



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
AUTHORITY
OF IRELAND

BAI Codes and Rules

Public Call for Comments and Observations

November 2022

About the Call for Comments and Observations

Introduction

This document is part of a review process that the Broadcasting Authority is undertaking. The purpose of the document is to invite comments and observations from the public, broadcasters, advertisers, programme-makers and other interested individuals and organisations about the following BAI Codes and Rules: -

- Code of Programme Standards.
- Code of Fairness, Objectivity and Impartiality in News and Current Affairs.
- General Commercial Communications Code.
- Rules on Advertising and Teleshopping (Daily and Hourly Limits).

The BAI Children's Commercial Communications Code and the BAI Access Rules are outside the scope of this call for comments and observations. This is because the children's code was reviewed recently and because the review of the Access Rules is being dealt with separately via a targeted stakeholder review process focusing on users of subtitling, Irish Sign Language and audio description, broadcasters and services providing accessible content to broadcasters.

Once this review process is complete, a report on the outcomes will be provided to the Minister for Tourism, Arts, Culture, Gaeltacht, Sports and Media. This report will be placed before Dáil Éireann and Seanad Éireann.

Revisions to the four codes and rules detailed above will be considered by Coimisiún na Meán. This is the new media regulator that will replace the Broadcasting Authority of Ireland from 2023. This new regulator will be responsible for broadcasting but also for on-demand services (such as the RTÉ Player) as well as video sharing platforms based in Ireland. The BAI believes that revisions to the codes and rules by the new regulator is the best approach. This is because the protection of audiences that the rules on advertising and the codes for programme standards and news and current affairs provide are not only relevant for broadcasters. When revising the codes and rules the new regulator can therefore apply them, where relevant to on-demand services and video sharing platforms.

How Can I Respond?

The BAI is taking an open approach in terms of the way that you can respond to this call for comments and observations. The next sections of the document focus on the four above-mentioned BAI Codes and Rules. You can provide your views on only one of these codes and rules or all four. In addition, you don't have to provide an opinion on all parts of the code or rules that you are interested in, and you should feel free to comment only on one part of the regulations. For example, the BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs includes a rule about election and referenda coverage. If that is what you are interested in, then feel free to provide a comment on only that rule and nothing else.

As part of this review, the BAI is particularly interested on your views on several issues. Again, you can provide an opinion on one or more of these issues and you can also provide a view on an issue that is not included.

The issues that the BAI is particularly interested are as follows: -

- Sustainability, including climate change.
- Science-based factual reporting for example coverage of pandemics, climate change etc.
- Election and referenda coverage.
- Hate speech, including gender-based violence.
- Cosmetic surgery and services.
- Cryptocurrency and related financial services.
- Product Placement.
- Gambling.
- Medical products, treatments, and services.

You can respond to the call for comments and observations on our codes and rules in a number of ways. Your response can simply be an email, or you can also send us a document if your views are more detailed. Responses can be sent using the following: -

Email: Submit your response by email to codes@bai.ie

Post: Submit your response in writing to: BAI Review of Codes and Rules, Broadcasting Authority of Ireland, 2-5 Warrington Place, Dublin 2.

Timeframe for Responses

All responses to this public consultation must be submitted to the BAI by **21st December 2022**.

If you require any assistance with making the response, please contact the BAI by email on info@bai.ie, by phone on 01 644 1200 or via our [Facebook](#) or [Twitter](#) accounts.

Use of Information

The BAI shall comply with its obligations under the General Data Protection Regulation (“GDPR”), Data Protection Act 2018 and any other applicable data privacy laws and regulations.

The BAI is obligated and committed to protecting all personal data submitted. The BAI has an appointed Data Protection Officer who is registered with the Data Protection Commission.

Applicants can find out more on how the BAI processes personal information in the BAI's published policy at: <https://www.bai.ie/en/about-us/data-protection-policy/> and the BAI's terms and conditions at: <https://www.bai.ie/en/about-us/terms-conditions>.

For this process, the BAI will collect the name, email address and any other personal information that is included in your response. The name of the respondent to the consultation and the response provided will be made publicly available. However, the BAI will not make publicly available your contact details, such as your address, phone number or email.

The information collected will be used only for the purposes of this review and for no other purpose.

