

Summary of Responses to the Consultation on Draft Media Services Codes and Rules, Stage 1

Report by



12 November 2024

Contents

Chapter 1: Executive Summary	4
Chapter 2: Tabled presentation of categories of respondents and respondents	5
Chapter 3: Responses to amendments that are proposed to each of the Broadcasting Codes and Rules (Stage 1, Consultation Q.1).....	6
General Comments.....	6
Section 3: Purpose and Application of the Code	6
Section 6: Waiver	7
Section 7: Compliance and Enforcement	7
Chapter 4: Responses to General Commercial Communications Code (Stage 1 Consultation Q.2)	8
Section 3: Purpose and Application of the Code	8
Section 10: General Definitions	8
Section 11: Exclusions	8
Section 13: Prohibited Commercial Communications	8
Section 14: Provisions applying to all Commercial Communications	9
Section 16: Sponsorship, including competitions	9
Section 17: Product Placement	9
Section 18: Alcohol.....	10
Section 21: Food, Nutrition and Health	11
Section 24: Financial Services and Products	12
Chapter 5: Responses to Children’s Commercial Communications Code (Consultation Q.3)	13
Section 10: Definitions and Interpretative Note	13
Section 13: Undue Pressure	13
Section 17: Diet and Nutrition.....	13
Chapter 6: Responses to Code of Programme Standards (Consultation Q.4 and Q.5).....	14
General comments	14
The Distinction between Harm and Offence	15
Section 11: Objectives	16
Section 12: Importance of Context (Principle 2 of the current Standards Code)	16
Section 14: Protection form Harm (Principle 3 of the current Standards Code)	17
Section 15: Protection for Children (Principle 4 of the current Standards Code)	17
Section 16: Respect for Persons and Groups in Society (Principle 5 of the current Standards Code)	18
Section 17: Protection of the Public Interest (Principle 6 of the current Standards Code)..	18
Section 18: Respect for Privacy (Principle 7 of the current Standards Code)	18
Integration of a definition of undue offence in the Code (Q.5)	18

Chapter 7: Responses to Media Service Code and Media Service Rules (Advertising, Teleshopping, Signal Integrity and Information) (Stage 1, Consultation Q.6 and Q.7)	20
Comments on proposed changes to the Code: Question 6	20
Comments on proposed changes to the Code: Question 7	21
Chapter 8: Responses to Advertising Radio (Stage 1, Consultation Q.8 and Q.9)	22
Comments on proposed changes to the Code: Question 8	22
Comments on proposed changes to the Code: Question 9	22
Chapter 9: Responses to the Code of Fairness, Objectivity & Impartiality in News and Current Affairs (Stage 1, Consultation Q.10)	24
Comments on proposed changes to the Code: Question 10	24
Chapter 10: Responses to Short News Reporting Code (Consultation Q.11)	28
Comments on proposed changes to the Code: Question 11	28
Annex 1 – Full List of Respondents	29
Annex 2 – List of Consultation Questions	30
Consultation on the Broadcasting Codes	30

Chapter 1: Executive Summary

Coimisiún na Meán (the Commission) is Ireland’s regulator for broadcasting, video-on-demand, online safety and media development.

Coimisiún na Meán was established in March 2023, further to the Broadcasting Act 2009 as amended by the Online Safety and Media Regulation Act 2022 (the “2009 Act as amended” or the “OSMR Act”).

Coimisiún na Meán has a range of responsibilities, including setting standards, rules, and codes for the different types of media services and relevant online services under the jurisdiction of Ireland.

The Commission is required under section 46Q of the Act to engage in a public consultation on any draft media service codes or media service rules it intends to introduce, to allow for diverse perspectives and feedback to be considered in the making of effective rules.

On 4 September 2024, the Commission published a public consultation on proposed changes to the Broadcasting Codes. The deadline for responses was 3 October 2024.

The primary objective of the proposed changes to the Broadcasting Codes is to give effect to Ireland’s obligations under the Audiovisual Media Services Directive (“the AVMS Directive”). The AVMS Directive is the regulatory framework established by the European Union to coordinate national legislation for the regulation of broadcasters, audiovisual on-demand services and for video-sharing platforms.

The AVMS Directive provides for minimum standards and obligations that media service providers must adhere to in a variety of areas, including child safety, the accessibility of their services, and the prohibition of content that incites hatred. The latest version of the AVMS Directive has introduced new requirements for television broadcasters, which has necessitated changes to the Broadcasting Codes.

In addition to this, the Commission is also updating the Broadcasting Codes to account for further changes to the national legislation under the Act, including the establishment of the Commission as the new regulator for broadcasting services.

This document provides a summary of the responses to the Commission’s *Consultation Document: Draft Media Service Codes and Rules*.

The purpose of this document is to provide an accessible overview of the responses to Stage 1 of the consultation on the changes to the Broadcasting Codes (Chapter 2 of the *Consultation Document: Draft Media Service Codes and Rules*).

The objective of this document is not to evaluate responses, nor provide any conclusions or recommendations (legal or regulatory) or to provide or suggest any technological solutions. It provides a summary of the representations made, but it should be noted that the Commission has read and evaluated all responses and taken them into account in reaching any decisions.

A total of 17 responses to the consultation were received and Figure 2 below categorises responses according to the types of organisations that provided submissions. The full list of respondents and organisational type are listed in alphabetical order in Annex 1. The authors of this report have made all efforts to faithfully and fairly present the main findings and opinions expressed by all respondents in their submissions.

Chapter 2: Tabled presentation of categories of respondents and respondents

Figure 1: Breakdown of responses from respondent generated by chapter of this report

