



Coimisiún
na Meán

Draft Media Service Code

Code of Programme Standards

(Radio and Television Broadcasters)

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1. Introduction

- 1.1 Pursuant to Section 46N(1) 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.
- 1.2 Pursuant to Sections 46N(2)(a), (b) (c), and (e) of the Act, the Commission may make media service codes providing for standards and practices to ensure that programme material protects the interests of the audience.
- 1.3 Pursuant to Section 46N(5) of the Act, the Commission shall make media service codes providing for the matters required to be provided for by Articles 5, 6(1), 6a(1) to (3), 7b, 8, 9, 10, 11, 15, Chapter VI, and Chapter VII (other than Article 26) of Directive (EU) 2010/13 (as amended by Directive (EU) 2018/1808) (the “**Audiovisual Media Services Directive**”) (except in so far as provision is made by media service rules).
- 1.4 In accordance with its statutory duties and obligations set out above, the Commission has prepared this media service code (the “**Code**”).
- 1.5 Pursuant to Section 46N(11)(c) of the Act, the BAI Code of Programme Standards dated 1 March 2015 was continued in force with the establishment of the Commission.
- 1.6 In accordance with its statutory duties and obligations set out above, the Commission has prepared this Code. The Code replaces the 2015 BAI Code of Programme Standards, which will be revoked as of the date this Code takes effect.

2. Scope and Jurisdiction

- 2.1 The Code gives effect to Articles 6(1) and 6a(1) to (3) of the Audiovisual Media Services Directive in Ireland, in so far as they relate to broadcasters.
- 2.2 The Code only applies to broadcasters under the jurisdiction of the State within the meaning of Section 2A of the Act.

3. Purpose and Application of the Code

Purpose

- 3.1 The purpose of the Code is to ensure that broadcasters that are under the jurisdiction of the State comply with the duties set out in the Act relating to the broadcasting of programme material on their services.

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 a broadcaster 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 has been prepared in accordance with the procedures provided for by Section 46Q of the Act.

4. Regulatory Principles Relevant to the Code

4.1 In its interpretation, application and enforcement of the Code, 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 In its interpretation of the Code, the Commission will have due regard to the right to freedom of expression conferred under Article 40.6.1 of the Constitution, Article 11 of the Charter of Fundamental Rights of the European Union, and Article 10 of the European Convention on Human Rights.

4.4 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 broadcasters best serve the needs of the people of the island of Ireland.

- 4.5 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.
- 4.6 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 and audiovisual on-demand media services,
 - provide a regulatory environment that will sustain independent and impartial journalism,
 - 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.
- 4.7 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 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 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 shall remain fully effective, applicable and enforceable. To the extent necessary any provision or part of the Code found to be unlawful, invalid, prohibited, unenforceable or inapplicable shall be severed from the Code.

6. Waiver

- 6.1 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 broadcaster has complied with its obligations under the Act and/or the Code.

- 6.2 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 Code.

7. Compliance and Enforcement

- 7.1 Pursuant to Section 46N(10) of the Act, a failure by a broadcaster to comply with the Code 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 this Code.
- 7.3 Pursuant to Section 47(3) of the Act, broadcasters are required to prepare and implement a code of practice for the handling of complaints relating to the failure of the broadcaster to comply with a media service code.

8. Complaints

- 8.1 A person may make a complaint if they believe a broadcaster has not complied with this Code. 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.
- 8.2 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 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, 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. General Definitions

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

“**broadcaster**” means a provider of sound broadcasts or television broadcasts as defined in this Code.



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

- (a) a service provided in a non-linear manner where each user of the service chooses a programme from a catalogue of programmes, or
- (b) any other services provided by way of the internet, if the service does not provide audiovisual programmes.

“child” or **“children”** means a person or persons under the age of 18 years.

“programme” means (a) a set of moving images with or without sound or (b) audio material, in each case constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider, 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

“television broadcasting” or **“television broadcast”** (i.e. a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule.

11. Objectives

11.1 The objectives of the Code are: -

- a) to promote the responsible provision of broadcasting services which enhance access to information, entertainment and education and a range of views, while avoiding undue offence and harm.
- b) to acknowledge the diversity of tastes and interests that exist in contemporary Irish society and to encourage and facilitate broadcasting that caters for this diversity.

- c) to advise viewers and listeners on the standards they can expect from broadcasting.
- d) to enable viewers and listeners to hold broadcasters to account in the event that they believe that a broadcaster has behaved irresponsibly.

