

**Consultation on the proposed
Ofcom Broadcasting Code**

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Section 1

Summary

1. The Office of Communications (Ofcom) is the new regulator for the UK communications industries, with responsibilities for television, radio, telecommunications and wireless communications services. It was established on 29 December 2003.
2. In terms of broadcasting it replaces the Broadcasting Standards Commission (BSC), the Independent Television Commission (ITC) and the Radio Authority (RA).
3. In 2005 Ofcom will publish a new Code for broadcasting. This consultation document contains Ofcom's proposed Code (the Code). All Ofcom television and radio licensees as well the British Broadcasting Corporation (BBC) and Sianel Pedwar Cymru (S4C) will have to comply with it, with certain exceptions for the BBC. These exceptions are sections 8 and 9 of this consultation, which are not relevant to the BBC as the Corporation is separately regulated by the BBC governors on matter of impartiality and accuracy in news (including election and referendum reporting); section 12 of this consultation, regarding sponsorship, which is not relevant as the BBC does not take sponsorship; and section 13 of this consultation regarding commercial references and other matters which does not apply to the BBC as this section refers to international obligations in the European Television Without Frontiers Directive 89/552 EEC, as amended by 97/36/EC (TWF Directive) which the UK government has decided not to apply to the BBC. The relevant sections of the TWF Directive would apply to the BBC only if the government was to issue a notification to that effect.
4. Ofcom is required by the Communications Act 2003 (the Act) and also by the Broadcasting Act 1996 (the 1996 Act) to draw up a Code or Codes setting standards for programmes, sponsorship and fairness and privacy. The relevant sections of the two Acts are in annex 4. The new proposed Code will replace the following six Codes (legacy Codes):
 - BSC Code on Fairness and Privacy
 - BSC Code on Standards
 - ITC Programme Code
 - ITC Code of Programme Sponsorship
 - RA News and Current Affairs Code and Programme Code
 - The sponsorship rules contained in the RA Advertising and Sponsorship Code
5. The Code will apply to all television programmes, radio programming and sponsorship on broadcast services regulated by Ofcom. The Code will not apply to broadcast advertising (except in the case of fairness and privacy in accordance with the 1996 Act).
6. The proposed Code sets out principles and rules (which include minimum standards). It is an Ofcom broadcasting licence condition (and a statutory obligation for the BBC, S4C and S4C digital) that radio and television broadcasters must comply with the standards set out in the rules in the Code. Ofcom has a regulatory duty to investigate, and where appropriate to register

breaches of its Code and, if necessary, apply statutory sanctions. (Guidance on case and complaints handling and the statutory sanctions procedure can be found at the Ofcom web site, www.ofcom.org.uk).

7. All rules and principles relate directly to legislation, in particular the Act, the 1996 Act, the TWF Directive, the Political Parties, Elections and Referendums Act 2000 (PPERA) and the Representation of the People Act 1983 (RPA).
8. It is proposed that the Code will be supplemented by guidance on the Ofcom website. Members of the public without access to the web may request a paper copy from Ofcom. The aim of the guidance is to help broadcasters and the public interpret the Code. The guidance will be updated to respond to changes in society and in the way the public view broadcasting standards, and to developments in broadcasting. Ofcom is not required to consult on this guidance, which is non-binding, but you may see one example of draft guidance in annex 10 of this consultation.
9. This consultation document sets out Ofcom's proposals for the new Code. It explains where and how the draft Code is different from the Codes it replaces. Significant issues are contained in section 14, the Regulatory Impact Assessment (RIA).
10. There are other, less substantial, but significant issues raised in the consultation document.
11. Ofcom has tried to draw up a Code which is easy to understand and clearly laid out. Rules that existed before may still exist but be expressed in a different manner. However, Ofcom has also considered creating, changing or omitting other rules. You are asked which, in your opinion, is the best option, and why, or whether there is another option we have not considered. We would welcome any suggestions as to how this Code can be improved, including omissions, additions and changes to those parts where no alternative is offered or question asked. Wherever possible, we would encourage anyone replying to this consultation, to include evidence that might be useful in deciding what should be in the new Code. If a new rule or wording is proposed, we would also like suggestions as to how it can be practicably enforced, if it is not immediately obvious.
12. Ofcom would like responses to this consultation from:
 - interested members of the public;
 - those who represent the interests of people who watch television, use teletext or listen to radio and sound programmes including those representing minorities;
 - broadcasters regulated by Ofcom;
 - the BBC;
 - companies, professional organisations, associations, bodies, groups or individuals who represent the interests of those who will have to take account of the new sponsorship standards;
 - companies, professional organisations, associations, bodies, or individuals who work in the broadcasting sector or related sectors;
 - companies, professional organisations, associations, charities, authorities, bodies and individuals concerned with the protection of the under eighteens, the prevention of crime, the prevention of harm,

religion in programmes, and the study of broadcasting, or the training of those who work in the broadcasting industry and related sectors;

- The Welsh Authority
- The Electoral Commission
- other regulators.

13. The new Code aims to be proportionate, consistent and targeted. It should remove duplication and simplify and clarify the rules which apply to programme and sponsorship standards. Broadcasters should be able to comply with the rules and understand them. Members of the public should also be able to understand them. In addition Ofcom should be able to use the proposed Code to regulate broadcasting effectively.

Section 2

Introduction to the Consultation

1. Freedom of expression is an essential human right. It is the right to hold opinions, to receive information and ideas and to impart them.
2. Broadcasting and freedom of expression are intrinsically linked. The one is the life blood of the other. Nowhere can that tension between the right to freedom of expression and its restriction be more acute than in drawing up a Code which seeks to regulate broadcasting.
3. All regulation in the proposed Code must be prescribed by law and necessary in a democratic society. Unnecessary regulation should not be in this Code. Rules cannot be made at the whim of a regulator.
4. Regulation should be transparent, accountable, proportionate, consistent and targeted only at cases where action is needed. That is a requirement of the Act but it is also part of the test Ofcom has to apply in restricting freedom of expression.
5. So what is necessary? In drawing up this Code Ofcom has not started with the Codes of the legacy regulators but has instead started with the law.
6. The sections into which the proposed Code is divided are primarily drawn from sections 319(2) of the Act and 107 of the 1996 Act. The section on Election and Referendum reporting, which mainly deals with the coverage of UK elections and referendums, is also based on the PPERA and the RPA. The proposed Code also implements certain aspects of the TWF Directive.
7. The regulation in each section seeks to protect viewers and listeners. But it must also be consistent, where possible, with promoting choice and competition. Choice and competition benefits listeners and viewers, as both citizens and consumers, as well as benefiting the broadcasting industry. Ofcom is required to foster plurality, promote cultural diversity, promote informed citizens and support innovation, creativity and investment. In considering the necessity for regulation Ofcom must have all these in mind.
8. It is also important, as different media converge, to regulate television and radio in the same way wherever possible. Sometimes, however, different legislation means we have to treat television differently. But we have not proposed to increase the regulatory burden on radio which has traditionally been regulated with a lighter touch.
9. The Act also lists certain considerations that Ofcom has to take into account, to the extent it considers relevant, in setting standards. This list, which is contained in section 319(4) of the Act, is so important that it has been included in the proposed introduction to the Code itself. For example, it says the likely expectation of the audience should be taken into account: the expectation of the audience will vary from service to service, and programme to programme. Broadcasters are in the best position to know their likely audience and to be able to alter the audiences' expectations by various means such as scheduling, publicity, presentation introductions, format and so on.

10. We have considered, in drawing up this proposed Code, whether it is necessary to set a rule which applies across all broadcasters equally. An example of such a rule would be that no material should be broadcast which incites crime. Where such specific rules are not necessary, we have then sought to set rules which can be interpreted differently by different broadcasters and in different circumstances, e.g. that broadcasters must provide adequate protection for viewers and listeners from the inclusion of harmful or offensive material in television or radio programmes.
11. Interpretative rules of this nature also allow for the possibility of increased media literacy and labelling by broadcasters.
12. The introduction to the proposed Code (section 3 of this consultation) explains how the Code should be used and the difference between principles, rules, meanings and guidance. That explanation is not included here. Moreover, the background to each part of the Code is explained in each section. However, there is an essential difference in the way sections 1 and 2 of the Code (sections 4 and 5 of this consultation) have been approached which it is worth explaining here.
13. Section 1 of the proposed Code (section 4 of this consultation) deals with the protection of the under eighteens. The Act requires Ofcom to have as a standards objective that 'persons under the age of eighteen are protected'. This wording is uncompromising. Ofcom has approached this section, where necessary, with a precautionary approach, particularly with regard to children (defined here as the under fifteens). This contrasts with section 2 of the proposed Code (section 5 of this consultation) which deals with harm and offence. Material that might be regarded as harmful or offensive must be judged against 'generally accepted standards' and 'adequate protection' must be provided against the inclusion of such material. The wording in the Act is qualified and so Ofcom has approached this section with these qualifications very much in mind. It is necessarily less restrictive than section 1 of the proposed Code.
14. As listeners and viewers exercise choice in a digital and multi-channel environment, it is important to allow broadcasters as much freedom as is consistent with the law to differentiate between services and offer choice to their audiences. The Act clearly envisages both audiences and broadcasters taking more responsibility for what is broadcast on the one hand and what is received on the other. The regulation that Ofcom provides in this Code should include the minimum standards required by law. We have only set more restrictive rules for specific descriptions of services where this can be justified. Otherwise it allows broadcasters to manage their own standards and enable them to differentiate their services for their viewers and listeners.
15. In a creative industry such as broadcasting, freedom of expression will always mean that there will be a certain level of complaints as broadcasters explore fresh areas and boundaries. The existence of complaints is no bad thing. If there were no complaints at all, it would indicate a level of self censorship by broadcasters and an unwillingness to experiment with form and content by broadcasting challenging and provocative programmes, both of which would be unhealthy in a democratic society and ultimately deny audiences the benefits of choice to which they are entitled.

Section 3

Ofcom Broadcasting Code Introduction

In this proposed Code introduction, references to Code sections and appendixes refer to sections and appendixes in the proposed Code, not to sections in the consultation.

- Proposed Code Introduction
- Background to proposed Code Introduction
- Proposed inclusions
- Proposed deletions
- Questions

Proposed Code Introduction

This Code is for the use of the public and for those who work in broadcasting, or in connection with broadcasting.

Broadcasting is a creative and evolving medium where choice, innovation and experimentation serve the interest of both citizens and consumers.

Freedom of expression is an essential human right. It is the right to hold opinions, to receive information and ideas and to impart them.

Broadcasting and freedom of expression are intrinsically linked. The one is the life blood of the other. Nowhere can that tension between the right to freedom of expression and its restriction be more acute than in drawing up a Code which seeks to regulate broadcasting.

The main purpose of the Code is to set standards which will protect viewers and listeners whilst still enabling broadcasters to be creative and to express a full range of views.

The Code is laid out in terms of principles, meanings and rules. The purpose of the principles is to help broadcasters understand the standards objectives and apply the rules. Broadcasters must ensure that they comply with the rules as set out in the Code. The meanings help explain what Ofcom intends by some of the words and phrases used in the Code. Relevant legislation is noted under section headings so readers can turn to the actual legislation if they wish.

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

To further assist those who work in broadcasting, as well as viewers and listeners who wish to understand broadcasting standards or make a complaint, non-binding guidance to accompany the Code will also be issued by Ofcom on the Ofcom website

(www.ofcom.org.uk) and will be regularly reviewed. Members of the public who have no access to the web can ask Ofcom to send them a copy by post.

Broadcasters should be familiar with their audiences and ensure that programme content can always be justified by the context and the editorial needs of the programme. (In the Code, the word 'programmes' is taken to mean both television programmes and radio programming.) No subject matter is prohibited by this Code. But it is expected that broadcasters will ensure at all times that their programmes comply with the law, respect the truth and respect human dignity. These are minimum standards applicable to all programmes and are relevant as appropriate to all the standards objectives. They are set in accordance with Ofcom's general duties under sections 3(2)(e) and (f) and 3(4)(g)-(j) and section 319(5)(a) of the Act, and apply to all broadcasters. A programme which does not comply with the law, respect the truth or respect human dignity is likely to breach one or more standards objectives.