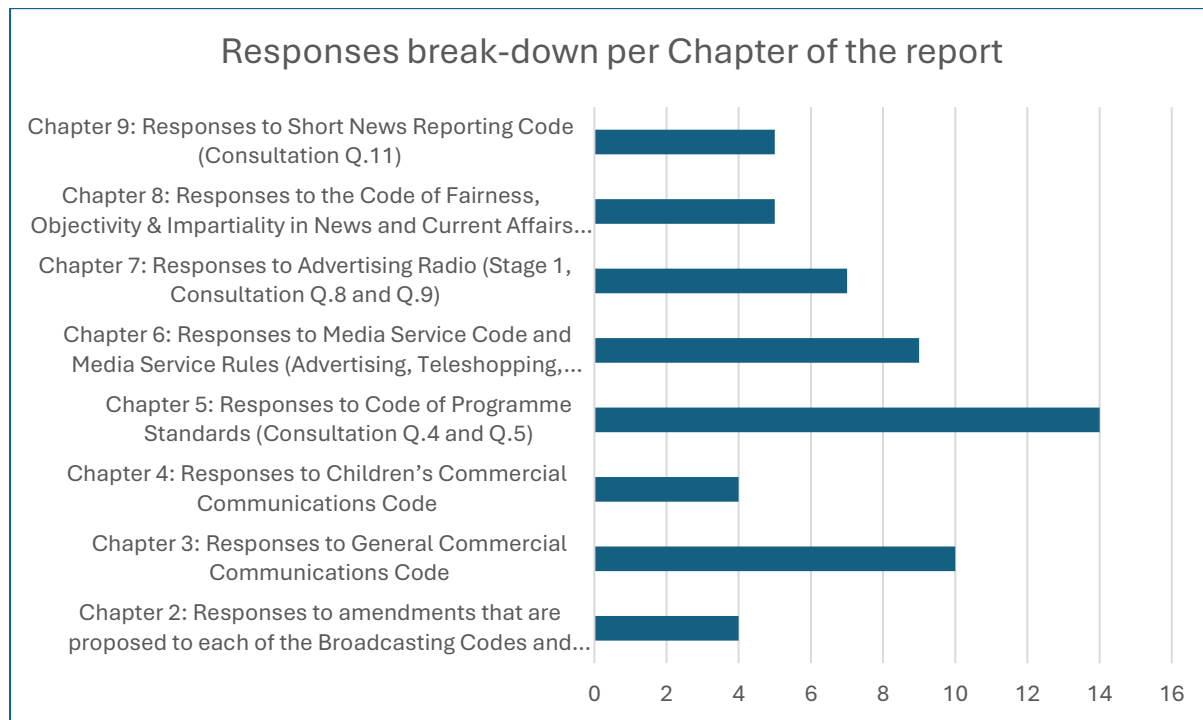
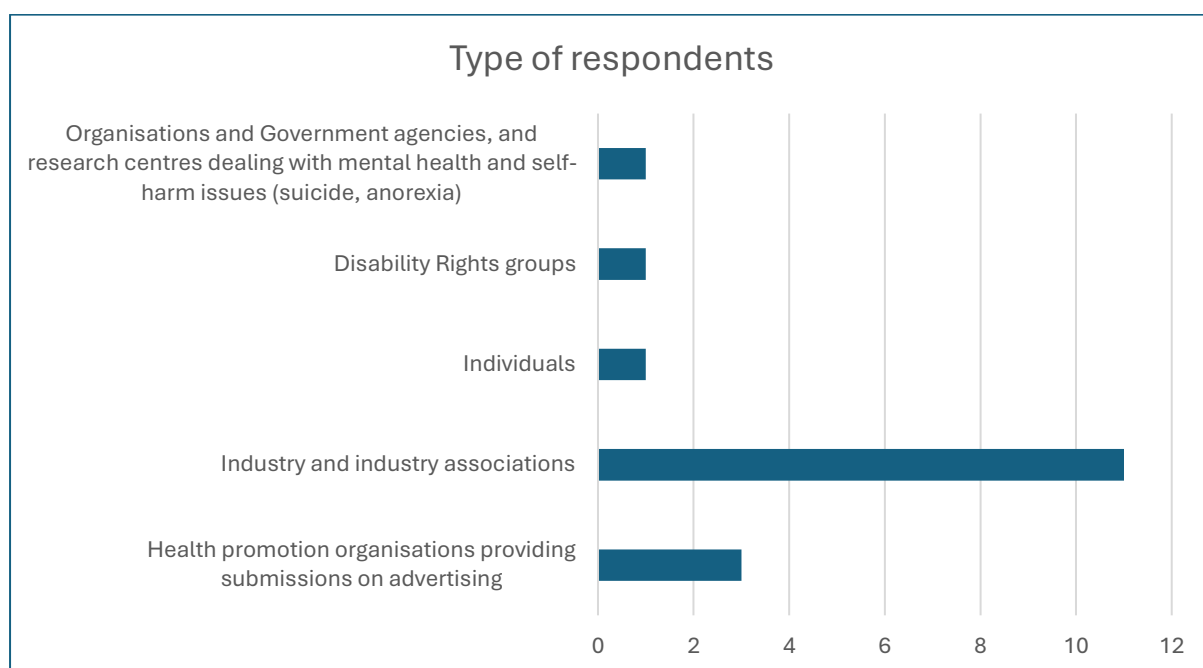


Figure 2: Breakdown by type of respondents



Chapter 3: Responses to amendments that are proposed to each of the Broadcasting Codes and Rules (Stage 1, Consultation Q.1)

Question 1 of the Stage 1 Consultation asked, “Do you have any comments on the general amendments that are being proposed to apply to each of the Broadcasting Codes and Rules?”

This chapter summarises the comments submitted in response to this question.

General Comments

Changing the name to ‘Media Services’ from ‘Broadcasting’ was seen to make sense, given that these codes and rules now apply to on-demand media services as well as broadcasting licensees. However, it was noted that most of the draft code documents related to broadcasters and not on-demand media services. ([Dublin Community Television](#))

It was noted that much that was being proposed in Broadcasting Codes and Rules amounted largely to a series of non-material clarifications. ([Warner Bros. Discovery](#))

General concern was expressed that broadcasters were subject to particular restrictions which affected the overall level-playing field. This did not reflect technological progress and competition in the media overall and will result in an uneven application. It was noted that OSMA Act does not include what had previously been a maximum advertising limitation. The legislation allows for flexibility in radio advertising and it was requested that the Commission should take this opportunity to implement it fully. ([Independent Broadcasters of Ireland](#))

The recognition of the current disparity between radio (10 minutes/hour) and television (12/minutes hour) advertising allowances was welcomed. It was noted that in addition, radio has a 15% minutage average for advertising, while TV has an 18% minutage average in the current Code. It was believed that the approach should be consistent and both radio and television should have a maximum of 12 minutes advertising per hour. It was also argued that the 15% minutage average for radio should be formally and urgently adopted and that consistency is particularly important when the largest TV broadcaster in the State has the clear advantage of guaranteed Exchequer/TV licence funding and commercial sponsorship/advertising revenues, dwarfing the revenues in other media sectors, and creating market distortion. ([Independent Broadcasters of Ireland](#))

There was also a request for clarity in relation to the codes dealing with consumer issues and rights. It was suggested that if consumer rights are not within its remit, the Commission could leave the regulation of advertising and consumer issues in all media to the Advertising Standards Authority, Ireland and to the statutory Competition and Consumer Protection Commission, both of which have codes and enforcement mechanisms. This, it was argued, would avoid confusion and the risk of discriminatory and anti-competitive regulation leading to the unintended consequence and help to ‘ensure and maintain a thriving and diverse media landscape in Ireland that facilitates a mix of voices, opinions and sources of news and current affairs, as well as a safe online environment.’ ([Independent Broadcasters of Ireland](#))

Section 3: Purpose and Application of the Code

Any breaches of other legislation or European legislation, rules, regulations and codes of practice issued from time to time by any relevant competent authority should be addressed under the applicable Irish legislation/European legislation and such a breach should not constitute a breach of the Code or of s8B of the OSMR Act. (TG4)

Section 6: Waiver

It was also considered that the use of a waiver (Section 6.1 and 6.2) was inappropriate in a regulatory code. It was stated that waiver language is appropriate in a contract between two parties but has no place in a code issued by a regulator which can result in severe penalties for media service providers in the event of a breach. It was recommended that Sections 6.1 and 6.2 were deleted. (TG4)

Section 7: Compliance and Enforcement

In Section 7.3, it was suggested that the word 'alleged' be added to the following sentence, 'a media service provider is required to prepare and implement a code of practice for the handling of complaints relating to the alleged failure of the media service provider to comply with a media service code or media service rule.' (addition underlined). (TG4)

Chapter 4: Responses to General Commercial Communications Code (Stage 1 Consultation Q.2)

Question 2 of the Stage 1 Consultation asked, “Do you have any comments on the proposed changes to the General Commercial Communications Code?”

This chapter summarises the comments submitted in response to this question.

Among the proposed amendments to the General Commercial Communications Code, those that generated the most reactions and comments were the changes relating to Sponsorship (Section 16), Product placement (Section 17) and those relating to commercial communications for alcohol (Section 18).

