



Consultation on BAI's Draft General Commercial
Communications Code

Statement of Outcomes

Broadcasting Authority of Ireland

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1. Introduction

The Broadcasting Authority of Ireland (BAI) has revised its General Commercial Communications Code ('Code') following a statutory review of the effect of the Code and a public consultation on a revised draft Code. This document provides the outcomes from the consultation, outlining the changes made to the draft Code, which were informed by the submissions received by the BAI during the consultation.

The next section sets out the legislative basis for the Code and describes the statutory review of the effect of the Code, which was completed by the BAI in 2015. This is followed by an outline of the public consultation undertaken by the BAI on a draft Code that was prepared following the statutory review. For reference, the statutory review report and the draft Code are available from www.bai.ie. The final section of this document details the outcomes of the consultation, including the BAI's deliberation and decisions in relation to the proposals and ideas from stakeholders. This section is divided into sub-sections that follow the structure of the final Code, which is included at Appendix 1.

2. Legislative Basis and Background

The BAI prepares and publishes broadcasting codes for broadcasters, as required by law. The BAI General Commercial Communications Code was introduced in 2010 to regulate advertising, sponsorship, product placement and other forms of commercial communication on Irish broadcasting services.¹ The Code applies to all broadcasters that fall under Irish jurisdiction and replaced the BCI² General Advertising Code.

The Code gives expression to the statute, specifically to the requirements of sections 42(2) (h) and (j) of the Broadcasting Act 2009 ('the Act'), as set out below. The Code must also accord with the provisions contained in the EU Audio Visual Media Services Directive (AVMSD).

42(2) *Broadcasting codes shall provide –*

(h) that advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, other than advertising and other activities as aforesaid falling within paragraph (g), must protect the interests of the audience,

(j) for the matters to be provided for by Chapters IIA, IV and V of the Council Directive.³

The Code is also a key deliverable for the BAI in meeting its strategic objectives to “develop the understanding, engagement and participation of the public in an evolving media landscape” and

¹ In 2011, the Code was updated to incorporate the BAI's decision to permit product placement following the introduction of the EU Audiovisual Media Services Directive. Under the previous European Directive, Television Without Frontiers, paid product placement was prohibited. The Code was updated again, in 2013, to reflect new BAI rules on the promotion of food that is high in fat, salt and sugar (HFSS food). The new rules arose in the context of the review of another BAI codes, the Children's Commercial Communications Code.

² The Broadcasting Commission of Ireland (BCI) was replaced by the Broadcasting Authority of Ireland following the enactment of the Broadcasting Act 2009.

³ 'Council Directive' means Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 and by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007. A simplified and codified version of these Directives was introduced in 2010: the Audiovisual Media Services Directive 2010/13/EU.

“regulate to achieve a responsible and accountable broadcasting sector” in the BAI Strategy Statement 2017-2019.

Section 45(3) of the Act requires the BAI to review the effect of the Code every four years and submit a review report to the Minister for Communications, Climate Action and Environment.⁴ Work on the statutory review commenced in 2014 and comprised a review of existing BAI data, an operational review of the effect and impact of the Code and a jurisdictional and legal review of the Code. The operational review was undertaken by Ipsos MRBI and was designed to incorporate the views of all stakeholders on the effectiveness of the Code, in particular audiences, advertisers and broadcasters. As many elements of the Code reflect provisions in the AVMSD, the jurisdictional and legal review looked at trends in other European countries and identified areas for consideration in revising the Code. This was conducted by independent consultants, Miha Kriselj and Deirdre Kevin. The *Report on the Effect of the BAI General Commercial Communications Code 2010* was completed in April 2015 and laid before the Houses of the Oireachtas by the Minister for Communications, Energy and Natural Resources on the 7th October 2015.⁵

The report concluded that the Code was effective and was achieving its objectives. It met the requirements of national and international legislation and was generally supported by stakeholders. Notwithstanding this, the report found that certain areas of the Code would benefit from further consideration and modification. In the main, these pertained to:

- sponsorship rules, particularly as they apply to radio,
- a desire from broadcasters for greater clarity or guidance on rules for specific products and services, e.g. e-cigarettes and betting services, and
- the potential to have greater public awareness of and engagement with the Code.

Informed by the report's findings, the BAI prepared a revised draft General Commercial Communications Code and this was put to public consultation, as required by section 44(1) of the Act.

3. The Consultation

The public consultation on the BAI's draft Code launched on 26th July 2016 and ran for 8 weeks, closing on 20th September 2016. The BAI prepared a consultation document, comprised of the draft Code itself, information on the proposed changes to the Code, questions for stakeholders about those changes and instructions on how to make a submission. On the launch day, the consultation document was made available to read and to download from the BAI's website and was sent to over 200 BAI stakeholders. An audio version was available for those with a vision impairment and Braille versions could be sought on request.

The launch day included a briefing with the press and a presentation to invited industry stakeholders. It was accompanied by a notice in a national newspaper, as required by the Act. The BAI took out online advertising and a paid social media campaign to raise awareness of the draft Code and the proposed changes to it and invite submissions from the public.

⁴ Formerly the Minister of Communications, Energy and Natural Resources, prior to the General Election 2016.

⁵ The research reports by Ipsos MRBI and Miha Kriselj and Deirdre Kevin and the Report on the Effect of the BAI General Commercial Communications Code (2010) are available from www.bai.ie.

Overall, there was good stakeholder engagement with the draft Code during the consultation and the BAI received quality submissions and inputs. In addition to written submissions, the BAI also met with selected stakeholders to discuss their views on the draft Code and consulted with the BAI's Compliance Committee⁶ and compliance staff to examine potential issues concerning its implementation. By the closing date, the BAI had received 25 written submissions and met with 6 external stakeholders, representing a mix of broadcasters, advertisers, industry organisations, civil society groups, public bodies and individuals, as follows:

Written Submissions	
1	Alcohol Action Ireland (AAI)
2	Association of Advertisers in Ireland
3	Baby Feeding Law Group Ireland (BFLGI)
4	Betway
5	Central Bank of Ireland
6	Consumers' Association of Ireland (CAI)
7	Department of Justice and Equality (DJE)
8	Family and Media Association (FMA)
9	Gaming & Leisure Association of Ireland (GLA)
10	Geoghegan, Éamonn
11	Gilmartin, Padraic
12	Health Service Executive (HSE) - Office of Health Promotion and Improvement
13	IBEC (ABFI)
14	Independent Broadcasters of Ireland (IBI)
15	Institute of Public Health in Ireland (IPH)
16	Irish Heart Foundation (IHF)
17	Irish Medical Organisation (IMO)
18	Irish Society for the Prevention of Cruelty to Children (ISPCC)
19	Kaul, Tadhg
20	Ombudsman for Children's Office (OCO)
21	Royal College of Physicians of Ireland (RCPI)
22	RTÉ
23	TV3
24	UTV Ireland
25	Wireless Group Ireland

Stakeholder Consultation Meetings	
1	Alcohol Action Ireland
2	Department of Justice and Equality (DJE)
3	Health Products Regulatory Authority (HPRA)
4	Independent Broadcasters of Ireland (IBI)
5	Urban Media Ireland
6	Wireless Group Ireland

⁶ The Compliance Committee is responsible for the monitoring and enforcement of compliance, the investigation of complaints and a number of reporting functions. The Committee has eight members; four of whom are appointed by the Government on the nomination of the Minister, while the remaining four are appointed by the Authority, comprising of two members of the Authority and two members of the BAI Executive.

4. Consultation Outcomes

Almost all stakeholders expressed broad satisfaction with the draft Code, with one submission noting that the Code struck the right balance between allowing broadcasters offer commercial communications while ensuring the interests of the audience are protected, particularly those of children. The extra detail provided in certain areas of the Code, e.g. Food, Nutrition and Health, was generally welcomed. Sponsorship and alcohol rules were the areas of the Code that attracted the most feedback and suggested changes. There were also proposals from stakeholders in relation to exclusions to the Code, the rules for financial services and products, gambling rules and to the sections of the Code dealing with medicinal products and medical devices; medical treatments and services; cosmetic products, treatments and services; and, hypnosis and hypnotherapy.

Some concerns raised by stakeholders are not within the scope of the Code as they pertained to the complaints process, regulation of programme content, online regulation and copy clearance. In addition, there were some concerns falling outside of the matters the BAI examined in the revision of the Code, for example, proposals to prohibit RTÉ from selling advertising around repeat programming and to introduce a minimum Irish language requirement for advertising. Finally, it was noted in the consultation document that matters pertaining to high fat, salt and sugar (HFSS) foods will be considered as part of the forthcoming review of the *BAI Children's Commercial Communications Code*. A number of stakeholders expressed strong views on this matter and these will be considered in the context of the review of the Children's Code, but the relevant rules in this Code remain unchanged for now.

The next sections of this document set out views and proposals from stakeholders and the BAI's consideration and decisions in relation to them. For ease of reference, these sections follow the structure of the final Code:

1. Introduction
2. General Definitions and Exclusions
3. Principles of the Code
4. Prohibited Commercial Communications
5. Rules for all Commercial Communications
6. Advertising and Teleshopping
7. Split screen, Interactive and Virtual Advertising Techniques
8. Sponsorship on Television, including Competitions
9. Sponsorship on Radio, including Competitions
10. Product Placement
11. Alcohol
12. Medicinal Products and Medical Devices
13. Medical Treatments and Services, including psychiatry, psychotherapy and counselling
14. Cosmetic Products, Treatments and Services
15. Hypnosis, Hypnotherapy and similar services
16. Food, Nutrition and Health
17. Slimming Treatments, Products and Services
18. Smoking Cessation Aids
19. Financial Products and Services
20. Gambling
21. Premium-rate Telecommunication Services
22. Fortune tellers, Psychic Services, etc.

4.1 Introduction

The Introduction sets out the legislative basis for the General Commercial Communications Code and what it aims to achieve for broadcasters, viewers, listeners and the wider public. The Introduction is comprised of the following sub-sections:

- Legislative Basis
- The Objectives of this Code
- Complying with this Code
- Complying with Relevant Legislation and Codes from other Authorities
- The Right to Complain
- How to Make a Complaint
- How Complaints will be Assessed by the BAI
- Scope and Jurisdiction
- Guidance on the Code for Broadcasters
- Effective Date

In general, stakeholders were satisfied with this section of the Code and there were few proposed changes. The Ombudsman for Children's Office (OCO) recommended a minor change to the sub-section 'Complying with relevant legislation and codes from other authorities' to include a reference to international legislation and for the list of legislation at Appendix Four of the Code to include a reference to the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child. The BAI was satisfied with these additions and they are included in the final Code.

The ISPPC and the Royal College of Physicians of Ireland recommended that the BAI's process for responding to non-compliance is clarified and outlined within the Code. The Institute of Public Health in Ireland (IPH) suggested it would be helpful to clarify the relationship with the *BAI Compliance and Enforcement Policy 2014*. On foot of this, the following text was added to the sub-section 'How Complaints will be Assessed by the BAI':

"All complaints adjudicated by the BAI will be published on the BAI's website, unless it is inappropriate to do so. Where a complaint is upheld, in whole or in part, the broadcaster concerned will broadcast the BAI's decision, unless it is inappropriate to do so. The BAI's methods and approach to dealing with instances of non-compliance by broadcasters is set out in the BAI's Compliance and Enforcement Policy, which is also available on www.bai.ie."

Finally, the Family and Media Association (FMA) was of the view that while the first objective for commercial communications to be "legal, honest, truthful, decent and protect the interests of the audience" is a positive aspiration, it does not go far enough. The FMA suggested this objective should protect the interests of *all* the people, not just those who might constitute the audience at any particular time. The term "protect the interests of the audience" derives from section 42(2)(h) of the Broadcasting Act 2009, the provision of the Act establishing a requirement for the Code. The wording of this objective reflects the purpose of the Code as articulated in statute. The BAI is of the view that this wording should not be altered, therefore, the objective in the final Code remains unchanged.

4.2 General Definitions and Exclusions

This section defines the common terms used throughout the Code. It also sets out the type of content that does not count toward advertising minutage and what content is excluded from this Code.

Many of the definitions and exclusions derive from the EU Audiovisual Media Services Directive (AVMSD) and the Broadcasting Act 2009 and stakeholders were broadly satisfied with them. However, stakeholders raised several concerns with certain aspects of the definitions and exclusions, relating to the definitions of 'Children's Programmes', 'Sponsorship' and 'Product Placement', and how the Code was treating trailers and promotions. These are looked at in more detail below.

Definition of Children's Programmes

Alcohol Action Ireland (AAI) highlighted that there were a number of different terms and phrases used in the Code in connection with children and children's programmes. AAI suggested the Code would benefit from greater clarity by defining the terms used and using consistent phrasing in the relevant rules. A definition of children's programmes was added to this section, deriving from the definition used in the BAI's Children's Commercial Communications Code. Where relevant, rules throughout the Code were updated to refer to this definition. In addition, the following phrases: "specifically aimed at children", "primarily intended for children whether as viewers or listeners" and "appealing to children" were replaced with the phrase "directed exclusively or principally at children".

Definitions of Sponsorship and Product Placement

In the consultation, the Consumer Association of Ireland expressed a view that the distinction between product placement and sponsorship could be clearer and proposed including some of the explanatory text that was used in the consultation to achieve this. The following italicized text was added to the definitions of sponsorship and product placement to provide extra clarification on the distinction between them.⁷

Sponsorship: "Sponsor announcements or references may be shown during a programme but shall not be part of the plot or narrative, *that is, they are limited to announcements declaring the sponsorship arrangement (e.g. "sponsored by", "brought to you by", etc.) and announcements for sponsored competitions.* References to a product or service that are built into the action of a programme constitute product placement, where such references meet the definition of paid product placement or prop placement."

Product Placement: "*The display of logos or branding in programme content (and outside of sponsorship announcements or references) is considered product placement if it meets the definition of product placement.*"

During the consultation, the BAI drew stakeholders' attention to two proposed changes in relation to the definition and interpretation of product placement, as follows:

- Products and services that are not of significant value and are placed free of charge in a programme would be considered editorial and not sponsorship, and,
- There would be no explicit monetary threshold for 'significant value', as it would be determined by the BAI's Compliance Committee on a case-by-case basis when adjudicating on complaints.

None of the stakeholder submissions to the consultation had anything to say about these proposals, which suggested that the above issues are primarily implementation concerns for the BAI.

⁷ Rule 8.3 in the sponsorship section of the Code draws on these definitions and so this rule was also amended with similar wording.

In relation to the first proposal, there is some concern it could lead to a gap in regulation such that products and services featured in a programme that are not of significant value could effectively amount to a commercial communication but would not come within the scope of the Code. The following italicized text was added to the definition of product placement to guard against this:

*“Products and services featured within a television programme free of charge, and where the total value of all those products and services featured within a single scheduled episode of a programme is **not** of significant value, does not constitute product placement. However, where the featuring of such products and services is unduly prominent, is not editorially justified and/or could be construed as a commercial communication, the Authority may rely on the provisions of this Code prohibiting surreptitious commercial communications.”*

Another concern pertained to the potential for inconsistent interpretation and application of ‘significant value’ when left undefined. It was felt this could result in a lack of clarity and shared understanding between the BAI, broadcasters and advertisers as to what constitutes significant value, which in turn, could lead to the miscategorisation of commercial content. This lack of shared understanding had emerged during the review of the Code as an issue to be addressed. Having provided clearer distinctions between product placement and sponsorship and editorial, the BAI was of the view that it would then be possible to set a currency threshold for significant value. This threshold would be a clear criterion to determine when the placement of products and services in a programme amounts to product placement, facilitating advertisers and broadcasters, but also assisting BAI in monitoring programme content for compliance with product placement rules. The following text was added to the Code:

“Products and services are deemed of significant value where the total value of all products and services featured in a single episode of a programme exceeds €1,000. The BAI reserves the right to amend this interpretation of significant value from time to time as it sees fit and such amendments will be published on the BAI’s website at www.bai.ie.”

This text sets a threshold of €1,000 for significant value, which is lower than the €5,000 threshold in guidance notes for the previous Code. The higher value had allowed for products and services placed in a programme to be deemed sponsorship when they were under the significant value threshold. Given this would no longer be the case, the threshold has been lowered. The rationale for not setting the threshold even lower is to ensure the placement of incidental items such as pens, cups, etc. does not amount to a commercial communication.

Exclusions – trailers, self promotions and cross promotions

In the draft Code in the consultation, trailers came under the Code Exclusions, that is they are not considered commercial communications and are not required to comply with the Code. The exclusion stated: *“trailers...are considered to be programmes once they relate to programmes carried on the same broadcast service”*. UTV Ireland noted that this exclusion of trailers would apply differently to RTÉ than to commercial broadcasters because RTÉ television services are considered the same broadcast service in Irish law. In effect, promotions aired on RTÉ 2 for programmes on RTÉ 1 would be excluded from the Code. However, for commercial broadcasting services that are part of the same ‘family’ of services, that is, they are owned by one broadcaster, such promotions would be considered commercial communications and would be required to comply with the Code, as well as counting toward advertising minutage. UTV Ireland argued for a change to the Code to exclude these types of promotions for commercial broadcasting services as it does for RTÉ.

The BAI considered the above concerns and was of the view that there should be no differential

treatment between commercial and public service broadcasters in relation to these kinds of promotions. The BAI decided to amend the Code so that such promotions operate in similar way for commercial and public service broadcasters, in as much as the legislation allows for it. The following changes to the Code were required to achieve this:

- Include a definition of a broadcasting service and a broadcaster and the distinction between them;
- Provide a distinction between promoting a broadcasting service's own programmes (self promotion) and promoting programmes of other broadcasting services that 'belong' to the same broadcaster (cross promotion) and set out the instances when these are excluded from advertising minutage; and,
- Provide a definition of a trailer and set out clearly the instances when trailers are excluded from the Code.