In setting standards for fairness and privacy and standards for the content of programmes to be included in television and radio services, Ofcom is required by the Communications Act 2003 (the Act) and also by the Broadcasting Act 1996 (the 1996 Act) to draw up a Code or Codes relating to standards in programmes, sponsorship and fairness and privacy. See sections 3(2)(e) and (f), 319, 320, 321 and 326 of the Act and sections 107(1) and (2) of the 1996 Act. (These extracts can be found in appendix 1 of the Code). Ofcom is required (under section 319(4) of the Act) to take account of each of the following matters, to the extent Ofcom thinks relevant in securing the standards objectives:

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

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

The Code applies to programmes and sponsorship on radio and television services licensed by the Office of Communications (Ofcom), to the British Broadcasting Corporation (BBC) and Sianel Pedwar Cymru (S4C) and S4C digital. Broadcasters

are required by the terms of their Ofcom licence, and, in the case of the BBC by the BBC Agreement¹, and, in the case of S4C by statute, to observe the standards set out in this Code.

However, sections 5 and 6 of this Code, regarding impartiality and election and referendum coverage and sections 9 and 10, regarding sponsorship and commercial references and other matters, do not apply to the BBC. The BBC is regulated separately by the BBC governors on matters of impartiality, accuracy in news and the undue prominence of views and opinions which includes election and referendum coverage. The BBC does not take sponsorship and section 13 refers to international obligations in the European Television Without Frontiers Directive (TWF Directive) which the UK government has decided not to apply to the BBC. The relevant sections of the TWF Directive would apply to the BBC only if the government was to issue a notification to that effect.

The Code has been drafted in the light of the Human Rights Act 1998 (the HRA) and the European Convention on Human Rights (the Convention). In particular, the right to freedom of expression, as expressed in Article 10 of the Convention, encompasses the audience's right to receive creative material, information and ideas without interference but subject to restrictions required by law and necessary in a democratic society. This Article together with Article 8 regarding the right to a person's private and family life, home and correspondence, can be found in appendix 3 of the Code.

The Code also gives effect to a number of requirements relating to television in the TWF Directive. The relevant extracts can be found in appendix 2 of the Code.

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

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

¹ the BBC "Agreement" is the Agreement dated 25 January 1996 between Her Majesty's Secretary of State for National Heritage (now the Secretary of State for Culture, Media and Sport) and the British Broadcasting Corporation as amended by the Amendment dated 4 December 2003

Background to Proposed Code Introduction

1. Key legislative extracts from the Act and the 1996 Act can be found in annex 4.
2. Ofcom is required by section 3(2)(e) of the Act to apply standards that provide adequate protection to members of the public from the inclusion of harmful and offensive material in television and radio services. Section 3 (2)(f) of the Act also requires Ofcom to apply standards that provide adequate protection to members of the public and all other persons from unfair treatment in programmes and unwarranted infringement in privacy resulting from the activities of radio and television services.
3. Ofcom is required by section 319(1) of the Act to set standards to secure standard objectives set out in section 319(2) of the Act. Section 319(3) of the Act further states that those standards must be contained in one or more Codes.
4. In setting these standards Ofcom must have regard to matters laid out in section 319(4) of the Act such as the likely expectations of the audience. These standards must include minimum standards for all television and radio services (section 319(5)(a) of the Act) and such other standards as appear to be appropriate for securing the objectives (section 319(5)(b) of the Act). Section 319(6)(a) and (b) of the Act includes particular provisions that must apply to religious programmes. Section 319(7) of the Act requires Ofcom to take into account international obligations notified to Ofcom by the Secretary of State.
5. Ofcom must also implement the relevant provisions of the TWF Directive. Some key extracts can be found in annex 5 of this consultation.
6. Additionally, with regard to sponsorship, Ofcom is required by section 321 (1)(a) and (b) of the Act to include general provisions governing standards and practice in the sponsorship of programmes and may include provision prohibiting forms and methods of sponsorship (whether generally or in particular circumstances). Section 321(4) of the Act requires Ofcom, in relation to programme services, to have a general responsibility with respect to methods of sponsorship. It is also the duty of Ofcom to comply with any direction given by the Secretary of State regarding forms and methods of sponsorship that should not be employed in, or in connection with the provision of programme services as set out in section 321(5) and (6) of the Act.
7. With regard to fairness and privacy, Ofcom is required by section 327 of the Act to take over the functions of the Broadcasting Standards Commission contained in part 5 of the 1996 Act (with some exceptions). Particularly, however, under section 107(1) of the 1996 Act, Ofcom has a duty to draw up a Code giving guidance as to the principles to be observed and the practices to be followed in connection with avoiding unfair and unjust treatment in programmes and the unwarranted infringement of privacy in, or in the obtaining of material included in, programmes.

Proposed inclusions

1. The introduction to the proposed Code is intended to set the tone and draw up the background for the whole Code. Its purpose is to set out clearly the parameters for the Code, Ofcom's legal obligations in drawing up the Code, and the effect that it is intended that the Code will have.
2. The introduction is a narrative. Ofcom invites comments on the introduction as a whole or on specific matters raised in it.
3. The introduction sets out what areas are covered by the Ofcom Broadcasting Code and who the Code applies to. It explains why Ofcom has drawn up the Code and why broadcasters must comply with it. The introduction also draws attention to relevant sections of the HRA along with certain central principles - respect for the law, the truth and human dignity - as these are key to Ofcom's expectations of all broadcast material. Respect for the law, the truth and human dignity are minimum standards that may relate to each of the standards objectives as relevant depending on the nature of the broadcast, and are set in accordance with Ofcom's duties under the Act. They apply to all broadcasters.
4. The introduction sets out the structure of the Code and how it should be used. It lists the considerations in the legislation Ofcom considers are relevant to complying with the Code. The introduction also explains to what extent Ofcom can and will give guidance.

Proposed deletions

5. The introduction to the proposed Code does not replace any specific part of the Codes of the legacy regulators.

Questions

Question 3a: Does the introduction appropriately set out the purpose and background of the Code and does it achieve the right balance between giving broadcasters creative and editorial freedom while protecting listeners and viewers?

Question 3b: Should there be one Code or more than one Code? (Please see the RIA in section 14 of this consultation for further information.)

Question 3c: Is the approach suggested by Ofcom the best approach to the proposed new Code/s? If not, is there a better approach and, if so, what? (Please see the RIA in section 14 of this consultation for further information.)

Question 3d: Should the Code differentiate between different types of services with different rules for different services, or does the proposed approach allow sufficient latitude for services to interpret the rules appropriately for their audiences? (Please see the RIA in section 14 of this consultation for further information.)

Section 4

Protecting the Under Eighteens

This section is laid out as follows:

- Proposed Code section 1
- Background to section 1
- Proposed inclusions
- Proposed deletions
- Questions

Proposed Code, section 1, Protecting the Under Eighteens.
(section 319(2)(a) of the Act, TWF Directive Article 22)

Principles

To ensure that people under the age of eighteen are protected from:

- **potential or actual moral, psychological or physical harm caused by content in programmes;**
- **potential or actual distress caused by content in programmes;**
- **potential or actual exploitation through participation or coverage in programmes;**
- **potential or actual harm through participation or coverage in programmes;**
- **material which might seriously impair the moral, psychological or physical development of children.**

Rules

Scheduling and content information

- 1.1 Material that might seriously impair the moral psychological or physical development of children must not be broadcast.

Meaning of “children”:

Children are people under the age of 15 years.

- 1.2 Material that is unsuitable for people under the age of eighteen must be appropriately scheduled. In particular, children must be protected by appropriate scheduling or technical devices from material that is likely to impair their moral, psychological or physical development. If such material is not encoded then a clear verbal warning must be given before the programme starts.
- 1.3 In scheduling content, broadcasters must take account of the likely number and age range of children present in the potential audience, bearing in mind school time, weekends and holidays. Television broadcasters must observe

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

Meaning of the “watershed”:

The watershed only applies to television. It is the period which starts at 2100 and lasts until 0530. Material unsuitable for children should not, in general, be shown before 2100 or after 0530. On premium subscription services the watershed is at ? (please see linked questions at the end of this section)

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

This phrase applies to radio and sound services. It particularly refers to the school run and breakfast time, but might include other times.

- 1.4 Television broadcasters should ensure that the transition at the watershed to stronger material is not abrupt. Stronger, more adult material, should be scheduled well after 2100. Broadcasters must consider giving clear warnings if the material may be unsuitable for young persons.

Meaning of “young persons”:

Young persons are those aged 15,16 and 17.

- 1.5 For television programmes broadcast before the watershed, clear information about content that is unsuitable for certain age ranges under the age of eighteen must be given to the audience.
- 1.6 For radio and sound services, broadcasters must consider giving clear verbal warnings about programme content that may be unsuitable for young persons when children are not particularly likely to be listening. Clear information must be given to the audience, when children are particularly likely to be listening, about content that is unsuitable for certain ages under the age of eighteen.

The coverage of sexual and other offences involving the under eighteens

- 1.7 Broadcasters must not identify people under the age of eighteen who are victims, witnesses or defendants in UK court proceedings involving sexual offences (unless the court rules otherwise). The word ‘incest’ must not be used where a person under the age of eighteen might be identified as the victim (the offence may be described as a serious sexual offence).
- 1.8 Particular care must be taken when reporting court proceedings involving sexual offences, that the relationship between the accused and the person under the age of eighteen is not implied, and cannot be inferred, from the material broadcast or taken in conjunction with other material published by the media.
- 1.9 When covering any pre-trial investigation into an alleged criminal offence in the UK, broadcasters should pay particular regard to the potentially vulnerable position of any person under the age of eighteen involved as a witness or victim, before broadcasting their name, address, identity of school or other educational establishment, place of work, or any still or moving picture of them. Particular justification is also required for the broadcast of

such material related to the identity of any person under the age of eighteen who is involved in the defence as a defendant or potential defendant.

Smoking, alcohol, drug and solvent abuse

- 1.10 Drinking alcohol, smoking, solvent abuse, the use of illegal drugs and the abuse of drugs should not be featured in children's programmes unless there is a clear educational purpose.
- 1.11 Drinking alcohol, smoking, solvent abuse, the use of illegal drugs and the abuse of drugs should be avoided in other programmes broadcast before the watershed, or when children are particularly likely to be listening, unless there is an editorial justification.

Violence and dangerous behaviour

- 1.12 Material containing violence that has the potential to cause moral or psychological harm should not be broadcast before the watershed or when children are particularly likely to be listening.
- 1.13 Types of violence or violent behaviour, whether verbal or physical, that are easily imitable by children in a manner that is harmful and or dangerous, should not be broadcast before the watershed or when children are particularly likely to be listening, unless it is editorially justifiable. Such material should not be featured in children's programmes unless it serves a clear educational purpose.
- 1.14 Dangerous behaviour or its portrayal, that is likely to be easily imitable by children in a manner that is dangerous, should not be broadcast before the watershed, or when children are particularly likely to be listening, unless it is editorially justifiable. Such material should not be featured in children's programmes unless it serves a clear educational purpose.
- 1.15 Violence and violent behaviour (verbal or physical) should not be presented as a positive means to an end in programmes broadcast before the watershed, or when children are particularly likely to be listening, unless there is an editorial justification. Such material should not be featured in children's programmes unless it serves a clear educational purpose.

Offensive language

- 1.16 The most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening.
- 1.17 Offensive language should not feature in children's programmes.
- 1.18 Less offensive language must not be broadcast before the watershed, or when children are particularly likely to be listening, unless it is justified by the context. Frequent use of such language must be avoided before the watershed.

Sex

- 1.19 Material of a sexual nature (verbal and/or visual) should be inexplicit and appropriately limited, if broadcast before the watershed or when children are particularly likely to be listening.

Nudity

- 1.20 Nudity before the watershed must be non-sexual and must be justified by the context.

Exorcism, the Occult and the Paranormal

- 1.21 Demonstrations of exorcism and the occult must not be transmitted before the watershed, or when children are particularly likely to be listening.

Please see the RIA, in section 14 of this consultation, for detailed discussion on options regarding the scheduling of programmes regarding the paranormal. A related question is asked at the end of this section.

Premium subscription services and pay-per-view channels

Please see the RIA, in section 14 of this consultation, for detailed discussion on options regarding premium subscription services and pay-per-view (PPV) channels. Related questions are asked at the end of this section.

The participation of people under the age of eighteen in programmes

- 1.22 People under the age of eighteen must not be harmed or put in moral, psychological or physical danger in the making of programmes or by the broadcast of programmes.
- 1.23 People under the age of eighteen must not be caused unjustifiable distress or anxiety by their participation in programmes or the broadcast of those programmes.
- 1.24 The exploitation of persons under the age of eighteen is unacceptable, irrespective of any consent given by persons under the age of eighteen or by a parent, guardian or other person over the age of eighteen in loco parentis.
- 1.25 Prizes offered in programmes to children must be appropriate to the age range of both the target audience and participants.