Freedom of Information

Information held by the BAI is subject to its obligations under law, including under the Freedom of Information Act 2014. All responses received in the public consultation will be made publicly available at the end of the process. Should you consider that any of the information supplied in your response should not be disclosed because of its sensitivity, you should, when providing the information, identify the relevant content and specify the reasons for its sensitivity. The BAI will consult with you about this sensitive information before making a decision on any Freedom of Information request received.

Accessing Copies of the BAI's Codes and Rules

When considering your response to the BAI you may want to review the BAI's Codes and Rules. A copy these Codes is available on the BAI's website – www.bai.ie. The relevant links on our website are as follows: -

- Code of Programme Standards
<https://www.bai.ie/en/codes-standards/#al-block-4>
- Code of Fairness, Objectivity and Impartiality in News and Current Affairs
<https://www.bai.ie/en/codes-standards/#al-block-3>
A copy of the BAI's Rules on Election and Referenda Coverage can also be accessed via this link online. Guidance notes published with this Code can also be found here.
- General Commercial Communications Code
<https://www.bai.ie/en/codes-standards/#al-block-2>
- Rules on Advertising and Teleshopping (Daily and Hourly Limits)
<https://www.bai.ie/en/codes-standards/#al-block-7>

A copy of the Codes and Rules are also available on request from the BAI by contacting BAI reception on 01 644 1200 or by emailing reception@bai.ie.

1. BAI Code of Programme Standards

This Code sets out the principles applying to all editorial (but not commercial) content with a view to minimising harm and undue offence that such content may cause. The Code also has 4 objectives. These objectives summarise what the purpose of the Code is and what it intends to achieve. They are: -

- To promote responsible broadcasting in which access to information, entertainment and education and a range of views are enhanced and undue offence and harm are reduced.
- To acknowledge the diversity of tastes and interests that exist in contemporary Irish society and to encourage and facilitate broadcasting that caters for this diversity.
- To advise viewers and listeners on the standards they can expect from broadcasting services and to enable viewers and listeners to hold broadcasters to account in the event that they believe that a broadcaster has behaved irresponsibly.
- To provide guidance to broadcasters in relation to matters falling within the scope of the Code.

These objectives are reflected in the 7 Principles of the Code and each principle has several rules that broadcasters must comply with when airing content. The 7 Principles included in the Code are as follows: -

- **Principle 1: Respect for Community Standards:**
These standards relate to a range of issues covered in programme content. This includes coarse and offensive language terms, the use of violent imagery and sexual content. This principle recognises that individual audience members are different and that community standards about what is offensive are different and evolving. It recognises that some programmes may cause offence to viewers and listeners but are justified for creative, editorial, or other reasons.
- **Principle 2: Importance of Context:**
This highlights the importance of programme scheduling and providing audiences with information so that viewers and listeners are not harmed or unduly offended by programme content. So, while broadcasters have the freedom to include content that some audiences may find offensive, it should not include content that would harm audiences and it should also provide audiences with information so that they can choose not to watch programmes that they might be offended by.
- **Principle 3: Protection from Harm:**
This principle recognises that there are some viewers and listeners who, because of their age, personal circumstances or vulnerability, may need special consideration. Broadcasters can show this consideration by providing information/guidance in the case of programme content with which some viewers or listeners may personally identify, and which could potentially cause them distress.

Other audience members may require protection from programme material that can cause a physical reaction, for example, material that affects those with photo sensitive epilepsy.

- **Principle 4: Protection of Children:**

This principle is intended to ensure that the needs of children as audience members are protected. The principle requires that children are not exposed to programming that would seriously impair their moral, mental or physical development. In particular, care is required when broadcasting content that may include violent or sexual content. The principle highlights that broadcasters share a responsibility with parents and guardians for what children listen to and watch and in protecting them from harmful content. The Code identifies a child as a person who is under the age of 18 years.

- **Principle 5: Respect for Persons and Groups in Society:**

The focus of this principle is to ensure that the manner in which persons and groups in society are represented on radio and television is appropriate and justifiable. It is also intended to ensure that this representation does not prejudice their right to human dignity. Programme content should not stigmatise, support or condone discrimination or hatred against any persons or groups in society. This is important in particular so as to avoid discrimination and hatred on the basis of age, gender, marital status, membership of the Traveller community, family status, sexual orientation, disability, race, nationality, ethnicity or religion. The Code states that robust debate is permissible in broadcasting, and it is important for free debate that broadcasting challenges assumptions but that it should be done in a manner that shows respect, avoids, discrimination and does not incite hatred.

