



Coimisiún
na Meán

Draft Media Service Code and Media Service Rules

Advertising

(Radio Broadcasters)

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1. Introduction

- 1.1 Pursuant to Sections 46N(1) and (2) of the Broadcasting Act 2009, as amended by the Online Safety and Media Regulation Act 2022, (the “**Act**”) Coimisiún na Meán (the “**Commission**”) may make codes (“**media service codes**”) governing the standards and practices of broadcasters. Pursuant to Sections 46O(1), (2), and (4) of the Act, the Commission may make rules (“**media service rules**”) in relation to the total daily times that shall be allowed for broadcasting of commercial communications.
- 1.2 Pursuant to Section 46O(13)(b) of the Act, the BAI Rules on Advertising and Teleshopping (Daily and Hourly Limits) dated 28 July 2010 were continued in force with the establishment of the Commission.
- 1.3 In accordance with its statutory duties and obligations set out above, the Commission has prepared this media service code (“the **Code**”) and these media service rules (the “**Rules**”) to apply to providers of sound broadcasting services.
- 1.4 The Code and Rules replace the sections of the 2010 BAI Rules on Advertising and Teleshopping (Daily and Hourly Limits) applying to sound broadcasts, which will be revoked as of the date the Rules take effect.

2. Scope and Jurisdiction

- 2.1 The Code and Rules apply only to broadcasters that are under the jurisdiction of the State.
- 2.2 The Code and Rules are made without prejudice to the powers granted to the Minister for Tourism, Arts, Culture, Gaeltacht, Sports and Media, pursuant to Section 106 of the Act, to approve certain time limits for advertisements in sound broadcasting services provided by RTÉ.

3. Purpose and Preparation of the Code and Rules

Purpose

- 3.1 The purpose of the Code and Rules is to ensure that broadcasters that are under the jurisdiction of the State comply with the duties set out under section 46M of the Act, and to ensure that commercial communications adequately protect audience interests.

Preparation of the Code

- 3.2 Pursuant to Section 46N(6) of the Act, the Commission has had regard to the following matters when preparing the Code: -
 - the degree of harm or offence likely to be caused by the inclusion of a particular matter in programme material.

- the likely size and composition of the potential audience for programme material.
- the likely expectation of the audience as to the nature of programme material, and the extent to which the nature of the programme material can be brought to the attention of potential members of the audience.
- the likelihood of persons who are unaware of the nature of programme material being unintentionally exposed to it by their own actions.
- the desirability of securing that the provider of a broadcasting service or an audiovisual on-demand media service informs the Commission of any change affecting the nature of the service and, in particular, of any change relevant to the application of media service codes.
- the desirability of maintaining the independence of editorial control over programmes.

3.3 The Code and Rules have been prepared in accordance with the procedures provided for by Section 46Q of the Act.

4. Regulatory Principles Relevant to the Code and Rules

4.1 In its interpretation, application and enforcement of the Code and Rules, the Commission must, in accordance with its public law duties, act lawfully, rationally and fairly.

4.2 More particularly, the Commission must act in accordance with: -

- its general statutory objectives and functions under the Act.
- the rights conferred by the Constitution, the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights insofar as applicable under the European Convention on Human Rights Act 2003 and the EU Treaties.

4.3 Section 7(2) of the Act provides that, in performing its functions, the Commission shall endeavour to ensure that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld, and that the interests of the public, including the interests of children, are protected, with particular commitment to the safety of children. The Commission shall also endeavour to ensure the Commission's policies in relation to broadcasting services and audiovisual on-demand media services best serve the needs of the people of the island of Ireland.

4.4 In addition, the Commission must endeavour to ensure that its regulatory arrangements (i) address programme material and other content which are harmful or illegal; (ii) take account of technological and societal change; and (iii) operate proportionately, consistently and fairly.

- 4.5 Section 7(3) of the Act provides that, in addition, the Commission shall, inter alia:
- stimulate the provision of high quality, diverse, and innovative programmes by providers of broadcasting services.
 - engage in evidence-based decision-making in the exercise of its functions, and promote evidence-based decision-making by those with which it consults.
 - encourage compliance with the provisions of the Act, and the provisions of any code, rule or other statutory instrument made under it, in any manner the Commission considers appropriate, including by the publication of guidance as to how those provisions may be complied with.
- 4.6 Pursuant to Section 7(4) of the Act, in performing its functions, the Commission shall have regard to: the safety of children, and published policies of the Minister for Children, Equality, Disability, Integration and Youth in respect of that matter; the regulation of gambling, and published policies of the Minister for Justice in respect of that matter; climate change and environmental sustainability, and published policies of the Minister for the Environment, Climate and Communications in respect of that matter; and published policies of the Government in respect of any of those matters.

5. Severability

- 5.1 If any provision of the Code or the Rules is found to be unlawful, invalid, prohibited, unenforceable or inapplicable (either generally or with respect to a particular broadcaster) in any respect, on the basis of any law (including the Constitution and European law), such finding shall not affect the lawfulness, validity, enforceability or applicability of any other provision of the Code and Rules or part thereof, unless the finding is declared to be applicable to such other provision or part thereof, or the same is the subject of the relief granted by a court.
- 5.2 Without prejudice to the foregoing, all of the other provisions and/or parts of the Code and Rules shall remain fully effective, applicable and enforceable. To the extent necessary any provision or part of the Code and Rules found to be unlawful, invalid, prohibited, unenforceable or inapplicable shall be severed from the Code and Rules.