Background to proposed Code section 1 – Protecting the under Eighteens

1. The principles and rules in this section of the Code are drawn from Ofcom's responsibilities under two pieces of legislation: the Act and TWF Directive Article 22. (You can find these in annex 4 and 5 of this consultation).
2. The specific obligation set out section 319(2)(a) in the Act, to protect persons under the age of eighteen is new. The 1990 Act contained no such obligation. However it did require the ITC to have "*special regard to programmes included in licensed services in circumstances such that large numbers of children and young persons may be expected to be watching the programmes*" and it placed an equivalent obligation upon the Radio Authority with regards to radio.
3. In drawing up their Codes the RA and ITC placed a high priority on the protection of children and young people. Ofcom does not believe that there is a compelling need to change the substance of the rules relating to the protection of the under eighteens that currently exist.
4. However, as the legacy Codes tend to combine provisions for the protection of children with other matters (such as taste and decency). Ofcom believes it is appropriate to follow the standard objectives of the Act and therefore has drafted a specific section in the new Code to deal with the protection of the under eighteens. Given this is the first standard objective named in the Act this section also opens the Code as an indication of the importance Parliament, and Ofcom, place on the protection of the under eighteens.
5. Whilst Ofcom recognises the obligation to protect persons under the age of eighteen, it does not consider that all age groups within this range necessarily require identical forms of protection at all times. The rules have been drafted with this in mind. For example, the care that broadcasters must take in protecting the average seventeen year old audience member will be of a different nature to that required to protect the average eight year old audience member.

Proposed inclusions

Principles

6. The principles are new and are intended to clearly set out the rationale behind Ofcom's rules in this area, as a result of Ofcom's obligations under the Act and the TWF Directive.

Rules

7. All the rules as drafted are intended to protect the under eighteens as required under the Act and by the TWF Directive. They are newly worded although in most cases they are currently covered by the existing Codes. Where Ofcom believes there has been a substantive change, this is highlighted below.

Scheduling and content information

8. Rule 1.1 reflects Article 22(1) of the TWF Directive. It sets a necessary standard which should be applied to protect the under eighteens across all service providers regardless of whether the TWF Directive applies to that service or not. Ofcom does not consider that any broadcaster regulated by Ofcom would find this regulation disproportionate.
9. Rule 1.2 maintains broadcasters' existing responsibility to schedule their material appropriately. Ofcom recognises that, in an open and democratic society, citizen-consumers have the right to listen to, and watch, complex and challenging broadcast material. However, Ofcom also recognises that sometimes such material can be problematic, particularly with regard to younger members of society. Therefore a necessary balance must be struck between the wider needs of society and the need to protect children. It is Ofcom's view that the specific rule on appropriate scheduling, and the consequential rules that follow, help to provide this balance.
10. The second sentence of rule 1.2 reflects Article 22(2) and (3) of the TWF Directive. It sets a necessary standard which should be applied to protect the under eighteens across all service providers regardless of whether the TWF Directive applies to that service or not. Ofcom does not consider that any broadcaster regulated by Ofcom would find the addition of this regulation disproportionate.
11. Rule 1.3 maintains the obligation on television broadcasters to respect the watershed and take account of factors such as school holidays that might increase the number of children present in a given audience. Ofcom believes it important to maintain the principle of the television watershed: that is the transition point (at 2100 for most channels) whereby viewers may expect that material *could* be of a more adult nature. (The RIA in section 14 discusses rules surrounding the watershed on premium subscription services. There are related questions at the end of this section.)
12. The watershed has not been defined in terms of age before. Separately, under the ITC Code, children were defined as those aged 15 and under. The other relevant Codes did not define a specific age. There is no single accepted definition of children either in legislation or more generally.
13. Ofcom proposes that it would be more appropriate to define children as those under 15. This will maintain consistency with the existing ITC guidelines (whether they are removed or not) with regards to film classification and scheduling, whereby as a general guide '15' rated films may be broadcast from 2100. Using 2100 as a starting time for 15 plus material is well established and understood by television broadcasters.
14. However, Ofcom does recognise that children and young people, especially in their teenage years, vary widely in maturity and sophistication. Whilst Ofcom believes it is appropriate to define 'children' for the purposes of the Code as those aged under 15, respondents should take note of the rules relating to scheduling and warnings with regard to young people who may stay up after the watershed.
15. Audience expectations regarding radio are different to television. With radio programming, the focus has tended to be on those times when children are

particularly likely to be listening, e.g. during the 'school run' or breakfast shows. Because of these existing audience expectations, Ofcom proposes that it would be appropriate to keep the same framework in place for radio.

16. Rule 1.4 is proposed in recognition of the fact that, whilst the watershed is well recognised as a delineating marker beyond which more adult material may be shown, an abrupt transition at 2100 to material with a strong adult theme is potentially harmful. Therefore rule 1.3 takes account of the fact that there may be programmes that overlap the watershed which some children may be allowed to stay up to watch the ending of. There is clearly material that most people would regard as problematic for all children and it is this material that should be broadcast significantly later in the schedule. In those cases consideration should be given to young people who may be in the audience and clear warnings given, if necessary, which will enable them to decide whether to continue to watch.
17. Rule 1.5 is drafted in recognition of the fact that, even with appropriate scheduling, some additional information *before* the watershed may be necessary in order to protect the under eighteens.
18. Rule 1.6 addresses the same issues as 1.4 and 1.5 with regards to radio (where there is no watershed but where broadcasters must take account of times when children are particularly likely to be listening).
19. We draw a distinction between information generally and more specific warnings. Information may be appropriate at any time of the day and is in line with a trend towards an increased use of labelling to aid viewers make informed choices. For example, a nature programme transmitted in the early evening may show scenes of animals preying on one another that a very young child might find upsetting. However if a warning is needed the material should in all probability be scheduled after the watershed. Exceptionally News may sometimes require a warning pre watershed.

Coverage of sexual and other offences involving the under eighteens

20. The rules as drafted are based on the existing rules as previously agreed with broadcasters by the legacy regulators.
21. Rules 1.7 and 1.8 specifically address the coverage of sexual offences and are largely unchanged. Rule 1.8 seeks to address the potential for the 'jigsaw' effect.
22. The 'jigsaw' effect is when a person's identity may be revealed through different parts of the media reporting different aspects of a crime that, taken individually do not reveal the victim's identity, but taken together might well do so. For example, one news source might name a particular person in a particular locality and report that he has been charged with a 'serious' sexual offence, another news source might report that a 'man' in that locality has been charged with offences against children in his care – taken together the two pieces of news might enable someone to identify the child or children who are the alleged victims of a sexual offence.
23. Rule 1.9 is concerned with pre-trial coverage of criminal cases in general (not just sexual offences) and is intended to protect the potentially vulnerable position of persons under the age of eighteen who may be involved as

victims, witnesses or as defendants. Please note that the courts have the power to impose or lift reporting restrictions where appropriate and Ofcom will not apply regulation that is more restrictive than the courts.

24. Parliament is sufficiently concerned by both of these matters to have passed appropriate amending legislation - although the relevant provisions have not been brought into force. The Secretary of State has preferred, instead, to leave this to regulators and the media itself. Consequently this rule has been included and, if properly applied, there will be no need for legislation to be enacted.

Rules regarding smoking, alcohol, drug and solvent abuse

25. The issues and concerns surrounding smoking, alcohol, the misuse and abuse of drugs (both legal and illegal) and solvent abuse are varied and complex. They are all a feature of modern society and clearly a legitimate component or theme for programming. However, given the potential for harm, rules are proposed that provide a clear framework for the way these substances are included in programming where children are concerned.
26. Ofcom has drawn on the existing Codes to set the rules in this area. In particular Ofcom does not believe the inclusion of these substances in programmes for children is acceptable without a clear educational purpose. However, the inclusion of these substances in more general programming before the watershed is acceptable providing there is editorial justification.

Rules regarding violence and dangerous behaviour

Violence

27. Ofcom understands that many citizen-consumers are very concerned about the potential impact of violence within broadcast material upon society - in particular on children and younger audience members.
28. The existing Codes also reflected these concerns and Ofcom's new rules have sought to specify these protections by restricting more violent material until after the watershed and requiring that less violent material before the watershed is editorially justified.

Offensive language

29. These rules are based on the existing rules. Ofcom recognises that offensive language is also a feature of modern society and may be legitimately used in broadcasting. However, offensive language raises clear concerns about harm to children and offence in general. There is a concern that children may imitate offensive language or be upset or offended to hear offensive language that their parents or guardians or other adults have told them is wrong.
30. The prohibition on the most offensive language before the watershed (rule 1.16) serves two interlinked purposes; it helps to protect children from potentially distressing or harmful material when they may not be mature enough to deal with it and also protects all viewers more generally from offence. Ofcom believes this is consistent with the existing Code provisions. Its primary purpose however is to protect children.

31. The prohibition on offensive language in children's programmes (rule 1.16) ensures that there will always be programming that parents can be certain will not contain offensive language.
32. Rule 1.18 limits the amount of less offensive language shown before the watershed or when children may be particularly likely to be listening. By ensuring that such material is in context and not frequently used, Ofcom believes children are protected from the potentially harmful effects of repeated use of offensive language and, as with the general prohibition on more offensive language before the watershed, audience members more generally are protected from offence.

Sex

33. This rule is based on the existing rules. Rule 1.19 limits the type of sexual material that may be broadcast before the watershed or when children might be particularly likely to be listening. More explicit material may be acceptable in an educational programme. Material of a more explicit nature after the watershed is subject to the more general rules on offence and appropriate scheduling.

Nudity

34. These rules are based on the existing rules. We believe that nudity in a non-sexual context before the watershed is not problematic and will not harm persons under the age of eighteen providing it is in a relevant context and not gratuitous.

Exorcism, the occult and the paranormal

35. The proposed rules continue to apply protection to children (using the precautionary principle) and also take into account the differing views expressed in the ITC research *Beyond Entertainment* (2001) regarding the potential for harm of negative practices such as the occult and other practices. This research is explained in greater detail in the background to the next section regarding harm and offence.
36. The scheduling of programmes on the paranormal is discussed in detail in the RIA in section 14 of this consultation. A relevant question is included at the end of this section.

Premium subscription services and pay-per-view channels

37. The RIA in section 14 discusses rules surrounding PPV and premium subscription services. There are related questions at the end of this section.

Participation

38. The rules as drafted are based on the existing rules and are intended to protect persons under the age of eighteen who take part in programmes.
39. Rule 1.22 is intended to protect persons under the age of eighteen from harm or danger in the making, or broadcast of programmes.

40. Similarly, rule 1.23 seeks to protect persons under the age of eighteen who participate in programmes from unjustifiable distress. However, Ofcom does recognise that there may, on occasion, be a legitimate need to make or broadcast programmes that may distress those persons under the age of eighteen involved with the making of a programme. It is unjustified distress that is unacceptable.
41. Rule 1.24 reflects concerns raised by stakeholders about the participation of persons under the age of eighteen in programmes. There are certain circumstances, where the nature of the participation is clearly so inappropriate despite consent having been given by a parent, parents, guardian or person in loco parentis that exploitation has occurred.
42. With regards to rule 1.25 Ofcom believes it is important that prizes in programmes for children are appropriate to the age range of the audience.
43. Where prizes are of a very high value there is a risk that child participants will be under excessive pressure to perform. The existing ITC Programme Code expressly forbids the awarding of cash prizes in children's television programmes. However, there is no such rule for radio programming. Ofcom believes there may be no regulatory reason to have different rules for television and radio and therefore seeks views on whether cash prizes should be expressly forbidden for television.
44. Ofcom understands that citizen-consumers may have a number of concerns about the use of cash prizes in children's competitions.
45. Such prizes might be regarded as an inappropriate way for broadcasters to 'buy' children's audiences. Cash prizes may result in undue pressure (from e.g. family members) upon children to perform well. Parents may also be concerned that children may receive such cash prizes without them (the parents) being aware of it. Finally, parents may be concerned about the potentially negative effect of cash prizes about children's perceptions of the value and role of money and the way in which such prizes might simply be regarded as appealing to greed.
46. In contrast, Ofcom also recognises that it would be difficult to consider that, e.g. a £10 cash prize, was potentially more harmful than a £150 games console.
47. Ofcom therefore welcomes respondents' responses to the question at the end of this section on whether cash prizes should be specifically forbidden.

