

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title: **Broadcasting Code Review.**

To (Ofcom contact): **Sara Winter**

Name of respondent: **STV group**

Representing (self or organisation/s): **Organisation**

Address (if not received by email): **joan.darroch@stv.tv – Compliance Manager**

### CONFIDENTIALITY

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

Nothing	<input checked="" type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

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Name

Joan Darroch

Signed (if hard copy)

# Consultation questions

## Sexual Material Rules (Code Section One)

### Question 1 (P. 25 at 4.21 - 4.31)

a) Do you consider that the rule in relation to 'adult-sex' material needs to be clarified?

**STV welcomes clarity and notes that the rules are aimed at niche adult TV Services.**

b) Do you agree with our proposed amendments to the rule on 'adult-sex' material (Proposed Rule 1.18 to replace Rule 1.24 – relating to Premium subscription Services)?

**Yes**

c) If you do not agree with our proposed amendments, please explain why and suggest alternative wording where appropriate.

**N/A**

### Question 2 (P 28 at 4.32 -4.42)

a) Do you consider that the introduction of a new rule in relation to material of a strong sexual nature is appropriate? (Rule 1.19)

**STV agrees that new rules are necessary to prevent harm or offence to all viewers and such content should always be editorially justified.**

**STV is of the view that harm and offence can be prevented through the provision of warnings, labels and signposts which provide viewers with sufficient information to allow them to decide whether to watch the programme, or to switch channels. This remains an important factor for all channels. Indeed, it is STV's view that strong sexual content, which is editorially justified, should continue to be acceptable after the watershed where sufficient information, guidance and warnings are provided in print and on screen before and during the programme.**

**It is also clear from Ofcom's recent research that parents are also responsible for their children's viewing. Therefore STV suggests that the provision of warnings, labels and signposts when promoting programmes containing more adult themes will also prevent the possibility of offence or harm to its viewers.**

b) Do you agree with our proposed rule on material of a strong sexual nature (proposed Rule 1.19)?

**Yes**

c) If you do not agree with our proposed new rule, please explain why and suggest alternative wording where appropriate.

**N/A**

### Question 3 (P30 at 4.43 -4.52)

a) Do you consider that the rule in relation to material equivalent to the BBFC R-18 rating needs to be separated from the rule in relation to R-18 rated works?

**Yes**

b) Do you agree with our proposed rule on material equivalent to the BBFC R-18 rating (proposed Rule 1.17)?

**Yes**

c) If you do not agree with our proposed new rule, please explain why and suggest alternative wording where appropriate.

**N/A**

**Question 4 (P31 at 4.53 to 4.58)**

a) Do you consider that the rule in relation to pre-watershed material needs to be clarified? (New Rule 1.20)

**Yes**

b) Do you agree with our proposed amendments to the rule on pre-watershed material (proposed Rule 1.20 to replace Rule 1.17)?

**Yes**

c) If you do not agree with our proposed amendments, please explain why and suggest alternative wording where appropriate.

**N/A**

**Question 5 (P32 at 4.59 – 4.69)**

a) Do you consider that the associated revisions are appropriate following the other rule revisions outlined above (includes re-grouping of rules: Sex; Nudity; Exorcism).

**Yes**

b) Do you agree with our proposed associated revisions in Section One?

**Yes**

c) If you do not agree with our proposed revisions, please explain why and suggest alternative wording where appropriate.

**N/A**

**Question 6 (P34 at 4.70 p 4.71)**

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

**No**

**Competitions and Voting Rules (Code Section Two)**

**Question 7 (P37 at 5.13 to 5.23)**

a) Do you consider that the introduction of new rules in relation to competitions and voting is appropriate?

**Yes**

b) Do you agree with our proposed new rules in relation to competitions and voting (proposed Rules 2.11 to 2.13 to replace Rule 2.11)?

**Yes**

c) If you do not agree with our proposed new rules, please explain why and suggest alternative wording where appropriate.

**N/A**

**Question 8 (P38 at 5.24 to 5.28)**

a) Do you consider that the introduction of new meanings in relation to competitions and voting are appropriate?

**Yes**

b) Do you agree with our proposed new meanings in relation to competitions and voting?

**Yes**

c) If you do not agree with our proposed new meanings, please explain why and suggest alternative wording where appropriate.

**N/A**

**Question 9 (P39 at 5.29 to 5.31)**

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

N/A

**Commercial References in Television Programming Rules (Code Section Nine)**

**Question 10 (P42 at 6.22 to 6.26)**

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

**STV agrees that the rules would benefit from being separated as the different application of the rules can cause confusion, specifically in relation to programme sponsorship.**

**STV is of the view that Ofcom should continue to be as flexible as possible when applying laws and regulations which apply to TV alone - to avoid inadvertently affecting commercial competition through the creation of a commercial advantage for radio broadcasters - where it is not legally required to do so.**

b) Do you agree with the introduction of the proposed new Section Nine on commercial references in television programming?

