadcasting (Amendment) (EU Exit) Regulations 2019 ("the Exit Regulations")⁴, which will come into force immediately after the end of the transition period. The transition period is expected to end at 11pm on 31 December 2020.
- 2.3 Under the Exit Regulations, jurisdiction over linear TV services will be based on a number of factors:
- i) Where a service is based, e.g. where the head office and programme scheduling decisions are made.
 - ii) Where a service is broadcasting to, e.g. to the UK or another country.
 - iii) How a service broadcasts, e.g. through cable, satellite or online.
- 2.4 Ofcom has made changes to TV licensing arrangements⁵ as a result of the Exit Regulations. In summary, these changes are:
- i) UK country of destination licensing: any TV service that appears on a 'regulated UK EPG' needs to be licensed and regulated in the UK. The exceptions to this are TV services from countries party to the ECTT, as well as the Irish services TG4, RTÉ1 and RTÉ2.
 - ii) European Convention on Transfrontier Television: The ECTT is a Council of Europe treaty that is based on a similar country of origin principle to the AVMSD. Where TV services based in the UK are broadcasting to another ECTT country, they are regulated under the provisions of the ECTT. Where TV services broadcasting to the UK are based in an ECTT country, they will not need a licence from the UK but will be regulated by that country to the standards required by the ECTT.
- 2.5 The Exit Regulations provide that Ofcom must treat a service as one that can be received in an ECTT country if, but only if, the service:
- a) can be received by the general public in all parts of the relevant State using standard consumer equipment, and
 - b) can be accessed in the relevant State by means of an electronic programme guide which:

⁴ <https://www.legislation.gov.uk/ukdsi/2019/9780111176733/contents>

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0020/207821/brexit-avms-statement.pdf

- i) is licensed or otherwise regulated under the law of the relevant State, or
 - ii) if the relevant State is a State other than the United Kingdom whose law does not regulate the provision of electronic programme guides, is provided by a person whose head office is in the relevant State.
- 2.6 In this document, we refer to services that can be received in this way by an ECTT country other than the UK as “ECTT Services”.
- 2.7 The following countries have signed and ratified the ECTT: Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Malta, Montenegro, Norway, Poland, Portugal, Republic of Moldova, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Switzerland, the former Yugoslav Republic of Macedonia, Turkey.
- 2.8 Although some elements of law which referred to the AVMSD have had to be changed, the Exit Regulations contain provisions designed to ensure that the protections the AVMSD gives to audiences will not be lost. For example, quotas for European Works and limits on advertising will remain in force even after the end of the transition period.

The Audiovisual Media Services Regulations 2020

- 2.9 Under Section 211 the Communications Act 2003 (“the Act”), Ofcom has a duty to regulate television broadcast services that are under the jurisdiction of the UK for the purposes of the AVMS Directive. Section 319 of the Act requires Ofcom to set, and from time to time, review and revise, standards for the content of television and radio programmes. These standards must secure objectives set out in Section 319 of the Act.
- 2.10 In 2018 the EU completed a review of the AVMS Directive, introducing a number of changes to the regulation of audiovisual media services, including television. Under the terms of [the Withdrawal Agreement](#), the UK Government committed to implementing EU legislation up to the end of the Brexit transition period on 31 December 2020. The UK Government consulted on [its proposed approach to implementing the revised Directive](#) in 2019 and the AVMS Regulations 2020 were laid before Parliament on 30 September 2020 and came into force on 1 November 2020.
- 2.11 The AVMS Regulations include changes to the standards objectives in Section 319 of the Act.

Impact

- 2.12 The changes we are proposing in this consultation are required by law, as detailed above, and appropriate impact assessments have already therefore been carried out. We do not consider the way in which Ofcom is implementing these changes has any incremental impact on any persons.

3. Broadcasting Code: Proposed revisions

The AVMS Regulations and the ECTT

- 3.1 The ECTT and the AVMS Directive set standards that apply to the content of programmes transmitted by television services that fall within scope. For services that fall under UK jurisdiction, these standards are reflected in the Broadcasting Code. This consultation proposes changes to the Broadcasting Code that Ofcom considers necessary to ensure these standards are met.

Section Three: Crime, disorder, hatred and abuse

Incitement to Hate

- 3.2 Until the recent revision of the AVMS Directive, Article 6 of the Directive required EU Member States to secure that television services under their jurisdiction did not contain any incitement to hatred based on race, sex, religion or nationality. This is implemented by section 319(2)(b) of the Act, which requires Ofcom to set standards to secure that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television services. More broadly section 319(2)(f) requires generally accepted standards to be applied to provide adequate protection for members of the public from the inclusion of offensive and harmful material.
- 3.3 The 2018 amendment to the AVMS Directive broadens the scope of Article 6 to require Member States to prohibit incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the European Charter on Fundamental Freedoms (“the Charter”).
- 3.4 Article 21 of the Charter contains an expanded list of protected characteristics and captures, in addition to those set out above, colour, ethnic or social origin, genetic features, language, belief, political or any other opinion, membership of a national minority, property, birth, disability, age and sexual orientation.
- 3.5 Rules in Section Two and Section Three of the Code secure the standards in section 319(2)(b) and (f). Specifically, Section Two of the Code contains rules that provide general protections for audiences from material likely to cause harm or offence and Section Three provides protections from material inciting crime, from hatred, and from abusive and derogatory treatment.
- 3.6 Section Three contains a definition of hate speech, which sets out the characteristics covered by the rules. Although we consider that content amounting to hate speech would be caught in any event by Section Two of the Code, we consider it would be more transparent to include it in Section Three along with the existing hate speech provisions. We therefore propose amending this definition to include the characteristics, as set out in Article 21 of the Charter, as follows (additional text in shown in red)

Meaning of “hate speech”: all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, social origin, sex, gender, gender reassignment, nationality, race, religion or belief, ~~or~~ sexual orientation, colour, genetic features, language, political or any other opinion, membership of a national minority, property, birth or age.

- 3.7 We note that although the amendment expands the list of characteristics on the basis of which a hate speech finding could be made, the nature of the characteristic concerned is relevant to whether or not content can be considered hateful. The change does not affect the weight we would place on the importance of freedom of expression in relation to political matters and content that is in the public interest.
- 3.8 Ofcom welcomes stakeholders’ views on whether the proposed amendments appropriately reflect the requirements of the AVMS Directive.

Section Nine: Commercial references on TV

- 3.9 Section Nine of the Broadcasting Code contains rules that apply to commercial references in television programming (e.g. references to products and services). These have been set under section 319(2) and include general rules that apply to all commercial references and more targeted rules for specific forms of commercial references, such as product placement (section 319(2)(fa)) and sponsorship (section 319(2)(jj)). The rules help ensure that broadcasters maintain editorial independence over programming and that there is distinction between editorial content and advertising.

Changes resulting from the AVMS Regulations

- 3.10 Under the current rules, product placement is not permitted in any news or children’s programme, regardless of where the programme is made. In addition, product placement is not permitted in religious, consumer affairs or current affairs programmes that are made under UK jurisdiction.
- 3.11 The AVMS Regulations implement the revised Directive by extending the statutory prohibition on product placement in religious, consumer affairs or current affairs programmes to all programmes that fall within these genres, regardless of where they are made.
- 3.12 The amended Act also extends the list of products that cannot be placed in programmes to include placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or refill containers.
- 3.13 We are proposing to amend the rules in Section Nine of the Code to reflect these changes.