The draft Code already included a definition of 'broadcasting service' in a sub-section of the Introduction and this was moved to the General Definitions section of the Code. It is included below for ease of reference. New definitions of 'broadcaster', 'self promotions', 'cross promotions' and 'trailer' were added to the Code, as follows:

Broadcasting Service: *"The term 'broadcasting service' is understood in the context of the definition provided in the Broadcasting Act 2009, which is as follows:*

a service which comprises a compilation of programme material of any description and which is transmitted, relayed or distributed by means of an electronic communications network, directly or indirectly for simultaneous or near-simultaneous reception by the general public, whether that material is actually received or not, and where the programmes are provided in a pre-scheduled and linear order, but does not include:

- a) a service provided in a non-linear manner where each user of the service chooses a programme from a catalogue of programmes, or*
- b) other audio and audiovisual services provided by way of the Internet.*

Broadcasting services may be commonly understood as the television and radio channels that are transmitted to the audience via cable, satellite, set-top box or integrated TV, or, for radio, on a traditional radio receiver. It does not cover services provided over the internet. It does not cover on-demand audiovisual services made available in the Republic of Ireland. On-demand audiovisual services are governed by the ODAS Code of Conduct for media service providers of on-demand audiovisual media services."

Broadcaster: *"The term 'broadcaster' is understood in the context of the definition provided in the Broadcasting Act 2009, which is as follows:*

A person who supplies a compilation of programme material for the purpose of its being transmitted, relayed or distributed as a broadcasting service (whether that person transmits, relays or distributes that material as such a service or not).

For the purpose of this Code, a broadcaster may provide one broadcasting service or multiple broadcasting services, depending on the broadcaster's ownership of said services or the broadcaster's functions as established in statute. That is, a broadcaster is a person owning

and controlling one or more broadcasting services or an entity established by legislation to provide public service broadcasting (e.g. RTÉ)."

Self Promotions: *"These are announcements on a broadcasting service for programmes and ancillary products directly derived from these programmes, aired without payment or similar consideration on that broadcasting service. The term 'ancillary' refers to products intended specifically to allow the viewing public to benefit fully from, or to interact with, these programmes and does not include commercial activities of the broadcaster unrelated to programmes or ancillary products."*

Cross Promotions: *"These are announcements made in connection with programmes and ancillary products directly derived from these programmes, aired without payment or similar consideration on a broadcasting service other than the one airing the programmes, and where the broadcasting services in question are owned and controlled by the same broadcaster. The term 'ancillary' refers to products intended specifically to allow the viewing public to benefit fully from, or to interact with, these programmes and does not include commercial activities of the broadcaster unrelated to programmes or ancillary products."*

Trailer: *"A trailer is a compilation of extracts from a forthcoming programme or programmes."*

Minutage exclusions, that is content that is required to comply with the Code but does not count toward teleshopping and advertising minutage was amended to incorporate references to the new definitions, that is, self-promotions and cross-promotions are excluded from minutage.

The exclusion of trailers from the Code was also updated to reflect the new definitions. The exclusion now reads as follows:

"The following exclusions are not forms of commercial communication and are not required to comply with this Code. They shall, however, comply with the BAI's Code of Programme Standards.

1. *'Trailers' are considered programmes and not commercial communications once they relate to programmes carried on the same broadcasting service. Trailers for programmes on another broadcasting service, aired without payment or similar consideration, are considered cross-promotions, when both broadcasting services are owned and controlled by the same broadcaster."*

4.3 Principles of the Code

This section sets out four general principles that apply to all forms of commercial communication, as follows:

- Principle 1: Legal, Honest, Decent and Truthful
- Principle 2: Human Dignity, Offence and Harm
- Principle 3: Transparency
- Principle 4: Protection of Children

These principles were generally welcomed by stakeholders to the consultation and there were few suggested changes. Many stakeholders were particularly pleased with the introduction of *Principle 4*:

Protection of Children, including Alcohol Action Ireland, the Consumer's Association of Ireland, the Health Service Executive (HSE), the Institute of Public Health in Ireland (IPH), the ISPC, the Royal College of Physicians of Ireland (RCPI), Betway, the Irish Heart Foundation (IHF) and the Ombudsman for Children's Office (OCO). The OCO suggested that an explicit reference to the best interests of the child be made under this principle in light of the obligations emanating from European and international human rights legislation. The following italicized wording was added, as follows:

"This principle recognises that children of different ages and maturity require different levels of protection and that in all actions and decisions relating to children the child's best interests shall be a primary concern."

There were minor wording changes to Principles 1 and 2 to ensure greater consistency in how terms and phrases are used throughout the Code and to remove duplication, but no other substantive changes were made to the principles. It is worth noting, however, that the Family and Media Association (FMA) raised a concern about both of these principles. In relation to Principle 1 Legal, Honest, Decent and Truthful, the FMA was of the view that an emphasis on "Protecting the Individual and Society" had been removed or given less prominence than in the previous Code and this was a 'backward step' in its view. However, while the title of the principle may have changed, the BAI believes that its role in protecting the interests of the audience is retained in the first line of the principle, as set out in the following wording:

"Commercial communications shall be prepared with a sense of responsibility both to the individual and to society and shall be legal, honest, decent, truthful and protect the interests of the audience."

In addition, the FMA welcomed the retention of the reference to human dignity in Principle 2, but suggested that the term 'offensive' should not be subjective or ever shift in meaning. The BAI's conceptions of offence and harm were set out most recently in its *Code of Programme Standards*. That Code acknowledges that harm is not subjective, but that offence may be. In this conception, offence is not rigid, static and common to all, but shifts with changes in society and cultural attitudes. Moreover, people do not have a right to not be offended and there are times when offence will be caused. When adjudicating on complaints, the BAI as the regulator, has the responsibility of deciding when such offence is undue. For consistency, this approach to offence is also used in the BAI's General Commercial Communications Code.

4.4 Prohibited Communications

This section of the Code details the types of products and services that may not be advertised or included as part of a sponsorship, product placement or other commercial arrangement.

In the draft Code the prohibited commercial communications were at the end of the document. It was felt that they ought to be placed more prominently in the Code to establish at the outset the fundamentals of what the Code aims to achieve. As such, the prohibited commercial communications now follow the principles of the Code.

In the draft Code, the rule prohibiting "surreptitious, subliminal and misleading commercial communications" was in the section dealing with the rules for all commercial communications. It was felt that this sits more appropriately in the prohibited commercial communications and it has been moved to this section.

In the consultation, the Health Products Regulatory Authority (HPRA) and BAI compliance staff suggested the prohibition on commercial communications for e-cigarettes at rule 4.4 could be written in plainer language so that the exemptions to the prohibition are clear. This was an area that stakeholders had identified in the review of the Code as needing greater clarity. The BAI was satisfied to make the following amendments, per the italicized text below:

“Commercial communications with the aim or direct or indirect effect of promoting electronic cigarettes and refill containers are prohibited. This does not apply to electronic cigarettes and refill containers that *are considered medicinal products or medical devices, that is, they are* subject to (1) an authorisation requirement relating to medicinal products for human use (under Directive 2001/83/EC) or (2) the requirements concerning medical devices (under Directive 93/42/EEC).”

4.5 Rules for all Commercial Communications

This section includes 12 specific rules that flow from the four principles of the Code and apply to all commercial communications.

These rules were largely unchanged from those in the previous Code and stakeholders were satisfied, for the most part, with the rules as presented in the draft Code. There is one notable change to rule 5.4, made in response to a matter raised by the Health Products Regulatory Authority. The HPRA noted that it has found some commercial communications for medicinal products and medical devices that include claims to be the number one product/device, without a factual basis for the claims. The HPRA suggested a change to the Code to allow such claims only when they can be substantiated. The BAI is of the view that such a proposal would protect the interests of the audience and the benefits of it extend beyond medicinal products and medical devices. Therefore, the following italicized text is added to rule 5.4:

“Points of comparison *or top seller claims (e.g. claims a brand or product is number one)* shall be based on facts that can be substantiated.”

4.6 Advertising and Teleshopping

The rules under this heading deal specifically with advertising and teleshopping and derive, in the main, from the EU Audiovisual Media Services Directive (AVMSD).

Stakeholders to the consultation were satisfied, for the most part, with the rules in this section. However, the Independent Broadcasters of Ireland (IBI) was of the view that the first four rules, while applying to both television and radio, have aspects that are pertinent to television only, e.g. references to teleshopping and to split-screen and virtual advertising. The IBI believed that the rules as presented would be confusing for radio broadcasters. To address this, the BAI has prepared a separate sub-section with radio-only advertising rules with references to television-specific rules removed. These separate rules appear in the Code as rules, 6.1, 6.2, 6.3 and 6.4 and are intended to be clearer, more relevant and easily understood for radio broadcasters. The following rules, 6.5 to 6.12, apply to television only and remain unchanged from the rules in the draft Code.

4.7 Split Screen, Interactive and Virtual Advertising Techniques

The rules under this heading deal with specific types of advertising techniques that are different to traditional advertising. There is a need for additional rules to protect the interests of audiences because such advertising techniques are within a programme or alongside it and, therefore, there is less separation between editorial and commercial content.

Overall, stakeholders were satisfied with the proposed rules in the draft Code. However, one stakeholder, the Family and Media Association (FMA), opposed these forms of commercial communication in principle. The FMA expressed the view that split screen and virtual advertising should not be allowed at all on the basis that it blurs the distinction between what is real and what is not, which is particularly dangerous for children. In addition, the FMA believes that interactive advertising should not be permitted because children may be directed to unregulated spaces. In considering these views, the BAI had regard to the public survey undertaken as part of the review of the previous Code, in which the public raised no issues in relation to these types of advertising. It is also worth noting that audiences may be directed to unregulated spaces in programmes and in all forms of commercial communications, including by way of these techniques. As such, these forms of advertising pose no greater risks in this regard than 'traditional' advertising. It should also be noted that, further to the BAI Children's Commercial Communications Code, these techniques are prohibited when commercial communications are broadcast during children's programmes. For these reasons, the BAI decided to retain the rules as proposed in the draft Code.

4.8 Sponsorship on Television, including Competitions, and

4.9 Sponsorship on Radio, including Competitions

Section 8 of the revised Code deals with sponsorship on television and section 9 covers sponsorship on radio. A key objective of these rules is to codify what is allowed in sponsorship announcements in accordance with the principles of this Code. The rules also ensure there are distinctions between advertising and sponsorship because there are statutory and policy minutage limits on the amount of broadcast advertising permitted but there are no such time limits for sponsorship.

The matters that arose during the consultation in relation to sponsorship are taken together here. These pertain to the distinction between sponsorship and product placement, referencing more than one product or service in a sponsorship announcement, the prohibition of 'calls to purchase' in sponsorship announcements, promotional references in sponsorship announcements on radio, and sponsorship of current affairs on radio.

Distinction between sponsorship and product placement

In the consultation, the BAI proposed a new rule to provide greater distinction between sponsorship and product placement on television because this had emerged as an issue during the review of the previous Code. Stakeholders were satisfied with the proposed rule and it has been retained in the Code (see rule 8.3), however, the wording has been updated to reflect changes that were made to the definitions of sponsorship and product placement, as described above. The changes to the rule are in the italicized wording below:

"There shall be a clear distinction between sponsorship and product placement. Sponsorship announcements and references may be shown during a programme but shall not be part of the plot or narrative, *that is, they are limited to announcements declaring the sponsorship arrangement (e.g. "sponsored by", "brought to you by", etc.) and announcements for sponsored competitions.*

References to products or services *or a trademark, including the display of logos or branding*, built into the action of the programme, are considered product placement, where such references meet the definition of paid product placement or prop placement.”

Reference to more than one product or service

Arising from the review of the previous Code, the BAI proposed allowing sponsorship announcements to reference more than one product or service in the draft Code put to consultation. This was welcomed by the Association of Advertisers in Ireland and the Independent Broadcasters of Ireland (IBI), but other stakeholders expressed concern that the proposed change could result in lengthy sponsorship announcements, thereby exposing audiences to excessive levels of commercial communications. It is worth noting that there has never been a time limit on the length of sponsorship announcements and sample monitoring of radio content undertaken in the review of the Code revealed an average duration of just 36 seconds per hour for sponsorship. On this basis, the BAI was satisfied to retain the proposal in the consultation to allow reference to more than one product or service (see rules 8.5 and 9.3).

Calls to action and calls to purchase

The BAI also proposed, in the draft Code, to permit 'calls to action' in sponsorship announcements, but to prohibit 'calls to purchase' (see rules 8.5 and 9.3). In the previous Code, calls to action were not permitted in sponsorship announcements and this had emerged as a key concern for radio broadcasters, who were of the view that this unduly stifled commercial opportunities for radio. The BAI proposed the above change to the Code to address the concerns of radio broadcasters while still protecting the interests of the audience.

The Association of Advertisers in Ireland, the IBI, Wireless Group Ireland and Urban Media all supported the proposed change. However, the Family and Media Association (FMA), Alcohol Action Ireland (AAI) and the Irish Heart Foundation (IHF) opposed the change. The latter two stakeholders were largely concerned about how this change may be used by alcohol sponsors of programmes. It is worth noting that the Public Health (Alcohol) Bill 2015, which has yet to be enacted, provides for strong restrictions around alcohol advertising. The BAI decided not to introduce more alcohol advertising restrictions for broadcasters in advance of the enactment of this Bill on the basis that it could have a negative commercial impact during a period in which other advertising platforms would not be similarly restricted. Further detail is provided in relation to this in section 4.11 below, which deals with commercial communications for alcohol.

An additional concern expressed by some stakeholders was that allowing calls to action (other than calls to purchase) would allow advertising-like content in sponsorship announcements, thereby circumventing the statutory and policy time limits in place for advertising. The BAI is of the view that the sponsorship rules taken together shall make clear to audiences that they are listening to/watching a sponsorship announcement and not an advertisement through the rules that require signalling and a distinction between content types (see rules 8.2, 8.3 and 8.4 for television and rules 9.2, 9.3 and 9.4 for radio).

Notably, whether stakeholders supported or opposed the proposal, almost all expressed a concern about the lack of a definition of the term 'calls to purchase'. To address this, the BAI has provided a definition of call to purchase, which can be found in the General Definitions and Exclusions section of the Code, as follows:

"A call to purchase is an instruction or direction to the audience to make a transaction in relation to a product or service, usually using an imperative verb such as buy, purchase, lease, acquire, sign up, book or other verbs which describe acquiring or purchasing goods or services."

Promotional references in sponsorship announcements

Rules 8.5 and 9.3 of the draft Code prohibited the inclusion of special promotional references to products and services in sponsorship announcements. This prohibition was unchanged from the previous Code.

Wireless Group Ireland, Urban Media and the IBI argued that there should be fewer restrictions on what may be included in a sponsorship announcement and the rule for radio should be amended to allow sponsorship announcements include promotional references. The IBI suggested that, for radio broadcasters to grow their commercial revenue, sponsorship should be able to offer something more than the type of brand building it has traditionally been limited to. These stakeholders proposed removing the restriction prohibiting promotional references.

In considering this proposal, the BAI had regard to the fact that sponsorship must be distinguishable from advertising to ensure adherence to the statutory and policy limits on advertising minutage. If sponsorship sounds like advertising, even if it includes a declaration that it is a sponsorship announcement, it could be seen as a means of circumventing the purpose of the legislation to limit advertising time. The BAI was of the view that allowing promotional references in sponsorship announcements would blur the distinction between sponsorship and advertising to such an extent that it would be nearly impossible to enforce the minutage rules. On this basis, the prohibition on promotional references in sponsorship announcements is retained in the Code.

Sponsorship of current affairs on radio

The proposed draft Code prohibits news programmes on radio from being sponsored but allows sponsorship for current affairs programmes (see rule 9.7). One stakeholder, Éamonn Geoghegan, expressed the view that current affairs should not be sponsored on radio (it is not allowed on television), in particular, sponsorship by financial and medical products.

In its considerations, the BAI noted that sponsorship of current affairs programmes on radio has been permitted under previous Codes and no issues have arisen to date, either in practice or in the review of the previous Code. It was also noted that Principle 1 of the Code offers some protection in this regard, as it states:

"Advertisers, sponsors and providers of placed products and services and providers of other commercial communications shall not exercise any editorial influence over the content or scheduling of programmes."

The BAI was of the view that there are sufficient protections in the Code and the rule is retained as presented in the draft Code.

4.10 Product Placement

The rules under this section apply only to product placement on television. Because product placement is embedded within the story of a programme, a high degree of transparency is required to ensure the interests of the audience are protected. The rules also limit the type of programmes in which it may be used.

Aside from one stakeholder, respondents to the consultation were satisfied with the inclusion of rules allowing product placement in certain types of programmes and with restrictions. The Family and Media Association (FMA) was of the view that product placement should not be allowed on Irish television because it blurs the distinction between advertising and programming and decreases the likelihood of broadcasters seeing programming as a service, putting them "in conflict with the proposed principles [of the Code]". Product placement operates in Ireland under the legal framework of the EU Audio Visual Media Services Directive and was introduced in 2011. No fundamental issues arose with product placement in the review of the previous Code and the BAI is of the view it should be retained as a permissible form of commercial communication, with certain restrictions in place.

Some of the other stakeholders to the consultation made proposals to modify certain rules in this section, mainly in reference to children's programmes, product integration and thematic placement, signalling of product placement and product placement in news and current affairs.