- **Principle 6: Protection of the Public Interest:**

The BAI supports robust but responsible broadcasting as this can help audience understand and engage with important issues for Irish society. Such programming can be in the public interest because it might for example, help prevent or detect crime, expose deception by individuals and organisations or expose misuse of public funds. At the same time, broadcasters are required not to include content that might likely promote, or incite crime or tend to undermine the authority of the State. This does not mean that broadcasters should not challenge public policy or have open debates about how government and society does or does not operate. Rather, it highlights the importance of doing so responsibly and in the interests of citizens and residents of Ireland.

- **Principle 7: Respect for Privacy:**

The final principle recognises that individuals have a right to privacy and broadcasters are expected to appropriately respect that right to privacy. The right to privacy is not absolute and there may be occasions when that right can be infringed. This may be where it is in the public interest, for example, to expose wrongdoing. The principle requires that broadcasters must have a good reason to infringe on privacy. The right to privacy must therefore be balanced against other rights, such as the public interest, freedom of expression and the common good, amongst others.

The above is a summary of the provisions of this Code. If you want to look at the Code in more detail, a copy of the Code of Programme Standards can be accessed here - <https://www.bai.ie/en/codes-standards/#al-block-4>.

Questions for Consideration

If you would like to comment on this Code or parts of this Code, you may want to consider the following questions.

- The BAI is interested in hearing your thoughts on whether the Code should be updated to deal with, or deal differently with the following issues: -
 - the issue of hate speech.
 - the issue of gender-based violence.
- Are there any other parts of the Code that you think could be improved or changed?
- Are there any topics of issues that you think should be included in the Code and which are not? If there are, what are they and why should they be included? Do you have any suggestions about how the Code could include them?

2. BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs

This Code is concerned with ensuring that the broadcasting of programme content that is news is factual, objective and impartial and content that is current affairs is fair, objective, and impartial and that both are presented in an objective and impartial manner and without any expression of the broadcaster's own views. The BAI has issued separate election and referenda guidelines which are anchored in an obligation in this Code to comply with any such guidelines or guidance issued by the BAI in respect of national ballots. The BAI has also produced guidance notes for the Code. The guidelines and guidance are part of the review.

The Code has 5 objectives and intends: -

- To set out clearly the minimum standards and practices that are expected of broadcasters in their treatment and broadcast of news and current affairs content.
- To provide general guidance to broadcasters to assist in their decision-making processes, as they pertain to news and current affairs content.
- To promote independent and impartial journalism in the provision of news and current affairs content.
- To inform and generate awareness among audiences with regard to standards they may expect in relation to news and current affairs content.
- To protect the interests of audiences, in their right to access fair, objective and impartial, news and current affairs content.

In developing these rules, the BAI has also taken into account the European Convention on Human Rights and in particular the provisions relating to freedom of expression, the right to privacy and the securing of rights without any discrimination on any ground.

These objectives are reflected in the Principles of the Code, and these are as follows: -

Principle of Fairness:

This principle highlights that the BAI is committed to ensuring that, through the implementation of this Code, individuals and organisations that are the subject of news and current affairs content, or persons who contribute to news and current affairs programmes or items, are treated fairly and honestly.

Principles of Objectivity & Impartiality:

These principles are concerned with ensuring that news and current affairs content is compiled, produced and presented in a manner which is and can be seen as independent, unbiased, and without prejudice.

Principles of Accuracy & Responsiveness:

These principles detail how radio and television audiences are entitled to, and do, trust that the news and current affairs content they access from the broadcast media is accurate. It highlights that accurate information enables audiences to participate more fully in a democratic society. Accuracy is therefore a fundamental principle associated with the broadcast of news and current affairs content.

Transparency & Accountability:

The principles of transparency and accountability are concerned with ensuring that practices and procedures adopted by broadcasters in sourcing, compiling, producing, and presenting news and current affairs are visible, open to scrutiny, robust and accessible. This is particularly the case where a decision to broadcast may impact on an individual's privacy.