The footnote stating that broadcasters should be aware that other categories of commercial communications are prohibited or restricted by other legislative or regulatory instruments was considered inappropriate for the Draft Code. It requires broadcasters to comply with those other requirements with a resultant breach of the Draft Code or of Section 8 b of the Act for failure to comply. (TG4)

Section 3: Purpose and Application of the Code

In Section 3.1, it was recommended that the reference to Article 6(1), 6a (1)-(3) and 15 of the AVMS Directive was removed, as these Articles do not relate to commercial communications. (TG4)

Section 10: General Definitions

There was concern that the definition of ‘surreptitious commercial communications’ could be misleading and include misidentified product placements. It was suggested that the definition under Section 10 should be expressly stated not to include product placements. (Warner Bros. Discovery)

Clarification was requested on the definition of product placement, in particular on how a broadcaster would know if a video included product placement as defined, as it would not know if payment has been made to the user who has generated the video. (TG4)

Section 11: Exclusions

It was requested that public service announcements and charity appeals remain subject to the General Code of Commercial Communications in order to comply with the same standards as any commercial advertisement, as it was argued that for the viewer/listener, a public service announcement can be confused with an advertisement paid for by the government and vice versa. (Dublin Community Television)

Section 13: Prohibited Commercial Communications

Clarification was requested, by way of a guidance note from the Commission, on what would constitute behaviour that is grossly prejudicial to the protection of the environment. It was noted that some products and services that are particularly harmful to the protection of the environment, such as the sale of diesel or petrol cars, are nevertheless legally permissible services and products and legitimate sources of advertising. (RTÉ)

It was felt that political advertising should be allowed on radio, as it is allowed on other Irish media and on social networks and the web, provided that it is specifically identified as such and clearly separated from editorial content. This would be in the interests of equal opportunities, plurality and diversity of the media and to help the sector be commercially viable. ([Independent Broadcasters of Ireland](#))

The industry expressed support for the prohibitions laid down under Section 13.1 and 13.2(j) of the Draft Code, which prohibit commercial communications on infant formula for use by infants during the first 6 months of life, as these restrictions meet European regulations and standards. ([Dairy Industry Ireland](#))

However, it was also argued that the prohibition in Section 13.2(j) of the Draft Code on commercial communication of infant formula for use by infants during the first six months of life be extended to the 'first 36 months of life', as this would effectively address the central issue of halting the commercial communication of milk formulas and support the International Code of Marketing of Breastmilk Substitutes. Subsequently, if Section 13.2 is amended, Section 21.10 and 21.11 of the Draft Code would become moot, as no commercial communications relating to follow-on milk should be permitted. ([Baby Feeding Law Group Ireland](#))

It was suggested that the prohibition under Section 13.2 of the Draft General Communications Code which "are for alcoholic beverages and are aimed specifically at minors or encourage immoderate consumption of such beverages" be reworded as follows: "that are aimed specifically at minors or that encourage". (TG4)

Section 14: Provisions applying to all Commercial Communications

Further clarification was requested about the particular types of content that would be considered to 'impair the physical, mental or moral development of children'. ([Warner Bros. Discovery](#))

In addition, it was suggested that Sections 14.15, 14.16 and 14.17 of the Draft Code relate to children and should be removed from this Code and instead included in the Children's Commercial Communication Code. (TG4)

Section 16: Sponsorship, including competitions

There were concerns that the adoption of an additional and optional restriction, such as a ban on the use of sponsor logos in children's programmes, could have serious and specific implications and that this is optional under Article 10(4) of the AVMS Directive which may not apply in other EU Member States. It was argued that the restrictions in the existing codes are sufficient and working well, and that there is no evidence to justify extending the restrictions at present. ([Food Drink Ireland](#))

It was recommended that Section 16.11 of the Draft Code be removed. (TG4)

It was believed that sponsorship of programmes and items within programmes on radio should be permitted as long as the identity of the sponsor and their activity are made clear on air. ([Independent Broadcasters of Ireland](#))

Section 17: Product Placement

It was suggested that alcohol product placement should be explicitly banned, as there is considerable evidence from other jurisdictions that this form of alcohol advertising is both significant and increasing. ([Alcohol Action Ireland](#))

A guidance note was requested to clarify how the proposed deletion of the differentiation between product placement and prop placement would work in practice. In particular, clarity was sought about whether it would mean that any use of a product, regardless of its value, should be carrying a 'PP' notice. There were fears that even incidental use would result in extensive PP recognition and could lead viewers to incorrectly believe that commercial interests were unduly influencing editorial considerations and decisions. (RTÉ)

It was pointed out that in Section 17.3 of the Draft Code, the word 'produce' should read 'product'. (TG4)

Section 18: Alcohol

Clarity was sought on when Section 19 of the Public Health (Alcohol) Act 2018 comes into effect, whether it would replace Section 18.7(c) of the General Commercial Communications Code and that the Draft Code will not itself input any broadcast 'watershed'. (Warner Bros. Discovery)

In addition, it was suggested that a wider discussion and review of pre-watershed period of 5.30am to 9pm was due, as the watershed no longer reflected the habits of viewers in Ireland, citing the example of live sporting events which generally start from 7pm. It was suggested that the watershed changed from 9pm to 7.30pm to reflect the realities of what viewers want to see from broadcasters. They pointed out that for broadcasters that do not receive licence fee or Exchequer funding, the financing of rights can only be ensured through the sale of sponsorship/advertising, so this adjustment would support the objectives of the legislation, while facilitating the revenue streams needed to acquire sports rights. (Virgin Media)

It was recommended that the proposed changes to the inclusion restrictions in the Public Health (Alcohol) Act 2018 should be made consistent and in tandem with the Draft Codes and rules for video-on-demand services to avoid confusion and to avoid inadvertently creating an uneven playing field where alcohol restrictions for broadcasters are stricter. (RTÉ)

However, there was also a request for the Commission to make clear that alcohol advertising during sporting events e.g. on pitches and hoardings cannot be broadcast prior to the broadcast watershed for alcohol advertising which comes into effect from January 2025. (Alcohol Action Ireland)

Clarification was also sought on whether the existing guidelines for alcohol-free products would continue to apply. (RTÉ)

It was noted that research shows Irish children continue to be heavily exposed to alcohol brand marketing, a known risk factor for children taking up drinking. It was recommended that regular monitoring of children's exposure to alcohol advertising should be carried out directly by the Commission and published. (Alcohol Action Ireland)

The issue of advertisements for alcohol during sporting events was raised by a respondent, as it believed this could constitute a breach of Section 18.2(b) of the Draft Code. This is because it can link sports stars to alcohol and thereby creates a linkage between alcohol and enhanced physical performance, and a breach to Section 18.3(c) as broadcasting successful sports stars playing rugby or football on a field emblazoned with alcohol brands creates the impression that the consumption of alcohol contributes towards success or social success. More broadly, these situations could all be considered to breach Section 18.5 of the Code. (Alcohol Action Ireland)

There was also concern expressed that the wording under Section 18.2(b) relating to the prohibition on creating ‘the impression that the consumption of alcohol contributes to social or sexual success’ is excessively broad, and could inadvertently include the depiction of alcohol consumption in convivial social contexts. It was recommended that more specific wording was used to expressly clarify that this refers to the illusory claims that alcohol consumption would directly benefit the consumer, and not the simple portrayal of alcohol consumption in social contexts. ([Warner Bros. Discovery](#))

With regard to section 18.7(b) of the Draft Code, which restricts alcohol advertising to programmes with an audience profile of at least 75% adults, some expressed concern about popular programmes, such as major sporting events, which may attract a large proportion of the audience, including children, even if they represent less than 25% of the audience share. In such a situation, a large number of children could be exposed to alcohol advertising. Consequently, they recommended this section of the Code should be replaced with a statement that children should not be exposed to alcohol advertising. ([Alcohol Action Ireland](#))

Concerns were raised that the advertisement of zero alcohol products used identical branding to the alcohol master brand could further normalise a culture of alcohol consumption and blur potential conflicts of interest in developing public health policies and broadcasting rules. It was suggested that zero alcohol product advertising is currently being used to promote alcohol brands and thereby circumvent current broadcasting rules. Hence, it was recommended that zero alcohol product advertisements which use the branding of alcohol producers should be subject to the same restrictions as alcohol advertisements, and that zero alcohol product placements in broadcast programmes should be explicitly banned. ([Alcohol Action Ireland](#))

Section 21: Food, Nutrition and Health

It was pointed out that there was a unique opportunity presented by the development of these codes for Ireland to meet its obligations under the International Code of Marketing of Breastmilk Substitutes and human rights law. It also presented the possibility for Ireland to continue its leadership in public health policymaking by addressing the harm caused to children's health by broadcast and digital commercial milk formula marketing. With this in mind, it was suggested that technology-assisted solutions, such as the existing artificial intelligence tools that currently monitor the digital market for commercial milk formulas, can facilitate compliance monitoring. ([Baby Feeding aw Group Ireland](#))