6. Waiver

- 5.3 The fact that the Commission does not respond to or comment upon any submission, assessment, proposal, report, compatibility statement or any analogous document submitted to it by a broadcaster shall not be deemed to be an acceptance or approval of the contents of any part of the same and shall not imply that the provider has complied with its obligations under the Act and/or the Code and Rules.

- 5.4 Without prejudice to the foregoing, the fact that the Commission does not respond or comment on any such document shall not create an estoppel against, or constitute a waiver by, the Commission of any of its powers or rights pursuant to the Act and/or the Rules.

7. Compliance and Enforcement

- 7.1 Pursuant to Section 46N(10) and 46O(11) of the Act, a failure to comply with the Code or Rules shall be a contravention for the purposes of Part 8B of the Act.
- 7.2 A broadcaster shall ensure that it has systems and controls in place to demonstrate compliance with the obligations contained in the Code and Rules.
- 7.3 Pursuant to Section 47(3) of the Act, a broadcaster is required to prepare and implement a code of practice for the handling of complaints relating to the failure of the media service provider to comply with a media service code or media service rule.

8. Complaints

- 8.1 A person may make a complaint if they believe that a broadcaster has not complied with the Code and Rules. Coimisiún na Meán advises complainants to make their complaint to the broadcaster in the first instance as this is the quickest way to have a complaint considered and responded to.

Information on the complaints handling process, including Coimisiún na Meán's process, is available on our website (www.cnam.ie) or you can contact Coimisiún na Meán on + 353 1 963 7755 or at usersupport@cnam.ie.

9. Guidance

- 9.1 The Commission may provide general non-binding guidance regarding the provisions of the Code and Rules on request or as and when it is deemed necessary. The Commission reserves the right to publish and amend guidance from time to time as it sees fit.
- 9.2 Requests for guidance must include the relevant material linked to the request for guidance. The request should clearly state the section(s) of the Code and Rules, which the requestor believes are relevant, and set out the specific question about which the requestor would like a view. The Commission accepts no liability for any decision (or consequences arising therefrom) made following receipt of non-binding general guidance from the Commission.



10. Definitions

Terms not defined below have the meanings given by the Act.

“advertising” is a form of commercial communication (as that term is defined in the Act) and means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.

“broadcaster” means a provider of sound broadcasts.

“community broadcaster” means a person holding a sound broadcasting contract under Sections 64, 68(1)(b) or 72 of the Act.

“programme” means audio material constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a broadcaster, including feature-length films, video clips, sports events, situation comedies, documentaries, children's programmes and original drama.

“sound broadcasting service” or **“sound broadcast”** means a service, within the meaning of Articles 56 and 57 of the Treaty on the Functioning of the European Union, where —

(a) the principal purpose of the service is devoted to providing sound programmes, by electronic communications networks, to the general public, under the editorial responsibility of the provider of the service, in order to inform, entertain or educate, and

(b) the service is provided for simultaneous or near-simultaneous listening to sound programmes on the basis of a programme schedule

“sponsorship” means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of broadcasting services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trade mark, image, activities or products.

Media Service Code Provisions

The following provisions are made pursuant to Sections 46N(1) and 46N(2)(d)(i) of the Act.

11. Advertising

- 11.1 A broadcaster shall ensure that advertising is readily recognisable and distinguishable from editorial content. Advertising shall be kept quite distinct from other parts of the programme by acoustic means. Such means shall not contain any commercial communications, such as a sponsorship announcement.
- 11.2 A broadcaster shall ensure that the insertion of advertising does not affect the integrity (including editorial integrity) of a programme. Advertising segments shall be inserted into programmes in such a way that takes into account the natural breaks and the duration and nature of the programme concerned and shall not prejudice the rights of the rights holders.
- 11.3 A broadcaster shall ensure that advertising is not inserted in any broadcast of a religious service.

Media Service Rules Provisions

The following provisions are made pursuant to Sections 46O(1), (2), and (4) of the Act.

12. Daily and Hourly Limits – Advertising

- 12.1 Subject to sections 12.2 and 12.3, a broadcaster shall ensure that:
- (a) the total daily time devoted to the broadcasting of advertisements does not exceed 15 per cent of the total daily broadcasting time; and
 - (b) the time given to advertising in any clock hour does not exceed a maximum of ten minutes.
- 12.2 A community broadcaster shall ensure that the time given to advertising in any clock hour does not exceed a maximum of six minutes.
- 12.3 A broadcaster holding a contract under section 68(1) of the Act shall not carry advertising.
- 12.4 The following will not be calculated as time spent broadcasting advertising:
- (a) announcements of sponsorship; or
 - (b) announcements made by a broadcaster in connection with its own programmes and ancillary products directly derived from those programmes or with programmes and from other entities belonging to the same broadcasting group.