12. Importance of Context

- 12.1 Broadcasters shall ensure that they schedule programme content appropriately taking into account, amongst other things: -
- a) the nature of the programme material.
 - b) the genre of the programme material.
 - c) the likely age range of the audience.
 - d) the nature of the broadcast service.
 - e) the particular programme and the time of day when children are likely to be watching or listening to programme material (including, in the case of radio, during school-run or holiday periods).
 - f) on television services, the use of the watershed (which operates after 21.00), where appropriate.
- 12.2 Broadcasters shall ensure that they use prior warnings where programme material has the potential to offend or cause distress to audiences.
- 12.3 Broadcasters shall ensure that they have due regard to the established audience expectations of a broadcasting service and/or a programme and to the consequences of any intentional departure from the usual nature of the service or content of the programme.
- 12.4 Broadcasters shall ensure that in live programming they take timely corrective action where unplanned content is reasonably likely to have caused undue offence. Such action may be to acknowledge, clarify and/or apologise for such content.
- 12.5 Broadcasters shall ensure that all audience information and guidance mechanisms are provided in a manner which is clearly audible for radio audiences and clearly visible and audible for television audiences.
- 12.6 Broadcasters shall ensure that they promote on-air their audience information and guidance mechanisms.

13. Violence, Sexual Content and Offensive Language

- 13.1 Broadcasters shall ensure that they have due regard to the appropriateness of and/or editorial justification for the inclusion in programme material of the following content: -
- i. violence.
 - ii. sexual content.
 - iii. offensive language.
- 13.2 Broadcasters shall be alert to, and guard against, the use of offensive language in live programming and, where such incidents occur, take timely steps to minimise any offence caused, such as acknowledging, clarifying and/or apologising for the language used.

14. Protection from Harm

- 14.1 Broadcasters shall ensure that they take due care when broadcasting programme material containing characters, actions and personal circumstances with which audiences may identify and which can cause distress, particularly in relation to content such as sexual violence, self-harm or suicide, reconstructions of factual events and archive footage. Programme material of this nature shall be accompanied by some form of audience information or guidance, such as prior warnings.
- 14.2 Broadcasters shall ensure that they provide appropriate helpline contact details for the viewer or listener, where relevant, including telephone numbers to facilitate immediate contact with a helpline or hotline.
- 14.3 Broadcasters shall ensure that programme material does not encourage or favourably present the abuse of drugs, alcohol, or solvents or the use of illegal drugs. Depictions and/or descriptions of detailed methods and techniques for administering illegal drugs must have strong editorial justification for their inclusion.
- 14.4 Broadcasters shall ensure that they do not broadcast or make available material that encourages people to imitate acts which are damaging to their health and safety.
- 14.5 Broadcasters shall ensure that they take due care when broadcasting programme material that includes the simulation of news. Simulated news (for example in drama or in documentaries) must be broadcast in such a way that there is no reasonable possibility of the audience being misled into believing that they are listening to, or watching, actual news.

- 14.6 Broadcasters shall ensure that they treat with due care demonstrations of exorcism, the occult, the paranormal, divination (including fortune telling) or practices relating to any of these that purport, or may be thought, to be real. When such demonstrations are for entertainment purposes, this must be made clear to the audience.
- 14.7 Broadcasters shall ensure that demonstrations addressed by section 14.6, whether purporting to be real or for entertainment purposes, shall not contain life-changing advice directed at an individual upon which they may reasonably be expected to act or rely. This does not apply to demonstrations which feature in films, drama or other fictional programming.
- 14.8 Broadcasters shall ensure that they take due care with regard to the manner in which hypnosis is conducted during a programme.
- 14.9 Broadcasters shall ensure that they provide prior warnings, as appropriate, for viewers with photo sensitive epilepsy in a manner which is clearly audible and visible.

15. Protection for Children

- 15.1 Broadcasters shall ensure that they take particular care when broadcasting programme material around programmes that are likely to be watched or listened to by children, or at times when children will normally hear or see it. This will include programme material broadcast before the watershed (in respect of television), during school runs, and during school holidays.
- 15.2 Broadcasters shall ensure that trailers and promotions for programming not reasonably regarded as suitable for children shall not be broadcast immediately before, during or after children's programming or before the watershed around children's programming.