Section 21.11(d) of the Draft Code was pointed out as particularly problematic, as brands cross-promote infant and follow-on milks using similar branding, making it difficult for parents to distinguish between different product advertising. ([Baby Feeding aw Group Ireland](#))

While the industry expressed support for the requirement under Section 21.10 of the Draft Code, it was noted that the term ‘follow-on infant formula’ is not a term used in existing legislation, hence it was suggested to change the terms to ‘follow-on formula’ (6-12 month product category) in order to ensure alignment with Commission Delegated Regulation (EU) 2016/127 of 25 September 2015 supplementing Regulation (EU) No 609/2013. It was further suggested that this change should also apply to the relevant text in Section 21.11 and Appendix one Definitions for specific products and services. ([Dairy Industry Ireland](#))

It was suggested that Section 21.13 of the Draft Code would be more appropriate for the Children's Commercial Communications Code. ([TG4](#))

Section 24: Financial Services and Products

The issue of Ireland's terms and conditions disclosure requirements for radio advertising of financial services was raised. It was suggested that according to research, the disclosure requirements do not add significant protection for consumers and do not achieve the objective of comprehensiveness and attention-grabbing and may make radio advertising less attractive to those who choose it. It was proposed that there were other ways of providing this information in a more suitable format. It was suggested that the Central Bank of Ireland and the Commission could liaise on this issue. ([Independent Broadcasters of Ireland](#))

Chapter 5: Responses to Children’s Commercial Communications Code (Consultation Q.3)

Question 3 of the Stage 1 Consultation asked, “Do you have any comments on the proposed changes to the Children’s Commercial Communications Code?”

This chapter summaries the comments submitted in response to this question.

Section 10: Definitions and Interpretative Note

It was suggested that the introduction of the terminology ‘direct or indirect interest’ to the revised definition of ‘children’s commercial communications’ does not seem to align with the existing definition in the current Children’s Commercial Communications Code. The current Code uses the term ‘particular’ instead, and defines them as ‘commercial communications that promote products, services, or activities that are deemed to be of particular interest to children and/or broadcast during and between children’s programmes’. It was also suggested that this terminology does not seem to derive from the AVMS Directive either. There was concern that the use of this terminology could lead to a very broad definition with many potential interpretations, introducing uncertainty for advertisers. It was therefore recommended that the definition in the current Children’s Commercial Communications Code should be retained, to provide clarity and certainty for advertisers and media organisations regarding their compliance requirements. ([Food Drink Ireland](#))

Section 13: Undue Pressure

It was suggested that the drafting around the purchasing or provision of a product or service for a child in Section 13 was excessively broad and should allow for more flexibility in terms of content. In particular, it was observed that Section 13.5 provides that children’s commercial communications shall not create the impression that a parent/guardian who purchases or provides a product / service for a child is better, more intelligent or more generous than one who does not. It was noted that this appeared to include situations where a parent is portrayed as generous for gifting a product or service to their child. More specific language or drafting was requested to show that that this provision would exclude the portrayal of gift-giving as generous but address illusory claims that a parent is more generous than a parent who does not purchase this product for their child. ([Warner Bros. Discovery](#))

Section 17: Diet and Nutrition

It was suggested that Section 17.7 on children’s commercial communications relating to HFSS food (food high in fat, sugar and salt) products and services should also include a ban on infant formula and follow-on formula, in addition to HFSS foods. This prohibition should extend to the hours after watersheds, not just during children’s programming. ([Baby Feeding aw Group Ireland](#))

Chapter 6: Responses to Code of Programme Standards (Consultation Q.4 and Q.5)

Question 4 of the Stage 1 Consultation asked, “Do you have any comments on the proposed changes to the Code of Programme Standards?”

Question 5 for Stage 1 Consultation asked “While the Code includes guidance for broadcasters on undue offence, it is not defined. What are your views as to whether the Commission should include a definition of undue offence in the code. If you think a definition should be included, what factors or criteria might the Commission use to determine that undue offence has been caused?”

This chapter summaries the comments submitted in response to these questions.

General comments

Among the amendments made to the Code of Programme Standards, those that generated the most reaction and comment were the changes relating to the interpretive note on the distinction between harm and offence, to Section 12 - “Importance of Context” and Section 15 - “Protection for Children”.

It was underlined that the obligation to have regard to ‘the provision of this Code in Section 16.2, 18.1, 18.5 and 18.6 should be deleted, as this has the effect that a failure to comply fully with other aspects of the Code puts the broadcaster in breach of these sections also. The same reasoning applies to Section 16.2 the last sentence “*having regard to the provisions of this Code, in particular, the importance of context*” and the last point of the 6th paragraph of Appendix 1 “*the extent to which the programme material does not comply or adhere to the obligations of this Code.*” (TG4)

It was strongly suggested that the Draft Code should apply to programme material produced after the date the Code comes into operation, as it was considered not reasonable that programmes which were produced in accordance with legislation and codes which were in place at the time of production, cease to be compliant because the rules have changed in the meantime. Such a situation would discourage broadcasters from investing in cost effective programming which has a long shelf life. It was considered to be in violation of the obligation for the Commission under Section 4.5 of the Draft Code to operate fairly or their obligation under Section 7.3 of the OSMR Act to “*stimulate the provision of high quality, diverse, and innovative programmes by providers of broadcasting services*”. (TG4)

It was noted that there are numerous references in the Draft Code to ‘editorial justification’, ‘clear editorial justification’ and ‘strong editorial justification’, it was suggested that only the term editorial justification should be used throughout as the additional words create uncertainty and should therefore be removed. In addition, clarity was requested on how a broadcaster can rely on editorial justification as permitted by the Draft Code for content which the broadcaster has acquired when it has no involvement in the production of the programme or editorial process relating to that programme. (TG4)

Serious concerns were raised about the conspicuous absence of portrayals of mental illness in Irish broadcasting, apart from reports of serious violent crime. While it was recognised that amending the Code to protect against this lack of representation was difficult, it was also emphasised how important it was for programme content to not stigmatise, support or condone discrimination or hatred against individuals or groups in society, and that the lack of more representative experiences of mental illness

makes this almost impossible to avoid. The Commission was therefore strongly encouraged to take this point into account in their programme funding and research schemes. (Shine)

On the question of whether it would be appropriate to introduce a definition of ‘undue offence’, several respondents expressed their views, with opinions divided on the need to introduce such a definition, with some preferring a broader and more flexible concept.

It was recommended that the principle-based approach should be maintained, as it allowed more scope for future changes and it was suggested that it has worked very well and has clearly stood the test of time. (Virgin Media)

The Distinction between Harm and Offence

The consideration and guidance provided in Appendix 1 of the Draft Code was welcomed. (RTÉ, Virgin Media) Specifically, the inclusion of suicide and self-harm content under the definition of ‘harm’ was welcomed, as well as the guidance on providing audiences at risk of suicide or mental distress with prior warnings of that content, and the inclusion of consideration for both individuals and groups which may be harmed by broadcast content. (Shine) The adoption of Article 21 of the Charter of Fundamental Rights of the European Union and the Equal Status Act as the basis for determining serious offence to individuals or groups by means of the language or representations of those individuals or groups was also welcomed. (Shine)

Concerns were raised that the introduction of the term ‘undue offence’ could be perceived as introducing or establishing a lesser standard for broadcasters. In addition, it was suggested that parts of the current Code of Programme Standards, including the two extracts mentioned below, should be retained and incorporated into the new Code, insofar as these extracts recognise that people do not have a right not to be offended and the programmer’s duty to provide a diverse range of programming. (Virgin Media) The extracts mentioned are the following:

- *“It would be an unconscionable restriction on the freedom of expression and the vitality of broadcasting if nothing likely to offend anybody could ever be broadcast. But that is neither what the law requires, nor what this Code prescribes. Not only is there no right not to be offended, but it will also be unavoidable that a programme service that captures the full richness of life and that seeks to address the entire range of topics of concern to the audience will contain material which will be a source of offence to some. There is an obligation on broadcasters to be provocative and to contribute to the awareness that a society has of itself, of its dynamic and changing character and of its place in the modern world”¹*
- *“Acknowledging this, there can be no guarantee that programme material will be free from offence. There is no right not to be offended and, for broadcasters, it is to be expected that, in fulfilling their duty to provide a diverse range of programming that caters to a diverse audience, there will be programming that causes offence to some members of the audience.”²*

Clarification was also sought on the meaning of the terms ‘serious’ and ‘widespread’ used in the examples of undue offence. (TG4)

¹ Extract from the Foreword Section, page 1 of the current Code of programme Standards.