Proposed deletions

49. Paragraph 85 of the BSC Code on Standards contained an overt prohibition on '*explicit portrayals of sexual acts between adults and children*'. Similarly, rule 1.4c in the RA's Programme Code, has a prohibition on '*portrayal or description of sexual activity between humans and animals or between adults and children*'.
50. Ofcom believes that such explicit rules are unnecessary in the light of proposed general rules relating to the incitement of crime (section 6 of this consultation), offence (section 5 of this consultation) and the rule on material of a sexual nature (proposed rule 1.19).
51. The RA Programme Code had a specific prohibition in rule 1.3 on blasphemy in children's programmes or when young listeners are particularly likely to be listening.
52. Ofcom's view is that such a specific prohibition is not necessary to protect younger members of the audience. This is because the new rules refer to 'offensive' (rather than 'bad') language, and so include blasphemy.
53. Section 1.4 of the ITC Programme Code contains specific rules regarding the scheduling of films classified by the British Board of Film Classification (BBFC).
54. The rules broadly require that normally no '12' rated film should start before 2000, that normally no '15' rated film should start before 2100 (or 2000 on premium rated services), and that no '18' rated films should start before 2200 on any service.
55. The ITC rules are qualified by saying that the BBFC classifications should be used as a "*guide to scheduling*" and also by the insertion of the word "*normally*" with regard to '12' and '15' films and by allowing the rule regarding '18' films to be relaxed if the film was made more than ten years ago. There is a balancing warning that some '15' films may not even be suitable for 2000 because of their content
56. The ITC Code creates an assumption in scheduling by rating that, some argue, is too prescriptive in its approach. At the same time it may be confusing because of the possible exemptions which effectively recognise that these strict rules are not easy to apply.
57. Broadcasters make numerous scheduling and content decisions about the material they transmit. Films are just one of many genres they handle daily.
58. Ofcom proposes that this rule be omitted because the scheduling rules contained at the start of this section adequately protect the under eighteens.

Questions

Question 4a: Are the principles, rules and meanings necessary, consistent, proportionate and achievable? If not, can the wording be improved and if so how?

Question 4b: Are there any principles, rules or meaning we have not put here which would achieve the intentions of the Communications Act and other applicable legislation and be necessary, consistent, proportionate and achievable?

Question 4c: Are the proposed definitions of children and young persons appropriate?

Question 4d: Do we need rules regarding violence and dangerous behaviour, smoking, drug taking etc as proposed in the Code or are such matters already covered by other rules?

Question 4e: Which of the options described in the RIA regarding the watershed on premium subscription services is the best option and why? (If a new place is proposed for the watershed, what is it, and why?) What technical and other protections can broadcasters and platform operators put in place to protect children?

Question 4f: Which of the options described in the RIA on the scheduling of programmes regarding the paranormal is the best option and why?

Question 4g: Should cash prizes be specifically forbidden in children's programmes?

Question 4h: Should there be rules linking the scheduling of films to the BBFC classifications?

Section 5

Harm and Offence

This section is laid out as follows:

- Proposed Code section 2
- Background to proposed Code section 2
- Proposed inclusions
- Proposed deletions
- Questions

Proposed Code, section 2, Harm and Offence

(section 319(2)(f) and (l) of the Act)

The rules in this section are to prevent harm and offence, however, they also have the additional effect of protecting people under the age of eighteen.

Principle

To ensure that broadcasters provide adequate protection for viewers and listeners from the inclusion of harmful or offensive material, judged against generally accepted standards.

Rules

- 2.1 Broadcasters must provide adequate protection for viewers and listeners from the inclusion of harmful or offensive material in television or radio programmes judged against generally accepted standards.
- 2.2 Factual programmes must respect the truth.
- 2.3 The use of potentially offensive language and material – in particular, the inclusion of scenes of violence or sex, or scenes of humiliation, distress or the use of discriminatory treatment or language or scenes of graphic sexual violence – must be justified by the context, and information included where it might assist in preventing offence.

Meaning of “context”:

Context is used to denote, among other things, the matters referred to in section 319 (4)(a),(b),(c) and (d) of the Communications Act which can be found in the introduction to this Code. Those matters are: the degree of harm or offence caused by the inclusion of a particular sort of material, the likely size and composition of the audience, the likely expectation of the audience, the extent to which content can be brought to the attention of the audience e.g. by the giving of information, and the effect of the material on somebody who views or hears it by chance. Context also includes the service, the time of transmission, what other programmes are scheduled before and after the programme concerned, whether the programme is a one off or part of a series as well as the editorial content of the programme. This list is not exhaustive. Context will also be applied to harmful and offensive material in 2.1.

‘Adult’ material on premium subscription services

Please see the RIA, in section 14 of this consultation, for detailed discussion of options regarding ‘Adult’ material on premium subscription services. Related questions are asked at the end of this section.

- 2.4 Programmes must avoid anything that individually, and/or taken as a whole and in context, is likely to encourage violent, dangerous or seriously antisocial behaviour.
- 2.5 The means or methods of suicide and self harm must not be included in programmes except where the context, scheduling and likely audience can justify them.
- 2.6 Demonstrations of exorcism, the occult, the paranormal, divination and related practices must be treated with due objectivity. Entertainment programmes that contain such demonstrations must be clearly labelled as such for the audience. No potentially life changing advice may be given. (Religious programmes are exempted from the rule about life-changing advice but must, in any event, comply with the provisions in the section regarding religious programmes in this Code.) (Please also note the scheduling restrictions contained in section 1 of this Code.) Films, dramas and fiction generally are not bound by this rule.

Meaning of “life-changing”:

Life-changing advice includes advice about health, finances, employment, relationships etc.

- 2.7 Broadcasters must prevent hypnosis being induced in susceptible viewers and listeners.

‘R18’- rated films and programmes and R18 standard

Please see the RIA, in section 14 of this consultation, for detailed discussion on options regarding R18 and R18 standard materials. Linked questions are asked at the end of this section.

- 2.8 No version of a film or programme refused certification by the British Board of Film Classification (BBFC) may be broadcast.
- 2.9 Programmes must not use techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.
- 2.10 Television broadcasters must minimise the risk to viewers who have photosensitive epilepsy. Please see appendix 3 of this Code (this can be found in Annex 8 to this consultation).

Background to proposed Code section 2 – Harm and Offence

1. The principle and rules in this section derive from sections 319(2)(f), (l) and 319(4)(a), (b), (c), (d) and (e) of the Act and Article 22 of the TWF Directive. These can be found in annexes 4 and 5 of this consultation.
2. The 1990 Broadcasting Act (the 1990 Act) required that “[nothing should be included which] *offends against good taste and decency*” or “[is likely to be] *offensive to public feeling*”.
3. The wording in the Act is different. It deals with the concept of harm as well as offence, not simply offence. It does not require, as the previous act, that **‘nothing’** should be included which offends but instead requires **‘adequate protection’** from the inclusion of harmful and offensive material. **‘Good taste and decency’** and **‘public feeling’** is now replaced by the concept of **‘generally accepted standards’**. Also section 319(4)(a) of the Act talks about the degree of harm or offence likely to be caused by the inclusion of any particular sort of material.
4. Detailed prescriptive rules cannot anticipate every situation. Moreover social mores and sensitivities change, both over time and in response to events day by day; and television and radio must have wide freedom to address any subject.
5. The rules in this section have, on the whole, been drawn widely to stand the test of time and also to allow broadcasters, the audience and Ofcom to interpret what is meant by harm and offence as it applies in every case.
6. The legacy Code sections that this proposed section would replace are found in section 1 and section 5 of the ITC Programme Code; section 1 of the RA Programme Code; and the BSC Code on Standards.

Proposed inclusions

7. The principle is new. It is based on the requirements of the Act.
8. Rule 2.1 is based on the Act.
9. Rule 2.2 which, requires the truth to be respected in factual programmes, is a minimum standard. Ofcom believes this should be applied to avoid giving offence and possibly causing harm. While respect for the truth is specifically set out as a rule in this section in recognition of its potential relevance to the harm and offence standards objectives, the requirement that broadcasters comply with the law, respect the truth and respect human dignity are minimum standards, set in accordance with Ofcom’s duties under the Act. They are included in the introduction to the Code and relate to each standards objective as relevant depending on the nature of the broadcast.
10. Rule 2.3 is effectively a new rule although it picks up on many areas contained in the legacy Codes. It points up some of the key areas where audiences have found offence in the past including graphic sexual violence.
11. Effectively, there is no ban on any type of material as long as it is within the law. (R18 and films refused a BBFC certificate are discussed in the RIA and

later in this section respectively.) Material that has the potential to offend may be used. But it must be justified by context, and information used where it may help prevent offence. This is a rule which has been set with the matters raised in 319(4) very much in mind. The meaning of context which follows includes the matters contained in section 319(4) of the Communications Act and indicates that other matters may be added to that list depending on the circumstances of each programme. This is a rule which must be interpreted by each broadcaster.

12. Rule 2.4 is new. It addresses the concern that some programmes may e.g. by the tone of the commentary effectively condone or glorify violent or dangerous or seriously anti-social behaviour so that it encourages viewers or listeners to copy the behaviour or be supportive of such behaviour.
13. Rule 2.5 covers a continued concern about the impact of real or portrayed suicide, and self harm on those whose minds may be disturbed. Whilst it is always difficult to prove causality a study found that portrayal of self poisoning in a popular television drama (*Casualty*) was associated with a short lived increase in presentation of self poisoning patients to general hospitals. (Hawton et al 1999, *British Medical Journal*). Another study, *The Werther effect after television films* (Schmidtke A, Hafner H, Psychological Medicine 1988) studied the effect of a twice-broadcast (1981, 1982) six-episode weekly serial showing the railway suicide of a 19-year-old male student. Over extended periods (up to 70 days after the first episode), the number of railway suicides increased.
14. Rule 2.6 has a complicated background. The ITC, in the autumn of 2003, consulted on the section of the Programme Code that dealt with these matters and updated its Code. This proposed rule changes this regulation yet again and brings together radio and television regulation in this area.
15. Specific regulation has been included on this matter as a result of research undertaken by the ITC with a representative sample of 3000 viewers which was published in 2001 (*Beyond Entertainment*). It showed that occult practices, namely Satanism, black magic, ouija and voodoo, were viewed as having negative intent. They were considered as risky and, therefore, dangerous, whether people believed in such phenomena or not, as the intention behind such practice was believed to be about exerting influence. Those considering such phenomena as harmful ranged from 91% for Satanism to 78% for spells. However purportedly contacting the 'known' dead was border line. 54% of viewers thought clairaudience was harmful and 44% thought clairvoyance was harmful.
16. Where viewers perceive material as harmful there is a possibility that they will be offended by stumbling across it accidentally.
17. Substantive evidence of actual harm was not received by the ITC during its consultation on these matters in autumn 2003 although concern was expressed by diverse groups and individuals about such programming.
18. This proposed rule requires that entertainment shows be clearly labelled as such, and that no potentially life changing advice should be given. (Examples of what may be considered as life-changing are also given). These elements of the legacy Codes (although not the detailed requirements of the ITC Programme Code) would be retained as proportionate, necessary and

targeted regulation. The requirement that factual shows look at such matters only in the context of a legitimate investigation would be removed and replaced by a requirement for due objectivity in both entertainment and factual programmes. The stronger the material, the more likely offence or harm could be caused, and, therefore, the greater the objectivity that would be needed. Please note that under the Fraudulent Mediums Act 1951, a person who is acting for a reward and who, with intent to deceive, purports to act as a spiritualistic medium or to exercise any powers of telepathy, clairvoyance or other similar powers, or while doing so uses any fraudulent device, is guilty of an offence, unless it is done solely for the purpose of entertainment.