Prop placement in children's programmes

The draft Code prohibited prop placement in children's programmes for products and services that are not permitted around those programmes and where there are relevant restrictions on advertising of such products and services. The Irish Heart Foundation (IHF) and the Royal College of Physicians of Ireland (RCPI) suggested the inclusion of a specific reference to high fat, sugar and salt (HFSS) foods as an example of what is not permitted as prop placement in children's programmes. This proposal is in accordance with the BAI's Children's Commercial Communications Code and offers clarity for readers of the Code. The addition was made to rule 10.4 in the Code.

The Institute of Public Health in Ireland (IPH) also suggested that consideration be given to extending the restriction of products and services that may not feature in children's programmes to those programmes where it can be reasonably assumed that significant numbers of children view. Similarly, the RCPI proposed a watershed of 9pm "where it can reasonably be assumed that significant number of children are watching". The review of the previous Code did not reveal any particular issue in relation to the protections offered to children in this section and the stakeholders did not offer a case as to why this change might be necessary. As such, the BAI decided to retain the protections for children as per the draft Code and which were carried over from the previous Code.

Product integration and thematic placement

Rule 10.6 of the Code prohibits 'product integration' and 'thematic placement' of products and services in programmes. Following a suggestion from BAI compliance staff that these terms are not in common usage, further wording has been added to rule 10.6 to clarify what these terms mean.

Signalling of product placement

Alcohol Action Ireland (AAI) expressed a concern that broadcasters are not required to signal product placement to audiences in programmes that were not produced or commissioned by the broadcaster or a company affiliated to the broadcaster (see rule 10.8). AAI is of the view that broadcasters should inform the audience of the existence of product placement in all programmes, not just those it has produced or commissioned.

The approach in the draft Code was taken by the BAI when product placement was introduced in Ireland in 2011 and it mirrors that taken by other EU countries, including the UK. The administrative burden on broadcasters to identify and signal product placement in all acquired programmes is considered too great to warrant changing this rule. It should be noted that this was not raised as a concern by the

public in the review of the previous Code. On this basis, the BAI has retained the rule as proposed in the draft Code.

Product Placement in News and Current Affairs

Rule 10.3 of the Code permits prop placement in all programmes. One stakeholder, Éamonn Geoghegan, expressed a view that product placement should not be allowed on news or current affairs programming due to the potential for bias resulting from the commercial arrangement. It should be noted that this rule is carried over from the previous Code because the review did not highlight any issues arising with it. The BAI also took in to account the following protections for audiences in Principle 1 of the Code:

"Advertisers, sponsors and providers of placed products and services and providers of other commercial communications shall not exercise any editorial influence over the content or scheduling of programmes. Special care is required in instances where commercial communications are included in programme content. In such instances the featured products, services, facilities, trademarks or branding of the provider shall not be unduly prominent and their inclusion shall be editorially justified."

The BAI also had regard to the fact that news and current affairs must comply with the BAI *Code of Fairness, Objectivity and Impartiality in News and Current Affairs*, which audiences may rely on if they are of the view that such content has not been objective, fair or impartial, as a result of commercial arrangements or otherwise. The BAI decided that no change to the Code was necessary.

4.11 Alcohol

The Code includes a number of sections dealing with commercial communications for specific products or services. The rules in these sections recognise that additional regulation of these commercial communications is in the public interest. Section 11 sets out the rules for commercial communications for alcoholic beverages and the protection of children is a core focus of these rules.

The draft Code that went to public consultation incorporated provisions of the Alcohol Marketing, Communications and Sponsorship Code of Practice⁸ ('the code of practice') in the rules pertaining to alcohol. The Consumer Association of Ireland (CAI), the Alcohol Beverage Federation of Ireland (ABFI/IBEC), the Irish Medical Organisation (IMO), UTV Ireland, Wireless Group Ireland and the ISPCC all supported this approach. However, several stakeholders were of the view that these regulations are not sufficient in protecting children from exposure to alcohol advertising and support the enactment of the Public Health (Alcohol) Bill⁹. This legislation, yet to be enacted, includes restrictions on the advertising of alcohol, including commercial communications on television and radio. Some of these restrictions include a lower limit on sold advertising time, a watershed for television and radio and a restriction on the content of alcohol commercial communications to include only certain factual pieces of information.

Many stakeholders, including Alcohol Action Ireland (AAI), the Health Service Executive (HSE), the Institute of Public Health in Ireland (IPH), the Irish Heart Foundation (IHF), the ISPCC and the Royal

⁸ A voluntary code, agreed by the Department of Health and Children, the Advertising Association of Ireland (AAI) and the Institute of Irish Advertising Practitioners in Ireland (IAPI), broadcasting media interests, cinema, outdoor media, and the drinks industry, which came into force in January 2004, and was updated in 2008.

⁹ The Public Health (Alcohol) Bill is at committee stage and was debated in the Seanad on the 26th October 2016.

College of Physicians of Ireland (RCPI), expressed strong views in support of the following further restrictions:

- Changing the rule that allows commercial communications for alcoholic beverages to be broadcast “only in or around programmes with an adult audience profile of 75% or greater” to an adult audience profile of 90% or greater.
- Introducing a 9pm broadcast watershed for alcohol commercial communications.
- Prohibiting the broadcast of alcohol commercial communications in and around sports programmes.

The above matters are addressed in the Public Health (Alcohol) Bill 2015 and the BAI was of the view that it would be premature to adopt changes to the Code in advance of the enactment of this legislation, because it would commercially disadvantage television and radio broadcasters over other advertising platforms. Therefore, the BAI decided not to include the above proposals in the Code. There were, however, other matters raised by stakeholders in relation to the alcohol rules. These pertained to the prohibition on commercial communications for alcohol of 25% AbV and above, incidental references to alcohol, sponsorship of sports programmes, and publishing lists of programmes that are not permitted to carry alcohol commercial communications.

Prohibition on commercial communications for alcohol of 25% AbV and above

Rule 11.3 of the Code prohibits commercial communications for alcohol of 25% AbV and above. This is unchanged from the previous Code. ABFI/IBEC was of the view that commercial communications for these products should be permitted in the same manner as other alcohol categories and according to the same content and placement regulations. The BAI noted that these products have not been permitted to be advertised on Irish broadcasting services for more than 20 years. Moreover, liberalising this rule would be out of kilter with the current legislative context, in which public representatives are moving toward greater restrictions on alcohol commercial communications. The BAI, therefore, decided to retain the rule as proposed in the draft Code.

Incidental references to alcohol brands

In the draft Code, the prohibition on commercial communications for beverages with an AbV above 25% in rule 11.3 was explicit in exempting incidental references to such beverages, where such alcohol brands are associated with an event, for example. AAI expressed concern that commercial communications for events/activities that have an alcohol sponsor attached are not subject to the more restrictive rules in relation to alcohol and could circumvent the spirit of those rules. The BAI is of the view that it is legitimate to advertise such events/activities, however, it is worth having some regulation in place to ensure the spirit of the Code is adhered to. On this basis, rule 11.4 was added to the Code, which states, as follows:

"Commercial communications are permitted for events or activities that have alcohol sponsorship. The sponsor of the event or activity and the sponsor's product(s) may be referenced in the commercial communication but shall not be more prominent than the event or activity being promoted."

AAI also suggested that broader commercial communications promoting alcoholic beverages, such as those for supermarkets or convenience stores, should be treated in the same manner as those commercial communications solely for alcoholic beverages. These types of commercial communications are regarded by the BAI as being for the supermarket and not the alcohol brand or manufacturer. The nature of these commercial communications tends toward a factual depiction of the

product and its price in an effort by the supermarket to attract customers for all of its groceries and other products. There were no issues with these commercial communications in the review of the Code. On this basis, no changes were made to this section of the Code.

Sponsorship of sports programmes

AAI proposed that competitions with alcohol sponsors should not be permitted during sports programmes. Rule 11.5 does not permit alcohol sponsorship of sports programmes and this includes sponsored competitions, but it is not stated explicitly. Wording was added to rule 11.5 to clarify this. Further wording was also added to explain the term 'solus/whistle breaks' which may not be clearly understood by people outside of the advertising sector. The changes to the rule are highlighted in the italicized text below:

"Alcohol sponsorship of sports programmes and sports bulletins, including competitions within sports programmes, is not permitted. Solus/whistle breaks advertising spots for alcohol brands are not permitted during sports programmes. These are understood as isolated or individual advertising spots before the normal advertising breaks at half-time or full-time in programme coverage of a sports event."

Publishing lists of programmes that do not carry alcohol commercial communications

The IBI noted that rule 11.8 includes an additional requirement to the code of practice, obliging broadcasters to publish on their websites the list of programmes identified as not carrying commercial communications for alcohol. The IBI suggested this was an unnecessary step, which adds an administrative burden to the radio sector and with no discernible benefit. In its deliberations, the BAI noted that broadcasters are currently required to produce these lists under the code of practice and did not agree that posting lists on a website creates a significant additional administrative burden. The benefit of publication is the added transparency and clarity for the public around what programmes should not have commercial communications for alcohol. On this basis, the BAI retained the rule as proposed in the draft Code.

4.12 Medicinal Products and Medical Devices

The Code includes specific rules for medicinal products in recognition of the fact that such products are strictly regulated at an Irish and European level. In addition, the Code recognises there are particular risks associated with the promotion of medical devices and specific rules are required to govern such promotions.

In the draft Code that was put to consultation, this section dealt only with commercial communications for medicinal products. The Irish Medical Organisation (IMO) recommended including medical devices in this section because such devices must be licensed by the Health Products Regulatory Authority (HPRA) and advertising for them is subject to industry codes of conduct similar to that of medicinal products. On this basis, this section of the Code was updated to reflect the IMO's recommendation. In addition, there were two other changes arising from the consultation, in relation to e-cigarettes and medicinal products offered free of charge.

E-cigarettes

In the consultation, a number of stakeholders noted that it may be useful to reference the prohibition on commercial communications for e-cigarettes and refill containers in the relevant sections of the Code. The BAI noted that the review of the previous Code highlighted a stakeholder desire for greater clarity in relation to e-cigarettes. As such, rule 12.3 was amended per the italicized wording below to clarify

the circumstances in which commercial communications for e-cigarettes and refill containers are permitted.

Commercial communications for all other medicinal products are only permissible where such products are the subject of a marketing authorisation or certificate of traditional use registration or are registered/certified by a relevant competent authority. *Commercial communications for electronic cigarettes and refill containers are permitted where such products are deemed medicinal products or medical devices, that is, they are subject to (1) an authorisation requirement relating to medicinal products for human use (under Directive 2001/83/EC) or (2) the requirements concerning medical devices (under Directive 93/42/EEC).*

Medicinal products offered free of charge

Rule 12.7 of the Code sets out a range of content that is not permitted in commercial communications for medicinal products and medical devices. The HPRA suggested it may be appropriate for the Code to address promotions/offers for medicinal products in this rule. Regulation in this area does not permit medicinal products to be given to customers free of charge, in connection with a promotional offer. The BAI decided to include wording at rule 12.7(s) to provide for this, as shown in italics below:

Commercial communications for medicinal products and medical devices shall not contain material which:

(s) refers to an offer of a free sample of a medicinal product to a consumer as part of a promotion.

4.13 Medical Treatments and Services, including psychiatry, psychotherapy and counselling

The Code recognises that the particular risks associated with commercial communications for medical treatments and services warrant having specific rules to protect the interests of the audience.

The draft Code that was put to consultation included medical devices in this section, but as explained earlier, these have been moved to the previous section that deals with medicinal products. In addition, the IMO recommended including psychiatry, psychotherapy and counselling as medical treatments and services, on the basis that medical specialists in psychiatry are regulated by the Medical Council and communications must comply with the *Guide to Professional Conduct and Ethics by Registered Medical Practitioners*. Moreover, the Minister for Health recently proposed including counsellors and psychotherapists in the list of professions to be regulated under Health and Social Care Professionals Act 2005 and communications relating to counselling and psychotherapy services will be subject to a code of conduct and ethics similar to that of other health and social care professionals regulated under the Act. On this basis, the BAI was satisfied to amend the Code accordingly.

The IMO also strongly recommended that the Code ensure people are not misled by information concerning efficacy of conventional medical treatment or of complementary or alternative treatments. It also suggested that information about medical services must be true and verifiable, must not make false claims or have the potential to raise unrealistic expectations. The BAI is of the view that these concerns are adequately addressed in the rules of this section, in the provisions of *Principle 1: Legal, Honest, Decent and Truthful* and in rule 4.1 which prohibits misleading commercial communications. As such, no further changes were made to this section of the Code.

4.14 Cosmetic Treatments, Products and Services

This section of the Code sets out particular restrictions on the promotion of cosmetic treatments and services. These apply to skin care and dental products, amongst others, and also to treatments and procedures such as cosmetic surgery. There are additional restrictions in the case of cosmetic surgery given the particular risks associated with promotions of this type of service.

Stakeholders were generally satisfied with the rules of this section as proposed in the draft Code that went to public consultation and there was just one minor change to rule 14.6. This rule sets out the type of material and content that is not permitted in commercial communications for cosmetic treatments, products and services. The HPRA expressed a concern that elements of this rule relating to the enhancement of health or the affect on health could effectively prohibit commercial communications for toothpastes and mouthwashes used to prevent gingivitis or suntan lotions providing protection from the sun. The BAI had not intended to prohibit commercial communications for these products and, therefore, added wording to rule 14.6(h) to allow for them. The amendment is in the italicized text below.

"Commercial communications for cosmetic treatments, products and services shall not contain material which:

suggests that the health of the subject could be affected by not using a cosmetic treatment, product or service (*this does not prohibit verifiable and substantiated claims concerning the prevention of conditions using cosmetic products, e.g. tooth decay, gingivitis or skin damage caused by the sun*)."

4.15 Hypnosis, Hypnotherapy and similar services

This section of the Code sets out the rules for commercial communications for hypnosis, hypnotherapy and similar services. In the draft Code, this section also covered psychiatry, psychotherapy and counselling, however, as detailed above, these were moved to section 13 of the Code which deals with medical treatments and services. Stakeholders were satisfied with the rules as proposed and there are no changes to this section of the Code.

4.16 Food, Nutrition and Health

The 10 rules under this heading of the Code acknowledge that advertising for food products and for products and services making health and nutritional claims must be truthful and responsible. The rules derive, for the most part, from Irish and European legislation. In the draft Code that went to consultation, this section included more detail than was in the previous Code. The aim was to offer greater clarity for stakeholders in this area, which had emerged as an issue in the review of the previous Code.

Stakeholders were generally pleased to see more detailed rules included in this section of the Code and its expansion to cover nutrition and health, as well as food. Rule 16.10 in relation to high fat, sugar and salt (HFSS) foods attracted a lot of feedback and comment from numerous stakeholders, however, as was noted in the consultation document, the BAI intends to review the provisions in relation to HFSS foods when reviewing the BAI Children's Commercial Communications Code.

The Baby Feeding Law Group Ireland (BFLGI) also expressed a view that rule 16.9 should be changed. This rule requires commercial communications for follow-on infant formula (formula for babies aged 6 months or more) to comply with relevant legislation and to prohibit the suggestion that such formula is superior to breastfeeding. The BFLGI suggested that commercial communications for follow-on infant formula be prohibited on the basis that such products are expensive and unnecessary and it is unethical to promote foodstuffs that may cause unwarranted financial difficulties for families. In considering this

proposal, the BAI noted that the review of the Code did not highlight a concern from the public in relation to these products and there is no legislation or regulation requiring the audience be protected from commercial communications for follow-on formula. As such, the BAI decided to retain rule 16.9 as presented in the draft Code.

The BAI made one amendment to this section of the Code. The HPRA recommended a provision that commercial communications for foods that make medicinal claims must comply with the section of the Code dealing with medicinal products. The BAI was satisfied to include this provision and wording to this effect was added to rule 16.1 as shown in italics below.

"Food information in commercial communications shall be accurate, clear and easy to understand and shall not mislead as to the characteristics of the food, food effects or properties or attribute medicinal properties to foods. Food information shall not attribute to any food the property of preventing, treating or curing a human disease, nor refer to such properties, subject to derogations provided for by European law applicable to natural mineral waters and foods for particular nutritional uses. Commercial communications attributing medicinal claims to foods are permitted where such foods are legally recognised as a medicinal product and those communications shall comply with section 12 of this Code - Medicinal Products and Medical Devices."

4.17 Slimming Treatments, Products and Services

The rules under this section require adverts, sponsorship and other types of commercial communications for slimming treatments, products and services to take a responsible approach when informing the public of their services. It must be clear to a listener or viewer how the treatment, product or service will lead to weight reduction or maintenance and the promotions cannot undermine the following of a properly designed diet.

In its submission, the IMO called for advertisements for slimming treatments, products and services to be accurate and backed up with clear scientific evidence. The BAI is of the view that the rules in this section and the principle that commercial communications be legal, honest, decent and truthful adequately provide for this. Otherwise, stakeholders were generally satisfied with the rules in this section and there are no changes to the rules as presented in the draft Code that was put to consultation.

4.18 Smoking Cessation Aids

Smoking cessation aids are those products and services which are intended to assist people to stop smoking. The rules in this section permit commercial communications for such products once they do not make claims that they will achieve this objective without the application of a person's willpower.

In the consultation, the HPRA suggested this section of the Code ought to reference circumstances when commercial communications for e-cigarettes are permitted. In the review of the previous Code, this emerged as an area in which stakeholders wanted greater clarity. Therefore, the BAI decided to introduce a new rule at 18.3 to provide for this, as follows:

"Commercial communications for electronic cigarettes and refill containers are permitted where such products are deemed medicinal products or medical devices, that is, they are subject to (1) an authorisation requirement relating to medicinal products for human use (under Directive 2001/83/EC) or (2) the requirements concerning medical devices (under Directive 93/42/EEC). These commercial communications shall comply with the rules in section 12 of this Code –

Medicinal Products and Medical Devices. Where these products purport to assist people to quit smoking, section 18 of this code will also apply."