² Extract from “The distinction of harm and offence” section, page 9 of the current Code of Programme Standards.

It was also pointed out that the wording of the sentence in the 7th paragraph of Appendix 1 *“the extent to which the programme material has unreasonably encroached upon the privacy of an individual/s”* suggests that unreasonably encroaching on privacy constitutes harm, which was considered excessive and should be removed. (TG4)

Some concerns were also raised with regard to the sentence used in one of the bullet points of the 7th paragraph on the determination of ‘undue offence’: *“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.”* In recent years, broadcasters and regulators have experienced situations where, in relation to certain programmes, a campaign is launched, often online, encouraging individuals to ‘copy and paste’ a prepared complaint and to sign it personally and send it in, irrespective of whether the individual has seen or listened to the programme. This type of practice cannot be considered a fair use of the statutory complaints procedure and represents a considerable resource challenge for broadcasters who are obliged to respond to every complaint. As this practice is becoming increasingly common, it was considered appropriate for the Commission to provide guidance, for example by indicating whether, where the number of identical complaints exceeds a certain threshold, the broadcaster is not required to respond in detail to each complaint. (RTÉ)

Section 11: Objectives

It was recommended that Section 11.1 of the Draft Code should specify the requirement to have due regard to freedom of information as referenced in Section 4.3 of the Draft Code, and should read as follows: *“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 and having due regard to the right to freedom of expression referenced in s4.3 of this Code”*. (TG4)

Section 12: Importance of Context (Principle 2 of the current Standards Code)

Concerns were expressed about the wording of Section 12.2, in particular the use of the term ‘the potential’, which could be interpreted by the public as imposing an obligation on broadcasters to anticipate offence and/or distress in every programme. It was feared that this would mean that almost every programme would require prior warning, given that the potential sources of offence are limitless, which would lead to the system being rendered meaningless. Therefore, they suggested the following wording: *“Broadcasters shall ensure that they use prior warnings where it may be reasonably anticipated that pre-recorded programme material has the potential to offend or cause distress to audiences”*. (RTÉ)

It was recommended that the requirements for ‘timely corrective action’ under Section 12.4 of the Draft Code should be expanded to include content that may cause harm, as outlined in Appendix 1. This is of concern especially in relation to broadcasters whose guest contributors speak about detailed methods of suicide or self-harm, as some shared, they observed in their media monitoring the unexpected inclusion of these details in caller-driven radio programming. In this line, they recommended Section 12.4 to be redrafted as follows: *“Broadcasters should ensure that in live programming they take timely corrective action where unplanned content is reasonably likely to have caused undue offence or harm. Such action may be to acknowledge, clarify, provide support and/or apologise for such content”*. (Shine)

It was considered that the addition of Section 12.6 is a timely reminder to promote ‘on air’ guidance signposting to helplines. (Dublin Community Television) Separately, there was also a request for clarification on the meaning of this requirement. (TG4)

Guidance was also requested in relation to the requirement under Section 12.5 on the form of visible warning which a broadcaster must give and, on the weight, attached to the warnings which are given by the broadcaster in the event that the Commission determines there is a breach. (TG4)

Section 14: Protection form Harm (Principle 3 of the current Standards Code)

It was recommended that Section 14.1 which addresses broadcast programming material containing elements of self-harm or suicide should be expanded to include suicidal behaviours which would include attempted suicide. Further, the inclusion of explicit direction on content about suicide method was considered helpful, in the form of the following additional requirement: *“Broadcasters shall not broadcast the method used for self-harm, suicide, or attempted suicide. Depictions and/or descriptions of methods and techniques for suicide behaviours must have strong editorial justification for their inclusion”*. (Shine)

In addition, the inclusion in Section 14.2 of the recommendation concerning the inclusion of telephone numbers to facilitate immediate contact with a helpline was welcomed as a very positive step towards the inclusiveness of the Draft Code and the accessibility of preventive measures against harm. (Shine)

Section 15: Protection for Children (Principle 4 of the current Standards Code)

Attention was drawn to the importance of not implying that broadcasters have a responsibility that is shared equally with parents/guardians with regard to the content that children can access,. The importance of this was noted in the previous BAI Statutory Review of Codes exercise in 2023 and in Article 42 of the Constitution, which provides that this responsibility rests primarily with parents/guardians. In this vein, it was recommended that Section 15.1 should be aligned with Section 10.2 of the Draft Children’s Commercial Communications Code, namely that the primary responsibility for content accessed by children rests with parents/guardians. The following wording was suggested: *“Parental Responsibility – Parents and guardians have primary responsibility for content that children access on television and/or radio and broadcasters can support the parent/guardian relationship with children by scheduling responsibly”*. (RTÉ)

There was a call for further, prescriptive clarification of the Draft Code's child protection provisions, as it was suggested that they go beyond the AVMS Directive and the OSMR Act 2022. It was recommended that the Draft Code should be more specific about the particular types of content that may ‘impair the physical, mental or moral development of children’, as the scope of content covered by such a phrase may be excessively broad and impose disproportionate costs on broadcasters. (Warner Bros. Discovery)

With regard to age verification tools, it was recommended that the provision should specifically provide for the use of age verification tools based solely on self-declaration of age by users, as it was argued that age verification tools that are not based on self-declaration require complex and cumbersome technical mechanisms and may have serious implications for data protection and viewers' right to privacy. (Warner Bros. Discovery). It was also recommended that such tools should not be applied to on-demand services. (TG4)

Clarification was also sought on whether the Draft Code requires all content which may impair children’s physical, mental or moral development to be subject to the full extent of protection mechanisms referenced in Section 10, or whether the provision of one (or some) of these protection mechanisms was sufficient, depending on the relevant context. (Warner Bros. Discovery)

With regards to Section 15.3 of the Draft Code, it was suggested that the warning requirement after the commercial break was unnecessary and should be removed. (TG4)

Section 16: Respect for Persons and Groups in Society (Principle 5 of the current Standards Code)

The adoption of Article 21 of the Charter of Fundamental Rights of the European Union and the Equal Status Act as the basis for Section 16.1 on incitement to violence or hatred was welcomed. The inclusion of disability in Section 16.2 on the justification of emphasis was also welcomed. (Shine)

In Section 16.2 of the Draft Code, the reference to content being justified was suggested to be amended as 'editorially justified' for greater clarity. (TG4)

It was underlined that the prohibition in Section 16.3 imposes a more onerous burden on broadcasters and goes beyond the requirement of the OSMR Act, which does not contain an obligation to not cause offence against specific groups. In addition, it was recommended that the word 'unduly' should be included before the word 'offensive' to align with the OSMR Act. (TG4)

Section 17: Protection of the Public Interest (Principle 6 of the current Standards Code)

It was recommended that the phrase 'reasonably regarded' should be included in Section 17.1 as this is the language used in clause 46J of the OSMR Act, and the absence of this phrase imposes a more onerous burden on broadcasters that goes beyond what is required by the OSMR Act. (TG4)

Section 18: Respect for Privacy (Principle 7 of the current Standards Code)

Section 18.1, 18.2, 18.4, 18.6, 18.9 and 18.10 were considered problematic for acquired programmes because the broadcaster is licensing rights in these programmes, but the programmes are not produced by or on behalf of the broadcaster and, therefore, the broadcaster will not be able to comply with these obligations for acquired programmes. The Draft Code should therefore specify that these sections apply only to programmes produced by or for a broadcaster. (TG4)