In the case of **television broadcasters** only: -

- 15.3 Broadcasters shall ensure that they provide sufficient information to audiences about content which may impair the physical, mental or moral development of children. Television broadcasters shall use a system describing the potentially harmful nature of the content on their service/s. Information provided to audiences should be displayed at the beginning of a programme and after a programme returns from a commercial break.
- 15.4 Broadcasters shall take appropriate measures to ensure that programmes containing content which may impair the physical, mental or moral development of children, including, but not limited to:
- (a) content consisting of pornography,
 - (b) content consisting of gratuitous violence,

are only made available in such a way as to ensure that children will not normally hear or see them.

- 15.5 Appropriate measures entail the use of protection mechanisms including the following: -
- a) the use of prior content warnings.
 - b) age verification tools.
 - c) encryption.
 - d) scheduling, including the use of the watershed.
 - e) other measures that achieve an equivalent outcome of the foregoing.
- 15.6 Broadcasters shall ensure that the measures they take are proportionate to the potential for the programme to harm children. Factors to consider include: -
- i. The likely degree of harm potentially caused by the programme content.
 - ii. The likelihood of children accessing the content.
 - iii. The nature of the service and its likely audience.
- 15.7 Broadcasters shall ensure that the most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures.

16. Respect for Persons and Groups in Society

- 16.1 Broadcasters shall ensure that they do not broadcast any material which may reasonably be regarded as likely to incite to violence or hatred directed against a group of persons, or a member of a group, based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union,¹ namely sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation. Nationality constitutes such a ground without prejudice to the special provisions of the Treaty establishing the European Community and of the Treaty on European Union.
- 16.2 Broadcasters shall ensure that programme material only emphasises sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation when such references are justified, having regard to the provisions of this Code, in particular, the importance of context.

¹ This includes but is not limited to members of the Traveller Community and Roma Communities.

- 16.3 Broadcasters shall ensure that the use of terms, references and images that could reasonably be considered offensive to persons and groups in society and associated colloquial terms of abuse aimed at any group are only included where there is a clear editorial justification for their inclusion in programming.
- 16.4 Broadcasters shall ensure that they show due respect for religious views, images, practices and beliefs in programme material. This is not intended to prevent the critical scrutiny of religion by means of information, drama or other programming.

17. Protection of the Public Interest

- 17.1 Broadcasters shall not broadcast material likely to promote, or incite to, crime or tending to undermine the authority of the State.
- 17.2 Broadcasters shall not broadcast material which may reasonably be regarded as conduct falling within the concept of public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541.
- 17.3 Broadcasters shall ensure that programme material does not encourage behaviour or views that are grossly prejudicial to the protection of the environment. Broadcasters are encouraged to inform audiences of current developments in respect of environmental matters in a manner that gives due weight to the balance of contemporary scientific knowledge.
- 17.4 Broadcasters shall ensure that a broadcasting service that has, as one of its principal objectives, the promotion of the interests of any organisation, protects the interests of the audience. These services shall meet the requirements of the code.

18. Respect for Privacy²

- 18.1 Broadcasters shall ensure that any encroachment on the privacy of an individual in a programme or in the means employed to make a programme is not unwarranted, having regard to the provisions of this Code, in particular, the protection of the public interest. Any such encroachment must be reasonable, proportionate and limited to the degree that is required to inform the audience in the public interest.
- 18.2 Broadcasters shall have due regard to the concept of individual consent and ensure that participants in a programme material are generally aware of the subject matter, context and the nature and format of their contribution so that their agreement to participate constitutes informed consent.

² Section 18 (Respect for Privacy) applies to all programme materials. There are additional provisions with respect to news and current affairs content and these are set out in the Code of Fairness, Objectivity and Impartiality in News and Current Affairs.

- 18.3 Broadcasters shall ensure that the personal data of children collected or otherwise generated by broadcasters is not processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.
- 18.4 Broadcasters shall have due regard to the particular considerations that apply in the case of a vulnerable person or a child under 16 years of age, to ensure that the privacy of such persons is never unreasonably encroached upon. Vulnerable people are individuals whose personal circumstances or well-being require that extra care be taken.
- 18.5 Broadcasters shall ensure that they obtain consent where programme material, or the means employed to make programme material, directly involves a vulnerable person or a child less than 16 years of age. Consent should be sought from the vulnerable person or child, if possible, and from a parent, guardian, nominated representative or person responsible for the primary care of a vulnerable person or a child. It will not be necessary to obtain consent if the subject matter is trivial or the participation is minor or, based on other factors, it is warranted to proceed without consent, having regard to the provisions of this Code.
- 18.6 Broadcasters shall give due consideration to indications of withdrawal of consent, having regard to the provisions of the Code, in particular, the protection of the public interest and other circumstances that may arise, such as contractual relationships.
- 18.7 Broadcasters shall ensure that the re-use of material, for use in different programme material or for another purpose, does not unreasonably encroach on the privacy of an individual.
- 18.8 Broadcasters shall have due regard to the impact that coverage and repeated coverage of death may have on the families and friends of the deceased.
- 18.9 Broadcasters shall have due regard to the particular considerations that apply when filming in situations of emergency or when filming victims of accidents or those suffering personal tragedy, in order to ensure that the privacy of such persons is not unreasonably encroached upon.
- 18.10 Broadcasters shall ensure that surreptitious filming or recording is only used where it is warranted.