Changes resulting from application of the ECTT to certain services

- 3.14 In relation to advertising, Article 11(5) of the ECTT goes further than the existing rule requiring broadcasters to maintain editorial control over programming, in that it prohibits

advertisers exercising any editorial influence over the content of programmes. We are therefore proposing to add a rule reflecting this requirement to Section Nine of the Code. This rule would be applicable to ECTT Services only.

3.15 The proposed changes are shown in Table 1, as follows:

Table 1: Proposed substantive amendments to Section Nine

Current Rule	Proposed Rule
n/a – new rule applicable to ECTT services	<p>Rule 9.1(a) applies only to services that are subject to the ECTT.</p> <p>9.1(a) Broadcasters must ensure that no advertiser exercises editorial influence over the content of programmes.</p>
<p>9.6</p> <p>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.</p>	<p>9.6</p> <p>Product placement is prohibited in:</p> <p>a) news programmes</p> <p>b) children’s programmes</p>
<p>9.7</p> <p>Programmes that fall within the permitted genres must not contain product placement if they are:</p> <p>a) news programmes; or</p> <p>b) children’s programmes.</p>	<p>Rule 9.7 applies to programmes, the production of which began after 31 October 2020.</p> <p>9.7</p> <p>Product placement is prohibited in:</p> <p>a) religious programmes</p> <p>b) consumer affairs programmes</p> <p>c) current affairs programmes</p> <p><u>Note:</u></p> <p>For religious, consumer affairs and current affairs programmes made before 1 November 2020, Rule 9.12 applies.⁶</p>
<p>9.11</p> <p>The product placement of the following products, services or trade marks is prohibited:</p> <p>a) cigarettes or other tobacco products;</p> <p>b) placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products;</p> <p>c) prescription-only medicines; or</p>	<p>9.11</p> <p>The product placement of the following products, services or trade marks is prohibited:</p> <p>a) cigarettes or other tobacco products;</p> <p>b) placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products;</p> <p>c) prescription-only medicines;</p>

⁶ As Rule 9.7 will now include the first reference to current affairs programmes in Section Nine of the Code, the note, ‘Meaning of “current affairs programmes”’, which currently follows Rule 9.12, will be moved to follow this Rule (in addition to the new note cited here and the note, ‘Meaning of “children’s programme”’, which already follows this Rule).

d) electronic cigarettes or refill containers.	d) electronic cigarettes or refill containers; or e) placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or refill containers, if the programme in which the placement occurs began production after 31 October 2020.
<p>9.12 Product placement is not permitted in the following:</p> <p>a) religious programmes; b) consumer advice programmes; or c) current affairs programmes.</p>	<p>9.12 Product placement is not permitted in programmes made under UK jurisdiction, if:</p> <p>a) the production of the programme began before 1 November 2020; and b) the programme is a:</p> <p>I. religious programme; II. consumer advice programme; or III. current affairs programme.</p> <p><u>Note:</u> For religious, consumer advice or current affairs programmes made under any jurisdiction after 31 October 2020, Rule 9.7(c) applies.</p> <p><u>Meaning of “current affairs programme”:</u> See meaning under Rule 9.7.</p>

3.16 Ofcom welcomes stakeholders’ views on whether the proposed amendments to Section Nine reflect appropriately the requirements of both the Communications Act, as amended by the AVMS Regulations, and the ECTT.

Other amendments

- 3.17 We are proposing to remove the following from the Code:
- i) references and requirements in the Cross Promotion Code that relate to digital switchover, which was completed in 2012; and
 - ii) following the UK’s departure from the EU, all references to European parliamentary elections in Section Six (Elections and referendums) of the Code⁷.
- 3.18 We are also proposing to amend the explanatory text accompanying the definition of “the Watershed” in Section One (Protecting the under-eighteens) of the Code to reflect Rule 1.24 of the Code, which came into force in January 2019. This rule allows programmes that

⁷ We are similarly proposing to remove all references to the European parliamentary elections from Ofcom’s rules on Party Political and Referendum Broadcasts (see https://www.ofcom.org.uk/data/assets/pdf_file/0035/99188/pprb-rules-march-2017.pdf).

are unsuitable for children that would usually be scheduled after the watershed, to be broadcast pre-2100 and post-0530 provided that mandatory daytime protection is in place.

3.19 A draft of the revised Broadcasting Code can be found at Annex 1.

4. Code on the Scheduling of Television Advertising: Proposed Revisions

- 4.1 Rules that apply to how much advertising a broadcaster can transmit and where advertising is scheduled are set out in the Code on the Scheduling of Television Advertising (“COSTA”).
- 4.2 The ECTT contains requirements that apply to advertising.
- 4.3 We are proposing to add a new part to COSTA, to reflect the ECTT provisions. This section of the code will apply to ECTT Services.
- 4.4 The advertising provisions in the ECTT differ to those that are currently required under COSTA in the following areas:
- a) The ECTT contains a definition of advertising that captures material that is intended to advance a cause or idea, or to bring about some other effect desired by the advertiser or the broadcaster.
 - b) The ECTT contains different requirements on the amount of advertising that can be broadcast and where this can be scheduled, including the requirement that, generally, there must be at least a 20 minute period between advertising breaks. The number of teleshopping windows that can be transmitted is also limited.

Proposed Revisions

- 4.5 Table 2 (below) sets out our proposed revisions. It also signposts the ECTT provisions that underpin the proposals.

Table 2: Proposed amendments to COSTA

Current COSTA (now Part A) Rule/Reference	New COSTA Part B Rule/reference	Relevant section of the ECTT
<p><u>Definitions</u></p> <p>‘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.</p>	<p><u>Definitions</u></p> <p>‘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 which is intended to promote the sale, purchase or rental of a product or service, to advance a cause or idea, or to bring about some other effect</p>	Article 2(f)

	desired by the advertiser or the broadcaster itself.	
<u>Rule 1</u> Broadcasters must ensure that television advertising and teleshopping is readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service. This shall be done by optical (including spatial) means; acoustic signals may also be used.	<u>Rule 1</u> Broadcasters must ensure that television advertising and teleshopping is clearly distinguishable as such and recognisably separate from the other items of the programme service by optical and/or acoustic means.	Article 13(1)
<u>Rule 6</u> Teleshopping windows must be at least 15 minutes long.	<u>Rule 6</u> (a) Teleshopping windows must be at least 15 minutes long. (b) The total duration of all teleshopping windows shall not exceed three hours per day. (c) Broadcasters may transmit a maximum of eight teleshopping windows per day.	Article 12(3)
<u>Rule 9</u> Isolated television advertising and teleshopping spots, other than in the transmission of sports events, shall remain the exception.	<u>Rule 9</u> (a) Advertising and teleshopping spots shall be transmitted in blocks of at least two advertisements/spots. This rule does not apply to programmes subject to Rule 9(c), below. (b) Unless otherwise specified below, where programmes are interrupted by advertising or teleshopping spots, a period of at least twenty minutes should elapse between each successive advertising or teleshopping break within the programme. This rule does not apply to programmes subject to Rule 9(c), below. (c) In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals, advertising and tele-shopping spots shall only be inserted between the parts or in the intervals.	Article 14