Guidance was requested under Section 18.4 on how to identify participants who are individuals whose personal circumstances or well-being require that extra care be taken, on what steps should be taken to ensure that extra care should be taken, and on consent and in particular consent of vulnerable participants. (TG4)

In addition, clarification was requested on the meaning in Section 18.6 of the Draft Code of '*indications of withdrawal of consent*', as this differs from a '*request to withdraw consent*' which is the phrase used in the Code of Fairness, Objectivity and Impartiality in News and Current Affairs. Further, it was suggested that this Section 18.6 should be removed from the Code, as its inclusion in the Draft Code appears to go beyond what is required by the OSMR Act and because it interferes with the contractual relationship between the broadcaster and participant who has signed a contract consenting to participate or who has otherwise agreed to participate in a programme produced by or on behalf of a broadcaster. (TG4)

Integration of a definition of undue offence in the Code (Q.5)

The idea of including a definition was welcomed by some respondents (Association of Advertisers in Ireland, Independent Broadcasters of Ireland, Warner Bros. Discovery), as was the provision of examples of potential undue offence. (Association of Advertisers in Ireland) It was suggested that although matters which cause offence can be subjective, leaving the term wholly undefined means that the scope of content it covers may be excessively broad (Warner Bros. Discovery). In addition, the fact that this term is not well-defined exposes organisations to the risk of non-compliance, with no way of knowing for sure, hence the need for further work on such a definition, which should be specific, clear and capable of being identified by any reasonable person. (Independent Broadcasters of Ireland)

Others strongly recommended not including a definition of undue offence ([Virgin Media](#)), as some feared that a definition would be too vague and broad to cover all circumstances. They pointed out that under the rules-based principles and spirit of the codes, where incidents are reported which may constitute undue offence, they can be taken into account as part of the complaints procedure and the context can be included in the broadcast material. ([Dublin Community Television](#)) In addition, they believed it was very important to include additional text and retain some of the text of the current Code i.e. clearly distinguish between offence and serious/widespread nature of the meaning of undue offence. ([Virgin Media](#))

It was also believed the issue of “undue offence” only applies to broadcasters, which therefore causes a risk to be discriminatory in terms of media overall and does not promote a level-playing field, and media plurality. ([Independent Broadcasters of Ireland](#))

Chapter 7: Responses to Media Service Code and Media Service Rules (Advertising, Teleshopping, Signal Integrity and Information) (Stage 1, Consultation Q.6 and Q.7)

Question 6 of the Stage 1 Consultation asked, “Aside from the hourly limits on advertising and teleshopping, do you have any comments on the Draft Media Service Code and Media Service Rules (Advertising, Teleshopping, Signal Integrity and Information)?”

Question 7 for Stage 1 Consultation asked “What are your views on the proposal to retain the maximum of 12 minutes of advertising and teleshopping per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?”

This chapter summarises the comments submitted in response to these questions.

Comments on proposed changes to the Code: Question 6

It was considered that the Commission should facilitate innovation, subject to transparency and code compliance. This would enable independent radio licensees to use their content or frequency space for audiovisual or other services to maximise listenership and generate additional revenue. There was a request for the Commission to encourage radio stations to come forward with innovations so that the Code can facilitate this. ([Independent Broadcasters of Ireland](#))

It was requested that the Commission allow for increased advertising during periods in which radio gets its largest audience e.g. September to December (a period which sees 40% of the advertising revenue), run-up to bank holidays, return to school, Easter and St Patrick’s Day. ([Independent Broadcasters of Ireland](#))

It was believed that political advertising should be permitted on radio as it is on the web, social media and ‘Our of Home’, so long as it was specifically identified and separated from editorial. This was in the interest of a level playing field and media plurality. ([Independent Broadcasters of Ireland](#))

It was noted that two exclusions concerning information announcements have been removed from the Draft Code. The first concerned information announcements broadcast on RTÉ services for forthcoming concerts, recital or performances (whether broadcast or not) given by the National Symphony Orchestra, the RTÉ Concert Orchestra and other RTÉ performing or comparable groups which are under contract to RTÉ or employed by or under contract to a broadcaster and to which the public are allowed entry. The second, concerned announcements of outside broadcasting events or non-broadcast events organised in whole or in part by the broadcaster if the public were allowed entry for free. Where these events were linked to a sponsorship arrangement, the broadcaster was permitted to credit the sponsor in line with the sponsorship rules in this Code. These were not regarded as specific examples but as minutage exclusions. Under the current Code these fall under the exemption 5. It is unclear where such announcements now fall and whether, for example, RTÉ’s promotion of the BT Young Scientific Exhibition still falls under such an exemption. This is an area the Commission could address in more detail in a Guidance Note. ([RTÉ](#))

It was considered that the use of a waiver (Section 6.1 and 6.2) was inappropriate in a regulatory code. It was stated that waiver language is appropriate in a contract between two parties but has no place in a code issued by a regulator which can result in severe penalties for media service providers in the event of a breach. It was requested that the word 'alleged' be added (to Section 7.3) in the following sentence, 'a media service provider is required to prepare and implement a code of practice for the handling of complaints relating to the alleged failure of the media service provider to comply with a media service code or media service rule.' (addition underlined). (TG4)

It was submitted that further clarification was needed on the transparency and separation provisions. Section 11.1.1 states that television advertising and teleshopping is to be kept distinct from other parts of the programme 'by optical and/or acoustic and/or spatial means' and such means shall not contain any audiovisual commercial communications, such as a sponsorship announcement. However, the Draft Code does not specify what other types of optical, acoustic or spatial means would constitute an effective measure to make advertising or teleshopping distinct. Therefore, further clarity, by way of examples, was requested. (Warner Bros. Discovery)

Comments on proposed changes to the Code: Question 7

It was strongly recommended that the Commission retain the 12 minutes of advertising and teleshopping per hour. Reducing the minutage would potentially increase costs for advertisers because of demand will increase within a restricted environment. This could result in advertisers considering other media, e.g., online/social/digital, negatively impacting financially on broadcasters and on-demand providers. It is of note that digital advertising now accounts for c. 58% of all revenue within the advertising market in the Republic of Ireland. (Association of Advertising in Ireland)

It was argued that more minutes per hour would reduce the value of spots. Given that on-demand insertion is programmatic and plentiful, providing less advertisements in broadcasting means that linear is less cluttered and more competitive. As advertising has shifted online, perhaps the reality is that less is better and funding models that are less reliant on commercial breaks will become more commonplace in the future. Retention of this maximum is a good thing as broadcasters adjust funding options. (Dublin Community Television)

There was a recommendation that television and radio minutage should be the same. (Independent Broadcasters of Ireland)

There was a query in relation to whether the Commission anticipates approving alternative time limits on advertising for TG4 and RTÉ. (TG4)

The continuation to exclude announcements by broadcasters or other group entities relating to their programmes from daily advertising limits was welcomed. However, it was requested that the Commission removes the overall advertising limits during overnight hours when there are significantly smaller audiences. (Warner Bros. Discovery)

Chapter 8: Responses to Advertising Radio (Stage 1, Consultation Q.8 and Q.9)

Question 8 of the Stage 1 Consultation asked, “Aside from proposals about hourly advertising limits, do you have any comments on the Media Service Rules (Advertising – Radio)?”

Question 9 for Stage 1 Consultation asked “What are your views on the proposal to retain the maximum of 10 minutes of advertising per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?”

This chapter summarises the comments submitted in response to these questions.