Appendix

Guidance

Undue Offence and Harm

The Act states that a broadcaster shall not broadcast anything which may reasonably be regarded as causing harm or undue offence. This document provides non-binding guidance to broadcasters on the application of these terms in the context of the requirements of the Code of Programme Standards

Matters which cause offence can, and frequently do, differ from person to person and are largely subjective in their nature. There can be no guarantee that programmes will be free from material that some audience members may consider to be offensive, but which does not cause 'undue offence' (which is prohibited by the Code). However, while still subjective, undue offence can be considered to be programme material that, taking into account contextual factors such as editorial justification and the public interest, amongst others, could still be regarded as having crossed a line that has resulted in an individual or group of individuals being unduly offended i.e. programme material which has caused serious or widespread offence.³

Harm is less subjective. Harmful material is material that may cause mental, psychological or physical harm. Individuals should not be harmed by programme material and the Code aims to prevent harm to viewers and listeners, in particular children.

While acknowledging that harm and undue offence are two distinct concepts, content that has caused undue offence can become harmful in certain circumstances.

In assessing whether programme material may reasonably be regarded as causing harm and/or undue offence, broadcasters may have regard to the following non-exhaustive matters: -

In the case of both **harm** and **undue offence**: -

- the content of the programme material broadcast.
- the relevant contextual factors relating to the broadcast of the programme material.
- the extent to which the programme material does not comply or adhere to the obligations of this Code.

In the case of **harm**: -

- the likelihood that the programme material may reasonably be regarded as causing harm to any individual or group of individuals, including: -

³ Matters that may cause serious or widespread offence are detailed below.



- the extent to which the programme material or similar material has previously caused mental, moral or physical harm to an individual or group of individuals.
- the extent to which the programme material has unreasonably encroached upon the privacy of an individual/s.
- the extent to which strong language, violence (including gratuitous violence) and sexual behaviour (or other content that might impair the mental, moral or physical development of children) included in programme material has been inappropriately scheduled such that children are likely to see or hear it.
- the extent to which the programme material would reasonably be expected to impact negatively on an individual/s, because of their prior experiences, and that is shown without prior warnings, such as programme material featuring suicide, self-harm and sexual violence.
- the extent to which the programme material would reasonably be considered to support or condone discrimination contrary to the Equal Status Act 2000 and/or the Charter of Fundamental Rights of the European Union.
- the extent to which the programme material would reasonably be considered to incite to violence or hatred directed against a group of persons, or a member of a group, based on any of the grounds referred to in Article 21 of the European Charter of Fundamental Rights. Namely, on the grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation.
- the extent to which the programme material would reasonably be considered to support or condone crime including violent, dangerous or seriously antisocial behaviour or undermine the authority of the State.

In the case of **undue offence**, the likelihood that the programme material may reasonably be regarded as causing undue offence to any individual or group of individuals, including: -

- the extent to which the programme material or similar material has previously caused **serious offence** to any individual or to an individual or group of individuals because of: -
 - the inclusion in programme material of demeaning, hostile, abusive, derogatory or discriminatory language and/or representations about an individual or group of individuals without there being a strong editorial justification for this programme material. Particular care is required with respect to language and representations of individuals or groups of individuals, based on the grounds referenced in Article 21 of the Charter of Fundamental Rights of the European Union or the Equal Status Act 2000.

- the extent to which the programme material or similar material has previously caused **widespread offence** because, for example, it has offended the prevailing values in Irish society around content that might cause particular harm or offence, including violent or sexual content or content containing offensive language. While the volume of complaints made about programme material may be a relevant factor when considering whether it has caused widespread offence, this is not likely to be a determinant factor.
- the extent to which the broadcast of the programme material is in the public interest.