<p><u>Rule 10</u> The transmission of films and news programmes may be interrupted by advertising or teleshopping only once for each scheduled period of at least 30 minutes.</p>	<p><u>Rule 10</u> The transmission of films may be interrupted by advertising or teleshopping once for each complete period of at least 45 minutes, provided their scheduled duration is at least 45 minutes. A further interruption is permitted if the scheduled duration is at least more than 20 minutes longer than two or more complete periods of 45 minutes.</p>	<p>Article 14(5)</p>
<p><u>Rule 12</u> Children’s programmes with a scheduled duration of 30 minutes or less may not be interrupted by advertising. The transmission of children’s programmes with a scheduled duration of longer than 30 minutes may be interrupted by advertising or teleshopping once for each scheduled period of at least 30 minutes.</p>	<p><u>Rule 12</u> Any news, current affairs, documentary, religious or children’s programme that has a scheduled duration of less than 30 minutes must not be interrupted by advertising or teleshopping.</p>	<p>Article 14(5)</p>

4.6 A draft of the revised Code on the Scheduling of Television Advertising can be found at Annex 2.

4.7 Ofcom welcomes stakeholders’ views on whether the proposed amendments to COSTA reflect appropriately the requirements of the ECTT.

5. Summary

Ofcom's proposal

5.1 As required under the legislation detailed above, Ofcom proposes to:

- update the:
 - definition of “Hate Speech” in Section Three of the Code, to include the following additional characteristics: colour, ethnic or social origin, genetic features, language, belief, political or any other opinion, membership of a national minority, property, birth, disability, age and sexual orientation;
 - list of programmes in which product placement is not permitted, in Section Nine of the Code, to include all religious, consumer affairs and current affairs programmes, from which product placement is currently prohibited only if they are made under UK jurisdiction; and
 - list of products, services or trade marks that are prohibited from being product placed, in Section Nine of the Code, to include placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or refill containers;
- add a new section (Part B) to COSTA, reflecting the requirements of the ECTT; and
- make other, non-substantive, amendments to the Broadcasting Code.

Consultation questions

5.2 Ofcom seeks stakeholders' views in response to the four questions laid out in Annex 6 of this consultation.

A1. The Revised Broadcasting Code

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

Contents

Part One: Broadcasting Code

The Legislative Background to the Code

How to Use the Code

Section One:

Protecting the Under-Eighteens

Section Two:

Harm and Offence

Section Three:

Crime, Disorder, Hatred and Abuse

Section Four:

Religion

Section Five:

Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions

Section Six:

Elections and Referendums

Section Seven:

Fairness

Section Eight:

Privacy

Section Nine:

Commercial References in Television Programming

Section Ten:

Commercial Communications in Radio Programming

Part Two: Cross-promotion Code

Introduction

Legislative background to the Code

Principles

Rules

Guidance

General guidance on the Cross-promotion Code

Part Three: On Demand Programme Service Rules

Introduction

Legislative background

Administrative Rules

Editorial Rules

Part One: Broadcasting Code

The Legislative Background to the Code⁸

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 the European Convention on Transfrontier Television T-TT(2000)008 (“The ECTT”) for those broadcasters which are caught by that Treaty.

You must comply these requirements if you are providing a Licensed Service that:

- (a) can be received by the general public in all parts of an ECTT Party⁹ other than the UK using standard consumer equipment; and
- (b) can be accessed in the relevant Party by means of an electronic programme guide which:
 - (i) is licensed or otherwise regulated under the law of the relevant Party, or
 - (ii) if the relevant Party is a Party other than the UK whose law does not regulate the provision of electronic programme guides, is provided by a person whose head office is in the relevant Party.

We will refer to such a service as an “ECTT Service”.

The relevant ECTT requirements are identified throughout 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

⁸ 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.

⁹ The following countries have signed and ratified the ECTT: Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Malta, Montenegro, Norway, Poland, Portugal, Republic of Moldova, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom.

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 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 (“BBC ODPS”)¹⁰ and to Sianel Pedwar Cymru (“S4C”)¹¹.

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 Agreement¹² 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; “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. No part of the Code applies to the BBC World Service.

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, repeatedly or recklessly, Ofcom may impose statutory sanctions against the broadcaster.¹³ Ofcom’s procedures for investigating cases (following the receipt of a complaint or otherwise) and applying statutory sanctions to broadcasters are also on the

¹⁰ Such as the BBC iPlayer and iPlayer Kids (both audiovisual and sound programmes).

¹¹ Providers of on demand programme services (ODPS) requiring notification to Ofcom under section 368BA of the Act are not subject to the rules in Sections One to Ten of the Code, but to the statutory ODPS rules which can be found in Part Three of the *Ofcom Broadcasting Code (with the Cross-Promotion Code and the On Demand Programme Service rules)*.

¹² The BBC Agreement is the Agreement dated November 2016 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.

¹³ In the case of the BBC, Ofcom’s power to impose sanctions is set out in the BBC Charter.

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.

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 7 of the European Convention on Transfrontier Television (for ECTT Services only), Article 6a 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.

Rules¹⁴

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
- 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.

Broadcasters of services received in ECTT Parties should have regard to any relevant time differences in the country of reception.

- 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. The watershed does not apply to channels when mandatory daytime protection is in place (see Rules 1.24 and 1.25)

- 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

¹⁴ Scheduling requirements in Rules 1.3, 1.4, 1.5 and 1.6 do not apply to BBC ODPS.

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; and
- 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 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), 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, 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), 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), 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), 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), 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), 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) , 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, 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 and mandatory daytime protection

Meaning of “mandatory daytime protection”:

Mandatory daytime protection means there is a PIN protection system in place pre-2100 and post-0530 which cannot be removed by the user and restricts access solely to those authorised to view. This does not apply to ‘adult sex material’ which under Rule 1.18 can only be shown between 2200 and 0530 **and** must be behind mandatory restricted access (see Rule 1.18).

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 behind mandatory daytime protection), and even then they may be unsuitable for broadcast at that time.

- 1.24 Provided that mandatory daytime protection is in place pre-2100 and post-0530 (or pre-2000 and post 0530 for up to BBFC 15-rated films or their equivalent on premium subscription film services), programmes that are unsuitable for children that would usually be scheduled after the watershed, and films up to BBFC 18-rated or equivalent, may be broadcast on television at any time of day. Clear information must be provided with programme and film content that will assist adults to assess its suitability for children, and the mandatory daytime protection which is in place must be clearly explained to all viewers.

When not using mandatory daytime protection, broadcasters must comply with Ofcom's rules on scheduling and the watershed (see Rules 1.1 to 1.7).

Note:

'Clear information about programme and film content' may include but is not limited to:

- information about the programme provided in the EPG referring to any potentially unsuitable material such as "strong language", "nudity", "scenes of graphic violence", or "sexual images";
- ratings (BBFC or equivalent); and/or
- information given in continuity announcements.