19. These changes are in line with the requirements of 319(4) of the Act which require that Ofcom, in setting standards, has regard to matters such as the likely size and composition of the audience and likely audience expectation. The nature of the objectivity required would change according to the likely audience and the information that could be given to adjust an audience's expectations and understanding of the programme and its parameters.
20. Drama and fiction and films are excluded from this rule although, clearly, broadcasters may want to consider the potential for offence and/or harm and the need for information or warning when scheduling such material.
21. Scheduling advice on this matter is now contained in section 1 of the proposed Code (protecting the under eighteens). Further information can be found in the RIA, section 14. A question is asked regarding the scheduling at the end of section 4 of this consultation.
22. Rule 2.7, regarding hypnosis, has been brought across from the legacy Codes as a precautionary rule to prevent harm. Previous Codes referred to the Hypnotism Act of 1952. However Ofcom is not aware of evidence that hypnosis can be induced by radio and television broadcasts. Ofcom would welcome evidence and opinions on this matter and a question has been asked at the end of this section.
23. The arguments regarding R18s are covered in section 14 of this consultation, the RIA. Questions are asked regarding R18 and R18 standard material at the end of this section.
24. Rule 2.8 requires that films that have been refused a BBFC classification must not be broadcast. The case for such a prohibition is considered by some as obvious. In certain cases films, videos and DVDs contain material such as violent pornography which is not judged suitable for commercial distribution in this country. To remove this rule would mean that material unable to gain a BBFC certificate could be available on television. (It should be noted that rejections can also be for legal reasons which would equally apply to broadcasters.) Further it may be a matter of concern if broadcasters were perceived to apply an approach which undermined the intention of Parliament in passing the Video Recordings Act 1984 (VRA).
25. However some argue that in principle it is wrong for Ofcom to rely on the judgements of another regulator. Furthermore there is a difference between material rejected under the current guidelines (currently under one a year) and 'historic' rejects. 'Historic' rejects refused BBFC classification may, over time, or with cuts be suitable for broadcast. However broadcasters argue that

a television broadcaster would be faced with the unnecessary expense of reclassifying the film in order to comply with this rule whereas the general rules on offence in this section should cover it adequately. A question on this rule has been included at the end of this section.

26. Rule 2.9 is a direct reference back to the Act. It more or less repeats unaltered the provisions of the ITC and RA Codes.
27. Rule 2.10 derives from work done by the ITC and which is informed by considerable technical background. Ofcom understands that views differ on the detail of the limits to be applied to flashing images, rapid cutting and the like. The former ITC guidance has been attached as an appendix to the Code in order for it to be binding. It is in annex 8 of this consultation. Evidence based comment upon it would be welcome. It is there to protect viewers, particularly younger viewers from physical harm. However if it can be demonstrated that a lower level of technical intervention will actually achieve the same level of protection Ofcom would of course be required to lift or alter unnecessary regulation.

Proposed deletions

28. As part of Ofcom's move to simplify and condense the Code, considerable discussion of various topics has been omitted, particularly under offence. The aim is to cover these subjects in guidance.
29. In the legacy Codes protection of children is interspersed with matters of harm and offence for adults. The regulation regarding the protection of under eighteens has largely been moved into section 1 of the proposed Code – a section that did not previously exist.

Questions

Question 5a: Are the principles, rules and meanings necessary, consistent, proportionate and achievable? If not, can the wording be improved and if so how?

Question 5b: Are there any principles, rules or meaning we have not put here which would achieve the intentions of the Communications Act and other applicable legislation and be necessary, consistent, proportionate and achievable?

Question 5c: Should a rule on hypnosis be included and if so what evidence of harm or potential harm is there regarding the use of hypnosis on television or radio audiences?

Question 5d: Is the inclusion of R18 and R18 standard material compatible with the TWF Directive which requires that nothing is included in licence services which might seriously impair the physical, mental or moral development of minors?

Question 5e: If the answer to 5d is yes, then are there technical and other protections that broadcasters and platform operators can put in place to protect the under eighteens, who should not, and adults, who may not wish to, access R18 and R18 standard material? (the Act section 319(2)(a)(f) and 319(4))

Question 5f: Which of the options described in the RIA regarding R18s, and R18 standard material is the best option, and why?

Question 5g: Should the restrictions in place regarding transmitting 'adult' sex material on certain premium subscription services, PPV and PPN services be changed, and if so what restrictions should be in place, and on which services?

Question 5h: Should there be a prohibition on the transmission of films, videos and DVDs refused a BBFC certificate. If not should there be any rule and if so what rule?

Question 5i: Can a lesser level of technical intervention achieve the same protection for those with photosensitive epilepsy?

Section 6

Crime

This section is laid out as follows:

- Proposed Code section 3
- Background to proposed Code section 3
- Proposed inclusions
- Proposed deletions
- Questions

Proposed Code, section 3, Crime

(section 319(2)(b) of the Act)

Principles

To ensure that material likely to encourage or incite crime is not included in television or radio services.

To ensure that material likely to lead to disorder is not included in television or radio services.

To ensure that broadcast material does not enable viewers or listeners to commit crime.

Rules

- 3.1 Material likely to encourage or incite crime, or likely to lead to disorder must not be included in television or radio services.
- 3.2 Material that enables viewers or listeners to commit crime must not be included in television or radio services.
- 3.3 No payment, promise of payment, or payment in kind, must be made to an individual convicted, by a court of a criminal offence, or to their family, friends or colleagues directly or through agents, for an interview or other contribution to a programme relating to their crimes. The only exception is where it is justified by the public interest, and the material cannot be obtained otherwise. In those circumstances the payment or benefit must be declared on air.
- 3.4 While criminal proceedings are active, no payment or promise of payment may be made, directly or indirectly, to any witness or any person who may reasonably be expected to be called as a witness. Nor should any payment be suggested or made dependent on the outcome of the trial. Only actual expenditure or loss of earnings necessarily incurred during the making of a programme contribution may be reimbursed.
- 3.5 Where criminal proceedings are likely and foreseeable, payments should not be made to people who might reasonably be expected to be witnesses unless there is a clear public interest, such as investigating crime or serious wrongdoing, and the payment is necessary to elicit the information. Where such a payment is made it will be appropriate to disclose the payment to both

defence and prosecution if the person becomes a witness in any subsequent trial.

- 3.6 Material must not be broadcast that could endanger lives or prejudice the success of attempts to deal with a hijack or kidnapping.

Background to proposed Code section 3 - Crime

1. The principles and rules in this section of the Code are based on section 319(2)(b) of the Act. (You can find this in annex 4 of this consultation.)
2. The Act requires that television and radio services must not include material likely to encourage or incite crime.
3. The Act requires that material likely to lead to disorder is not broadcast.
4. The wording of the legislation (and its intention) has not changed in any significant manner from the relevant sections of the Act 1990.
5. Previous regulation on 'incitement to crime and disorder' was found in section 5 of the ITC Programme Code and in section 4 of the Radio Authority Programme Code. (Some of section 1.7 of the ITC Programme Code also dealt with imitable violence.)

Proposed inclusions

6. The proposed three principles are new. The principles are based on the wording of the Act.
7. Rule 3.1 is, in general, a direct transfer from previous Codes and Guidance. The wording has been slightly changed so that it reflects the wording and intentions of the Act.
8. Rule 3.2 is also a change in wording but not in intention. The rule is based on the objectives found in the Act and closely reflects the principles found in earlier Codes and Guidance.
9. Rule 3.3 is a change. It attempts to clarify the principles found in earlier Codes and Guidance that were thought to be difficult to interpret. It requires transparency so that viewers and listeners are aware of any benefits to former criminals and their families and can judge their contribution accordingly. The revisions also mean that the Code governing radio and television will now be more consistent with the recently revised Codes regulating the print press.
10. Rules 3.4 and 3.5 contains wording agreed in discussion between the legacy regulators and the Lord Chancellor's department. The government had been inclined to legislate on this issue but will not do so if regulation can achieve the same objective.
11. Rule 3.6 continues a rule in the legacy Codes and is designed to prevent broadcasters transmitting material that could endanger attempts to resolve or end a kidnap or hostage situation.

Proposed deletions

12. Much of what was previously found in earlier Codes has been simplified and standardised in the new rules. However a number of rules have been omitted from this section of the new Codes.

13. It is proposed that a rule governing demonstration of criminal techniques, contained in section 5.5 of the ITC Programme Code, is no longer included as a rule in its own right as it is covered by rule 3.2.
14. Section 4.3 of the RA Programme Code and section 5.3 of the ITC Programme Code on reporting terrorist or criminal activity are no longer included in this section as the Terrorism Act UK 2000 covers this issue.
15. Section 5.6 of the ITC Programme Code that regulated relationships with the police is no longer included in this section as it is now covered by the section on privacy (section 8 of the Code and section 11 of this consultation.)
16. Section 5.7 of the ITC Programme Code on the presence of television cameras at demonstrations and scenes of public disturbance has been omitted from this section as it is felt that the principle is dealt with by rule 3.1 which states that broadcasters must not transmit material that is likely to lead to disorder.
17. Previous rules contained in section 5.8 of the ITC Programme Code on smoking and drinking have been omitted as this is now covered in section 1 of the Code, Protecting the Under Eighteens, which can be found in consultation section 4.
18. Section 4.6 of the RA Programme Code on "*Sexual and Other Offences Involving Children*" is not included in this section of the Codes as it is covered in section 1 of the Code, protecting the under eighteens, which can be found in consultation section 4.
19. Section 1.7 of the ITC Programme Code outlined guidance for the broadcasting of violent material. Rules regarding the portrayal of violence have not been included in this section. Violence is separately dealt with in section 1 of the Code, protecting the under eighteens, which can be found in consultation section 4 and also in section 2 of the Code, harm and offence which can be found in consultation section 5.

Questions

Question 6a: Are the principles, rules and meanings necessary, consistent, proportionate and achievable? If not, can the wording be improved and if so how?

Question 6b: Are there any principles, rules or meaning we have not put here which would achieve the intentions of the Communications Act and other applicable legislation and be necessary, consistent, proportionate and achievable?

Section 7

Religion

This section is laid out as follows:

- Proposed Code section 4
- Background to proposed Code section 4
- Proposed inclusions
- Proposed deletions
- Questions

Proposed Code, section 4, Religion

(section 319(2)(e) and 319(6)(a) and (b) of the Act)

The rules in this section apply to religious programmes.

Principles

To ensure that a proper degree of responsibility is exercised by broadcasters regarding the content of religious programmes.

To ensure that the religious views and beliefs of a religion or religious denomination are not abused.

To ensure that audience members are protected from improper exploitation.

Rules

- 4.1 A proper degree of responsibility must be exercised by broadcasters regarding the content of religious programmes.

Meaning of a “religious programme”:

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

- 4.2 The religious views and beliefs of a religion or religious denomination must not be abused.
- 4.3 Descriptions of religious views and beliefs must be presented with due accuracy and fairness.
- 4.4 A programme which espouses religious views or beliefs must make the identity of the religion and/or denomination clear to the audience.

Please see the RIA, section 14 of this consultation, for discussion regarding raising funds for religious programmes and services. There is a question on that and also on seeking recruits at the end of this section

- 4.5 If a programme’s underlying purpose is to convey religious views or beliefs, or to seek recruits, then the broadcaster must make that purpose clear to the audience, if it is not already evident.

- 4.6 Programmes may not improperly exploit the audience by preying on their susceptibilities.
- 4.7 Programmes that contain claims that a living person (or group) has special powers or abilities must be treated with due objectivity and may not be broadcast at a time when significant numbers of children may be watching or when children are particularly likely to be listening.

Background to proposed Code section 4 - Religion

1. The principles and rules in this section of the Code are based on the Act 319(2)(e) and 319(6), which you can find in annex 4 of this consultation. The Act also refers to religion in a separate context. When describing religion and other beliefs, in the section dealing with the public service remit for television at section 264(13), it defines belief as “*a collective belief in or other adherence to a systemised set of ethical or philosophical principles or of mystical or transcendental doctrines*”. This description is helpful when deciding what is, or is not, a programme which deals with matters of a religious nature.
2. We have also drafted the Code in the light of Articles 9 and 14 of the Convention, which protect the freedom of religious thought and expression, and the practice of religious beliefs, and freedom from discrimination in these areas.
3. The Act requires that there should be a proper degree of responsibility in religious programming and that viewers’ or listeners’ susceptibilities should not be improperly exploited, or their views and beliefs abused.
4. The wording of the legislation (or its intention) has not changed in any significant manner from the relevant sections of 1990 Act.
5. Previous regulation on “*Religion*” and “*Religious and Spiritual Matters and Coverage of Paranormal and Supernatural Issue*” was contained, respectively, in section 7 of the ITC Programme Code and section 7 of the RA Programme Code.
6. Please note that there is further protection afforded by restrictions on the broadcast of certain material on the grounds of Harm and Offence, (section 6 of this consultation) and incitement to crime (section 7 of this consultation).