4.19 Financial Services and Products

The rules in this section ensure commercial communications for financial services and products do not mislead and do not omit important information for audiences. This type of commercial communication is also regulated by the Central Bank.

Aside from radio broadcasters, stakeholders were generally satisfied with the rules as proposed in the draft Code. There were no changes to the proposed rules, but the BAI has included an additional rule at 19.3. This rule pertains to mandatory regulatory statements in radio advertisements for financial services and products.

The Central Bank Code requires regulated entities to include key information in the main body of the advertisements and at a speed which makes it easy for the listener to understand. Wireless Group Ireland and the IBI argue that this requirement disadvantages radio in comparison to other platforms because the regulatory portion of the advertising copy must be read out rather than being presented visually. The position of the Central Bank is that the advertising of a financial product or service is a key area of consumer protection as it can present risks if products and services are not presented in the right way to the consumer. In addition, the Central Bank's overriding mandate to protect consumers would not be met if it were to allow radio advertising to be undertaken in a different manner to other forms of advertising. As such, the requirements of the Central Bank Code remain unchanged.

In the consultation, Wireless Group Ireland and the IBI acknowledged the requirement to broadcast the mandatory regulatory statements, but proposed excluding them from the calculation of advertising minutage. The BAI recognises that these statements provide important information for audiences in relation to the advertised financial products and services, but that they are not, in and of themselves, commercial in nature. The BAI also noted that the distinction between this information and the commercial message could be clearly identified in a commercial communication for radio, but not as clearly for television, where such information is usually included in a visual form, overlaying the commercial message. On this basis, the BAI was of the view that mandatory regulatory statements could be excluded from the calculation of advertising minutage for commercial communications carried on radio. The BAI decided to introduce rule 19.3 to the Code to facilitate this, as follows:

"Mandatory regulatory disclosure statements and warning statements in commercial communications for financial services and products shall comply with this Code but shall not count toward advertising minutage. It shall be clear to listeners that these statements are part of the overall commercial communication for a financial product or service but the statements themselves shall not include any content that constitutes advertising."

4.20 Gambling

This section covers commercial communications for all forms of gambling, including betting, gaming, lotteries and arcade games. The rules under this heading require the promotion of gambling to be done in a socially responsible manner. In addition, the rules take account of the separate legislation and regulation in place for the National Lottery and the role of the regulator of the National Lottery in setting standards for the promotion of lotteries.

The expansion of the rules to cover gambling and not just betting services, as in the previous Code, was generally welcomed by stakeholders. Several stakeholders were of the view that the Code ought to reference the Gambling Control Bill 2013, however, given that legislation has not yet been enacted, the BAI was of the view it would be premature to incorporate any of its provisions. The Family and Media Association (FMA) suggested it may be useful to have stricter rules on commercial communications for casino style gambling, in recognition of the ill-effects of gambling addiction, however, there were no specific proposals for such rules.

The main change to this section of the Code was to rule 20.3, however, proposals were also considered in relation to rules 20.2, 20.4 and 20.6, as detailed below.

National Lottery and other lotteries

Rule 20.3 sets out the restrictions on commercial communications for lotteries. The Department of Justice and Equality suggested that this rule could be clearer in stating that commercial communications are not permitted for unlicensed lotteries, while the IBI, UTV Ireland and Wireless Group Ireland sought clarification that Radio Bingo is permitted under the Code. The BAI reworded rule 20.3 as follows to take into account these concerns:

"Commercial communications are permitted for the National Lottery and other lotteries granted licenses by the relevant competent authority (e.g. charity bingo). These commercial communications shall comply with the Marketing Communications, Advertising, Promotions and PR Code of Practice approved by the regulator of the National Lottery, where applicable, and with rules 20.5 and 20.6 of this section of the Code. Commercial communications for any other lotteries are not permitted."

Remote bookmaking operations

Rule 20.2 was introduced to prohibit commercial communications for remote bookmakers (e.g. online bookmakers) operating without a proper license, following the enactment of the Betting (Amendment) Act 2015. Stakeholders were satisfied with the introduction of this new rule, however, some asked for greater clarity on the term 'remote bookmaking operation'. A definition has been provided in Appendix 2 of the Code as follows:

"These are operations carrying out the business of bookmaking by any electronic means, including over the internet, telephone or telegraphy (whether or not wireless telegraphy)."

Encouragement to gamble and promotional offers

Rule 20.4 restricts the content of commercial communications for gambling to factual information and does not permit promotions, discounts or inducements to gamble. Wireless Group Ireland, Betway and UTV Ireland suggested varying ways to liberalise this rule. In considering these, the BAI noted that there were no issues arising in relation to this rule in the review of the previous Code, aside from a proposal to change "encouragement to bet" to "direct encouragement to bet" in recognition of the fact that all commercial communications are encouragements of some description. There was no call from the public to have more liberal regulation in relation to commercial communications for gambling. Moreover, the Department of Justice and Equality is satisfied that these rules are appropriate and offer suitable protection for the public. On this basis, the BAI retained the rule in the same form as in the draft Code that went to public consultation.

Protecting Children

The Department of Justice and Equality and the Gaming and Leisure Association of Ireland (GLA) noted there are no time restrictions for commercial communications for gambling and the latter recommended a watershed of 9pm. The BAI noted that rule 20.6 prohibits commercial communications for gambling from having content directed exclusively or principally at children or broadcast in or around children's programmes. The BAI is of the view that this rule, combined with the other restrictions in this section of the Code, offers suitable protection for children. The BAI decided that no change to the Code was necessary.

4.21 Premium-rate Telecommunication Services

The rules in this section deal with commercial communications for phone, text and other telecommunication services that cost more than a regular phone call or email. This type of commercial communication is regulated by the telecommunications regulator ComReg, who sets rules that must be complied with. The rules in this Code include a general requirement to ensure that commercial communications under this heading are legal and honest. Stakeholders were satisfied with this section of the Code and no new rules or changes were proposed. The rules remain as they were in the draft Code that was put to consultation.

4.22 Fortune Tellers, Psychic Services, etc

The rules under this heading are intended to regulate fortune telling, psychic services and related services that are offered as entertainment. Individuals or companies who claim that they can in fact foretell the future or contact the dead or undertake similar services are not permitted to advertise. One stakeholder, the Family and Media Association (FMA), expressed the view that commercial communications for fortune tellers, psychic services etc., are not acceptable even where the service has the appearance of being only for entertainment purposes. The BAI noted that this did not arise as an issue for the public in the review of the previous Code and no other stakeholders raised concerns in relation to this. The BAI believes these services may advertise provided they adhere to the rules in this section and the principles and rules applying to all commercial communications. The BAI decided that no changes to this section of the Code were necessary.

Appendix 1
BAI General Commercial Communications Code
(March 2017)

General

Commercial

Communications

Code



General

Commercial

Communications

Code

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1. Introduction

Legislative Basis

The Broadcasting Authority of Ireland (BAI) prepares and publishes broadcasting codes for broadcasters, as required by law. This Code gives expression to the statute, specifically to the requirements of sections 42(2) (h) and (j) of the Broadcasting Act 2009 (the Act):

42(2) *Broadcasting codes shall provide:*

(h) that advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, other than advertising and other activities as aforesaid falling within paragraph (g), must protect the interests of the audience,

(j) for the matters to be provided for by Chapters IIA, IV and V of the Council Directive.¹

Section 42(2) of the Act also provides for other broadcast matters in relation to programming and commercial content, which are given expression in a range of BAI Codes and Rules. The legislative provisions and the corresponding BAI Codes and Rules are set out in a table in Appendix One.

The Objectives of this Code

- To ensure that the public can be confident that commercial communications are legal, honest, truthful, decent and protect the interests of the audience.

- To ensure that commercial communications do not impinge on the editorial integrity of broadcasts.
- To provide guidance to the general public on the standards they can expect from commercial communications on broadcasting services.
- To provide clear guidance to broadcasters as to the standards to which commercial communications shall adhere.
- To provide broadcasters with a simple, flexible and comprehensive code that does not impede in an unwarranted manner their right to communicate commercial messages.

Complying with this Code

- Broadcasting services shall comply with the spirit as well as the letter of the Code.
- The principles of this Code are indivisible, that is, all commercial communications shall conform to all of the principles.
- Commercial communications shall comply with all applicable rules in this Code. Commercial communications may be required to comply with more than one rule. Broadcasters are advised to consider the totality of the Code's provisions and not to apply any single rule in a too narrow or focused way.

¹ 'Council Directive' means Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 and by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007. A simplified and codified version of these Directives was introduced in 2010: the Audiovisual Media Services Directive 2010/13/EU.

Complying with Relevant Legislation and Codes from other Authorities

- All commercial communications shall comply with applicable Irish and European legislation and have regard to international conventions. This includes, but is not restricted to, the *Broadcasting Act 2009*, *Directive 2010/13/EU (Audiovisual Media Services Directive)* and *S.I. No. 258/2010 (European Communities (Audiovisual Media Services) Regulations 2010)*. A non-exhaustive list of legislation pertaining to commercial communications is included in Appendix Four.
- The Audiovisual Media Services Directive shall apply, as appropriate, to television broadcasting services exclusively devoted to advertising and teleshopping as well as to television broadcasting services exclusively devoted to self-promotion.
- Commercial communications shall comply with all applicable binding codes issued by the relevant competent authorities, e.g. ComReg, the Health Products Regulatory Authority, the Central Bank, etc.

The Right to Complain

This Code is intended to help viewers and listeners who believe that they have a legitimate complaint about a broadcast and who wish to make a complaint. It explains how the BAI may assess a complaint. The intention is to make it as easy as possible to have your complaint considered.

How to Make a Complaint

- Viewers and listeners who believe commercial communication(s) have not complied with the provisions of this Code are entitled to make a complaint. Complaints should be made, in the first instance, to the broadcaster.
- You should identify the particular commercial communication(s) and explain what it is about the broadcast that has led you to make a complaint. It is important to set out clearly the grounds of your complaint or why you believe a commercial communication(s) does not comply with the Code and/or the legislative provisions set out above.

- Your complaint should reference at least one of the principles and/or rules.
- Each broadcaster is required to consider complaints in line with its Code of Practice for Complaints Handling and you should refer to the broadcaster's Code of Practice when making your complaint to the broadcaster. The Code of Practice should explain how a broadcaster will consider and assess your complaint.

How Complaints will be Assessed by the BAI

In circumstances where your complaint has not been responded to by the broadcaster or you are not satisfied with the response, you may refer your complaint to the BAI. Commercial communications shall be considered by the BAI in whole and in context with reference to:

- The matters identified in the complaint;
- The principles and rules in this Code;
- The provisions of the Broadcasting Act 2009;
- The provisions of the Audiovisual Media Services Directive 2010/13/EU; and
- The procedures, practices and policies of the BAI.

The BAI will not carry out a separate or independent assessment outside of the matters raised in the complaint.

Further information on the complaints process is available on www.bai.ie or by phoning (01) 6441200.

All complaints adjudicated by the BAI will be published on the BAI's website, unless it is inappropriate to do so. Where a complaint is upheld, in whole or in part, the broadcaster concerned will broadcast the BAI's decision, unless it is inappropriate to do so. The BAI's methods and approach to dealing with instances of non-compliance by broadcasters is set out in the BAI's Compliance and Enforcement Policy, which is also available on www.bai.ie.

Scope and Jurisdiction

This Code shall apply to all commercial communications carried on broadcasting services operating under contract with the BAI or established under Irish statute. It shall not apply to commercial communications carried on broadcasting services licensed in other jurisdictions or commercial communications carried on non-broadcasting services.

Guidance on the Code for Broadcasters

The BAI does not provide a copy clearance service to broadcasters, advertisers or the general public.

The BAI will provide general non-binding guidance regarding the provisions of this Code and/or in relation to commercial communications on request or as and when it is deemed necessary. The BAI reserves the right to publish and amend any such guidance from time to time as it sees fit.

Requests for such guidance must be submitted in writing or email, include the complete text and, where relevant, audio/video copy of the commercial communication in question. The submission should clearly state the section(s) of the Code, which the requestor believes are relevant, and set out the specific question about which the requestor would like a view. In certain circumstances, broadcasters may be requested to refrain from airing the communication under consideration. The BAI accepts no liability for any decision (or consequences arising) made by a broadcaster to defer the airing of a commercial communication pending receipt of guidance from the BAI. Similarly, the BAI accepts no liability for any decision (or consequences arising from) made by a broadcaster to air a commercial communication following receipt of non-binding general guidance from the BAI.

Effective Date

This Code comes into effect on 1st June 2017.



2. General Definitions and Exclusions

General Definitions

Below are the definitions that pertain to terms used throughout this Code. Definitions in relation to specific products and services are set out in Appendix Two.

Advertising

Images with or without sound and radio announcements 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.

Broadcaster

The term 'broadcaster' is understood in the context of the definition provided in the Broadcasting Act 2009, which is as follows:

A person who supplies a compilation of programme material for the purpose of its being transmitted, relayed or distributed as a broadcasting service (whether that person transmits, relays or distributes that material as such a service or not).

For the purpose of this Code, a broadcaster may provide one broadcasting service or multiple broadcasting services, depending on the broadcaster's ownership of said services or the broadcaster's functions as established in statute. That is, a broadcaster is a person or legal entity owning and controlling one or more broadcasting services or an entity established by legislation to provide public service broadcasting (e.g. RTÉ).

Broadcasting Service

The term 'broadcasting service' is understood in the context of the definition provided in the Broadcasting Act 2009, which is as follows:

a service which comprises a compilation of programme material of any description and which is transmitted, relayed or distributed by means of an electronic communications network, directly or indirectly for simultaneous or near-simultaneous reception by the general public, whether that material is actually received or not, and where the programmes are provided in a pre-scheduled and linear order, but does not include:

- a. a service provided in a non-linear manner where each user of the service chooses a programme from a catalogue of programmes, or*
- b. other audio and audiovisual services provided by way of the Internet.*

Broadcasting services may be commonly understood as the television and radio channels that are transmitted to the audience via cable, satellite, set-top box or integrated TV, or, for radio, on a traditional radio receiver. It does not cover services provided over the internet. It does not cover on-demand audiovisual services made available in the Republic of Ireland. On-demand audiovisual services are governed by the ODAS Code of Conduct for media service providers of on-demand audiovisual media services.

Call to Purchase

A call to purchase is an instruction or direction to the audience to make a transaction in relation to a product or service, usually using an imperative verb such as buy, purchase, lease, acquire, sign up, book or other verbs which describe acquiring or purchasing goods or services.

Child/Children

For the purpose of this Code, the terms 'Child' and 'Children' refer to any person under 18 years of age.

Children’s Programmes

Children’s programmes are programmes that are commonly referred to as such and/or have an audience profile of which over 50% are under 18 years of age.

Commercial Communication

Images with or without sound and radio announcements which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images and radio announcements accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of commercial communication include, among other things:

- advertising,
- sponsorship,
- teleshopping, and
- product placement.

Public service announcements and charity appeals broadcast free of charge are not commercial communications.

Comparative Commercial Communications

Commercial communications that contain explicit or implicit identification of a competitor or products or services offered by a competitor.

Cross-Promotions

These are announcements made in connection with programmes and ancillary products directly derived from these programmes, aired without payment or similar consideration on a broadcasting service other than the one airing the programmes, and where the broadcasting services in question are owned and controlled by the same broadcaster. The term ‘ancillary’ refers to products intended specifically to allow the viewing public to benefit fully from, or to interact with, these programmes and does not include commercial activities of the broadcaster unrelated to programmes or ancillary products.

Interactive advertising

An advertising technique which allows the viewer/listener to interact with the television or radio broadcast by actively choosing the advertising content to which s/he wishes to be

exposed to for as long as s/he wants. Interactive advertising allows the viewer/listener to provide information directly to the broadcaster/advertiser by means of a return path, and/or participate in an interactive environment which is separate to the broadcast content.

Misleading Commercial Communications

Commercial communications that contain any element of spoken or visual presentation which misleads or is likely to mislead, either directly or by implication, by act or omission, with regard to the merits of the product or service promoted or its suitability for the purpose recommended and which, by reason of its misleading nature, is likely to prejudice the interests of individuals or a competitor.

Product Placement

Any form of commercial communication on television consisting of the inclusion of or reference to a product, a service or the trademark thereof so that it is featured within a programme. The decisive criterion distinguishing product placement from sponsorship is the fact that in product placement the reference to a product or service is built into the action of a programme. In contrast, sponsor announcements or references may be shown during a programme but are not part of the plot or narrative of the programme. The display of logos or branding in programme content (and outside of sponsorship announcements or references) is considered product placement if it meets the definition of product placement.

For the purposes of this Code, there is a distinction between two types of product placement as provided for in the Audiovisual Media Services Directive, as follows:

Paid Product Placement	A third party provides products and services for inclusion within a television programme for payment or similar consideration to the broadcaster.
Prop Placement	A third party provides products and services for inclusion within a television programme free of charge and the total value of all the products and services featured in a single scheduled episode of a programme is of significant value.

Products and services featured within a television programme free of charge, and where the total value of all those products and services featured within a single scheduled episode of a programme is **not** of significant value, does not constitute product placement. However, where the featuring of such products and services is unduly prominent, is not editorially justified and/or could be construed as a commercial communication, the BAI may rely on the provisions of this Code prohibiting surreptitious commercial communications.