- 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 daytime protection 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 daytime protection" 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, 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.

Rules

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 belief, 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 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.

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 7 of the European Convention on Transfrontier Television (for ECTT Services only), Article 6 of the Audiovisual Media Services Directive, 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.

Rules

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;
- 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, social origin, gender, sex, gender reassignment, nationality, race, religion or belief, sexual orientation, colour, genetic

features, language, political or any other opinion, membership of a national minority, property, birth or age.

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 Descriptions or demonstrations of criminal techniques which contain essential details which could enable the commission of crime must not be broadcast unless editorially justified.
- 3.5 No payment, promise of payment, or payment in kind, may be made to convicted or confessed criminals whether directly or indirectly for a programme contribution by the criminal (or any other person) relating to his/her crime/s. The only exception is where it is in the public interest.
- 3.6 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.
- 3.7 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.
- 3.8 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.

Rules

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).

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.)

Section Five: Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions

(Relevant legislation includes, in particular, sections 319(2)(c) and (d), 319(8) and section 320 of the Communications Act 2003, Article 7 of the European Convention on Transfrontier Television (for ECTT Services only), the BBC Charter and Agreement, and Article 10 of the European Convention on Human Rights.)

Principles

To ensure that news, in whatever form, is reported with due accuracy and presented with due impartiality.

To ensure that the special impartiality requirements of the Act are complied with.

Rules

Meaning of “due impartiality”:

“Due” is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. “Due” means adequate or appropriate to the subject and nature of the programme. So “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important.

Due impartiality and due accuracy in news

- 5.1 News, in whatever form, must be reported with due accuracy and presented with due impartiality.
- 5.2 Significant mistakes in news should normally be acknowledged and corrected on air quickly (or, in the case of BBC ODPS, corrected quickly). Corrections should be appropriately scheduled (or, in the case of BBC ODPS, appropriately signaled to viewers).
- 5.3 No politician may be used as a newsreader, interviewer or reporter in any news programmes unless, exceptionally, it is editorially justified. In that case, the political allegiance of that person must be made clear to the audience.

Special impartiality requirements: news and other programmes

Matters of political or industrial controversy and matters relating to current public policy

Meaning of “matters of political or industrial controversy and matters relating to current public policy”:

Matters of political or industrial controversy are political or industrial issues on which politicians, industry and/or the media are in debate. Matters relating to current public policy need not be the subject of debate but relate to a policy under discussion or already decided by a local, regional or national government or by bodies mandated by those public bodies to make policy on their behalf, for example non-governmental organisations, relevant international institutions, etc.

The exclusion of views or opinions (Rule 5.4 applies to television and radio services (except restricted services) and to BBC ODPS.

- 5.4 Programmes in the services (listed above) must exclude all expressions of the views

and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy (unless that person is speaking in a legislative forum or in a court of law). Views and opinions relating to the provision of programme services are also excluded from this requirement.

The preservation of due impartiality

(Rules 5.5 to 5.12 apply to television programme services, teletext services, national radio and national digital sound programme services, all BBC radio services and BBC ODPS.)

5.5 Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service (listed above). This may be achieved within a programme or over a series of programmes taken as a whole.

Meaning of “series of programmes taken as a whole”:

This means more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience. A series can include, for example, a strand, or two programmes (such as a drama and a debate about the drama) or a ‘cluster’ or ‘season’ of programmes on the same subject.

5.6 The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air¹⁵.

5.7 Views and facts must not be misrepresented. Views must also be presented with due weight over appropriate timeframes.

5.8 Any personal interest of a reporter or presenter, which would call into question the due impartiality of the programme, must be made clear to the audience.

5.9 Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of “personal view” or “authored” programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole. Additionally, presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality. Presenter phone-ins must encourage and must not exclude alternative views.

5.10 A personal view or authored programme or item must be clearly signalled to the audience at the outset. This is a minimum requirement and may not be sufficient in all circumstances. (Personality phone-in hosts on radio are exempted from this provision unless their personal view status is unclear.)

Meaning of “personal view” and “authored”:

“Personal view” programmes are programmes presenting a particular view or perspective. Personal view programmes can range from the outright expression of highly partial views, for example by a person who is a member of a lobby group and is campaigning on the subject, to the considered “authored” opinion of a journalist, commentator or academic, with professional expertise or a specialism in an area which enables her or him to express opinions which are not necessarily mainstream.

Matters of major political or industrial controversy and major matters relating to current public policy

5.11 In addition to the rules above, due impartiality must be preserved on matters of major

¹⁵ For BBC ODPS this should be made clear to the audience by appropriate signalling to the audience.

political and industrial controversy and major matters relating to current public policy by the person providing a service (listed above) in each programme or in clearly linked and timely programmes.

Meaning of “matters of major political or industrial controversy and major matters relating to current public policy”:

These will vary according to events but are generally matters of political or industrial controversy or matters of current public policy which are of national, and often international, importance, or are of similar significance within a smaller broadcast area.

5.12 In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented.

The prevention of undue prominence of views and opinions on matters of political or industrial controversy and matters relating to current public policy

(Rule 5.13 applies to local radio services (including community radio services), local digital sound programme services (including community digital sound programme services) and radio licensable content services. For the avoidance of doubt, it does not apply to any BBC services.)

5.13 Broadcasters should not give undue prominence to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy in all the programmes included in any service (listed above) taken as a whole.

Meaning of “undue prominence of views and opinions”:

Undue prominence is a significant imbalance of views aired within coverage of matters of political or industrial controversy or matters relating to current public policy.

Meaning of “programmes included in any service...Taken as a whole”:

Programmes included in any service taken as a whole means all programming on a service dealing with the same or related issues within an appropriate period.

Section Six: Elections and Referendums

(Relevant legislation includes, in particular, sections 319(2)(c) and 320 of the Communications Act 2003, the BBC Charter and Agreement, and Article 10 of the European Convention on Human Rights. Broadcasters should also have regard to relevant sections of the Representation of the People Act 1983 (as amended) (“RPA”) – see in particular sections 66A, 92 and 93 (which is amended by section 144 of the Political Parties, Elections and Referendums Act 2000).)

Rules made under section 333 of the Communications Act 2003 (regarding party election broadcasts, party political broadcasts and referendum campaign broadcasts) and the BBC Agreement, and referred to in paragraph 18 of Schedule 12 to the Communications Act 2003, are contained in *Ofcom Rules on Party Political and Referendum Broadcasts* on the Ofcom website. However, such broadcasts are also required to comply with the relevant provisions of this Code, for example the provisions regarding harm and offence – notwithstanding that the content is normally the responsibility of the relevant political parties.

Principle

To ensure that the special impartiality requirements in the Communications Act 2003 and other legislation relating to broadcasting on elections and referendums, are applied at the time of elections and referendums.

Rules

Programmes at the time of elections and referendums

6.1 The rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums.

Programmes at the time of elections and referendums in the UK

The remainder of this section only applies during the actual election or referendum period which is defined below.

Meaning of “election”:

For the purpose of this section elections include a parliamentary general election, parliamentary by-election, local government election, mayoral election, Police and Crime Commissioner election, Scottish and Welsh Parliament elections, and Northern Ireland and London Assembly elections.