Proposed inclusions

7. The two proposed principles are new. They are based on the wording of the Act. They are designed to outline the Act’s intention and help audiences, broadcasters and regulators interpret the rules that follow as clearly as possible.
8. Rule 4.1 is based on the wording of the Act section 319(2)(e). It requires a proper degree of responsibility by broadcasters.
9. The meaning of religious programmes, which follows this rule demonstrates that this section of the Code does not apply simply to e.g. a programme regarding an act of worship but would include other types of programming eg a current affairs programme or a programme about the history of a religion, where religion or belief is a significant part of the programme. Section 264(g) of the Act includes some examples of programmes which are defined as religious programmes for the purposes of the public service remit. But this list is not exhaustive.
10. Rule 4.2 is based on the wording of the Act at 319(6) and requires that religious views and beliefs are not abused. It reflects the principles found in

earlier Codes and Guidance. The denigration of religious views and opinions in non-religious programmes would be covered by the proposed rules 2.1 and 2.3 in Harm and Offence.

11. Rule 4.3 is a change. It requires fairness and due accuracy in descriptions of religion. It attempts to address the issue of misrepresentation found in earlier Codes and guidance but seeks to distil the sometimes lengthy provisions into a simple, accessible rule. It relates to the wording of the Act regarding abusive treatment.
12. Rule 4.4 is, generally, a direct transfer from previous Codes and guidance. However, it reflects the requirement of the Act to protect audiences from improper exploitation of any susceptibilities. If audiences know who is addressing them (and why) they are more able to make an informed decision as to how to respond to what is being said, if at all. It draws on section 319(4)(c) of the Act and promotes transparency for audiences.
13. The options and background regarding appealing for funds is explored in the RIA in consultation section 14. A question can be found at the end of this section.
14. There is a separate issue regarding recruits. The Act in section 319(6)(a) requires Ofcom to set standards containing provision designed to secure that religious programmes do not involve “*any improper exploitation of the susceptibilities of the audience for such a programme*”.
15. This is the same wording as that of the 1990 Act. However the ITC and RA interpreted the provision differently. Section 7.6 of the RA Programme Code left it open for programmes and follow up material to recruit as long as it did not improperly exploit the susceptibilities of the listeners. The ITC, in section 7.6 of the Programme Code, required that “*Religious programmes on non–specialist channels may not be designed for the purpose of recruiting viewers to any particular religious faith or denomination.*” The ITC allowed recruitment in programmes on specialist channels but not on general channels. (Television and radio advertising regulation prohibits recruiting in advertisements.)
16. Ofcom can continue the ITC interpretation regarding television or it can bring television into line with radio. If it did so this would be a change. Those whose religion requires their members to convert others may feel the present rule is discriminatory. However those who come across a religious programme on a general channel which is recruiting for members may be offended if they are members of a different religion or no religion. They may also be offended if under eighteens in their families are exposed to such recruitment appeals. There is a presumption that parents wish to retain control of their children’s religious, moral and philosophical education.
17. Ofcom invites responses on the issue of maintaining or omitting the present rule prohibiting recruitment by religious programmes on specialist channels. A question is included on this matter at the end of this section.
18. Rule 4.5 relates to this issue. If a programme’s motive is to recruit then the programme must be transparent about that. This derives from 319(2)(e) and also 319(6)(a).

19. Rule 4.6 is a reflection of section 319(6)(a) of the Act and can be found in previous Codes and guidance. It requires that programmes do not prey on the susceptibilities of the audience.
20. Rule 4.7 draws on section 319(6)(a) of the Act and also on earlier provisions by the ITC and RA. The intention is primarily the protection of individuals where their susceptibilities are concerned. Some (especially newer) belief-systems have not been subjected to significant peer-review and/or extensive academic scrutiny and are not accountable to any other body. It is proposed that such programmes may not be shown when children, who are as yet unable to form mature judgements on such matters, may be watching in significant numbers or are particularly likely to be listening.

Proposed deletions

21. Much of what was previously found in earlier Codes has been simplified in the new rules. However, the requirement in section 7.9 of the ITC Programme Code that “*Licensees must satisfy themselves that follow-up material is responsible in tone and content*” has been omitted. This would now be covered by the general rules on programme related material in consultation section 13 (regarding commercial references in programmes and other matters) and requires broadcasters to be responsible for such material.
22. The provisions related to hypnotism in rule 7.13 of the RA Programme Code are now to be found in section 5 of this consultation on Harm and Offence.
23. Currently, the new rules do not differentiate between a *general* and a *specialist religious* service. Depending upon the outcome of the consultation, this may change. For example, if it is felt that protection of audience susceptibilities involves the restriction of matters like recruitment to specialist religious broadcasters alone, then the wording of the Code will reflect this.

Questions

Question 7a: Are the principles, rules and meanings necessary, consistent, proportionate and achievable? If not, can the wording be improved and if so how?

Question 7b: Are there any principles, rules or meaning we have not put here which would achieve the intentions of the Communications Act and other applicable legislation and be necessary, consistent, proportionate and achievable?

Question 7c: Which of the options regarding appealing for funds for religious programmes and/or services described in the RIA, section 14 of this consultation should Ofcom include in the Code and why?

Question 7d: Should religious programmes on non specialist television services be allowed to recruit?

Question 7e: Does the final rule in this section provide sufficient protection for children and susceptible audience members or is it, conversely, too protective?

Section 8

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

This section is laid out as follows:

- Proposed Code section 5
- Background to proposed Code section 5
- Proposed inclusions
- Proposed deletions
- Questions

Proposed Code, section 5, Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions

(section 319(2)(c) and section 320 of the Act)

This section of the Code does not apply to the BBC which is regulated on these matters by the BBC Board of Governors.

Principles

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

To ensure that controversial political and industrial matters and matters of current public policy are dealt with accurately, fairly and with an appropriate level of objectivity and even-handedness.

To encourage a wide range of views on controversial political and industrial matters and matters of public policy.

To ensure that broadcasters do not use their services as a platform for their views on controversial political and industrial matters and matters of public policy.

To ensure that the views and opinions of particular persons or bodies on controversial political and industrial issues and events and matters of public policy are not given undue prominence.

Rules

News

- 5.1 News, in whatever form, must be reported with due accuracy and presented with due impartiality
- 5.2 An appropriate range of views should be fairly and dispassionately reported and presented over an appropriate time scale when covering controversial political and industrial events and issues and matters of current public policy.

This is particularly so on matters of major political or industrial controversy and major matters relating to current public policy.

- 5.3 Significant mistakes should be acknowledged as quickly as possible and corrected on air with due weight.
- 5.4 No active politician should be used as a newsreader, interviewer or reporter in any news programmes. Where, in exceptional circumstances this may be editorially justified, the political allegiance must be made clear to the audience.
- 5.5 Simulated news bulletins in other programmes (eg drama, current affairs) must be produced in such a way that there is no reasonable possibility of listeners or viewers being misled into believing they are listening or watching an actual news bulletin.

Special impartiality requirements

Matters of political or industrial controversy and matters relating to current public policy on television services, teletext services, national radio and national digital sound programmes and services

- 5.6 Due impartiality on matters of political and industrial controversy and matters relating to current public policy must be preserved on the part of the person providing a television service, teletext service, national radio and national digital sound programmes and service. This may be achieved within a programme or over a series of programmes taken as a whole.

Meaning of “due impartiality”:

Impartiality requires fairness, accuracy and an appropriate level of objectivity and even handedness of approach to a subject. “Due” is an important word in the context of impartiality. “Due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. It means adequate or appropriate to the subject and nature of the programme. So the approach to impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in section 2 of the Code, is important.

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

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

Meaning of “series of programmes taken as a whole” (in relation to television and national radio):

This means more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like

audience. A series can mean e.g. a strand, or two programmes (such as a drama and a debate about the drama) or a 'cluster' or 'season' of programmes on the same subject.

- 5.7 The transmission of editorially linked programmes dealing with the same subject matter (as part of a 'series' in which the broadcaster aims to achieve due impartiality) should normally be announced to the audience on air.
- 5.8 Views and facts must be represented clearly, accurately, fairly and with due weight over appropriate time-frames.
- 5.9 Any off air status of a reporter or presenter, which might call into question his or her role in the programme, must be made transparent to the audience.
- 5.10 If a reporter or presenter is receiving money or benefits from any individual or group whose views are included in the programme, then that must be made clear to viewers or listeners.
- 5.11 Presenters, reporters, presenters of 'personal view' or 'authored programmes' and chairs of discussion programmes may express views on matters of political or industrial controversy or matters relating to current public policy as long as those views are adequately challenged by alternative voices either in the programme (eg through the inclusion of interviews, phone-in or panel debate), or in a series of programmes taken as a whole. Presenter phone-ins must invite and must not exclude alternative views.
- 5.12 Presenters must not use the advantage of regular appearances as a platform to give views undue prominence.
- 5.13 A 'personal view' or 'authored' programme must be clearly signalled to the audience at the start and end. (Personality phone-in hosts on radio are exempted from this provision unless their personal view status is unclear).

Meaning of "personal view" and "authored":

'Personal view' programmes are programmes where the presenter is presenting his or her personal view, opinion or beliefs on these matters. Personal views can range from the outright expression of highly partial views e.g. by a person who is a member of a lobby group and is campaigning on the subject, to the considered 'authored' opinion of a journalist, commentator or academic, with professional expertise or a specialism in an area which enables her or him to express opinions which are not necessarily mainstream

Matters of major political or industrial controversy and major matters relating to current public policy on television services, teletext services, national radio and national digital sound programmes and services

- 5.14 The rules described under due impartiality above apply. **In addition**, due impartiality must be preserved by the person providing a television service, teletext service, national radio and national digital sound programmes and service in **each programme or in clearly linked and timely programmes** on matters of **major** political and industrial controversy and **major** matters relating to current public policy, in which the matter is the subject (or a significant part) of the programme.

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

These will vary according to events but are generally matters of political or industrial controversy or matters of current public policy which are of national, and often international, importance.

- 5.15 **A full range of significant views and relevant facts** must be represented clearly, accurately, fairly and with due weight in **each programme or in clearly linked and timely programmes** concerning matters of major political and industrial controversy and major matters relating to current public policy.

Undue prominence in programming on matters of political or industrial controversy and matters relating to current public policy (local radio services, local digital sound programme services, or radio licensable content services)

- 5.16 Broadcasters should not give undue prominence to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy in programmes included in the service taken as a whole.

Meaning of “undue prominence of views and opinions” (in this section):

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

Meaning of “programmes included in the service taken as a whole” (in this section):

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

Views of television and radio licensees and S4C (excluding radio and television restricted services)

- 5.17 Television and radio services and S4C (with the exception of restricted services) must exclude all expressions of the views and opinions of the persons providing the service on matters of political and industrial controversy and matters relating to current public policy. Views and opinions relating to the provision of programme services are excluded from this requirement. (The service may include the expression of views and opinions by the persons providing the service if they are speeches in a legislative forum.)

Background to proposed Code section 5 - Due Impartiality

1. The principles and rules in this section of the Code are based on sections 319(2)(c) and (d) and 320 of the Act. (You can find these in annex 4 of this consultation). We have also carefully considered Article 10 of the Convention – the right of free expression. (You can find this in annex 6 of this consultation.)
2. The wording of the legislation (or its intention) has not changed in any significant manner from the relevant sections of the 1990 Act.
3. Previous regulation on ‘due impartiality’, ‘due accuracy’ and ‘undue prominence’ was contained in section 3 and 2.12 of the ITC Programme Code, and in section 1 of the RA News and Current Affairs Code, (some of that section also deals with fairness matters).
4. High profile cases in the last few years under the ITC have included a John Pilger programme on Palestine on ITV, and Fox News during the Iraq war. In neither case was the broadcaster found to be in breach of the ITC Programme Code.

Proposed Inclusions

5. The four principles are new. Principles one, two and four are based on wording from the Act. Principle three is an expression of the high level principle behind the creation of due impartiality legislation and is also an acknowledgment of the Article 10 of the Convention.