In addition to these principles, which provide direction to broadcasters on the general standards expected of them, the Code also includes a range of rules intended to ensure that coverage of news and current affairs is fairness, objective and impartial. There are 29 rules in total. In this regard: -

- Two of these rules detail the legal obligations of broadcasters as they relate to news and current affairs content. One rule highlights the obligation to ensure that coverage is objective and impartiality (in the case of news) and fair, objective, and impartial (in the case of current affairs). The relevant provisions of the Broadcasting Act 2009 / legislation are stated. The other rule obliges broadcasters to comply with the principles of the Code detailed above.
- 14 of these rules deal with fairness. These rules highlight the importance of treating fairly participants in news and current affairs coverage as well as those who are the subject of a news and current affairs story. It highlights the need to care for the needs of children or vulnerable people in coverage of news and current affairs as well as the importance of protecting confidential sources of information. The rules highlight the need for consent (where appropriate) for participation in this type of content but also sets down rules where techniques such as 'door-stepping', secret recording or reconstruction of events are used.
- 10 of the rules deal with objectivity and impartiality. These rules highlight the importance of accuracy and the value of correcting significant mistakes quickly. The important role of news and current presenters in ensuring responsible coverage is the focus of a number of rules. In particular, the rules state that news presenters may not express their own personal views. In the case of current affairs presenters, they must take care that in expressing views on a matter of public controversy that they do not display a lack of objectivity and impartiality. Furthermore, these rules require broadcasters to ensure that conflicts of interest are managed in the case of any staff member involved in deciding what goes on-air or how that topic is treated on-air, for example programme producers and presenters.

- One rule deals with election and referenda coverage. While only a single rule, this is an important one since it states that in their coverage of election and referenda, they must have regard to separate guidelines produced by the BAI for the coverage in these situations. The BAI's guidelines detail how fairness, objectivity and impartiality can be achieved during election and referenda coverage. They require broadcasters to be transparent in terms of how they approach such coverage. The guidelines also deal with the role of social media, polling information and in addition require broadcaster to implement a moratorium on coverage of the votes.
- Two rules deal with legal requirements and the need to have regard to BAI guidance on this issue. One rule requires broadcasters to adhere to all legislative requirements when sourcing, compiling, producing, and presenting news and current affairs content. The other rule requires broadcasters to have regard to separate guidance notes that the BAI has published to assist broadcasters in the understanding and interpretation of the Code.

The above is a summary of the provisions of this Code. If you want to look at the Code in more detail, a copy of the Code of Fairness, Objectivity and Impartiality in News and Current Affairs as well as the guidance notes for this Code and the BAI's Election and Referenda Guidelines can be accessed here - <https://www.bai.ie/en/codes-standards/#al-block-3>.

Questions for Consideration

If you would like to comment on this Code or parts of this Code, you may want to consider the following questions.

- The BAI is interested in hearing your thoughts on whether the Code should be updated to deal with, or deal differently with, the following issues: -
 - sustainability, including climate change.
 - science-based factual reporting for example coverage of pandemics, climate change etc.
- The BAI is also interested in hearing your thoughts on how the Code (including BAI Guidelines on Election and Referenda coverage) should be updated? Should the Codes or guidelines be updated and if they should, what changes should be made?
- Is there other part of the Code that you think could be improved or changed? If so, why and how?
- Are there any topics of issues that you think should be included in the Code and which are not? If there are, what are they and why should they be included? Do you have any suggestions about how the Code could include them?

3. General Commercial Communications Code

This Code sets out the rules required when broadcasters air commercial communications i.e., advertising, sponsorship (including competitions), product placement and other forms of commercial communications. This Code contains principles and rules applying to all forms of commercial communications, a set of rules concerning specific types of commercial communications e.g., sponsorship rules, rules applying to products and services where the risk to viewers and listeners is higher e.g., alcohol, and rules setting out prohibited commercial communications.

As with the other codes, the BAI has identified a number of objectives for these rules. They are as follows: -

- 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.

The Code also has 4 principles. These principles apply to all commercial communications in addition to any specific rules that might apply. The 4 principles are as follows: -

Principle 1: Legal, Honest, Decent and Truthful

This principle requires broadcasters to ensure that when they prepare commercial communications that they do so with a sense of responsibility both to the individual and to society and ensure that they are legal, honest, decent, truthful and protect the interests of the audience.

Principle 2: Human Dignity, Offence and Harm

This principle requires that commercial communications shall not prejudice respect for human dignity, cause serious or widespread offence, cause harm or encourage harmful behaviour.

Principle 3: Transparency

This principle of transparency is about ensuring that audiences are fully aware of the nature of the communications they see and/or hear. This principle requires that 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.

Principle 4: Protection of Children

This principle highlights the fact that children are viewers and listeners with particular needs and broadcasters share a responsibility with parents and guardians for what children listen to and watch. The principle sets out the expectation 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.