Meaning of “referendum”:

For the purpose of this section a referendum is a statutory referendum (to which the Political Parties, Elections and Referendums Act 2000 (“PPERA”) applies or to which section 127 of PERA is applied) which includes a UK-wide, national or regional referendum held under the provisions of an Act of the UK Parliament or the Scottish Parliament, but does not extend to a local referendum.

6.2 Due weight must be given to the coverage of parties and independent candidates during the election period. In determining the appropriate level of coverage to be given to parties and independent candidates broadcasters must take into account evidence of past electoral support and/or current support. Broadcasters must also consider giving appropriate coverage to parties and independent candidates with significant views and perspectives.

Meaning of “election period”:

For a parliamentary general election, this period begins with the dissolution of Parliament.

For a parliamentary by-election, this period begins with the issuing of a writ or on such earlier date as is notified in the London Gazette. For the Scottish Parliament elections and Welsh Parliament elections, the period begins with the dissolution of the Scottish Parliament or the Welsh Parliament as appropriate or, in the case of a by-election, with the date of the occurrence of a vacancy. For the Northern Ireland Assembly, the London Assembly and for local government elections, it is the last date for publication of notices of the election. In all cases the period ends with the close of the poll.

Meaning of “candidate”:

Candidate has the meaning given to it in section 93 of the Representation of the People Act 1983 (as amended) and means a candidate standing nominated at the election or included in a list of candidates submitted in connection with it.

6.3 Due weight must be given to designated organisations in coverage during the referendum period. Broadcasters must also consider giving appropriate coverage to other permitted participants with significant views and perspectives.

Meaning of “designated organisation” and “permitted participants”:

Designated organisations and permitted participants are those that are designated by the Electoral Commission.

Meaning of “referendum period”:

For referendums different periods may apply. A referendum held under the Northern Ireland Act 1998 (as amended) begins when the draft of an Order is laid before Parliament for approval by each House. In the case of a referendum held under other Acts, the time at which a referendum period commences is given in the individual Acts. In the case of an Order before Parliament, the time will be given in that Order. In all cases the period ends with the close of the poll.

6.4 Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post.) BBC ODPS are not required to remove archive content for the period when the polls are open.

6.5 Broadcasters may not publish the results of any opinion poll on polling day itself until the election or referendum poll closes.

6.6 Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period. BBC ODPS are not required to remove archive content for the election or referendum period.

6.7 Appearances by candidates (in UK elections) or representatives (of permitted participants in UK referendums) in non-political programmes that were planned or scheduled before the election or referendum period may continue, but no new appearances should be arranged and broadcast during the period. BBC ODPS are not required to remove archive content for the election or referendum period.

Constituency coverage and electoral area coverage in elections

(Rules 6.8 to 6.12 will only apply to S4C and/or the BBC if the relevant broadcaster has adopted them under the RPA as its Code of Practice.)

6.8 Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion.

Meaning of “electoral area”:

Electoral area (for example electoral division, borough ward or other area) is the local government equivalent to the parliamentary term “constituency”.

- 6.9 If a candidate takes part in an item about his/her particular constituency, or electoral area, then broadcasters must offer the opportunity to take part in such items to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates. However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead.
- 6.10 Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision. Where a constituency report on a radio service is repeated on several occasions in the same day, the full list need only be broadcast on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above.
- 6.11 Where a candidate is taking part in a programme on any matter, after the election has been called, s/he must not be given the opportunity to make constituency points, or electoral area points about the constituency or electoral area in which s/he is standing, when no other candidates will be given a similar opportunity.
- 6.12 If coverage is given to wider election regions, for example in elections to the Scottish Parliament, Welsh Parliament, Northern Ireland Assembly or London Assembly, then Rules 6.8 to 6.12 apply in offering participation to candidates. In these instances, all parties who have a candidate in the appropriate region should be listed in sound and/or vision, but it is not necessary to list candidates individually. However, any independent candidate who is not standing on a party list must be named. Where a report on a radio service is repeated on several occasions in the same day, the full list need only be broadcast on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above.

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 8 of the European Convention on Transfrontier Television (for ECTT Services only), 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.

Rule

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

Practices to be followed (7.2 to 7.15 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:

- 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 practices 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.

Rule

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 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 11, 13, 15, 17, 18 of the European Convention on Transfrontier Television (for ECTT Services only); 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; 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 television programming and audiovisual programming on BBC ODPS.

Section Ten of the Code concerns radio only.¹⁶ The 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 activity (e.g. product placement, programme-related material, sponsorship), whether it is carried out by, or 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.

Meaning of “programming”:

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

Meaning of “commercial reference”:

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

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.

¹⁶ Including audio-only content on BBC ODPS.

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.

Note:

Rule 9.1(a) applies to ECTT Services.

9.1(a) Broadcasters must ensure that no advertiser exercises editorial influence over the content of programmes.

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).

Rules 9.6 to 9.11 apply to all programmes

9.6 Product placement is prohibited in:

- a) news programmes
- 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".

Note

Rule 9.7 applies to programmes, the production of which began before 1 November 2020. For religious, consumer affairs and current affairs programmes made under UK jurisdiction, Rule 9.12 also applies.

9.7 Product placement is prohibited in:

- a) religious programmes
- b) consumer affairs programmes
- 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.

9.8 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;
- d) electronic cigarettes or refill containers; or
- e) placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of electronic cigarettes or refill containers, if the programme in which the placement occurs began production after 31 October 2020.

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) programmes produced under UK jurisdiction.

9.12 Product placement is not permitted in programmes that are made under UK jurisdiction, if:

- a) the production of the programme began before 1 November 2020; and
- b) the programme is a:
 - IV. religious programme;
 - V. consumer advice programme; or
 - VI. current affairs programme.

Note:

For religious, consumer advice or current affairs programmes made under any jurisdiction after 31 October 2020, Rule 9.7(c) applies.

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>

Rule 9.14 applies to programmes 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 “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, in a sponsored programme that is 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 9.7.

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).

An editorial reference in a programme to the sponsor (or its products, services or trade marks) that is not a result of a commercial arrangement with the broadcaster, the programme maker or a connected person, 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 Part Two of 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;
 - b) the organisation concerned is not prohibited from advertising on television; and
 - c) for ECTT services, if the appeal is self-promotional for the broadcaster, it may not feature, visually or orally, persons regularly presenting news and current affairs programmes.
- 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.

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.

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, 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 applies to radio only (including audio-only programming on BBC ODPS).

Code Section Nine (Commercial References in Television Programming) applies to television only.¹⁷ 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;
- specialist factual strands that are not news bulletins or news desk presentations, but may be featured in or around such programming;

¹⁷ Including audiovisual programming on BBC ODPS.

- 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

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).