News

6. Rules 5.1 is based on wording from the Act. *Impartiality and the News* a research study conducted by Ipsos-RSL on behalf of Ofcom/ITC in December 2003 (*Ofcom review of public service television broadcasting phase 1 annex 7.11, 2004*) examined attitudes to news impartiality in the UK. Over three-quarters of the 4000 respondents said impartiality in news was a good thing. Accuracy was viewed as even more important. The survey demonstrated that there are greater expectations for news channels that are perceived to be aimed at a UK audience than there are for channels with a global audience or for retransmitted news services made originally for non UK audiences. Section 319(4)(c) of the Act requires Ofcom to have regard in setting standards to the likely expectation of the audience and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience.
7. However it would be possible to create a new rule to add here. The research could be taken to show that given the complaints received during the Iraq war by the ITC, the essential tool UK audiences require is an indication of whether they are watching or listening to news that is primarily made for an overseas audience. This also fits in with the spirit of section 319(4)(d) of the Act. Over 70% in the survey recognised examples of retransmitted news services that were in fact made for a country outside the UK or for a global audience, but that leaves a proportion who did not realise that. A rule could be created which says retransmitted news made originally for a non UK audience should, in some way, be labelled as such. Such a rule would aid transparency for the

proportion in the survey who did not realise they were watching a non UK news. But would such a rule, which would be particular to the United Kingdom, be necessary, consistent, proportionate and achievable? It would still be the case that such services must ensure that a wide range of views and opinions are aired and that 'due impartiality' is still maintained. A question on this can be found at the end of this section.

8. Rule 5.2 is based on wording from the Act. Additional wording is drawn from the previous Codes as they are clear and well understood by broadcasters. The words 'appropriate time scale' have replaced the idea that views should be carried during the period in which a controversy is active and that editorial discretion will decide whether this is in a single news item or spread over bulletins.
9. Rule 5.3 draws on the intention of 'due accuracy' in the Act. The word 'significant' has been put there to acknowledge that some mistakes are more important than others and mistakes which are insignificant may not need correction. Due weight also incorporates the expectation of due prominence.
10. Rule 5.4 explains how, in practice, 'due impartiality' must apply to politicians who present news and acknowledges the need for transparency. Broadcasters currently abide by this rule. Additional wording from the ITC and RA Codes may move into guidance.
11. Rule 5.5 can be found in section 2.12 (ii) of the ITC Programme Code and ties in with the idea of 'due accuracy' and also with the idea of transparency for the viewer and listener.

Special impartiality requirements

Matters of political or industrial controversy and matters relating to current public policy on television services, teletext services, national radio and national digital sound programmes and services

12. The next part of this section deals with the special impartiality requirements described in section 320 of the Act.
13. The meanings have been created to explain how Ofcom will interpret the legislation and to help viewers and listeners, in particular, understand what these, sometimes quite technical terms, mean.
14. Rule 5.6 is drawn from the words of the Act, section 320(1)(b), (2)(a) and (b) and 4(a) and is required by section 320(5)(a).
15. The meaning of "due impartiality" draws on the understanding that broadcasters already have of this term but has some fresh wording which, in particular takes account of the requirements of 319(4)(c) of the Act, that is the expectation of audiences, and how they may be altered.
16. The meaning of "matters of political controversy and matters relating to current public policy" is included to aid understanding by viewers, listeners and those who work in the broadcasting industry. The explanation regarding public policy is new but, we believe, captures the meaning of the Act.

17. The meaning of “series of programmes taken as whole” is of particular use to viewers and listeners. It gives examples of ways in which programmes may be grouped together. Ofcom is required by legislation to determine what constitutes a series by section 320(5)(b) of the Act. The word “series” has changed over time and now encapsulates the idea of clusters and seasons, not simply a short run of programming on one subject. The period in which such a series should be transmitted has not been defined because that can vary according to the issue. For example, a series about legislation that is due to be debated in Parliament in a week’s time may need to be transmitted in that week whilst a series about legislation planned for a year’s time could run over a much longer period. The meaning also includes the words that the programmes should be “aimed at a like audience”. This is a concept that has been used in radio. In television terms it is understood that the type of audience available e.g. in peak is different to those available in the middle of the night or in daytime and if interested viewers are to be given the opportunity to hear further views then it should be at a time when they stand a reasonable chance of viewing the programme/s.
18. Rule 5.7 qualifies rule 5.6 by explaining that the existence of linked programmes in a series should normally be announced on air to the audience. This rule has generally been applied by broadcasters in the past and is not a new departure. It provides for greater transparency for the audience so that they know that they can find other views on an issue. It is not however an absolute requirement because it may be the case that over a long running issue fresh programming will be in the process of being made and the broadcaster will be unclear on precise transmission plans. This is a further explanation of what constitutes a series as required by section 320(5)(b) of the Act.
19. Rule 5.8 is a requirement that applies to rule 5.1. Fairness and factual accuracy are integral to “due impartiality” and are already understood by broadcasters. The words “clarity” and “due weight” have been added. Representing views clearly is part of a fair approach to different views. “Due weight” acknowledges that some facts and views are less important than others.
20. Rules 5.9 has been the practice for radio services and supports the general principle of transparency to the audience.
21. Rule 5.10 is a new rule but Ofcom believes that a financial or other benefit may be seen to be, or may be, an inducement to a presenter or reporter to take a particular line and in the interests of “due impartiality” and transparency the audience need to know this. This does not stop a programme from going ahead.
22. Rule 5.11 is drawn from current radio practice but is a change of emphasis from television custom and practice. It explains how “due impartiality” can be met whilst allowing presenters and reporters freedom of expression. Broadcasters feel that the ‘requirement’ in the ITC Programme Code to have a balancing “personal view” programme has had an inhibiting effect. Television broadcasters have been concerned that if they commission an opinion programme they will be constrained to broadcast a second opinion programme to balance it (taking the opposite view) and that presents scheduling difficulties and can be unattractive and unimaginative from the point of view of the audience. Broadcasters say that this has acted as a brake

preventing the full expression of all shades of opinion, on significant matters, that are essential in a democratic society. Broadcasters have argued that it has inhibited their right of freedom of expression under Article 10 of the Convention to impart information and ideas and for the listener and viewers to receive them. Although broadcasters of course acknowledge that the right of freedom of expression is subject, under Article 10 to the restrictions, prescribed by law, which are necessary in a democratic society. (You can read Article 10 in annex 6.)

23. Rule 5.12 qualifies rule 5.11. It means that even if a presenter view is balanced, as described in rule 5.11, presenters may not, over time, use their position to continually promote a view. It is drawn from radio practice and is an extension of the principle expressed in section 320(1)(c) of the Act.
24. Rule 5.13 also qualifies rule 5.11. The aim is to inform the audience and give greater transparency. If this is complied with it allows greater freedom of expression for the broadcaster. The requirement to signal this type of programme to the audience – both at the start to inform those watching or listening, and also at the end for those who may have turned on part way through the programme - is drawn from 319(4)(c) and (d). It also means that at the start and end of a programme, when presenters and reporters most commonly lay out their thesis and conclusions, the audience is made aware that they are listening to a perspective even if the aim is to achieve due impartiality within the programme. It is not anticipated that the actual words “personal view” or “authored” will be necessarily used by broadcasters but whichever form of labelling most suits their brands and audiences. The balancing programme obligation itself has been removed and the different ways in which challenging views could be achieved is expressed in rule 5.11.
25. The meaning of “personal view” draws on the way the words are presently understood by broadcasters. However the word “authored” has also been explained. This is a departure. “Authored” is a technical expression used by broadcasters and unlikely to be understood by members of the public. It deals with the difficulty of calling the considered judgements of a respected commentator a “personal view” whilst they none the less may reflect what is in fact an opinion even though it is an opinion based on experience, knowledge and judgement. This is not intended to cover news reports by correspondents or extended programmes by news correspondents unless they are clearly giving a “personal view.”

Matters of major political or industrial controversy and major matters relating to current public policy on television services, teletext services, national radio and national digital sound programmes and services

26. This part of the section concerning major matters contains two rules and one related meaning.
27. Rule 5.14 is based on the wording of section 320(6)(a) and (b) but adds some new wording. The new wording relates to the timing of a balancing programme or programmes and to signalling that such a programme/s exists to the audience It is there to aid transparency and links to section 319(4)(c). It also acknowledges the significance the Act gives to major matters of major political and industrial controversy and major matters relating to current public policy.

28. The meaning of major matters draws on wording that is well understood by broadcasters.
29. Rule 5.15 draws on the wording of rule 5.8 but applies to major matters. As this relates to major matters the rule further requires that a full range of significant views and relevant facts should be included in the programme or series.

Undue prominence in programming on matters of political or industrial controversy and matters relating to current public policy (local radio services, local digital sound programme services, or radio licensable content services)

30. The part of this section on “undue prominence” in programming contains one rule and two related meanings. Rule 5.16 draws on section 320(1)(c) of the Act.
31. The meaning of “undue prominence of views and opinions” draws on broadcaster’s current understanding of the meaning of these words.
32. The meaning of “programmes included in the service taken as a whole” is a change in meaning. Previously the RA specified a period of three months before the transmission of the item in question and three months after. This has been changed to the wording “appropriate period” and acknowledges that some matters are current for a short period and others for much longer. If the broadcaster has a reasonable proposition for the timing of programmes within a service then that will be a more logical way of approaching timing than using an arbitrary time frame. It will however be open to a listener with a complaint to say why the listener thinks the broadcaster’s approach to the appropriate period may be wrong.

Views of television and radio licensees and S4C (excluding radio and television restricted services)

33. The final part concerning the views of television and radio licensees and S4C contains one rule, 5.17 which is based on wording from section 320(1)(a) of the Act.

Proposed deletions

34. The specific section regarding personal view programmes contained in section 3.5 of the ITC Programme Code has been removed. Personal view programmes are allowed but the rules regarding how balance may be achieved, that facts should be respected and transparency at the front of the programme have all been dealt with as separate matters that apply to all programmes dealing with matters defined in section 320 of the Act.
35. Section 3.6 of the ITC Programme Code contains guidance regarding interviews and discussion has also been removed as it does not have the force of a rule.
36. General narration has also been removed. Where relevant, aspects of this may be included in guidance to this section of the Code.

Questions

Question 8a: Are the principles, rules and meanings necessary, consistent, proportionate and achievable? If not, can the wording be improved and if so how?

Question 8b: Are there any principles, rules or meaning we have not put here which would achieve the intentions of the Communications Act and other applicable legislation and be necessary, consistent, proportionate and achievable?

Question 8c: Does this section encourage imaginative and challenging programming on controversial matters?

Question 8d: In particular do rules 5.11, 5.12 and 5.13 and the associated meanings of “personal view” and “authored” programmes give broadcasters enough flexibility to produce challenging programmes while ensuring that the Act is complied with?

Question 8e: Would appropriate labelling help the UK audience understand the nature of retransmitted news services (not primarily intended for the UK market)?

Section 9

Election and Referendum Reporting

This section is laid out as follows:

- Proposed Code section 6
- Background to proposed Code section 6
- Proposed inclusions
- Proposed deletions
- Questions

Proposed Code, section 6, Election and Referendum reporting

(sections 319(2)(c) and 320 of the Act. Broadcasters should also have regard to the Political Parties, Elections and Referendums Act 2000 and relevant sections of the Representation of the People Act 1983 - see particularly sections 92, 93 and 66A)

This section of the Code does not apply to the BBC which is regulated on matters of due impartiality and accuracy in news by the BBC Board of Governors.

Rules made under section 333 of the Act (regarding party election broadcasts, party political broadcasts and referendum campaign broadcasts) and paragraph 18 of schedule 12 are contained in Ofcom's rules for party political, party election and referendum campaign broadcasting on ITV, Channel 4, Five and National Commercial Radio. Such broadcasts are expected to comply with the provisions of this Code e.g. the provisions regarding harm and offence - although editorial control normally rests with the relevant political parties.

Principles

To ensure that the provisions of section 5 of this Code, and legislation relating to broadcasting on elections and referendums, are applied at the time of elections and referendums.

Rules

Programmes at the time of elections and referendums

- 6.1 The rules in section 5, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums.

Programmes at the time of elections and referendums in the UK

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

Meaning of "elections":

This includes parliamentary general elections, parliamentary by-elections, local government elections, mayoral elections, Scottish Parliament, and Welsh, Northern Ireland and London Assembly elections, [Regional Assembly elections] and European parliamentary elections.

Meaning of “referendums”:

Referendums includes UK-wide, national, and regional referendums but does not extend to local referendums.

- 6.2 Due weight must be given to the coverage of major parties during the election period. Broadcasters must also consider giving appropriate coverage to smaller parties and independent candidates with significant views and perspectives.

Meaning of “major party”:

In the UK major parties presently are the Conservatives, Labour, and the Liberal Democrats. In addition major parties in Scotland and Wales respectively, are the Scottish National Party and Plaid Cymru and the major parties in Northern Ireland are Democratic Unionist, Sinn Fein, Social Democratic and Labour Party, and Ulster Unionist.