Comments on proposed changes to the Code: Question 8

Concerns were expressed over the lack of a level-playing field between broadcasters and social media or video streaming in relation to advertising standards. It was proposed that the Code allows for an increased advertising during high demand periods. Specifically, averages could operate over the full 24-hour period for the months November and December or for another period that the Commission chose. ([Independent Broadcasters of Ireland](#))

It was further proposed that political advertising, which is permitted in other media, should also be permitted on local radio, if stations choose, as long as it is specifically and strictly identified as such and separated from editorial. Similarly, it was suggested that the Commission liaises with the Gambling Regulatory Authority and the ASA on the issue of gambling advertising to ensure consistency and informed decisions. ([Independent Broadcasters of Ireland](#))

It was argued that radio advertising should be modernised to reflect changes in both the wider media landscape and in consumer expectations. It was recommended that integrated commercial messaging should be permitted in editorial content (e.g. presenter live-reads of commercial content), in addition to enhancing transparency requirements (e.g. appropriate signalling requirements), in order to align live radio with online audio content (e.g. podcasts), where presenter live reads are used in a way not currently permitted on live radio.

It was also suggested that the Code should adopt a more proportionate approach to commercial sponsorship on radio programming, including liberalising restrictions on the proximity between sponsorship messaging and advertising from the same client in an advertising break, accompanied by transparency and audience signalling.

Overall, it was suggested that the revised Code should trust audiences to be capable of identifying signalled commercial messaging and place more trust in radio broadcasters - who value their audiences - to appropriately manage commercial messaging. ([Wireless Ireland](#))

Comments on proposed changes to the Code: Question 9

The retention of the maximum of 10 minutes of advertising on radio per clock hour was strongly recommended. It was noted that as digital advertising now accounts for circa 58% of all revenue within the advertising market in the Republic of Ireland any reduction in radio advertising limits would lead to the potential for increased costs for advertisers due to the demand within a restricted timeframe, and in such scenarios, advertisers may have no choice but to consider other media, e.g., online/social/digital. ([Association of Advertisers in Ireland](#))

The removal of the 10-minute-per-hour restriction was welcomed ([Bauer Media Audio Ireland](#)) with an increase to a maximum of 12 minutes per hour suggested. ([Independent Broadcasters of Ireland](#))

It was suggested that the removal of the 10 minute per hour limit in legislation should be formally reflected in the Code and replaced with a rule that allows up to twelve minutes of ads per hour, within the 15% daily limit. This would align radio with the long-standing advertising practices of commercial television, and help to eliminate some of the unfair advantage conferred on non-broadcast media. ([Bauer Media Audio Ireland](#), [Independent Broadcasters of Ireland](#))

It was argued that if the radio sector had the opportunity to moderately increase its ability to meet the demand for advertising at high demand times, it would improve the economic outlook for the sector and also move Ireland closer to the status quo in many European markets in this respect.

There was a call for a more proportionate and flexible approach to advertising minutage limits to better fit with the natural flow of radio programming. Specifically, it was suggested that that average advertising minutage be maintained across the entire period 6am-1am daily to facilitate periods with high listenership and then lower advertising in the evenings. ([Wireless Ireland](#), [Independent Broadcasters of Ireland](#)) It was also argued that greater flexibility to determine when and where advertisements are placed would help to ensure viability and sustainability. ([Sunshine 106.8](#))

This approach would provide radio broadcasters with more flexibility, given changes in the wider media and advertising landscape and allow broadcasters to mitigate minor breaches. ([Wireless Ireland](#))

It was also suggested that consideration could be given to specific exceptions allowing stations to benefit from increased revenue at certain times of the year where advertising is available (e.g. in the run up to Christmas) as all other media are able to do, by allowing minutage to be measured across the full 24-hour day for those periods. ([Independent Broadcasters of Ireland](#))

It was argued that short sponsorship 'stings', or sponsorship content identifying support for a segment or programme, as well as sponsorship announcements, public announcements placed by the State, or references to charitable fundraising should be excluded from the advertising minutage measurement and limits. ([Independent Broadcasters of Ireland](#))

A trial or pilot was proposed to measure the effect of allowing broadcasters to operate longer minutage restrictions for a limited period, which would test feasibility and whether regulation is needed in this area or further flexibility could take place. Specifically, it was proposed to test the provision of allowing a higher maximum advertising minutage percentage of 18% (to be consistent with TV) on average across the day or a portion of the day which could allow some periods of short and longer ad breaks. ([Independent Broadcasters of Ireland](#))

The retention of the 15% total broadcasting time daily limit as a maximum cap was favoured, if it is accompanied by an increased maximum hourly limit of 15 minutes per hour.

It was argued that the listening experience would effectively disincentivise radio broadcasters from the excessive concentration of advertisements around certain programmes or times of day because of the risk of listeners 'turning the dial'. It was also suggested that a more liberal approach to advertising minutage would benefit the commercial radio sector and advertisers, without resulting in audience harm. ([Independent Broadcasters of Ireland](#), [Wireless Ireland](#))

Chapter 9: Responses to the Code of Fairness, Objectivity & Impartiality in News and Current Affairs (Stage 1, Consultation Q.10)

Question 10 of the Stage 1 Consultation asked, “Do you have any comments on the changes proposed for the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs?”

This chapter summarises the comments submitted in response to these questions.

Comments on proposed changes to the Code: Question 10

The aim of the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs is to ensure that news and current affairs content is treated with fairness, objectivity and impartiality. It provides underpinning principles for broadcasters to adhere to, including that of fairness, of accuracy and responsiveness, and of transparency and accountability.

While it was acknowledged that the Commission is aware that decisions in respect of editorial coverage rest solely with the broadcaster, this should be made explicit in the Code. ([Independent Broadcasters of Ireland](#))

It was stated that the obligations in the Code of Fairness, Objectivity & Impartiality in News and Current Affairs should not require broadcasters to provide airtime to people that the Broadcaster has reason to believe may engage in hate speech, defamation, misinformation or other forms of content that could put the broadcaster at risk. Recognised scientific experts should not be juxtaposed with people of different points of view simply to maintain balance. ([Independent Broadcasters of Ireland](#))

It was believed that the way balance could be achieved should be set out in the Code including: selection of programme contributors; the airtime made available to various candidates or points of view; measures to ensure overall coverage will be fair and balanced without in practical terms a requirement that all candidates and views can be included in an individual news bulletin, programme item or show; the scope of on-air discussions and debates; how a station structures election-related programming or coverage of an issue; how presenters handle on-air interviews and discussions; or seeking out a variety of viewpoints on the issues raised by the election or issue in question. ([Independent Broadcasters of Ireland](#))

It was suggested that the Draft Code should state that it will only apply to content produced by or on behalf of broadcasters. It was argued that broadcasters are not able to comply with any of the terms of the Code in respect of acquired programming which is produced by third parties and licensed to the broadcaster. Further, the broadcaster of acquired programming is not involved in the production process, it does not compile produce or present acquired programming and as such it cannot comply with the Code in respect of acquired programming. ([TG4](#))

It was suggested that news and current affairs reporting in Ireland is failing to provide essential context in its reporting. It was noted that Media Services Code will play a vital role in building and preserving public trust in the media. ([Private Individual](#)) A number of recommendations were made to ensure news in an impartial manner, without bias or omission of important context, and by extension, uphold the public’s trust in the media, including:

- Broadcasters should disclose when the news has been censored by the state or military (especially when there is no independent verification). ([Private Individual](#))

- Perpetrators of military attacks should be identified at the top of reports. (Private Individual)
- Conflicts should be accurately framed and a consistent approach used when describing who the conflict is between. (Private Individual)
- There should be a consistent reporting of death tolls with guidelines that ensure that death tolls are reported equally for conflicts around the world. It was suggested that different standards are applied to different conflicts because some lives are more newsworthy than others. (Private Individual)
- Broadcasters should provide full context when media black outs are enforced as the public should be made aware when independent reporting is prohibited. Codes to prevent reporting of independent unverified claims as trustworthy news would preserve the media's impartiality and independent. (Private Individual)

It was stated that an interviewer asking a question, or the reporting of a particular view, should not be assumed to be the views of the presenter and it was argued that stations should be able to reserve the right to pre-record or edit interviews, audio or news releases for time, balance or legal reasons. (Independent Broadcasters of Ireland)

It was claimed that broadcast news is more trusted than online as it is regulated and adheres to codes. In 2023, online overtook television as a primary source of news (Digital News Report Ireland 2024) and it was suggested that not applying these codes to online news sources is a missed opportunity. (Dublin Community Television)