Part Two: The Cross-promotion Code

Contents

- 1: Introduction
- 2: Legislative background to the Code
- 3: Principles
- 4: Rules
- 5: Guidance
- 6: General guidance on the Cross-promotion Code

Introduction

- 1.1 Subject to this Cross-promotion Code (“the Code”), television broadcasters are able to promote programmes, channels and other broadcasting-related services without such promotions being considered advertising and included in the calculation of advertising minutage.
- 1.2 The amount of advertising that may be broadcast on a television channel is restricted by the Code on the scheduling of television advertising (“COSTA”). COSTA imposes a maximum on the amount of advertising that can be shown in a given hour and over any one day. For the purposes of COSTA, the term ‘advertising’ is used to refer to any form of promotional announcement broadcast in return for payment or similar consideration.
- 1.3 The Code replaces the rules regulating the promotion of programmes, channels and related services on commercial television issued by the ITC in January 2002 and takes effect from 10 July 2006.
- 1.4 The Code applies to television services regulated by Ofcom. However, it does not apply to BBC services funded by the licence fee. Cross-promotions on such services are subject to Clause 63 of the BBC Agreement. All references to ‘licensees’ should be interpreted accordingly.
- 1.5 The Code applies to promotions outside programmes only.
- 1.6 Within programmes, references to all products and services, including broadcasting-related services, are subject to the rules in Broadcasting Code Section Nine on Commercial References in Television Programming.
- 1.7 The Ofcom Code applies in the usual way to the content of promotions outside programmes, unless otherwise stated in the guidance on Section Nine of the Broadcasting Code.

Legislative background to the Code

- 2.1 Under Ofcom’s powers to issue broadcasting licences under the Broadcasting Acts 1990 and 1996, broadcasting licences may contain such conditions as Ofcom considers appropriate having regard to the duties imposed on Ofcom under the Broadcasting Acts and Communications Act 2003. Under the Communications Act

2003 Ofcom also has the power to approve codes for the purposes of a provision contained in a licence.

- 2.2 Under section 316 of the Communications Act 2003 Ofcom has the power to include conditions which Ofcom considers appropriate for ensuring fair and effective competition. All television broadcasting licences currently contain a fair and effective competition licence condition. This condition requires licensees to comply with any code or guidance approved by Ofcom for the purpose of ensuring fair and effective competition.
- 2.3 Section 319 of the Communications Act 2003 imposes a duty on Ofcom to set standards to secure, amongst other things, that the international obligations of the United Kingdom with respect to advertising in television services are complied with. Ofcom must also set standards to secure that the requirements with respect to advertising contained in the European Convention on Transfrontier Television T-TT(2000)008 and any EU Directives, as they had effect immediately prior to the end of the transition period, are met. This includes the requirements contained in the Audiovisual Media Services Directive (Directive 2010/13/EU) as it had effect immediately before the end of the transition period.
- 2.4 Broadcasters should bear in mind the legislative background that has informed the rules, the principles that apply to each section, the meanings given by Ofcom and the guidance issued by Ofcom, in this Code, the Broadcasting Code all of which may be relevant in interpreting and applying the Code.

Principles

- 3.1 There are two key principles which the Rules contained in Section 4 of the Code are designed to reflect:
 - i) ensuring that cross-promotions on television are distinct from advertising and inform viewers of services that are likely to be of interest to them as viewers; and
 - ii) ensuring that promotions on television outside programmes do not prejudice fair and effective competition.

Rules

Meanings

'Broadcasting-related Services':

include all broadcasting activities licensable by Ofcom, for example television and radio services. They also include other services with a 'broadcasting feel', that is, services which deliver content similar to that delivered on a television or radio service. In addition, a website that provides content clearly and directly related to a Broadcasting-related Service may itself be a Broadcasting-related Service.

'Cross-promotions':

are promotions, on a channel, of programmes and Broadcasting-related Services, that are not Self-promotions.

'Licensees':

are the companies and legal entities which hold a broadcasting licence granted by Ofcom pursuant to the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003).

'Promotions':

are Self-promotions and Cross-promotions.

‘Self-promotions’:

are promotions on a channel for that same channel and/or for programmes broadcast on that channel.

Broadcasting-related services

4.1 All licensees and S4C shall ensure that Cross-promotions are limited to Broadcasting-related Services.

Guidance

5.1 This guidance is non-binding and will be reviewed from time to time to reflect Ofcom’s experiences with individual cases. It is provided to assist licensees in interpreting and applying the Code. Every complaint or case will be dealt with on a case by case basis according to the individual facts of the case.

Broadcasting-related services

5.2 Ofcom does not wish to be prescriptive in defining the term ‘Broadcasting-related Services’. Depending on the individual facts, it may include a service whereby audiovisual content is delivered over a mobile or broadband platform, and video-on-demand. It is distinct from ‘programme-related material’, which is defined in Section Nine of the Broadcasting Code.

Cross-promotion relationships

5.3 Certain relationships between broadcasters (which are based on shareholdings or voting power) create a rebuttable presumption that there are sufficient incentives for the promoting channel to provide another channel or broadcasting-related service with free airtime without the need for additional consideration. In these specific circumstances Ofcom would not, in the absence of evidence to the contrary, consider these Cross-promotions to be advertising. However, if Ofcom believes that payment or some other consideration has passed or is passing between the parties, these types of arrangements could be investigated under the advertising minutage rules and may be counted as advertising minutage.

5.4 The relevant relationships that create this presumption of sufficient incentives are as follows:

- (i) the Licence Holder for the promoting channel has a shareholding of 30% or more (or voting power of 30% or more) in the Licence Holder for the promoted channel;
- (ii) the Licence Holder for the promoted channel has a shareholding of 30% or more (or voting power of 30% or more) in the Licence Holder for the promoting channel; or²
- (iii) the Actual Licence Holder for the promoted channel and promoting channel are the same.

5.5 For the purposes the relevant relationships outlined in paragraph 5.4:

‘Actual Licence Holder’ means: the legal entity or company which holds the broadcasting licence granted by Ofcom pursuant to the Broadcasting Act 1990 (as amended by the Broadcasting Act 1996 and the Communications Act 2003); and

‘Licence holder’ means: the Actual Licence Holder or any legal entity or company which has a 30% or more shareholding (or 30% or more voting power) in the Actual Licence Holder.

- 5.6 If there is less than a 30% shareholding (or less than 30% voting power), there may be insufficient incentives for a broadcaster to provide another channel or service with free airtime and broadcasters will need to demonstrate that no consideration has passed between the parties and that Cross-promotion is justified on the basis of other incentives.
- 5.7 In the case of Cross-promotions between Channel 3 licence holders, there will be a rebuttable presumption that no consideration has passed.
- 5.8 These presumptions do not apply to public service announcements, charity appeals broadcast free of charge, announcements required by Ofcom and information to viewers broadcast in accordance with an Ofcom requirement, which are already excluded from paid for advertising by COSTA

General guidance on the Cross-promotion Code

- 6.1 It is the responsibility of the broadcaster to comply with the Cross-promotion Code
- 6.2 Ofcom can offer general guidance on the interpretation of the Cross-promotion Code. However, any such advice is given on the strict understanding that it will not affect Ofcom's discretion to judge cases and complaints after transmission and will not affect the exercise of Ofcom's regulatory responsibilities. Broadcasters should seek their own legal advice on any compliance issues arising. Ofcom will not be liable for any loss or damage arising from reliance on informal guidance.