Meaning of “election period”:

For a parliamentary general election this period begins with the announcement of the dissolution of Parliament. For a parliamentary by-election this period begins with the issuing of a writ or on such earlier date as is notified in the London Gazette. For the Scottish Parliament elections, the period begins with the dissolution of the Scottish Parliament, or with the date of the occurrence of a vacancy, in the case of a by-election. For the National Assembly for Wales, the Northern Ireland Assembly, the London Assembly and for local government elections it is the last date for publication of notices of the election. For European elections it is the last date for publication of the notice of election, which is 25 days before the election. In all cases the period ends with the close of the poll.

Meaning of “referendum period”:

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

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

Meaning of “designated organisation”:

These are organisations designated by the Electoral Commission as representing those campaigning for a particular outcome in the referendum.

Meaning of “permitted participants”:

Campaigners in a referendum have to register as permitted participants in the same way that political parties do for an election.

- 6.4 Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations not to any poll conducted in part, or entirely, by post).
- 6.5 Broadcasters may not publish the results of any opinion poll on polling day itself until the election or referendum poll closes. (For European Parliamentary elections this applies until all polls throughout the European Union have closed).
- 6.6 Candidates in UK elections, and representatives of permitted participants in referendums, must not present news, carry out interviews or present any type of programme during the election period.
- 6.7 Appearances in non-political programmes that were planned or scheduled before the election period may continue, but no new appearances should be arranged and transmitted during the period.

Constituency coverage and electoral area coverage in elections

- 6.8 The rules regarding due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion.

Meaning of “electoral area”:

The local government equivalent of the parliamentary terms ‘constituency’ and ‘by-election’ are ‘electoral areas’ and ‘election to fill a casual vacancy’. Rules 6.8-6.12 apply to an electoral division, borough ward or other area in the same way as to a constituency for a parliamentary election.

- 6.9 If a candidate takes part in an item about her/his particular constituency, or electoral area, then candidates, of each of the major parties, must be offered the opportunity to take part. (If they refuse, or are unable to participate, the item may, despite that, go ahead.)
- 6.10 Broadcasters transmitting constituency, or electoral areas, reports and debates must offer the chance to take part to candidates within the constituency or electoral area representing parties with previous significant electoral support or parties with evidence of significant current support. (If they refuse, or are unable to participate, the item may, despite that, go ahead.)
- 6.11 Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision.
- 6.12 Where a politician is taking part in a programme on any matter, after the election has been called, s/he must not be given the opportunity to make constituency points, or electoral area points about the constituency or electoral area in which s/he is standing, where no other candidates will have a similar opportunity.

- 6.13 If coverage is given to wider election regions i.e. in elections to the Scottish Parliament, Welsh Assembly, Northern Ireland Assembly, [Regional Assembly], London Assembly, or European Parliament, then rules 6.8 to 6.12 apply in offering participation to candidates. In these instances all parties who have a candidate in the appropriate region should be listed in sound and/or vision, but it is not necessary to list candidates individually. However any independent candidate who is not standing on a party list must be named.

Background to proposed Code section 6 – Election and Referendum Reporting

1. This section does not apply to the BBC as it is separately regulated on these matters by the Corporation's Board of Governors.
2. Previous regulation, based on the RPA, enabled one candidate in a constituency to effectively prevent broadcaster coverage by refusing to take part in a constituency report or debate. That right of veto has gone. The Code acknowledges this.
3. Previous regulation in this area was contained in section 4 of the ITC Programme Code and section 3 of the RA News and Current Affairs Code.

Proposed inclusions

4. All meanings and rules in this section are consistent with the previous legacy Codes. However for the first time this regulation covers referendums and therefore rules and meanings have been changed to take that into account.
5. Rule 6.1 is consistent with the preceding Codes but now includes referendums.
6. The meaning of elections would be expanded to include elections to regional assemblies if these are established. Otherwise it is consistent with previous legacy Codes.
7. Rule 6.2 is consistent with previous legacy Codes as are the associated meanings.
8. Rule 6.3 and the associated meanings are new and affectively applies the intent of rule 6.2 to referendum coverage.
9. Rule 6.4 is consistent with previous Codes but updates the rule to take into account postal ballots.
10. Rule 6.5 reflects the provisions of section 66(A) of the RPA. It has been clarified to take into account European Parliamentary Elections.
11. Rule 6.6 is consistent with legacy Codes but has been updated to take referendums into account.
12. Rule 6.7 is consistent with previous regulation.
13. Rules 6.8 – 6.13 are consistent with legacy regulation.

14. The meaning of “electoral area” is consistent with the meaning in the RA News and Current Affairs Code.
15. Rules 6.9 and 6.10 clarify that the ‘right of veto’ no longer exists.
16. Rule 6.13 will be updated if necessary to take into account Regional Assemblies if they are established.

Proposed deletions

17. The rules contained in section 4.4 of the ITC Programme Code and rule 2.3 of the RA News and Current Affairs Code, regarding the use of recordings of Parliamentary proceedings have been removed from this section. Parliamentary Broadcasting Unit Limited (PARBUL) is the company which provides broadcasters with television pictures (and sound) of the proceedings of the House of Commons, the House of Lords and of committees of each House. It is owned by the BBC, ITV, Channel 4, BskyB and Five. The company holds copyright licences from the Speaker (for the House of Commons) and the Clerk of the Parliaments (for the House of Lords) which allow it to do this. All those concerned in this process are obliged to operate within the rules of coverage set by the relevant authorities in each House.
18. Broadcasters, who pay a fee for the use of this material, (if they are not members of PARBUL) must comply with the parliamentary rules for the use of coverage of proceedings. That is an essential part of the arrangement they come to when they acquire material and therefore is not in this Code.
19. Commentary which was effectively guidance and did not have the force of rules has also been removed from the proposed Code but may be kept within web based guidance.
20. Rules regarding the allocation of party election broadcasts, party political broadcasts and referendum campaign broadcasts have been taken out of the Code as they only apply to the Public Service Broadcasters (PSBs). As explained in the proposed Code they are now contained in a separate Ofcom publication which will be available on the Ofcom web site and in paper form on request. The proposed Ofcom rules for party political, party election and referendum campaign broadcasting on ITV, Channel 4, Five and National Commercial Radio were published for consultation in June 2004.

Questions

Question 9a: Are the principles, rules and meanings necessary, consistent, proportionate and achievable? If not, can the wording be improved and if so how?

Question 9b: Are there any principles, rules or meanings we have not put here which would achieve the intentions of the Communications Act and other applicable legislation and be necessary, consistent, proportionate and achievable?

Section 10

Fairness

This section is laid out as follows:

- Proposed Code section 7
- Background to proposed Code section 7
- Proposed inclusions
- Proposed deletions
- Questions

Proposed Code, section 7, Fairness

(sections 3(2)(f) and 327 of the Act and section 107(1) and 130(1) of the 1996 Act, TWF Directive Article 23.)

Foreword

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

This section contains rules Ofcom expects broadcasters to observe in order to avoid unfairness in programmes to individuals or organisations. However, failure to observe any rule in this section will normally only constitute a breach of this section of the Code where it results in unfairness in the programme. Importantly, the Code cannot foresee every eventuality and does not set out all circumstances in which there may be unfairness.

Principle

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

Rules

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

Dealing fairly with contributors and obtaining informed consent

- 7.2 Broadcasters and programme makers should be straightforward and fair in their dealings with potential contributors to programmes. This normally includes making clear what the nature and purpose of the programme is and the nature of their respective contractual rights and obligations.
- 7.3 Where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor), they should normally:
- be told the nature of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when and where it is likely to be first transmitted;

- be told what kind of contribution they are expected to make e.g. live, pre-recorded, interview, discussion, edited, unedited etc;
- be informed about the areas of questioning, and, wherever possible, the nature of other contributions;
- be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and cause material unfairness (e.g. relevant changes in programme title or tone of the programme);
- be told, if offered an opportunity to preview the programme, whether they will be able to effect any changes to it;
- if the contributor is a child, consent should normally be obtained from a parent or guardian, or other person over the age of eighteen in loco parentis. In the case of an adult, who is not in a position to give informed consent, a person over the age of eighteen with primary responsibility for their care should normally give it on their behalf.

7.4 When a programme is edited, contributions should be represented fairly.

7.5 Guarantees given to contributors, e.g. relating to the content of a programme, confidentiality, or anonymity, should normally be honoured.

7.6 Broadcasters should ensure that the reuse of material, i.e. use of material originally recorded for one purpose and then used in a later or different programme, does not create unfairness (or an unwarranted infringement of privacy). This applies both to material obtained from others and the broadcaster's own material.

Opportunity to contribute and proper consideration of facts

7.7 Broadcasters should satisfy themselves, before transmitting a factual programme, that all material facts have been considered and are fairly presented.

7.8 Non-factual programmes (such as drama and drama-documentaries) should not distort facts in a way which is unfair to an individual or organisation. Care should also be taken in the characterisation or casting not to convey an unfair impression of the characters on whom the drama is based.

7.9 All relevant parties should be offered an opportunity to contribute where that is necessary to achieve fairness.

7.10 If a damaging critique is made in a programme, those concerned should normally be given an appropriate and timely opportunity to respond.

7.11 Anyone has the right to refuse to participate in a programme, but that need not prevent the programme from going ahead. Where a person chooses to make no comment or refuses to appear in a broadcast, the broadcast should make clear that the individual concerned has chosen not to appear and their explanation, if it could be unfair not to do so.

7.12 Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner and tone.

Deception, set-ups and 'wind-up' calls

- 7.13 Broadcasters or programme-makers should not normally obtain or seek information, pictures or an agreement to contribute through misrepresentation or deception.
- 7.14 Use of material obtained through misrepresentation or deception may be warranted if it is in the public interest. Where there is no adequate public interest justification, consent should be obtained from the individual concerned before the material is broadcast. Material with celebrities and those in the public eye can be used without consent, however it should not be used without a public interest justification if it is likely to result in unjustified public ridicule or personal distress.
- 7.15 Unsolicited 'wind-up' style calls and set-up interviews require care and the person being 'wound up' should not be exploited. Consent should be obtained before broadcasting 'wind-up' calls and therefore such calls must normally be pre-recorded.

Background to proposed Code section 7 - Fairness

1. The regulation of broadcasting regarding fairness is intended to protect those taking part in person in a programme (or who are otherwise directly affected) from being unfairly treated.
2. Section 3(2)(f) of the Act requires Ofcom to apply standards that provide adequate protection to members of the public and all other persons from unfair treatment in programmes. With regard to fairness, Ofcom is required by section 327 of the Act to take over the functions of the BSC contained in part 5 of the 1996 Act (with some exceptions).
3. Particularly, under section 107(1) of the 1996 Act, Ofcom has a duty to draw up a Code giving guidance as to the principles to be observed and the practices to be followed in connection with avoiding unfair and unjust treatment in programmes. The legislation on which the regulation in this area is based is otherwise unchanged from the 1996 Act. The aim of the principle and rules in the proposed Code is therefore, as can be expected, similar to the Code of Guidance issued by the BSC which is currently in force.

Proposed inclusions

4. The foreword to this section of the Code is intended to explain to users of the Code who and what the section applies to. This is necessary because the sections on fairness and privacy are different from the other sections of the Code.
5. The rules in this section are largely similar to the predecessor Codes. The legislation, on which this section of the Code is based is unchanged. However the wording has changed in places to follow the structure adopted by this Code.
6. The principle and rule 7.1 directly mirror the wording of the legislation in the 1996 Act, section 107(1)(a).
7. Rules 7.2 to 7.6 set out the practices Ofcom expects broadcasters to follow to avoid unfairness when dealing with contributors and obtaining fully informed consent.
8. Rules 7.7 to 7.12 deal with broadcasters' obligation to provide an opportunity to contribute to those who otherwise may be treated unfairly and to give proper consideration to facts. These rules reflect the requirement in the TWF Directive Article 23 to provide a "*right of reply*". The concept of a right to reply is fundamental to fairness and sets a standard which should be applied across all service providers, whether subject to the TWF Directive or not.
9. Rules 7.13 to 7.15 set out the practices broadcasters are expected to follow when using methods involving deception, set-ups, or 'wind-up' calls to obtain material for their programmes.

Proposed deletions

10. This draft section, along with the section on Privacy, of the Ofcom Code will replace the BSC Code on Fairness and Privacy, section 2 of the ITC