Significant Value	Products and services are deemed of significant value where the total value of all products and services featured in a single episode of a programme exceeds €1,000. The BAI reserves the right to amend this interpretation of significant value from time to time as it sees fit and such amendments will be published on the BAI’s website at www.bai.ie .
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Self-Promotions

These are announcements on a broadcasting service for programmes and ancillary products directly derived from these programmes, aired without payment or similar consideration on that broadcasting service. The term ‘ancillary’ refers to products intended specifically to allow the viewing public to benefit fully from, or to interact with, these programmes and does not include commercial activities of the broadcaster unrelated to programmes or ancillary products.

Split-screen Technique

A technique which allows the simultaneous presentation of editorial content and commercial information on the same screen, divided into two or more parts.

Sponsorship

Any contribution made by a public or private undertaking or natural person not engaged in providing radio or television services or in the production of sound broadcasting or audiovisual works, to the financing of television and/or radio services or programmes with a view to promoting its name, its trade mark, its image, its activities, its products or its services.

Sponsor announcements or references may be shown during a programme but shall not be part of the plot or narrative, that is, they are limited to announcements declaring the sponsorship arrangement (e.g. “sponsored by”, “brought to you by”, etc) and announcements for sponsored competitions. References to a product or service that are built into the action of a programme constitute product placement, where such references meet the definition of paid product placement or prop placement.

Subliminal Commercial Communications

Commercial communications that include any technical device, which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, members of an audience without their being aware or fully aware of what has been done.

Surreptitious Commercial Communications

Commercial communications that contain the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve as a commercial communication and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.

Teleshopping

A direct offer broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment. This includes content designed primarily to promote premium-rate telecommunication services.

Trailer

A trailer is a compilation of extracts from a forthcoming programme or programmes.

Virtual Advertising

An advertising technique which allows broadcasters to electronically insert virtual commercial messages into broadcasts by altering the broadcast signal itself, for example, by replacing existing advertising boards on a field or by superimposing new (e.g. three-dimensional) images.

Exclusions

Minutage Exclusions

The following exclusions are forms of commercial communication and shall adhere to the principles and applicable rules of this Code, but they do not count towards advertising and teleshopping minutage.

1. Self-promotions.
2. Cross-promotions.
3. Information announcements broadcast on RTÉ services for forthcoming concerts, recitals or performances, whether intended for broadcast or not, given by the National Symphony Orchestra, the RTÉ Concert Orchestra, and other RTÉ performing groups or of any other comparable groups which are employed by or under contract to RTÉ or employed by or under contract to a broadcaster and to which the public are allowed entry.
4. Sponsorship announcements and product placements.
5. Announcements of outside broadcasting events or of non-broadcast events organised in whole or in part by the broadcaster if the public are allowed entry free of charge. In the case of announcements of outside broadcasting events and announcements of non-broadcast events linked to a sponsorship arrangement, the broadcaster may credit the sponsor in accordance with the rules in relation to sponsorship in this Code.

Code Exclusions

The following exclusions are not forms of commercial communication and are not required to comply with this Code. They shall, however, comply with the BAI's Code of Programme Standards.

1. 'Trailers' are considered programmes and not commercial communications once they relate to programmes carried on the same broadcasting service. Trailers for programmes on another broadcasting service, aired without payment or similar consideration, are considered cross-promotions, when the broadcasting services are owned and controlled by the same broadcaster.
2. Public service announcements and charity appeals broadcast free of charge.

3. Principles of the Code

Principle 1 – Legal, Honest, Decent and Truthful

- Commercial communications shall be prepared with a sense of responsibility both to the individual and to society and shall be legal, honest, decent, truthful and protect the interests of the audience.
- Advertisers, sponsors and providers of placed products and services and providers of other commercial communications shall not exercise any editorial influence over the content or scheduling of programmes. Special care is required in instances where commercial communications are included in programme content. In such instances the featured products, services, facilities, trademarks or branding of the provider shall not be unduly prominent and their inclusion shall be editorially justified.
- Advertising, sponsorship, teleshopping, product placement and any other type of commercial communication must be easily understood by audiences, must not unduly distract or alarm viewers and listeners and must not mislead the public, either directly or indirectly. Claims made in commercial communications must be true and devoid of exaggeration. Broadcasters shall have mechanisms to satisfy themselves to a reasonable degree that the details, claims, etc., made in commercial communications are legal, honest, decent and truthful.

Principle 2 – Human Dignity, Offence and Harm

- Commercial communications shall not prejudice respect for human dignity, cause serious or widespread offence, cause harm or encourage harmful behaviour.
- The manner in which persons and groups in society are represented in commercial communications shall be appropriate and justifiable and shall not stigmatise, support or condone discrimination or incite hatred against persons and groups in society, based on sex, racial or ethnic origin, nationality, religion or belief, disability, age, sexual orientation or membership of the Traveller community.
- Broadcasters shall have due regard for the appropriateness and/or justification for broadcasting commercial communications that include, depictions and/or descriptions of violence, sexual conduct and coarse and/or offensive language.
- Commercial communications shall not encourage behaviour prejudicial to health or safety or grossly prejudicial to the protection of the environment.

Principle 3 – Transparency

— The principle of transparency is about ensuring that audiences are fully aware of the nature of the communications they see and/or hear. Broadcasters must ensure that the distinction between editorial content and commercial communications is clear and identifiable for audiences. Any commercial arrangement within programming shall be readily recognisable as such and the listener/viewer shall be made aware of such an arrangement.

— The closer the commercial content is to programme content, through the use of sponsorship and product placement for example, the greater the degree of transparency required.

Principle 4 – Protection of Children

— Children are viewers and listeners with particular needs and broadcasters share a responsibility with parents and guardians for what children listen to and watch. It is expected that broadcasters will protect them from material that is unsuitable or would be likely to cause physical or moral detriment. This principle recognises that children of different ages and maturity require different levels of protection and that in all actions and decisions relating to children, the child’s best interests shall be a primary concern.

— Commercial communications shall not directly exhort children to buy or hire a product or a service by exploiting their inexperience or credulity; they shall not directly encourage children to persuade their parents, guardians or others to purchase the products or services being promoted; they shall not exploit the special trust children place in parents, guardians, teachers or other persons; and, they shall not unreasonably show children in dangerous situations.

— The BAI has a separate Children’s Commercial Communications Code that deals specifically with commercial communications promoting products, services or activities that are deemed to be of particular interest to children and/or broadcast during and between children’s programming. This is available to download from www.bai.ie.

4. Prohibited Commercial Communications

- 4.1

Surreptitious, subliminal and misleading commercial communications are prohibited.
- 4.2

All forms of commercial communications for cigarettes and other tobacco products are prohibited. This includes indirect forms of commercial communication which, whilst not directly mentioning the tobacco product, seek to circumvent the ban on commercial communications for cigarettes and other tobacco products by using brand names, symbols or other distinctive features of tobacco products or of undertakings whose known or main activities include the production or sale of such products.
- 4.3

Commercial communications for controlled drugs under section 2 of the Misuse of Drugs Act 1977, for psychoactive substances under the Criminal Justice (Psychoactive Substances) Act 2010 and for medicinal products and medical treatments available only on prescription in Ireland are prohibited.
- 4.4

Commercial communications with the aim or direct or indirect effect of promoting electronic cigarettes and refill containers are prohibited. This does not apply to electronic cigarettes and refill containers that are considered medicinal products or medical devices, that is, they are subject to (1) an authorisation requirement relating to medicinal products for human use (under Directive 2001/83/EC) or (2) the requirements concerning medical devices (under Directive 93/42/EEC).
- 4.5

Commercial communications for infant formula for use by infants during the first 6 months of life are prohibited.
- 4.6

Commercial communications that are directed towards a political end or that have any relation to an industrial dispute are prohibited. This rule does not prohibit the broadcasting of a party political broadcast provided that a broadcaster does not, in the allocation of time for such broadcasts, give an unfair preference to any political party. This rule does not apply to commercial communications broadcast at the request of the Referendum Commission in relation to a matter referred to in section 3 of the Referendum Act 1998 concerning a referendum.
- 4.7

Commercial communications that address the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation are prohibited.
- Broadcasters should be aware that other classes of commercial communication are prohibited, limited or otherwise restricted by legislative or regulatory provisions. A guide to these provisions is contained in the Appendix Four and this guide should not be deemed exhaustive.



5. Rules for all Commercial Communications

- 5.1

All pertinent details of an offer contained in a commercial communication shall be stated in a clear and understandable manner and shall not be contained solely in footnoted text on TV or taglines at the end of a commercial communication on radio.
- 5.2

Commercial communications shall comply with the following:

a.

Disclaimers and asterisked or footnoted information included/required in commercial communications shall not contradict more prominent aspects of the message and shall be located and presented in such a manner as to be clearly visible and/or audible;

b.

Where practicable, broadcasters shall use plain language which is easily understood by listeners and viewers;

c.

Where information is spoken, it must be at an appropriate speed so that the content of any additional information provided can be clearly understood;

d.

When using on-screen messages, broadcasters shall be mindful of the varying abilities of the public in terms of their physical and educational ability to read on-screen text; and,

e.

Broadcasters shall also take into consideration the time required to read the specific text and matters of readability, including the contrast between the text and the background picture onto which it is placed.
- 5.3

Presenters and other on-air personnel shall not advertise or endorse products or services during editorial content. This does not limit legitimate editorial comment where products or services may be reviewed and about which opinions may be given, for example, in consumer programmes or reviews of cultural matters.
- 5.4

Comparative commercial communications containing direct or implied comparisons with other products or services are permissible provided they objectively compare products or services meeting the same needs or intended for the same purpose. Points of comparison or top seller claims (e.g. claims a brand or product is number one) shall be based on facts that can be substantiated. The subject matter of a comparison shall not be chosen in such a way as to confer an artificial or unfair advantage to a promoter of a product or service.
- 5.5

Broadcasters shall be mindful of the potential for sound effects in commercial communications to distract and/or alarm viewers and listeners. Particular care shall be taken when including sound effects such as sirens, horns, ringing phones and screeching tyres. They shall not be included at the beginning of a commercial communication. This rule applies regardless of the placement of the commercial communication in an advertising break i.e. whether at the beginning, middle or end of an advertising break.
- 5.6

Commercial communications shall be appropriately scheduled with regard to the time of broadcast; the type of programme; the type of broadcasting service; the likely expectations of the audience of a programme or broadcasting service; the nature of the product or service being promoted; and, the likely size and composition of the audience.
- 5.7

Individual living persons shall not normally be portrayed or referred to in commercial communications without their permission. In general, any reference to such an individual, taking the form of a caricature or an impersonation which has not been approved by the person in question, is not permitted. However, references to living persons may normally be made in

commercial communications for books, films, radio or television programmes, newspapers, magazines etc., which feature the persons referred to in the communication, provided they are not offensive or inaccurate.

- 5.8 Commercial communications shall not be calculated to induce unwarranted fear on the part of the viewer or listener. Any appeal to fear in a commercial communication must be justified in the context of the product, service or activity promoted in the communication. Broadcasters shall give special consideration to the appropriateness and scheduling of such communications.
- 5.9 Commercial communications shall not feature persons regularly presenting news programmes (e.g. top-of-the-hour news bulletins and extended news bulletins). Commercial communications promoting appeals by registered charities or public service campaigns for safety, health, education, etc., do not fall within this category.

- 5.10 Commercial communications may make use of testimonials, that is, statements given by individuals reflecting their genuine views about a product or service. Such testimonials shall be genuine, relevant and contemporary and shall relate to the person giving the testimonial. Commercial communications that give the impression of a testimonial but where the testimonial is not genuine are prohibited. It must be made clear to audiences when a genuine testimonial is presented by an actor. The broadcaster shall retain documentary evidence of testimonials.
- 5.11 The language used in relation to guarantees, warranties and free goods and services shall be clear and unambiguous and shall not prejudice legal rights of consumers. No commercial communication shall contain a direct or implied reference which purports to take away or diminish the legal rights of a purchaser.
- 5.12 Commercial communications shall not describe products or services as 'free' unless the products or services are supplied at no cost or at no extra cost (other than actual postage or carriage) to the recipient. A trial may be described as 'free' even if the customer has to pay for the costs of returning the goods, provided this is made clear in the communication.

6. Advertising and Teleshopping

Rules applying to radio only

- 6.1 Advertising shall be readily recognisable and distinguishable from editorial content and shall be kept quite distinct from other parts of the programme by acoustic means. Such means shall not contain any commercial communications, such as a sponsorship announcement.
- 6.2 The insertion of advertising shall not affect the editorial integrity and value of programming. Advertising shall be inserted into programmes in such a way that takes into account the natural breaks in and the duration and nature of the programme concerned, and shall not prejudice the rights of the rights holders.
- 6.3 Advertising shall not be inserted in any broadcast of a religious service.
- 6.4 Broadcasters shall take all reasonable measures to ensure that advertisements do not sound louder than adjacent programming. Broadcasters shall establish clear limits on the use of compression, limiting and equalisation as these apply to advertisements, in accordance with best practice.

Rules applying to television only

- 6.5 Advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of split-screen, virtual or interactive advertising techniques, advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means. Such means shall not contain any commercial communications, such as a sponsorship announcement.
- 6.6 The insertion of advertising and teleshopping shall not affect the editorial integrity and value of programming. Advertising and teleshopping segments shall be inserted into programmes in such a way that takes into account the natural breaks in and the duration and nature of the programme concerned, and shall not prejudice the rights of the rights holders.
- 6.7 Advertising or teleshopping segments shall not be inserted in any broadcast of a religious service.
- 6.8 Broadcasters shall take all reasonable measures to ensure that advertisements do not sound louder than adjacent programming. Broadcasters shall establish clear limits on the use of compression, limiting and equalisation as these apply to advertisements, in accordance with best practice.
- 6.9 Advertising or teleshopping segments shall not be inserted:
- a. In any television broadcast of films made for television (excluding series, serials and documentaries), cinematographic works and news when their scheduled duration is less than 30 minutes; or,
 - b. More than once in each scheduled period of at least 30 minutes during the transmission of films made for television (excluding series, serial and documentaries), cinematographic works and news programmes.
- 6.10 Isolated advertising and television spots, other than in the transmission of sports, shall remain the exception. An isolated spot is generally understood as a single advertisement.
- 6.11 Teleshopping shall not exhort children to contract for the sale or rental of products and services by exploiting their inexperience or credulity. Please refer to the BAI's separate Children's Commercial Communications Code for further details.
- 6.12 Teleshopping shall not feature medicinal products (including prescription medicines), medical treatments, devices and services or cosmetic treatments and services.

7. Split-screen, Interactive and Virtual Advertising Techniques

- 7.1 Split-screen and virtual advertising will count towards advertising minutage in the same way as a traditional advertisement.
- 7.2 Split-screen advertising is permitted during natural breaks and during end credits. Split-screen advertising may also be inserted during long-form sports programmes which do not have a natural break e.g. Formula 1 Racing.
- 7.3 Split-screen advertising shall not exceed 50% of screen space and only one split-screen advertisement shall appear at any given time.
- 7.4 Split-screen and virtual advertising are not permitted in news or current affairs programmes, cinematographic works, television films, or broadcasts of religious services.
- 7.5 Interactive advertising shall not bring the audience immediately/directly to products or services that are advertised. Audiences shall be warned by appropriate means that they are about to enter a commercial interactive environment not governed by this Code. This shall be done via a two-step process whereby the viewer/listener shall be able to access the interactive content only after the second step.



8. Sponsorship on Television, including competitions

- 8.1 Sponsorship shall not influence the content and scheduling of programmes in such a way as to affect the responsibility and editorial independence of the broadcaster.
- 8.2 There shall be a clear separation between sponsorship and advertising for the audience. There is no prohibition on the inclusion of advertisements for a programme sponsor during advertisement breaks. Broadcasters shall take care to ensure sufficient separation between formal programme sponsorship announcements scheduled before or at the end of advertisement breaks and advertising for the products or services of the sponsor carried in a separate advertisement break.
- 8.3 There shall be a clear distinction between sponsorship and product placement. Sponsorship announcements and references may be shown during a programme but shall not be part of the plot or narrative, that is, they are limited to announcements declaring the sponsorship arrangement (e.g. "sponsored by", "brought to you by", etc.) and announcements for sponsored competitions. References to products or services or a trademark, including the display of logos or branding, built into the action of the programme, are considered product placement, where such references meet the definition of paid product placement or prop placement.
- 8.4 Audiences shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or at the end of the programmes.
- 8.5 Sponsorship must not constitute advertising, as defined in this Code, and sponsored programmes shall not directly encourage the purchase or rental of goods or services. A sponsorship announcement or reference shall not:
- Make special promotional references to a product or service e.g., sales and discounts;
 - Include advertising copy, prices, endorsements or calls to purchase; or,
 - Afford undue prominence to a product or service of the sponsor, though reference to more than one product or service is permitted.
- 8.6 Audience competitions within programme content may be sponsored. Announcements in relation to sponsored competitions shall not constitute advertising, as defined in this Code. Competition questions, entry mechanisms and prizes shall not give undue prominence to the sponsor, in particular its facilities, products or services.

- 8.7 Participants in competitions shall have a fair chance of winning a sponsored competition and broadcasters shall make available to the audience pertinent information in relation to it, including, but not limited to:
- a. How to enter the competition;
 - b. Closing times and dates;
 - c. The means by which a winner is selected;
 - d. Key terms and conditions that would void entry or prohibit a winner from taking up the prize;
 - e. How to access the full set of terms and conditions in relation to the competition; and,
 - f. Any changes to the competition terms and conditions and/or processes and/or prize.
- 8.8 News and current affairs programmes shall not be sponsored. This rule does not prohibit the sponsorship of weather, entertainment and traffic items.