The Code also includes a range of rules. Some of these rules apply to all commercial communications while others apply to those that are broadcast on radio only or television only. There are also rules dealing with specific types of techniques, for example, the use of sponsorship and product placement. Other rules deal with product and services where there may be additional risks to the public and for this reason more detailed rules are required. The Code also details certain products and services that may not be advertised at all. This is reflected in how the rest of the rules are laid out in this Code. In particular: -

- **Section 4:** Prohibited Commercial Communications.
- **Section 5:** Rules for all Commercial Communications.
- **Section 6:** Advertising and Teleshopping Rules (including radio only/TV only rules).
- **Section 7:** Split-screen, Interactive and Virtual Advertising Techniques.
- **Section 8:** Sponsorship on Television, including competitions.
- **Section 9:** Sponsorship on Radio, including competitions.
- **Section 10:** Product Placement.

Rules Pertaining to Specific Products and Services

- **Section 11:** Alcohol.
- **Section 12:** Medicinal Products and Medical Devices.
- **Section 13:** Medical Treatments and Services, including psychiatry, psychotherapy, and counselling.
- **Section 14:** Cosmetic Products, Treatments and Services.
- **Section 15:** Hypnosis, Hypnotherapy, and similar services.
- **Section 16:** Food, Nutrition and Health.
- **Section 17:** Slimming Treatments, Products and Services.
- **Section 18:** Smoking Cessation Aids.
- **Section 19:** Financial Services and Products.

- **Section 20:** Gambling.
- **Section 21:** Premium-rate Telecommunications Services.
- **Section 22:** Fortune Tellers, Psychic Services, etc.

The above is a summary of the provisions of this Code. If you want to look at the Code in more detail, a copy of the General Commercial Communications Code can be accessed here - <https://www.bai.ie/en/codes-standards/#al-block-2>.

Questions for Consideration

If you would like to comment on this Code or parts of this Code, you may want to consider the following questions.

- The BAI is interested in hearing your thoughts on whether the Code should be updated to deal with, or deal differently with commercial communications for the following types of products and services: -
 - Cosmetic surgery and services.
 - Cryptocurrency and related financial services.
 - Product Placement.
 - Gambling.¹
 - Claims about the environmental benefits of a product or service.
 - Medical products, treatments, and services.
- Are there any other parts of the Code that you think could be improved or changed?
- Are there any topics of issues that you think should be included in the Code and which are not? If there are, what are they and why should they be included? Do you have any suggestions about how the Code could include them?

¹ Please note that information provided in respect of gambling will inform the BAI's current understanding of the issue. Any changes to gambling advertising rules will be the responsibility of the new gambling regulator and not the BAI or Coimisiún na Meán.

4. Rules on Advertising and Teleshopping (Daily and Hourly Limits)

These rules outline the quantitative daily and hourly limits for advertising on commercial and community radio and television services. Limits for public service broadcasters are set by the Minister for Tourism, Arts, Gaeltacht, Sports and Media and are not dealt with in these BAI rules.

The rules address different types of broadcasters.

- **Commercial Television Broadcasters:** The rules identify the maximum hourly (12 minutes) and daily advertising limits (18% of output) as well as rules on teleshopping content. There are also limits on the hourly amount of advertising during children's programming (10 minutes per hour).
- **Commercial Radio Broadcasters:** The rules identify the maximum hourly (10 minutes) and daily advertising limits (15% of output) for these broadcasters.
- **Community Radio Broadcasters:** The rules identify the maximum hourly (six minutes) advertising limits for these broadcasters.
- **Community Television Broadcasters:** The rules identify the maximum hourly (six minutes) advertising limits as well as rules on teleshopping content.
- **Temporary and Institutional Radio Services:** No advertising is permitted on these services.

The above is a summary of the provisions of these rules. If you want to look at the rules in more detail, a copy of the BAI Rules on Advertising and Teleshopping can be accessed here - <https://www.bai.ie/en/codes-standards/#al-block-7>.

Question for Consideration

In the case of limits on advertising for commercial television and radio services, these are set by legislation and the regulator has a limited role in terms of this aspect of regulation. Limits for public sector broadcasters are set by the Minister for Tourism, Arts, Gaeltacht, Sports and Media. In that context, do you have any general comments and observations on the issue of advertising rules and limits in place for radio and television broadcasters?