2 Please note that, since publication of the cross-promotion statement on 9 May 2006, this part of the guidance has been revised by adding the word “or”. This amendment has been made to make clear that in order to create the rebuttable presumption explained in paragraph 5.3, a broadcaster only needs to satisfy one of the three relationships which are outlined in paragraph 5.4.

3 Please note that, since publication of the cross-promotion statement on 9 May 2006, this part of the guidance has been revised by adding the text “For the purposes the relevant relationships outlined in paragraph 5.4”. This amendment has been made to make clear that the definitions only apply to the relationships outlined in paragraph 5.4.

4 Please note that, since publication of the cross-promotion statement on 9 May 2006, this part of the guidance has been revised by adding ‘TV’ after the word ‘broadband’ in the last sentence. The amendment has been made to give further clarity.

5 Please note that, since publication of the cross-promotion statement on 9 May 2006, this part of the guidance has been revised by replacing the text “available on satellite, cable, digital TV through your aerial or over broadband” with “available on satellite, cable, digital TV through your aerial, or broadband TV”. This amendment has been made to give further clarity.

6 This phrase is intended to reflect the current branding of the retail TV services which satisfy the materiality threshold. The main commercial terrestrial broadcasters who are subject to the platform neutrality requirement will need to amend such a phrase to reflect any branding changes made to the retail TV services.

Part Three : On Demand Programme Service Rules

[please note that these rules are currently being updated]

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A2. The Revised Code on the Scheduling of Television Advertising

This Code sets out the rules with which television broadcasters licensed by Ofcom¹⁸ (“broadcasters”) must comply when carrying advertising. These rules give effect to relevant provisions of the Communications Act, the Audiovisual Media Services (AVMS) Directive and those policies determined by Ofcom following consultation. Part B of this Code also gives effect to a number of requirements relating to television advertising in the European Convention on Transfrontier Television T-TT(2000)008 (“The ECTT”) for broadcasters caught by that Treaty.

Broadcasters must also comply with the UK Code of Broadcast Advertising (the BCAP Code) issued by the Broadcast Committee of Advertising Practice.

Part A

Part A applies to advertising on services that:

- (a) **cannot** be received by the general public in all parts of an ECTT Party¹⁹ other than the UK using standard consumer equipment; and
- (b) **cannot** be accessed in the relevant Party by means of an electronic programme guide which:
 - (i) is licensed or otherwise regulated under the law of the relevant Party, or
 - (ii) if the relevant Party is a Party other than the United Kingdom whose law does not regulate the provision of electronic programme guides, is provided by a person whose head office is in the relevant Party.

For services that can be received in ECTT countries other than the UK, please see Rules in Part B.

Definitions

In Part A of this Code:

‘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.

¹⁸ For the purpose of this Code, this includes S4C, which is authorised by the Broadcasting Act 1990.

¹⁹ The following countries have signed and ratified the ECTT: Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Malta, Montenegro, Norway, Poland, Portugal, Republic of Moldova, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom.

'broadcasting day' is deemed to start at 06:00 and run for the following 24 hours.

'Parliamentary proceedings' includes proceedings on the floor of either House and Parliamentary Committees.

'public service channels' are Channel 3 services, Channel 4, Channel 5 and S4C.

'formal Royal ceremony' means a formal ceremony or occasion of which the Sovereign or members of the British Royal Family enjoying the prefix 'Royal Highness' are the centre. It applies to occasions such as the State Opening of Parliament and Trooping the Colour.

'films' means films made for television (including single dramas but excluding series, serials and documentaries) and cinematographic works.

'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.

'teleshopping windows' are extended teleshopping features with a minimum uninterrupted duration of 15 minutes.

Rules (Part A)

Identification of advertising

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

Time devoted to advertising

Rules 2 to 5 do not apply to:

- advertising by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;
- local digital television programme services ("L-DTPS") not receivable outside the UK (e.g. a DTT service not receivable outside the UK, or an encrypted satellite service); and
- teleshopping windows (see Rules 6 and 7).

2. Time devoted to television advertising and teleshopping spots on any channel in any clock hour must not exceed 12 minutes.

Further to Rule 2:

3. Non public service channels must show no more than an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising.

Teleshopping and self-promotional services are exempt from Rule 3 (for an explanation of these types of services see http://licensing.ofcom.org.uk/binaries/tv/tlcs_guidance.pdf).

4. On public service channels, time devoted to television advertising and teleshopping spots must not exceed:
 - i. an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and
 - ii. an average of 8 minutes per hour between 18:00 and 23:00.

During programmes broadcast by the national Channel 3 breakfast licensee, the amount of time permitted for television advertising and teleshopping spots between 06:00 to 09:25 may be averaged across the week.

There may be occasions when a broadcaster transmits less advertising than it scheduled. If this happens for reasons of good programme presentation, or because of unforeseen technical or human errors, Ofcom may grant the broadcaster a limited exemption from Rule 3 or 4 to enable it to transfer unused minutage to other parts of its schedule. In such circumstances, the broadcaster must contact Ofcom, in writing, to seek permission to transfer unused minutage. The request must set out:

- i. the reason for the proposed transfer; and
- ii. the date(s) and time(s) of the proposed recoupment, which must be within 7 days of the lost minutage.

In no circumstances can the transfer result in any clock hour containing more than 12 minutes of advertising.

5. Advertising breaks during programmes on public service channels may not exceed 3 minutes 50 seconds, of which advertising and teleshopping spots may not exceed 3 minutes and 30 seconds.

Advertising breaks in films are not subject to Rule 5.

Teleshopping windows

6. Teleshopping windows must be at least 15 minutes long.
7. On public service channels, teleshopping windows may be scheduled only between 00:00 and 06:00.

Placement of advertising

8. Where television advertising or teleshopping is inserted during programmes, television broadcasters must ensure that the integrity of the programme is not prejudiced, having regard to the nature and duration of the programme, and where natural breaks occur.
9. Isolated television advertising and teleshopping spots, other than in the transmission of sports events, shall remain the exception.
10. The transmission of films and news programmes may be interrupted by advertising or teleshopping only once for each scheduled period of at least 30 minutes.
11. Breaks are not permitted within schools programmes.

12. Children’s programmes with a scheduled duration of 30 minutes or less may not be interrupted by advertising. The transmission of children’s programmes with a scheduled duration of longer than 30 minutes may be interrupted by advertising or teleshopping once for each scheduled period of at least 30 minutes.
13. Programmes including a religious service may not include advertising or teleshopping breaks during the service.
14. Broadcasts of a formal Royal ceremony may not include advertising or teleshopping breaks during the ceremony.
15. Broadcasts of live Parliamentary proceedings:
 - i. may not include advertising and teleshopping breaks in programmes of a scheduled duration of 30 minutes or less;
 - ii. in programmes that have a scheduled duration that is greater than 30 minutes, the transition between live coverage of Parliamentary proceedings and advertising should take place where natural breaks occur via a programme presenter in sound or vision. Programme directors/editors must have the discretion to reschedule or cancel breaks to avoid artificial interruptions in live proceedings. Breaks should be dropped altogether where this would be incompatible with editorial responsibility, for example in coverage of matters of great gravity or emotional sensitivity.
16. For programmes other than those set out in Rules 10 to 15 above, the number of internal breaks permitted is set out in the tables that follow. For every additional 20-minute period beyond that set out in the tables, a further break is permitted.