- 8.9 Sponsor logos may not be shown during the editorial segments of documentaries and religious programmes.
- 8.10 Programmes sponsored by sponsor(s) whose activities include the manufacture or sale of medicinal products or medical treatments may promote the name or the image of the sponsor, but shall not promote specific medicinal products or medical treatments available only on prescription in the State.
- 8.11 Programmes shall not be sponsored by sponsor(s):
- a. Whose principal activity is the manufacture or sale of cigarettes and other tobacco products;
 - b. Whose products or services are not permitted to be promoted to the typical audience for that programme; or,
 - c. Who are involved in the manufacture, supply or provision of a product or service that is not permitted to be promoted under this Code.

9. Sponsorship on Radio, including competitions

- 9.1 Sponsorship shall not influence the content and scheduling of programmes in such a way as to affect the responsibility and editorial independence of the broadcaster.
- 9.2 There shall be a clear separation between sponsorship and advertising for the listeners. There is no prohibition on the inclusion of advertisements for a programme sponsor during advertisement breaks. Broadcasters shall take care to ensure sufficient separation between formal programme sponsorship announcements scheduled before or at the end of advertisement breaks and advertising for the products and services of the sponsor carried in a separate advertisement break.
- 9.3 Sponsorship must not constitute advertising, as defined in this Code, and sponsored programmes shall not directly encourage the purchase or rental of goods or services. A sponsorship announcement or reference shall not:
- a. Make special promotional references to a product or service e.g., sales and discounts;
 - b. Include advertising copy, prices, endorsements or calls to purchase; or,
 - c. Afford undue prominence to a product or service of the sponsor, though reference to more than one product or service is permitted.
- 9.4 Listeners shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, branding of the sponsor, and/or a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or at the end of the programmes e.g. by using phrases such as "sponsored by", "brought to you by", etc.
- 9.5 Listener competitions within programme content may be sponsored. Announcements in relation to sponsored competitions shall not constitute advertising, as defined in this Code. Competition questions, entry mechanisms and prizes shall not give undue prominence to the facilities, products or services of the sponsor.
- 9.6 Participants in competitions shall have a fair chance of winning a sponsored competition and broadcasters shall make available to the audience pertinent information in relation to it, including, but not limited to:
- a. How to enter the competition;
 - b. Closing times and dates;
 - c. The means by which a winner is selected;
 - d. Key terms and conditions that would void entry or prohibit a winner from taking up the prize;
 - e. How to access the full set of terms and conditions in relation to the competition; and
 - f. Any changes to the competition terms and conditions and/or processes and/or prize.

- 9.7 News programmes on radio shall not be sponsored. This rule does not prohibit the sponsorship of current affairs, weather, entertainment, traffic items or religious programmes.
- 9.8 Programmes sponsored by sponsor(s) whose activities include the manufacture or sale of medicinal products or medical treatments may promote the name or the image of the sponsor, but shall not promote specific medicinal products or medical treatments available only on prescription in the State.
- 9.9 Programmes shall not be sponsored by sponsor(s):
- Whose principal activity is the manufacture or sale of cigarettes and other tobacco products;
 - Whose products or services are not permitted to be promoted to the typical audience for that programme; or,
 - Who are involved in the manufacture, supply or provision of a product or service that is not permitted to be promoted under this Code.

10. Product Placement

- 10.1 Product placement shall be prohibited save for the exceptions set out in this section.
- 10.2 Paid product placement is only permitted in cinematographic works, television films, sport, dramas, including one-off dramas, drama series and serials (excluding docu-dramas) and light entertainment programmes (excluding talk/chat shows that regularly include 20% or more of news and current affairs content).
- 10.3 Prop placement is permitted in all programmes but shall not affect the integrity of such programmes, in particular, news and current affairs programmes.
- 10.4 Prop placement in children's programmes is not permitted in the case of products/services that may not feature in children's programmes (e.g. alcohol and HFSS foods) and in the case of other relevant restrictions.
- 10.5 The content and scheduling of programmes that contain product placement shall not be influenced in such a way as to affect the responsibility and editorial independence of the broadcaster.
- 10.6 The placement of products in programme content shall be editorially justified and shall not give undue prominence to the products or services in question. Product integration, where programme content, including storylines, is tailored around a product, service or facility provided through a product placement arrangement is not permitted. Thematic placement, where programme content, including storylines, is tailored around a specific theme, e.g. the beliefs, policies, aims and objectives of the product or service provider, is also not permitted.
- 10.7 Programmes that contain product placement shall not directly encourage the purchase or rental of products or services in particular by making special promotional references to those products or services and the placement therein must not constitute advertising as defined in this Code.
- 10.8 Audiences shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified by an announcement at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the audience. The BAI may prescribe the form of a product placement announcement from time-to-time, including its text, logo, size, colour, font type and audio message, and broadcasters shall ensure product placement announcements comply with the form and any related guidance prescribed by the BAI. This rule does not apply when broadcasting television programmes that have neither been produced nor commissioned by the broadcaster or a company affiliated to the broadcaster.

- 10.9 Programmes shall not contain product placement of:
- a. Tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;
 - b. Specific medicinal products or medical treatments available only on prescription in the State; or,
 - c. A product or service that is not permitted to be promoted under this Code.

- 10.10 The closing credits of a programme containing product placement shall include the name of the providers and the products, services etc. provided. Broadcasters shall keep a record of the programmes in which product placement occurs, the placement in each programme, the value of each individual placement and whether it is paid product placement or prop placement. This information must be available to the BAI upon request in the context of compliance monitoring or in instances where a complaint is investigated. This information must also be available in respect of any independent programmes commissioned by the broadcaster.

Rules pertaining to specific products and services

COMPREHENSIVE
PROTECT **SIMPLE**
STANDARDS COMMERCIAL MESSAGES
PRODUCT PLACEMENT FLEXIBLE
GUIDANCE SPONSORSHIP
PROTECTION OF CHILDREN
HONEST LEGAL
COMMERCIAL COMMUNICATION
DECENT AUDIENCE
TRUTHFUL **TRANSPARENCY**
HUMAN DIGNITY

11. Alcohol

- 11.1 Commercial communications for alcoholic beverages shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority, in particular any relevant codes of practice published or recognised by the Department of Health.
- 11.2 Commercial communications for alcoholic beverages shall be cast towards brand selling and identification and shall not:
- Depict or feature children consuming these beverages or encourage children or non-drinkers to begin drinking;
 - Link the consumption of alcohol to enhanced physical performance or to driving;
 - Create the impression that the consumption of alcohol contributes toward sexual attraction and success or social success;
 - Claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative, tranquilizer or a means of resolving personal conflicts;
 - Encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
 - Place emphasis on high alcohol content as being a positive quality of the beverages; or,
 - Bear health claims or nutrition claims for beverages containing more than 1.2% AbV, other than those which refer to a reduction in the alcohol or energy content.
- 11.3 Commercial communications are not permitted for the following:
- Beverages containing alcohol content of 25% AbV and above e.g. vodka, whiskey, tequila, rum, gin, brandy, etc.; or
 - Alco-pops, pre-mixed spirit drinks and products of a similar nature.
- This rule does not prohibit commercial communications for liqueurs containing alcohol content of less than 25% AbV.
- 11.4 Commercial communications are permitted for events or activities that have alcohol sponsorship. The sponsor of the event or activity and the sponsor's product(s) may be referenced in the commercial communication but shall not be more prominent than the event or activity being promoted.
- 11.5 Alcohol sponsorship of sports programmes and sports bulletins, including competitions within sports programmes, is not permitted. Solus/whistle breaks advertising spots for alcohol brands are not permitted during sports programmes. These are understood as isolated or individual advertising spots before the normal advertising breaks at half-time or full-time in programme coverage of a sports event.

11.6 Commercial communications for alcoholic beverages shall comply with the following:

- a. They shall not be placed in children's programmes;
- b. They shall not be broadcast in or around children's programmes;
- c. They shall be broadcast only in or around programmes with an adult audience profile of 75% or greater; and
- d. They shall not be broadcast between 6am and 10am.

11.7 Where alcohol advertising is permissible, it is limited to a maximum of 25% of sold advertising time and only one in four advertisements for alcoholic beverages is permissible across the broadcast day, excluding the period from 6am to 10am. No more than two advertisements for alcoholic beverages can appear in any one advertising break.

11.8 Each broadcaster shall identify the programmes in their schedules that do not carry commercial communications for alcoholic beverages, in particular, children's programmes, and shall publish this list on a website maintained by the broadcaster and make a copy of the list generally available.

11.9 Broadcasters shall enforce a Code of Conduct for their presenters ensuring that speech content that glamorises or encourages over-consumption or misuse of alcohol is prevented. Each broadcaster will publish this Code on a website maintained by the broadcasters and make a copy of the Code generally available.

12. Medicinal Products and Medical Devices

Relevant definitions for this section can be found in Appendix 2.

- Medicinal Product
- Medical Device
- Electronic Cigarette

12.1 Commercial communications for medicinal products and medical devices shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority.

12.2 Commercial communications are not permitted for prescription-only medicinal products, controlled drugs, psychoactive substances or for medicinal products or medical devices intended to treat any serious complaint, condition, symptom or disease which should rightly receive the attention of a registered medical practitioner. This rule does not apply to commercial communications for vaccination campaigns approved by the Minister for Health. This rule does not apply to human health or disease awareness campaigns provided there is no reference, even indirect, to medicinal products.

12.3 Commercial communications for all other medicinal products are only permissible where such products are the subject of a marketing authorisation or certificate of traditional use registration or are registered/certified by a relevant competent authority. Commercial communications for electronic cigarettes and refill containers are permitted where such products are deemed medicinal products or medical devices, that is, they are subject to (1) an authorisation requirement relating to medicinal products for human use (under Directive 2001/83/EC) or (2) the requirements concerning medical devices (under Directive 93/42/EEC).

12.4 Commercial communications for medicinal products shall not be broadcast unless:

- a. All parts of such communications comply with the particulars set out in the summary of product characteristics for the product;
- b. The rational use of medicinal products is encouraged by presenting them objectively and without exaggerating their properties; and,
- c. They are not misleading.

12.5 Commercial communications for medicinal products shall be clear that the message is an advertisement and the products are clearly identified as medicinal products. Such communications shall include the following minimum information:

- a. The name of the medicinal product;
- b. If it contains only one active ingredient, the common name of the medicinal product;
- c. The information necessary for the correct use of the medicinal product;
- d. An express and legible invitation to read carefully the instructions on the leaflet contained within the package or on the label, as the case may be; and,
- e. If it is a traditional herbal medicinal product, the following words "Traditional herbal medicinal product for use in" followed by a statement of one or more therapeutic indications for the product compatible with the terms of the certificate of traditional-use registration for that product, followed by the words "exclusively based upon long-standing use".

This rule does not apply to a commercial communication for a medicinal product that is intended only as a reminder, if the commercial communication consists solely of the following: the name of the product or international non-proprietary name or trademark (or in the case of a homeopathic medicinal product that is the subject of a certificate of registration, the scientific name of the stock or stocks or its invented name); and, advice to read carefully the instructions on the leaflet contained within the package, or on the label of the medicinal product, as the case may be.

12.6 Commercial communications for medicinal products and medical devices shall not contain material which is directed exclusively or principally at children.

12.7 Commercial communications for medicinal products and medical devices shall not contain material which:

- a. Is calculated to induce fear on the part of the viewer or listener that s/he may, without treatment, suffer, or suffer more severely, from any serious complaint, condition, symptom, or disease;
- b. Uses, in improper, alarming or misleading terms, pictorial representations of changes in the human body caused by disease or injury, or of the action of a medicinal product or medical device on the human body or parts thereof;
- c. Refers, in improper, alarming or misleading terms, to claims of recovery;
- d. Encourages unnecessary, indiscriminate, irrational and/or excessive use of medicinal products or medical devices;
- e. Gives the impression that a medical consultation or surgical operation is unnecessary, in particular by offering a diagnosis or by suggesting treatment by mail (includes post, telephone, e-mail and other electronic means of communication);

f. Might, by a description or detailed representation of a case history, lead to erroneous self diagnosis;

g. Suggests that the effects of taking a medicinal product are guaranteed, are unaccompanied by adverse reactions or are better than, or equivalent to, those of another treatment or medicinal product;

h. Suggests that the health of the subject can be enhanced by taking the medicinal product or medical device;

i. Suggests that the health of the subject could be affected by not taking the medicinal product or availing of the medical device (this does not apply to commercial communications for vaccination campaigns approved by the Minister for Health);

j. Contains unwarranted and indiscriminate use of such words as "safe", "without risk", "harmless", or terms of similar meaning in connection with medicinal products or medical devices;

k. Suggests that the safety or efficacy of the medicinal product or medical device is due to the fact that it is natural;

l. Includes exaggerated claims, in particular, through the selection of testimonials or other evidence unrepresentative of the effectiveness of medicinal products or medical devices;

m. Refers to a recommendation by scientists, health professionals or persons who are neither of the foregoing but who, because of their celebrity status, could encourage the consumption of medicinal products or use of medical devices;

n. Gives the impression of professional advice or recommendation made by persons who appear in the commercial communication and who are presented, whether actually or by implication, as being qualified to give such advice or recommendation;

o. Refers to a hospital, clinic, college, institute, laboratory or other similar body unless a bona fide establishment corresponding to the description used does in fact exist;

p. Refers to doctors unless such reference can be used with propriety in the context of the commercial communication;

q. Suggests that the medicinal product is a foodstuff, cosmetic or other consumer product;

r. Refers to a prize, competition or similar scheme or offers medicinal products or medical devices as prizes in a competition; or,

s. Refers to an offer of a free sample of a medicinal product to a consumer as part of a promotion.

13. Medical Treatments and Services, including psychiatry, psychotherapy and counselling

Relevant definitions for this section can be found in Appendix 2.

— Medical Treatments and Services

- 13.1 Commercial communications for medical treatments and services intended to treat any serious complaint, condition, symptom or disease, which should rightly receive the attention of a registered medical practitioner, are not permitted. This does not prohibit commercial communications for vaccination campaigns that have been approved by the Minister for Health or disease awareness campaigns.
- 13.2 Commercial communications for medical treatments and services shall not contain material which is directed exclusively or principally at children.
- 13.3 Commercial communications for medical treatments and services shall not contain material which:
- a. Is calculated to induce fear on the part of the viewer or listener that s/he may, without treatment, suffer, or suffer more severely, from any serious complaint, condition, symptom, or disease;
 - b. Uses, in improper, alarming or misleading terms, pictorial representations of changes in the human body caused by disease or injury, or of the action of a medical treatment or service on the human body or parts thereof;
 - c. Refers, in improper, alarming or misleading terms, to claims of recovery;

- d. Encourages unnecessary, indiscriminate, irrational and/or excessive use of medical treatments and services;
- e. Gives the impression that a medical consultation or surgical operation is unnecessary, in particular by offering a diagnosis or by suggesting treatment by mail (includes post, telephone, e-mail and other electronic means of communication);
- f. Might, by a description or detailed representation of a case history, lead to erroneous self diagnosis;
- g. Suggests that the health of the subject can be enhanced by availing of a medical treatment or service;
- h. Suggests that the health of the subject could be affected by not availing of a medical treatment or service;
- i. Contains unwarranted and indiscriminate use of such words as "safe", "without risk", "harmless", or terms of similar meaning in connection with medical treatments and services;
- j. Suggests that the safety or efficacy of a medical treatment or service is due to the fact that it is natural;
- k. Includes exaggerated claims, in particular, through the selection of testimonials or other evidence unrepresentative of the effectiveness of medical treatments and services;

LEGAL **COMMERCIAL COMMUNICATION**
TRUTHFUL **GUIDANCE** **DECENT**
PRODUCT PLACEMENT
PROTECTION OF CHILDREN
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AUDIENCE **FLEXIBLE**
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COMPREHENSIVE **HONEST**
SIMPLE **SPONSORSHIP**
HUMAN DIGNITY **PROTECT**

- l. Refers to a recommendation by scientists, health professionals or persons who are neither of the foregoing but who, because of their celebrity status, could encourage the use of medical treatments and services;
- m. Gives the impression of professional advice or recommendation made by persons who appear in the commercial communication and who are presented, whether actually or by implication, as being qualified to give such advice or recommendation in connection with medical treatments and services;
- n. Refers to a hospital, clinic, college, institute, laboratory or other similar body unless a bona fide establishment corresponding to the description used does in fact exist;
- o. Refers to doctors unless such reference can be used with propriety in the context of the commercial communication; or,
- p. Refers to a prize, competition or similar scheme or offers medical treatments or services as prizes in a competition.

14. Cosmetic Products, Treatments and Services

Relevant definitions for this section can be found in Appendix 2.

- Cosmetic Product
- Cosmetic Treatments and Services

- 14.1 Commercial communications for cosmetic products shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority.
- 14.2 Commercial communications for cosmetic products shall not contain material such as text, names, trademarks, pictures, and figurative or other signs, to imply that these products have characteristics or functions which they do not possess.
- 14.3 Commercial communications for cosmetic treatments, products and services intended to treat any serious complaint, condition, symptom or disease, which should rightly receive the attention of a registered medical practitioner, are not permitted.
- 14.4 Commercial communications for surgical cosmetic treatments and services, may contain the address of the service provider and factual descriptions of services available but shall not contain anything which could be deemed a direct encouragement to use the treatment or service.
- 14.5 Commercial communications for cosmetic treatments and services shall not contain material which is directed exclusively or principally at children.