It was noted that the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs gives effect to the AVMSD, and the Online Safety and media Regulation Act 2022 and no significant changes are proposed. (National Disability Authority)

Section 4: Regulatory Principles

It was suggested that specific reference should be made to the Commission having regard to freedom of expression as per the language in the Programme Standards Code and that the following should be included as a new Section 4.7: *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.* (TG4)

Section 6: Waiver

It was considered that sections 6.1 and 6.2 of the Short News Reporting Code containing a 'Waiver' was inappropriate for a regulatory code. Such waiver language was appropriate for contracts between two parties and not for a regulator which can impose severe penalties in the event of a breach. Therefore, it was proposed that sections 6.1 and 6.2 should be deleted. (TG4)

Section 11: Code Objectives

It was recommended that the Code Objectives should specify the requirement to have due regard to freedom of information and the following language was suggested: *In order to promote the responsible provision of broadcasting services which enhances access to news and current affairs content, while having due regard to the right to freedom of expression referenced in Section 4.7 of the Code.* (TG4)

On the first bullet point it was queried whether it should be amended to read "or making available" instead of "availability". (TG4)

It was noted that the fifth bullet point lists one of the Code's Objectives as follows "*To ensure news and current affairs content complies with applicable Irish and European legislation and has regard to international conventions*". It was argued that this requirement goes beyond the purposes of the Code and this form of language in the fifth bullet point should be removed from the Code. A breach of those other unspecified pieces of Irish and European legislation and international conventions would amount to a breach of the Code and a breach of s8B of the Act with a possible significant fine under the OSMR Act. Any breaches of other Irish legislation/European legislation or international conventions should be addressed under the applicable Irish legislation/European legislation/international convention and such a breach should not constitute a breach of the Code or a breach of s8B of the OSMR Act. (TG4)

Section 12

It was suggested that the provisions of s46L of the OSMR Act should be reproduced in the body of the Code or in a schedule to the Code in the interests of clarity. (TG4)

It was proposed that the Code should only apply to the content referred to in s46L(1)(b) of the OSMR Act, which has been produced after the coming into effect of the Code. It was argued that in the absence of this suggested change the regulatory arrangements of the Commission are not operating fairly as is required by Section 4.4 of the Code and is not complying with s7(3) of the OSMR Act. (TG4)

Clarity was sought on whether Section 12.1 and Section 12.2 will also apply to matters "which are either of public controversy or the subject of current public debate". (TG4)

It was queried whether the reference to "providers of broadcasters" was a typo and if it was not, then what is intended by this phrase. (TG4)

Section 13

Clarity was required on the meaning of "detrimental to their interest" in Section 13.3. (TG4)

Section 14

It was suggested that within Section 14.2, the words "and such links are made clear to the audience" should be deleted as this requirement appears to be unnecessary and it is not required by the OSMR Act. In addition, guidance was sought on the meaning of a reasonable time period. (TG4)

Guidance was similarly sought on how a broadcaster can genuinely express its views on broadcasting policy if it while expressing its views, and how a "personal" or "authored" current affairs segment can in fact be personal if it nevertheless has to comply with the broadcaster's statutory obligations to be impartial, objective and fair to all interests concerned. (TG4)

Section 15

It was suggested that Section 15.1 should refer to Irish election/Irish referendum. (TG4)

Section 16

It was argued that the requirement in 16.1 goes beyond the purposes of the Code as stated in Section 3.1 and the language in Section 16.1 should be deleted. As noted previously, a breach of those other unspecified pieces of legislation would amount to a breach of the Code and a breach of s8B of the Act with a possible significant fine under the OSMR Act.

Any breaches of other legislation should be addressed under the applicable legislation and such a breach should not constitute a breach of the Code or under s8B of the OSMR Act. (TG4)

It was suggested that Section 16.2 should be deleted as it imposes an obligation on the broadcaster to have due regard to guidance and a failure to do so would amount to a breach of the Code. Section 9.1 provides that the Guidance issued by the Commission is not binding however a failure to give due regard to this guidance is nevertheless a breach of the Code which is not reasonable. (TG4)

Chapter 10: Responses to Short News Reporting Code (Consultation Q.11)

Question 11 of the Stage 1 Consultation asked, “Do you have any comments on the Draft Short News Reporting Code?”

This chapter summarises the comments submitted in response to this question.

Comments on proposed changes to the Code: Question 11

It was stated that the Draft Short News Reporting Code should favour smaller broadcasters and provide more obligations on larger state broadcasters. Due recognition or citation of the source of any material carried by another broadcaster should be a requirement under the Code. It was believed that this section of the Code should only apply to broadcast media regulated by the Commission and other media (e.g. social) should not be able to access the same benefits. ([Independent Broadcasters of Ireland](#))

It was considered that Sections 6.1 and 6.2 of the Short News Reporting Code containing a ‘Waiver’ was inappropriate for a regulatory code. Such waiver language was appropriate for contracts between two parties and not for a regulator which can impose severe penalties in the event of a breach. Therefore, it was proposed that sections 6.1 and 6.2 should be deleted. Section 11.4 of the Code explains that where a short news extract is only available from a broadcaster in another EU Member State, then the law from that Member State shall apply. It was stated that under these circumstances, the Code should clarify that the OSMR Act / Code would not apply to those extracts. ([TG4](#))

There was a view that a code allowing short news clips was significant. The Olympics 2024 started with blacked out RTÉ News in Northern Ireland of news clips of the Olympics in Paris. It was stated that a legal mechanism with a complaints procedure is a logical step to allow for fair use in news without infringement of rights. ([Dublin Community Television](#))

It was felt that the Draft Short News Reporting Code contained no substantial changes. ([Warner Bros. Discovery](#))

Annex 1 – Full List of Respondents

Category	Respondent name
Disability rights groups	1. National Disability Authority (NDA)
Health promotion organisations providing submissions on advertising	2. Alcohol Action Ireland 3. Baby Feeding aw Group Ireland (BFLGI) 4. Food Drink Ireland
Industry and industry associations	5. TG4 6. Warner Bros. Discovery 7. Bauer Media Audio Ireland 8. Dublin Community Television (DCTV) 9. Independent Broadcasters of Ireland (IBI) 10. Sunshine 106.8 11. RTE 12. Wireless Ireland 13. Virgin Media
Industry organisations providing submissions on advertising	14. Association of Advertisers in Ireland 15. Dairy Industry Ireland
Organisations and Government agencies, and research centres dealing with mental health and self-harm issues (suicide, anorexia)	16. Shine
Other individuals	17. Private Individual

Annex 2 – List of Consultation Questions

Consultation on the Broadcasting Codes

1. Do you have any comments on the general amendments that are being proposed to apply to each of the Broadcasting Codes and Rules?
2. Do you have any comments on the proposed changes to the General Commercial Communications Code?
3. Do you have any comments on the proposed changes to the Children’s Commercial Communications Code?
4. Do you have any comments on the proposed changes to the Code of Programme Standards?
5. While the Code includes guidance for broadcasters on undue offence, it is not defined. What are your views as to whether the Commission should include a definition of undue offence in the code. If you think a definition should be included, what factors or criteria might the Commission use to determine that undue offence has been caused?
6. Aside from proposals about hourly limits on advertising and teleshopping, do you have any comments on the Draft Media Service Code and Media Service Rules (Advertising, Teleshopping, Signal Integrity and Information)?
7. What are your views on the proposal to retain the maximum of 12 minutes of advertising and teleshopping per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?
8. Aside from proposals about hourly advertising limits, do you have any comments on the Media Service Rules (Advertising – Radio)?
9. What are your views on the proposal to retain the maximum of 10 minutes of advertising per clock hour? What are your reasons for holding this view and if you think the provision should change, how do you think it should change and why?
10. Do you have any comments on the changes proposed for the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs?
11. Do you have any comments on the Draft Short News Reporting Code?