Yes

c) If you do not agree with the proposed new Section Nine, please explain why and suggest alternative wording where appropriate.

N/A

**Question 11 (P51 at 6.27 to 6.29)**

a) Do you consider that it is appropriate for Ofcom to include the enforceable provisions relating to product and prop placement, replicated from the AVMS Directive (Implementation) Regulations, as rules in the revised Code?

**STV agrees with such replication together with the provision of further guidance where the UK Regulation differs from the European Directive.**

**STV appreciates that the Regulations in relation to product placement are outwith Ofcom's control, however, STV is of the view that the differentiation between the UK Regulation and the EU Directive is an added complication which disadvantages the UK's ability to compete in an industry where territorial borders are shrinking.**

b) If you do not consider this to be appropriate, please explain why.

N/A

**Questions 12 (P52 at 6.30 to 6.45)**

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

**STV welcomes Ofcom's proposal to allow Public Information Programming.**

**STV would welcome clarification on the definition of a 'non-commercial' and 'not-for-profit-entity' and agrees with ITV's proposal that charities should be included.**

**STV seeks further clarification on Ofcom's view on government bodies and government campaigns in this respect. STV is of the view that government bodies, such as the police or the National Health Service, are bodies which should be included within the definition and indeed, the services they provide should not fall under the standard definition of a commercial service. In general terms, providers of not-for-profit services or charities should therefore be eligible as funders for Public Information Programming under this policy. The criteria should not prohibit not-for-profit charities, agencies, or other entities who are permitted from advertising, from being able to fund such programmes, subject to the necessary editorial controls.**

b) If Ofcom were to introduce rules in relation to Public Information Programming:

i. Are there any potential programmes that you believe could comply with the potential rules but that you consider would be undesirable or arguably not in the public interest? If so, please give details.

**STV is of the view that some not-for-profit organisations may be linked to activities which are not in the public interest. Any guidance provided by Ofcom must set out clear definitions and criteria - which should be subject to further comment. STV agrees that organisations which are prevented from advertising should be prevented from sponsoring programmes.**

ii. What impact (e.g. social, economic, equality) do you think the potential rules would have on viewers, the television industry and any other parties?

**STV is of the view that all educational programmes can only have positive results for viewers subject to the content being balanced and informative. A key factor will be for the broadcaster to continue to remain independent and balanced in the presentation of views and opinions. However, once again clarification is required to avoid the content being at risk of breaching the sponsorship code.**

iii. Do you consider that the potential rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection? If not, please explain why.

**STV is of the view that a programme about the activities of a sponsor is not in fact prohibited by the AVMS (please see further details at Q20) and would welcome a review of the interpretation to allow flexibility with editorial independence remaining the key objective.**

iv. Do you consider that additional or alternative safeguards to those included in the draft potential rules are necessary? If so, please provide details.

**STV is of the view that a consistent approach is required therefore clear rules and guidelines are of utmost importance in this area.**

**STV seeks clarification on how a programmes can refer to the activities of the funder (at 6.32) and at the same time, adhere to the proposed new rule 9.26 (at 6.33) which states that a programme may not be funded to promote activities of the funder. When references to activities are cross referenced to previous Ofcom decisions, programmes about the activities of a sponsor are in themselves found to be promotional.**

**STV is of the view that the word activities should be removed from Rule 9.26 as it is not required under the AVMS Directive (please refer to Q20 & Q21 for further information). It is STV's view that a blanket restriction on activities is unnecessary and renders new forms of programming unworkable without the broadcaster being at risk of falling foul of the new rules.**

**STV would also welcome further clarification on the term political, industrial or public controversy. It is understood that the activities of the 'police' is likely to fall within this criteria therefore, clear definitions are required to help broadcasters avoid inadvertently falling foul of the rules.**

**STV would welcome further clarification on when the provision of education and information about public interest matters would be regarded as influencing viewers on the policies or decisions of government.**

**Finally, STV is of the view that sponsor credits for Public Information Programming follows the same requirements as non Public Information Programming sponsor credits.**

v. Specifically, should there be any restriction on the type of non-commercial, not-for-profit entities permitted to fund Public Information Programming, and if so, what restrictions?

**STV is of the view that companies which are not permitted to advertise and those who have interests which are not in the public interest should be restricted and that appropriate guidance should be provided.**

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

**Question 13 (P56 at 6.46 to 6.54)**

a) Do you consider that the proposed new Section Nine would benefit from the introduction of new meanings?

**Yes**

b) Do you agree with our proposed new meanings for Section Nine?

**No**

c) If you do not agree with our proposed new meanings, please explain why and suggest alternative wording where appropriate.