14.6 Commercial communications for cosmetic treatments, products and services shall not contain material which:

- a. Is calculated to induce fear on the part of the viewer or listener that s/he may, without treatment, suffer, or suffer more severely, from any serious complaint, condition, symptom, or disease;
- b. Uses, in improper, alarming or misleading terms, pictorial representations of changes in the human body caused by disease or injury, or of the action of a cosmetic treatment, product or service on the human body or parts thereof;
- c. Refers, in improper, alarming or misleading terms, to claims of recovery;
- d. Encourages unnecessary, indiscriminate, irrational and/or excessive use of cosmetic treatments, products and services;
- e. Gives the impression that a medical consultation or surgical operation is unnecessary, in particular by offering a diagnosis or by suggesting treatment by mail (includes post, telephone, e-mail and other electronic means of communication);
- f. Might, by a description or detailed representation of a case history, lead to erroneous self diagnosis;
- g. Suggests that the health of the subject can be enhanced by using a cosmetic treatment, product or service;

- h. Suggests that the health of the subject could be affected by not using a cosmetic treatment, product or service (this does not prohibit verifiable and substantiated claims concerning the prevention of conditions using cosmetic products, e.g. tooth decay, gingivitis or skin damage caused by the sun);
- i. Contains unwarranted and indiscriminate use of such words as “safe”, “without risk”, “harmless”, or terms of similar meaning in connection with cosmetic treatments, products and services;
- j. Suggests that the safety or efficacy of a cosmetic treatment or service is due to the fact that it is natural;
- k. Includes exaggerated claims, in particular, through the selection of testimonials or other evidence unrepresentative of the effectiveness of cosmetic treatments and services;
- l. Refers to a recommendation by scientists, health professionals or persons who are neither of the foregoing but who, because of their celebrity status, could encourage the use of cosmetic treatments and services;
- m. Gives the impression of professional advice or recommendation made by persons who appear in the commercial communication and who are presented,

whether actually or by implication, as being qualified to give such advice or recommendation in connection with cosmetic treatments and services;

- n. Refers to a hospital, clinic, college, institute, laboratory or other similar body unless a bona fide establishment corresponding to the description used does in fact exist;
 - o. Refers to doctors unless such reference can be used with propriety in the context of the commercial communication;
 - p. Refers to a prize, competition or similar scheme or offers cosmetic treatments and services as prizes in a competition; or,
 - q. Details special offers, discounts, references to credit facilities available or any other promotional offers intended to encourage the use of surgical cosmetic treatments or services.
- 14.7 Commercial communications promoting sunbeds shall comply with any guidance, rules or regulations prescribed by the Minister for Health regarding permitted information and marketing practices for sunbeds.

15. Hypnosis, Hypnotherapy and similar services

- 15.1 Commercial communications for hypnosis, hypnotherapy and similar services may contain the address of the service provider and factual descriptions of services available but shall not contain anything which could be deemed a direct encouragement to use the services.
- 15.2 Commercial communications for hypnosis, hypnotherapy and similar services intended to treat any serious complaint, condition, symptom or disease, which should rightly receive the attention of a registered medical practitioner, are not permitted.
- 15.3 Commercial communications for hypnosis, hypnotherapy and similar services shall not contain material which is directed exclusively or principally at children.
- 15.4 Commercial communications for hypnosis, hypnotherapy and similar services shall not contain material which:
 - a. Is calculated to induce fear on the part of the viewer or listener that s/he may, without treatment, suffer, or suffer more severely, from any serious complaint, condition, or symptom;
 - b. Uses, in improper, alarming or misleading terms, pictorial representations of changes in the human body caused by disease or injury, or of the action of hypnosis, hypnotherapy and similar services on the human body or parts thereof;
- c. Refers, in improper, alarming or misleading terms, to claims of recovery;
- d. Encourages unnecessary, indiscriminate, irrational and/or excessive use of hypnosis, hypnotherapy and similar services;
- e. Gives the impression that a medical consultation or surgical operation is unnecessary, in particular by offering a diagnosis or by suggesting treatment by mail (includes post, telephone, e-mail and other electronic means of communication);
- f. Might, by a description or detailed representation of a case history, lead to erroneous self diagnosis;
- g. Suggests that the health of the subject could be affected by not using of hypnosis, hypnotherapy and similar services;
- h. Contains unwarranted and indiscriminate use of such words as “safe”, “without risk”, “harmless”, or terms of similar meaning in connection with hypnosis, hypnotherapy and similar services;
- i. Includes exaggerated claims, in particular, through the selection of testimonials or other evidence unrepresentative of the effectiveness of hypnosis, hypnotherapy and similar services;

- j. Refers to a recommendation by scientists, health professionals or persons who are neither of the foregoing but who, because of their celebrity status, could encourage the use of hypnosis, hypnotherapy and similar services;
- k. Gives the impression of professional advice or recommendation made by persons who appear in the commercial communication and who are presented, whether actually or by implication, as being qualified to give such advice or recommendation in connection with hypnosis, hypnotherapy and similar services;
- l. Refers to a hospital, clinic, college, institute, laboratory or other similar body unless a bona fide establishment corresponding to the description used does in fact exist;
- m. Refers to doctors unless such reference can be used with propriety in the context of the commercial communication;
- n. Refers to a prize, competition or similar scheme or offers hypnosis, hypnotherapy and similar services as prizes in a competition; or,
- o. Details special offers, discounts or any other promotional offers intended to encourage the use of hypnosis, hypnotherapy and similar services .

16. Food, Nutrition and Health

Relevant definitions for this section can be found in Appendix 2.

- Food
- Infant Formula
- Follow-on Infant Formula
- Health Claim
- HFSS Foods
- Nutrition Claim

- 16.1 Food information in commercial communications shall be accurate, clear and easy to understand and shall not mislead as to the characteristics of the food, food effects or properties or attribute medicinal properties to foods. Food information shall not attribute to any food the property of preventing, treating or curing a human disease, nor refer to such properties, subject to derogations provided for by European law applicable to natural mineral waters and foods for particular nutritional uses. Commercial communications attributing medicinal claims to foods are permitted where such foods are legally recognised as a medicinal product and those communications shall comply with section 12 of this Code - Medicinal Products and Medical Devices.
- 16.2 Commercial communications containing health and nutritional claims made for foods shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority.

- 16.3 Nutrition and health claims in commercial communications shall be based on and substantiated by generally accepted scientific data. A nutrition or health claim shall not be made if it is inconsistent with generally accepted nutrition and health principles or if it encourages or condones excessive consumption of any food or disparages good dietary practice.
- 16.4 The use of nutrition and health claims in commercial communications shall only be permitted if the average consumer can be expected to understand the beneficial effects as expressed in the claim.
- 16.5 The use of nutrition and health claims in commercial communications shall not:
 - a. Be false, ambiguous or misleading;
 - b. Give rise to doubt about the safety and/or the nutritional adequacy of other foods;
 - c. Encourage or condone excess consumption of a food;
 - d. State, suggest or imply that a balanced and varied diet cannot provide appropriate quantities of nutrients in general, subject to derogations provided for by European law; or,
 - e. Refer to changes in bodily functions which could give rise to or exploit fear in the consumer, either textually or through pictorial, graphic or symbolic representations.

- 16.6 Commercial communications involving health claims shall include all of the following information:
- a. A statement indicating the importance of a varied and balanced diet and a healthy lifestyle;
 - b. The quantity of the food and pattern of consumption required to obtain the claimed beneficial effect;
 - c. Where appropriate, a statement addressed to persons who should avoid using the food; and,
 - d. An appropriate warning for products that are likely to present a health risk if consumed to excess.

- 16.7 The following health claims shall not be allowed in commercial communications:
- a. Claims which suggest that health could be affected by not consuming the food;
 - b. Claims which make reference to the rate or amount of weight loss; or,
 - c. Claims which make reference to recommendations of individual doctors or health professionals and other associations not registered/certified by a relevant competent authority.

- 16.8 Reduction of disease risk claims in commercial communications shall comply with European and Irish legislation and shall also bear a statement indicating that the disease to which the claim is referring has multiple risk factors and that altering one of these risk factors may or may not have a beneficial effect.
- 16.9 Commercial communications for follow-on infant formula shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority. Commercial communications for follow-on infant formula shall not suggest, either directly or by implication, the superiority of this product to breastfeeding and shall clearly indicate the unsuitability of this product for infants under six months.
- 16.10 A maximum of 25% of sold advertising time and only one in four advertisements for High Fat Salt Sugar (HFSS) food products and/or services products are permissible across the broadcast day. There is a range of other rules in relation to food commercial communications for children and these can be found in the BAI's Children's Commercial Communications Code, which is available to download from www.bai.ie.

17. Slimming Treatments, Products and Services

- 17.1 Commercial communications shall not contain any offer of a treatment, product or service for slimming (i.e. weight reduction, limitation or control) which:
- a. Is in itself likely to lead to harmful effects;
 - b. Is not directly associated with the following of a properly designed diet; or,
 - c. Does not clearly state the manner in which slimming will be achieved.
- 17.2 Commercial communications for slimming treatment, products and services shall not contain material which is directed exclusively or principally at children.
- 17.3 Commercial communications for foods for use in energy restricted diets for weight reduction shall not make reference to the rate or amount of weight loss which may result from their use.
- 17.4 Where slimming treatments, products and services could reasonably be categorised under the headings in sections 12 to 16 of this Code, the commercial communications for such slimming treatments, products and services must adhere to the rules under the relevant section(s) in addition to rules under this section.



18. Smoking Cessation Aids

- 18.1 Commercial communications for products or services purporting to assist people to quit smoking shall indicate clearly that the product or service is only effective in conjunction with the positive application of the consumer's will power. Commercial communications purporting to assist people to quit smoking shall not indicate that a cure will be brought about by the product or service but may focus on the potential role of the product or service in assisting people to quit smoking.
- 18.2 Where smoking cessation aids could reasonably be categorised under the headings in sections 12 to 16 of this Code, the commercial communications for such smoking cessation aids must adhere to the rules under the relevant section(s) in addition to rules under this section.
- 18.3 Commercial communications for electronic cigarettes and refill containers are permitted where such products are deemed medicinal products or medical devices, that is, they are subject to (1) an authorisation requirement relating to medicinal products for human use (under Directive 2001/83/EC) or (2) the requirements concerning medical devices (under Directive 93/42/EEC). These commercial communications shall comply with the rules in section 12 of this Code – Medicinal Products and Medical Devices. Where these products purport to assist people to quit smoking, section 18 of this code will also apply.

19. Financial Services and Products

- 19.1 Commercial communications for financial services and products shall be presented in terms which do not mislead, whether by exaggeration, omission or in any other way.
- 19.2 Commercial Communications for financial services and products shall comply with relevant Irish and European legislation and with the rules, regulations and codes of practice issued from time to time by the relevant competent authority.

Rule applying to radio only

- 19.3 Mandatory regulatory disclosure statements and warning statements in commercial communications for financial services and products shall comply with this Code but shall not count toward advertising minutage. It shall be clear to listeners that these statements are part of the overall commercial communication for a financial product or service but the statements themselves shall not include any content that constitutes advertising.

20. Gambling

- Relevant definitions for this section can be found in Appendix 2.
- Gambling
 - Remote bookmaking operations
- 20.1 Commercial communications for gambling shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority.
 - 20.2 Commercial communications are not permitted for remote bookmaking operations carried on by a person who does not hold a bookmaker’s licence.
 - 20.3 Commercial communications are permitted for the National Lottery and other lotteries granted licenses by the relevant competent authority (e.g. charity bingo). These commercial communications shall comply with the *Marketing Communications, Advertising, Promotions and PR Code of Practice* approved by the regulator of the National Lottery, where applicable, and with rules 20.5 and 20.6 of this section of the Code. Commercial communications for any other lotteries are not permitted.
 - 20.4 Commercial communications that seek to promote services to those who want to gamble may contain the address of the service provider and factual descriptions of services available but shall not contain anything which could be deemed to be a direct encouragement to gamble. This includes providing information detailing special offers, free bets as prizes in competitions, discounts, inducements to visit any gambling establishment (including on-line) or any promotional offer intended to encourage the use of services of this nature.
 - 20.5 Portrayals of gambling in commercial communications shall not:
 - a. Encourage behaviour that is socially irresponsible or could lead to financial, social, psychological or emotional harm;
 - b. Suggest that gambling can be a solution to personal or professional problems or financial concerns;
 - c. Suggest that gambling can enhance personal qualities or contribute toward sexual attraction and success or social success; or
 - d. Depict or feature children gambling.
 - 20.6 Commercial communications for gambling shall not contain material which is directed exclusively or principally at children and shall not be broadcast in or around children’s programmes.

21. Premium-rate Telecommunications Services

- 21.1 Commercial communications for premium-rate telecommunication services shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority.
- 21.2 Commercial communications for premium-rate telecommunication services shall clearly state all charges for accessing these services in terms which do not mislead, whether by exaggeration, omission or in any other way.

22. Fortune Tellers, Psychic Services, etc.

- 22.1 Commercial communications for fortune tellers, psychic services etc., are acceptable where the service is evidently for entertainment purposes only and this is made clear in the communication. Such communications shall not include any of the following:
 - a. Claims that future events may be predicted, other than as a matter of opinion;
 - b. Claims to make contact with deceased persons; or,
 - c. Claims pertaining to matters of health, cures, curing and/or healing.
- 22.2 Commercial communications for fortune tellers, psychic services etc., shall not contain material which is directed exclusively or principally at children and shall not be broadcast in or around children's programmes.

Appendix One

BAI Codes and Rules corresponding to Section 42(2) of the Broadcasting Act 2009

Legislation	Broadcasting Codes shall provide:	BAI Code
Section 42(2)(a)	— all news broadcast by a broadcaster is reported and presented in an objective and impartial manner and without any expression of the broadcaster’s own views,	Code of Fairness, Impartiality and Objectivity in News and Current Affairs
Section 42(2)(b)	— the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of the broadcaster’s own views,	Code of Fairness, Impartiality and Objectivity in News and Current Affairs
Section 42(2)(c)	— anything being likely to promote or incite to, crime, or as tending to undermine the authority of the State, is not broadcast by a broadcaster,	Code of Programme Standards
Section 42(2)(d)	— in programmes broadcast by a broadcaster, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon,	Code of Programme Standards
Section 42(2)(e)	— a broadcaster does not, in the allocation of time for transmitting party political broadcasts, give an unfair preference to any political party,	Code of Fairness, Impartiality and Objectivity in News and Current Affairs and Election and Referenda Guidelines
Section 42(2)(f)	— in respect of programme material broadcast by a broadcaster that audiences are protected from harmful or offensive material, in particular, that programme material in respect of the portrayal of violence and sexual conduct, shall be presented by a broadcaster – — (i) with due sensitivity to the convictions or feelings of the audience, and — (ii) with due regard to the impact of such programming on the physical, mental or moral development of children,	Code of Programme Standards

Legislation	Broadcasting Codes shall provide:	BAI Code
Section 42(2)(g)	— advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, in particular advertising and other such activities which relate to matters likely to be of direct or indirect interest to children, must protect the interests of children having particular regard to the general public health interests of children,	Children’s Commercial Communications Code
Section 42(2)(h)	— advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, other than advertising and other activities as aforesaid falling within paragraph (g), must protect the interests of the audience,	General Commercial Communications Code
Section 42(2)(i)	— the provision of a broadcasting service which has, as one of its principal objectives, the promotion of the interests of any organisation, protects the interests of the audience, and	Code of Programme Standards
Section 42(2)(j)	— for the matters to be provided for by Chapters IIA, IV and V of the Council Directive. ²	Code of Programme Standards, General Commercial Communications Code, Children’s Commercial Communications Code, BAI Rules on Advertising and Teleshopping

² ‘Council Directive’ means Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 and by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007. A simplified and codified version of these Directives was introduced in 2010: the Audiovisual Media Services Directive 2010/13/EU.

In preparing or revising a broadcasting code, the Authority must have regard to each of the following matters, further to the provisions of Section 42(3) of the Act:

- a. the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description,
- b. the likely size and composition of the potential audience for programmes included in television and sound broadcasting services generally, or in television and sound broadcasting 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 a broadcasting service identifies when there is a change affecting the nature of the service that is being watched or listened to and, in particular, a change that is relevant to the application of the codes set under this section, and
- f. the desirability of maintaining the independence of editorial control over programme content.

Appendix Two

Definitions for Specific Products and Services

Cosmetic Product

A cosmetic product is defined as any substance or mixture intended to be placed in contact with the external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity, with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odours.

Cosmetic Treatments and Services

Cosmetic treatments and services are defined as surgical and non-surgical procedures where the primary aim is the change, the restoration, normalisation or improvement of the appearance, the function and well-being at the request of the individual. These treatments are for aesthetic rather than medical reasons. A non-exhaustive list of surgical procedures includes: lipo-sculpture/ liposuction; breast augmentation/uplift and reduction; penile enhancement; circumcision; ear correction surgery; fat removal; tummy tuck; lip, calf, cheek and chin implants. A non-exhaustive list of non-surgical procedures includes: semi-permanent make-up; laser skin rejuvenation; non-surgical uplift; microdermabrasion; tattoo removal; laser hair removal; Botox injections; dermal fillers.

Electronic Cigarette

Electronic cigarette means a product that can be used for 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. Electronic cigarettes can be disposable or refillable by means of a refill container and a take, or rechargeable with single use cartridges. Refill container means a receptacle that contains a nicotine-containing liquid, which can be used to refill an electronic cigarette.

Infant Formula

Infant formulae means foodstuffs intended for particular nutritional use by infants during the first months of life and satisfying by themselves the nutritional requirements of such infants until the introduction of appropriate complementary feeding.

Follow-on Infant Formula

Follow-on infant formulae means foodstuffs intended for particular nutritional use by infants when appropriate complementary feeding is introduced and constituting the principal liquid element in a progressively diversified diet of such infants.