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

Scheduled duration of programme	Number of breaks
21 – 44 minutes	One
45 – 54 minutes	Two
55 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes	Six

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

Scheduled duration of programme	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two

46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five

Part B

Part B applies to advertising on services that:

- (a) **can** be received by the general public in all parts of an ECTT Party²⁰ other than the UK using standard consumer equipment; and
- (b) **can** be accessed in the relevant Party by means of an electronic programme guide which:
 - (i) is licensed or otherwise regulated under the law of the relevant Party, or
 - (ii) if the relevant Party is a Party other than the United Kingdom whose law does not regulate the provision of electronic programme guides, is provided by a person whose head office is in the relevant Party.

For services that cannot be received in ECTT countries other than the UK, please see the Rules in Part A.

Definitions

In Part B of this Code:

'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 which is intended to promote the sale, purchase or rental of a product or service, to advance a cause or idea, or to bring about some other effect desired by the advertiser or the broadcaster itself.

'broadcasting day' is deemed to start at 06:00 and run for the following 24 hours.

'Parliamentary proceedings' includes proceedings on the floor of either House and Parliamentary Committees.

'public service channels' are Channel 3 services, Channel 4, Channel 5 and S4C.

'formal Royal ceremony' means a formal ceremony or occasion of which the Sovereign or members of the British Royal Family enjoying the prefix 'Royal Highness' are the centre. It applies to occasions such as the State Opening of Parliament and Trooping the Colour.

'films' means films made for television (including single dramas but excluding series, serials and documentaries) and cinematographic works.

'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.

'teleshopping windows' are extended teleshopping features with a minimum uninterrupted duration of 15 minutes.

²⁰ The following countries have signed and ratified the ECTT: Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Malta, Montenegro, Norway, Poland, Portugal, Republic of Moldova, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom.

Rules (Part B)

Identification of advertising

1. Broadcasters must ensure that television advertising and teleshopping is clearly distinguishable as such and recognisably separate from the other items of the programme service by optical and/or acoustic means.

Time devoted to advertising

Rules 2 to 5 do not apply to:

- advertising by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;
- announcements in the public interest and such charity appeals broadcast free of charge as fall within the definition of advertising; and
- teleshopping windows (see Rules 6 and 7).

2. Time devoted to television advertising and teleshopping spots on any channel in any clock hour must not exceed 12 minutes.

Further to Rule 2:

3. Non public service channels must show no more than an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising.
4. On public service channels, time devoted to television advertising and teleshopping spots must not exceed:
 - i. an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and
 - ii. an average of 8 minutes per hour between 18:00 and 23:00.
5. Advertising breaks during programmes on public service channels may not exceed 3 minutes 50 seconds, of which advertising and teleshopping spots may not exceed 3 minutes and 30 seconds.

Advertising breaks in films are not subject to Rule 5.

Teleshopping windows

6. (a) Teleshopping windows must be at least 15 minutes long.
(b) The total duration of all teleshopping windows shall not exceed three hours per day.
(c) Broadcasters may transmit a maximum of eight teleshopping windows per day.
7. On public service channels, teleshopping windows may be scheduled only between 00:00 and 06:00.

Placement of advertising

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

9. (a) Advertising and teleshopping spots shall be transmitted in blocks of at least two advertisements/spots. This rule does not apply to programmes subject to Rule 9(c), below.
 - (b) Unless otherwise specified below, where programmes are interrupted by advertising or teleshopping spots, a period of at least 20 minutes should elapse between each successive advertising or teleshopping break within the programme. This rule does not apply to programmes subject to (c), below.
 - (c) In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals, advertising and teleshopping spots shall only be inserted between the parts or in the intervals.
10. The transmission of films may be interrupted by advertising or teleshopping once for each complete period of at least 45 minutes, provided their scheduled duration is at least 45 minutes. A further interruption is permitted if the scheduled duration is at least more than 20 minutes longer than two or more complete periods of 45 minutes.
 11. Breaks are not permitted within schools programmes.
 12. Any news, current affairs, documentary, religious or children's programme that has a scheduled duration of less than 30 minutes must not be interrupted by advertising or teleshopping.
 13. Programmes including a religious service may not include advertising or teleshopping breaks during the service.
 14. Broadcasts of a formal Royal ceremony may not include advertising or teleshopping breaks during the ceremony.
 15. Broadcasts of live Parliamentary proceedings:
 - i. may not include advertising and teleshopping breaks in programmes of a scheduled duration of 30 minutes or less;
 - ii. in programmes that have a scheduled duration that is greater than 30 minutes, the transition between live coverage of Parliamentary proceedings and advertising should take place where natural breaks occur via a programme presenter in sound or vision. Programme directors/editors must have the discretion to reschedule or cancel breaks to avoid artificial interruptions in live proceedings. Breaks should be dropped altogether where this would be incompatible with editorial responsibility, for example in coverage of matters of great gravity or emotional sensitivity.

A3. Responding to this consultation

How to respond

- A3.1 Ofcom would like to receive views and comments on the issue raised in this document, by 5pm on 23 December 2020.
- A3.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-3/amendments-broadcasting-code-and-costa>. Please return this by email to the email address provided in the response form.
- If your response is a large file, or has BCode&COSTAamends@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address is for this consultation only and will not be valid after 5pm on 23 December 2020.
- A3.3 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A3.4 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A3.5 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A3.6 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A3.7 It would be helpful if your response could include a direct answer to the questions asked in the consultation document. The questions can be found at Annex 6. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A3.8 If you want to discuss the issues and questions raised in this consultation, please email BCode&COSTAamends@ofcom.org.uk.

Confidentiality

- A3.9 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that

everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, www.ofcom.org.uk, as soon as we receive them.

- A3.10 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A3.11 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A3.12 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

Next steps

- A3.13 Following this consultation period, Ofcom plans to publish a statement in December.
- A3.14 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

Ofcom's consultation processes

- A3.15 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 4.
- A3.16 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A3.17 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A4. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A4.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. 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

- A4.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A4.3 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 for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A4.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A4.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A4.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A4.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A5. Consultation coversheet

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

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

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

DECLARATION

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

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

Name

A6. Consultation questions

Amendments to the Broadcasting Code and the Code on the Scheduling of Television Advertising (COSTA)

A6.1 Ofcom seeks stakeholders' views in response to the following:

Question 1:

Do you consider Ofcom's proposed amendment to the definition of "Hate Speech" in Section Three of the Broadcasting Code reflects appropriately the requirements of the AVMS Directive? If not, please explain why.

Question 2:

Do you consider Ofcom's proposed amendments to Section Nine of the Broadcasting Code reflect appropriately the requirements of the Communications Act, as amended by the AVMS Regulations, and the ECTT ? If not, please explain why?

Question 3:

Do you consider Ofcom's proposed amendments to COSTA reflect appropriately the requirements of the ECTT? If not, please explain why?

Question 4:

Do you wish to make any additional comments on the proposed amendments to the Broadcasting Code and/or COSTA? If so, please specify.