**STV agrees with the rules in relation to editorial content and programme trailers. However, it is of the view that the rules do not address the reality of cross promotional material and sponsorship credits which are separate and distinct. Indeed, the AVMS recognises that self promotional activity is a 'new and relatively unknown phenomenon' and as such, STV would welcome separate rules for both cross promotion and sponsor credits so that these remain distinct from other editorial content and to avoid any unnecessary restrictive practices.**

**Question 14 (P57 at 6.55 to 6.60)**

a) Do you consider that the introduction of new Principles in relation to Section Nine is appropriate?

**Yes**

b) Do you agree with the proposed new Principles for Section Nine?

Yes

c) If you do not agree with our proposed new Principles, please explain why and suggest alternative wording where appropriate.

N/A

**Question 15 (P6.61 to 6.67)**

a) Do you consider that the proposed Rules 9.1 to 9.5 are broadly the same, in terms of both scope and intent, of current Rules 10.1, 10.2, 10.3, 10.4 and 10.12?

**STV agrees that the proposed rules are broadly the same.**

**STV welcomes additional guidance, which should provide clarity on how undue prominence will be determined, and which should be distributed for comment prior to implementation. The rules should of course recognise that undue prominence can occur in circumstances which are outwith the broadcasters control. These circumstances are not limited to events but include any element of audience participation or filming in the public arena.**

**It is STV's view that the revised Code should also address telepromotion within this section. Telepromotion was not included in previous versions but it is a form of advertising which the European Commission confirmed is compliant with Article 10 of the Television Without Frontiers Directive (TWF). It is another example where advertising can take part within a programme, but be appropriately identified.**

**The AVMS Directive recognises that a degree of flexibility with regard to television broadcasting should remain proportionate with the goals of general interest. Telepromotion as a form of advertising would be of particular benefit to broadcasters who deal with pan-European companies. Indeed, it would bring the UK in line with its counterparts in Europe and could create much needed revenue streams for commercial broadcasters. It is acknowledged that the growing sophistication of audiences within the UK will recognise such advertisements subject to clear separation between editorial content and advertising.**

b) If you do not consider the proposed rules are broadly the same as the current rules in this area, please explain why and suggest alternative wording where appropriate.

N/A

c) Do you agree with the introduction of the proposed new Rule 9.6?

Yes

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

N/A

**Question 16 (P61 at 6.68 to 6.75)**

a) Do you consider it appropriate to introduce the proposed new Rule 9.9?

Yes. (note: the word listeners should be amended to viewers).

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

N/A

**Question 17 (P62 at 6.76 to 6.85)**

a) Do you consider that the introduction of a new competition and voting section is appropriate?

**Yes**

b) Do you agree with the proposed new competition and voting section for Section Nine?

**Yes**

c) If you do not agree with our proposed new competition and voting section, please explain why and suggest alternative wording where appropriate.

**N/A**

d) Do you agree that it is appropriate to apply these rules to BBC services funded by the licence fee?

**STV agrees that where viewers are invited to actively engage with a TV audio visual media service provider and where such activity has the potential to result in financial harm, then the rules which are implemented to prevent such harm should apply to all broadcasters.**

e) If you do not agree that it is appropriate to apply these rules to BBC services funded by the licence fee, please explain why.

**N/A**

**Question 18 (P64 at 6.86 – 6.92)**

a) Do you consider that the rules in relation to programme-related material would benefit from clarification?

**Yes**

b) Do you agree with the introduction of the proposed programme-related material section for Section Nine?

**STV is of the view that programme related material announcements should not be restricted to within a programme and should continue to be permitted in or around a specific programme. The AVMS is not so restrictive.**

c) If you do not agree with the proposed programme-related material section, please explain why and suggest alternative wording where appropriate.

**N/A**

**Question 19 (P66 at 6.93 to 6.96)**

a) Do you consider that the proposed cross reference to the Cross-promotion Code would assist stakeholders?

**Yes**

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

**N/A**

**Question 20 (P66 at 6.97 to 6.100)**

a) Do you consider that the meanings in relation to sponsorship of television would benefit from revision?

**Yes**

b) Do you agree that the revised meanings are consistent with those currently used, but more accurately reflect the definition of sponsorship as set out in the AVMS Directive?

**No**

c) If not please explain why, suggesting drafting changes where appropriate.