Food

Food means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans. Food includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment. It includes water after the point of compliance as defined in Article 6 of Directive 98/83/EC and without prejudice to the requirements of Directives 80/778/EEC and 98/83/EC. Food shall also not include:

- feed;
- live animals unless they are prepared for placing on the market for human consumption;
- plants prior to harvesting;
- medicinal products within the meaning of Council Directives 65/65/EEC (1) and 92/73/EEC (2);
- cosmetics within the meaning of Council Directive 76/ 768/EEC (3);
- tobacco and tobacco products within the meaning of Council Directive 89/622/EEC (4);
- narcotic or psychotropic substances within the meaning of the United Nations Single Convention on Narcotic Drugs, 1961, and the United Nations Convention on Psychotropic Substances, 1971;
- residues and contaminants.

Gambling

Gambling is defined as playing for a stake in a game of chance for a monetary prize or other form of reward, and includes the playing of games available in casinos. Gambling may be gaming, betting, lotteries, bingos or amusement arcade games. Betting is defined as making or accepting a bet (including when made or accepted through a betting service or a betting exchange) on: (a) the outcome of a race, competition or other event or process, including virtual events,(b) the likelihood of something occurring or not occurring, or (c) whether or not something is true, and includes pool betting. Financial services and products regulated by the Financial Regulator must adhere to the rules under the Financial Services and Products section of this Code and are not required to adhere to the rules pertaining to Gambling.

Health Claim

A health claim means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health (for example, “aids digestion”). Broadcasters should also note the definition of a reduction of disease risk claim included in EU regulation. This means any health claim that states, suggests or implies that the consumption of a food category, a food or one of its constituents significantly reduces a risk factor in the development of a human disease.

HFSS foods

HFSS foods are those that are assessed as high in fat, salt or sugar in accordance with the Nutrient Profiling Model developed by the UK Food Standards Agency as adopted by the BAI. An overview of the Nutrient Profiling Model and how to apply it is provided in Appendix Three.

Medical Device

A device intended to prevent, cure or alleviate a medical complaint, condition, symptom or disease, including devices used in diagnosis and treatment

Medical Treatment or Service

A medical treatment or service is defined as a treatment or service intended to prevent, cure or alleviate a medical complaint, condition, symptom or disease. This includes, but is not limited to, psychiatry, psychotherapy and counselling.

Medicinal Product

For the purpose of this Code, a medicinal product is defined further to Directive 2001/83/EC, as amended by Directive 2004/27/EC, as

“any substance or combination of substances presented as having properties for treating or preventing disease in human beings or any substance or combination of substances which may be used in or administered to human beings either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis”.

This definition includes prescription-only medicines and medicinal products available from the pharmacy or shop counter that can be sold only once a Product Authorisation License has been granted by the relevant competent authority. It also includes medicinal products that are subject to any other licensing or certification requirements, including homeopathic and traditional herbal medicines. This does not include foods that make health or nutritional claims except those making medicinal claims.

Nutrition Claim

Further to the EU regulation, a ‘nutrition claim’ means any claim which states, suggests or implies that a food has particular beneficial nutritional properties due to:

- the energy (calorific value) it provides, provides at a reduced or increased rate, or does not provide;
- the nutrients or other substances it contains, contains in reduced or increased proportions, or does not contain.

Remote Bookmaking Operations

These are operations carrying out the business of bookmaking by any electronic means, including over the internet, telephone or telegraphy (whether or not wireless telegraphy).

Nutrient Profiling Model

For the purpose of this Code, the Nutrient Profiling Model developed by the UK Food Standards Agency should be used to assess whether commercial communications is for a product or service that is high in fat, salt or sugar and therefore subject to restrictions and regulation. There are three steps to working out the overall score of a food or drink.

1. Work out total ‘A’ points

A maximum of ten points can be awarded for each nutrient.

Total ‘A’ points = (points for energy) + (points for saturated fat) + (points for sugars) + (points for sodium). The following table indicates the points scored, depending on the amount of each nutrient in 100g of the food or drink:

Points Allocation ‘A’ Nutrients

Points	Energy (kJ)	Sat Fat (g)	Total Sugar (g)	Sodium (mg)
0	≤ 335	≤ 1	≤ 4.5	≤90
1	>335	>1	>4.5	>90
2	>670	>2	>9	>180
3	>1005	>3	>13.5	>270
4	>1340	>4	>18	>360
5	>1675	>5	>22.5	>450
6	>2010	>6	>27	>540
7	>2345	>7	>31	>630
8	>2680	>8	>36	>720
9	>3015	>9	>40	>810
10	>3350	>10	>45	>900

If a food or drink scores 11 or more ‘A’ points then it cannot score points for protein unless it also scores 5 points for fruit, vegetables and nuts.

2. Work out total ‘C’ points

A maximum of five points can be awarded for each nutrient/food component.

Total ‘C’ points = (points for % fruit, vegetable & nut content) + (points for fibre [either NSP or AOAC]) + (points for protein)

The following table indicates the points scored, depending on the amount of each nutrient/food component in 100g of the food or drink:

Points Allocation ‘C’ Nutrients

Points	Fruit, Veg and Nuts (%)	N&P Fibre (g)	Or AOAC Fibre ³ (g)	Protein (g)
0	<40	<0.7	<0.9	<1.6
1	>40	>0.7	>0.9	>1.6
2	>60	>1.4	>1.9	>3.2
3	–	>2.1	>2.8	>4.8
4	–	>2.8	>3.7	>6.4
5	>80	>3.5	>4.7	>8.0

3. Work out overall score

If a food scores **less than 11 ‘A’** points then the overall score is calculated as follows:

- Total ‘A’ points (energy + saturated fat + sugars + sodium) minus total ‘C’ points (fruit, veg and nuts + fibre + protein)

If a food scores **11 or more ‘A’ points** but scores 5 points for fruit, vegetables and nuts then the overall score is calculated as follows:

- Total ‘A’ points (energy + saturated fat + sugars + sodium) minus total ‘C’ points (fruit, veg and nuts + fibre + protein)

If a food scores **11 or more ‘A’ points, and less than 5 points for fruit, vegetables and nuts**, then the overall score is calculated as follows:

- Total ‘A’ points (energy + saturated fat + sugars + sodium) minus total points for fibre + points for fruit, vegetables and nuts (not allowed to score for protein)

A **food** is classified as ‘less healthy’ where it scores **4 points or more and is subject to the restrictions in the Code.**

A **drink** is classified as ‘less healthy’ where it scores **1 point or more and is subject to the restrictions in the Code.**

For further detail on the application of this model, please refer to separate guidance provided by the BAI and published on www.bai.ie.

3 One or other of the dietary fibre columns should be chosen to how the fibre content of the food or beverage was calculated by the manufacturer.

Legislation affecting commercial communications

The following is a non-exhaustive guide to the principal legislation which may restrict, control or otherwise affect commercial communications in Ireland. This is provided for guidance only and it is entirely a matter for individual parties to ascertain any relevant legislative provisions that may apply in each case as well as any updates, repeals or amendments made to the relevant legislation.

Broadcasting Legislation

- Broadcasting Authority Act, 1960
- Broadcasting Authority (Amendment) Act, 1976
- Broadcasting and Wireless Telegraphy Act, 1988
- Broadcasting Act, 1990
- Broadcasting Act, 2009

Other National Legislation

- Adoption Acts 1952 to 2010.
- Animal Remedies Act 1993.
- Animal Remedies (Control of Sale) Regulations 1985-1991 (S.I. 258/1985, S.I. 244/1991).
- Betting Act 1931.
- Betting (Amendment) Act 2015.
- Building Societies Act 1989 as amended by 2006 Act.
- Central Bank and Financial Services Authority of Ireland Act, 2003 and 2004.
- Central Bank Acts 1942-1998.
- Central Bank (Supervision and Enforcement) Act 2013.
- Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 (S.I. No. 420/2015).
- Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015 (S.I. No. 585/2015).
- Censorship of Films Acts 1923-1992.

- Censorship of Publications Acts 1929-1967.
- Censorship of Publications Regulations 1980 (S.I. 292/1980).
- Child Trafficking and Pornography Act 1998.
- Child Trafficking and Pornography (Amendment) Act 2004.
- Code of Professional Conduct and Ethics for Social Workers bye-law 2011 (S.I. No. 143/2011).
- Companies Acts 1963-2014.
- Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010.
- Communications Regulation (Licensing of Premium Rate Services) Regulations 2012 (S.I. No. 111/2012).
- Consumer Credit Act 1995.
- Consumer Credit Act 1995 (Section 28) Regulations, 1996 (S.I. 245/1996).
- Consumer Protection Act, 2007.
- Consumer Information (Advertisement for Concert or Theatre Performances) Order 1997 (S.I. 103/1997).
- Consumer Information (Advertisements)(Disclosure of Business Interest) Order 1984 (S.I. 168/1984).
- Consumer Information (Advertisement for Airfares) Order, 2000 (S.I. 468/2000).
- Consumer Information (Miscellaneous Goods)(Marking) Order, 1984 (S.I. 178/1984).
- Copyright Act 1963.
- Copyright and Related Rights Acts 2000 and 2004.
- Credit Guarantee Scheme 2012 (S.I. No. 360/2012).
- Credit Union Act 1997.
- Criminal Justice (Psychoactive Substances) Act 2010.
- Criminal Justice (Theft and Fraud Offences) Act 2001.
- Data Protection Acts 1988 and 2003.
- Dairy Products Acts 1924 to 1947.
- Defamation Act 2009.
- Defence Acts 1954 to 2007.
- Dietitians Registration Board Code of Professional Conduct and Ethics Bye-law 2014 (S.I. No. 448/2014).
- Employment Agency Act 1971.
- Employment Agency Regulations 1972 to 1993 (S.I. 27/1971, S.I. 255/1972, S.I. 49/1993).

- Employment Equality Acts 1998 and 2004.
- Gaming and Lotteries Acts 1956 to 1979.
- Hallmarking Act 1981.
- Health (Foods for Particular Nutritional Uses) Regulations 1991 (S.I. 331/1991).
- Health (Miscellaneous Provisions) Act 2014.
- Health (Pricing and Supply of Medical Goods) Act 2013.
- Hire Purchase and Credit Sale (Advertising) Order 1961 (S.I. 183/1961).
- Industrial and Commercial Property (Protection) Acts 1927 to 1958.
- Industrial Research and Standard Acts 1961 and 1979.
- Insurance Acts 1909 to 2000
- Investment Intermediaries Act 1995.
- Licensing Acts 1833 to 2004.
- Investor Compensation Act 1998.
- Medicinal Products (Control of Advertising) Regulations 2007 (S.I. 541/2007).
- Medical Preparations (Labelling and Package Leaflets) Regulations 1993-1999 (S.I. 71/1993, S.I. 440/1994, 187/1999).
- Medical Preparations (Licensing, Advertisement and Sale) Regulations 1984 to 1994 (S.I. 210/1984, S.I. 347/1989, S.I. 70/1993, S.I. 439/1994).
- Medicinal Products (Prescription and Control of Supply) Regulations 2003 as amended (S.I. 540/2003).
- Medicinal Products (Licensing and Sale) Regulations 1998 (S.I. 142/1998) and 2001.
- Merchandise Marks Act 1970.
- Metrology Act 1996.
- Milk and Dairies Acts 1935 and 1956.
- Occasional Trading Act 1979 as amended by the Casual Trading Act 1995.
- Official Languages Act 2003.
- Opticians Acts 1956 and 2003.
- Package Holidays and Travel Trade Act 1995.
- Prices and Charges (Tax-Inclusive Statements) Order 1973 (S.I. 9/1973).
- Property Services (Regulation) Act 2011.
- Public Health (Sunbeds) Act 2014

- Public Health (Sunbeds) (Prohibition of Certain Marketing Practices) Regulations 2015 (S.I. No. 51/2015).
- Public Health (Sunbeds) (Prohibition of Certain Marketing Practices) (Amendment) Regulations 2015 (S.I. No. 279/2015).
- Public Health (Tobacco) Acts 2002 to 2009.
- Public Health (Tobacco) (Amendment) Act 2013.
- Public Health (Tobacco) (Control of Sales Promotion) Regulations 2013 (S.I. No. 530/2013).
- Radiographers Registration Board Code of Professional Conduct and Ethics Bye-law 2013 (S.I. No. 392/2013).
- Red Cross Acts 1938 to 1954.
- Sale of Goods and Supply of Services Act 1980.
- Savings Certificates (Issue 21) Rules 2014 (S.I. No. 442/2014).
- Solicitors Acts 1954-2002 Solicitors (Advertising) Regulations 2002 (S.I. 518/2002).
- Solicitors Acts 1954-2002.
- Speech and Language Therapists Registration Board Code of Professional Conduct and Ethics Bye-law 2014 (S.I. No. 472/2014).
- State Airports (Shannon Group) Act 2014.
- Stock Exchange Act 1995.
- Taxi Regulation Act 2013.
- Taxi Regulation (Small Public Service Vehicle) Regulations 2015 (S.I. No. 33/2015).
- The Civil Law (Miscellaneous Provisions) Act 2011.
- Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations 1991-2009 (S.I. 326/1991, S.I. 215/2000, S.I. 243/2009).
- Tourist Traffic Acts 1939 to 1970.
- Trade Marks Act 1996.
- Trustee Savings Banks Acts 1989 and 2001.
- Unit Trusts Act 1990.

Rights

- Equality (Miscellaneous Provisions) Act 2015
- Equal Status Acts 2000 to 2004
- Equality Act 2004
- European Convention on Human Rights Act 2003
- EU Charter of Fundamental Rights
- Prohibition on Incitement to Hatred Act 1989
- UN Convention on the Rights of the Child

European-Based Legislation

- Council Directive 2010/13/EU (Audiovisual Media Services Directive)
- European Communities (Audiovisual Media Services) Regulations 2010 (S.I. No. 258/2010).
- Council Regulation (EC) No. 2200/96 as amended by 2699/2000 and European Communities (Fruit and Vegetables) Regulations 1997 (S.I. 122/1997).
- European Communities (Authorisation, Placing on the Market, Use and Control of Plant Protection Products) Regulations 2003 as amended (S.I. 83/2003).
- European Union (Batteries and Accumulators) Regulations 2014 (S.I. No. 283/2014).
- European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477/2011).
- European Union (Biocidal Products) Regulations 2013 (S.I. No. 427/2013).
- European Union (Capital Requirements) Regulations 2014 (S.I. No. 158/2014).
- Electronic Commerce (Directive 2000/31/EC) Regulations 2003 (S.I. 68/2003).
- European Communities (Definition, Description and Presentation of Spirit Drinks) Regulations 1995 (S.I. 300/1995).
- European Communities (Definition, Description and Presentation of Aromatised Wines, Aromatised Wine-Product Cocktails) 1998 (S.I. No. 254/1998).
- European Communities (Classification, Packaging and Labelling of Pesticides) Regulations 1994 (S.I. 138/1994).
- European Communities (Classification, Packaging and Labelling of Plant Protection Products and Biocide Products) Regulations 2001 (S.I. 624/2001).
- European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281/2010).
- European Communities (Co-operation between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2006 (S.I. 290/2006).
- European Communities (Cosmetic Products) Regulations 1997-2013 (S.I. 87/1997, S.I. 213/1998, S.I. 150/2000, S.I. 203/200, S.I. 870/2004, S.I. 373/2006, S.I. 440/2013).

- Commission Regulation (EU) No. 655/2013 laying down common criteria for the justification of claims used in relation to cosmetic products.
- European Union (Deposit Guarantee Schemes) Regulations 2015 (S.I. No. 516/2015).
- European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 (S.I. 853/2004).
- European Communities (Distance Marketing) of Consumer Financial Services) (Amendment) Regulations 2005 (S.I. 63/2005).
- European Union (Energy Performance Of Buildings) Regulations 2012 (S.I. No. 243/2012).
- European Union (Foodstuffs Intended for Particular Nutritional Uses) Regulations 2012 (S.I. No. 169/2012).
- European Communities (Food Supplement) Regulations 2003 (S.I. 539/2003).
- European Communities (Infant Formulae and Follow-on Formulae) Regulations 2007 (S.I. No. 852 of 2007) amended by European Communities (Infant Formulae and Follow-on Formulae) (Amendment) Regulations 2009 (S.I. No. 209 of 2009), European Communities (Infant Formulae and Follow-on Formulae) (Amendment) Regulations 2013 (S.I. No. 384 of 2013) and European Communities (Infant Formulae and Follow-on Formulae) (Amendment) Regulations 2014 (S.I. No. 92 of 2014).
- Commission Directive 2006/141/EC on Infant Formulae and Follow-on Formulae.
- European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485/2015).
- European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2000 and 2002 (S.I. 92/2000, S.I. 483/2002).
- European Communities (Life Assurance) Framework Regulations 1994 (S.I. 360/1994).
- Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. 342/2005).
- European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016 (S.I. No. 271 of 2016).
- Means of Distance Communications (Amendment) Regulations 2005 (S.I. 71/2005).
- European Communities (Misleading and Comparative Marketing Communications) Regulations 2007 (S.I. 774/2007).
- Directive on Misleading and Comparative Advertising (Directive 2006/114/EC).
- European Communities (Names and Labelling of Textile Products) Regulations 1998 (S.I. 245/1998).
- European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. 359/1994).
- European Communities (Directive 1924/2006) on Nutrition and Health Claims Made on Foods.
- European Union (Nutrition and Health Claims made on Foods) Regulations 2014 (S.I. No. 11/2014).
- European Communities (Requirements to Indicate Product Prices) Regulations 2002(S.I. 639/2002).
- European Communities (Pesticides Residues) (Feeding Stuffs) Regulations 1992 (S.I. 40/1992).
- European Communities (Plant Protection Products) Regulations 2012 (S.I. No. 159/2012).

- Poisons (Control of Residues in Foods of Animal Origin) Regulations 1985 and 1986 (S.I. 257/85, S.I. 236/86).
- Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. 324/2005).
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