**STV's view is that the rules should be aligned to the AVMS with the flexibility required to support commercial broadcasters. A restrictive approach is likely to adversely affect the economic and commercial capabilities of commercial broadcasters.**

**It is STV's view that the new proposal sets out a prohibition of references to a sponsor within sponsored content which does not accord with the objectives of the AVMS Directive. The Directive states that:**

- **Article 3f. 1(a) sponsored content cannot be influenced to affect the responsibility and editorial independence of the media service provider; and**
- **Article 3f 1 (b) sponsored programmes must not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services.**

**The AVMS Directive does not prohibit reference to a sponsor, its products, services or activities (which may or may not include direct or indirect interests) within a programme. Rather, focus is on the prevention of 'direct encouragement to purchase or rent' and the 'special promotional references to' products and services of the sponsor.**

**Interpretation of sponsorship in relation to the TWF Directive (from the Official Journal of the European Union) at section 55, clearly sets out that there is no formal prohibition on referring to products of the sponsor. Indeed, reference is made to sponsorship as a means for the sponsor to promote his activities. No reference is made to the inclusion or exclusion of the sponsor's activities. Once again, it is noted that the wording is limited to state that programmes must not encourage the purchase or rental of the products or services of the sponsor or the third party and explicit reference to the products or services is prohibited. This document is of course out of date and an updated version for interpretation of the AVMS, which relaxed the rules further, is outstanding.**

**STV further notes that the AVMS Directive omits the word 'services' but includes the word 'activities' when defining 'sponsorship' (Article 1(k)). The Directive subsequently limits the restriction on sponsor references to 'encouraging the purchase or rental of' or 'making special promotional references to' goods or services. There is no reference to activities of the sponsor. It is STV's view that this choice of wording is worth considerable attention when interpreting the Directive**

**Therefore it would appear that Ofcom's proposal to prohibit references to a sponsor within sponsored content does not accord with the Directive and an unnecessarily stricter approach has been adopted.**

**STV is of the view that the objective behind the Directive is to maintain editorial independence (Article 3f(a)) and that the Directive does not prohibit reference to the activities of a sponsor. It does however prohibit the promotion of the supply of goods and services – which is the definition of television advertising. The Guidance within Ofcom's existing Code, states that "there is no absolute prohibition on references to the sponsor or its products or services, that any reference should not be promotional, and there must be editorial justification." STV is of the view that this statement continues to be a more appropriate reflection of the intention behind the Directive.**

**It is STV's view therefore that the prohibition of inclusion of products and services, which are non-promotional and editorially justified, and the inclusion of activities of the sponsor (which may or may not include indirect and direct interests) is not prohibited under the AVMS Directive, which is of course subject to the maintenance of editorial independence.**

**Audiences are increasingly aware of areas such as promotional references through access to movies and digital channels and, as noted by ITV, this area attracts low levels of viewer complaints. As such, STV would recommend that the proposal for the prohibition of such should be re-considered under the Code review.**

**Question 21(P68 at 6.101 to 6.107)**

a) Do you consider that the rules in relation to the content of sponsored output would benefit from clarification?

**Yes**

b) Do you agree with the introduction of the proposed new rules on the content of sponsored output in Section Nine?

**STV would add that it agrees that a sponsor should not be permitted to sponsor a programme about itself. However, please also refer to STV's comments for Question 20.**

**STV would also appreciate Ofcom's definition for 'generic references' which are referred to within the rules.**

c) If you do not agree with the proposed new rules on the content of sponsored output, please explain why and suggest alternative wording where appropriate.

**N/A**

**Question 22 (P69 at 6.108 to 6.113)**

a) Do you consider that the rules in relation to sponsorship credits would benefit from clarification?

**Yes**

b) Do you agree with the introduction of the proposed rule?

**STV notes that the AVMS Directive does not make reference to undue prominence therefore Ofcom's proposal does not accord with the Directive. (Article 3f(c)) states that viewers should be provided clear information about the sponsor, including name, logo, reference to products or services in an appropriate way).**

**STV agrees that sponsor credits must be distinct from both editorial content and advertising and that advertisement messages are not accepted. Therefore STV welcomes further guidance on the type of content that is likely to be deemed by Ofcom to constitute advertising messages.**

c) If you do not agree with the proposed rule, please explain why and suggest alternative wording where appropriate.

**N/A**

**Question 23 (P70 st 6.114 to 6.119)**

a) *Do you consider that the rules in relation to appeals for funds would benefit from clarification?*

**Yes**

b) *Do you agree with the introduction of the proposed Rule 9.39 and the section on appeals for funds for programming or services?*

**Yes**

c) *If you do not agree with the proposals, please explain why and suggest alternative wording where appropriate.*

**N/A**

**Question 24**

a) *Do you consider that the proposed rule revisions are appropriate and would remain consistent with current rule requirements?*

**Yes**

b) *If you not, please explain why and suggest alternative wording where appropriate.*

**N/A**

**Question 25**

a) *Do you wish to suggest an alternative approach to the proposed revisions in relation to the regulation of commercial references on television?*

**No**

b) *If so, please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003, the Audiovisual Media Services Directive, the AVMS Directive (Implementation) Regulations 2009 and Article 10 of the European Convention on Human Rights.*

**N/A**