

UNITED KINGDOM

**STUDY ON THE IMPACT OF
ADVERTISING AND TEleshopping
ON MINORS**

- 1. INTRODUCTION**
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I. INTRODUCTION

The study on the impact of TV advertising and teleshopping on minors was carried out by International Research Associates (**INRA**) in collaboration for legal issues with the lawfirm **Bird & Bird** , for the 18 Member States of the European Union and the European Economic Area, and, for each country, in collaboration with a national lawfirm (a complete list is annexed to the study). For the UK the study was carried out by **Bird & Bird London**.

The aim of the study was to identify and describe the national provisions on advertising provided in legislation, regulation and self-regulatory codes, which are applied to advertising in each State for the protection of minors. In addition, the national system for the handling of complaints was described fully, covering administrative, legal and self-regulatory measures.

For most countries it was possible to identify and to comment upon official proposals of law. In this respect, the information received from professional associations in the advertising sector was very helpful, as were the comments made by national authorities, who had been sent the draft reports by the Directorate General Education and Culture.

Finally in each national report the consultants indicated the way in which the provisions of the TVWF Directive (unofficial consolidated version), have been implemented in national legislation concerning TV advertising and teleshopping directed at minors. Nevertheless, in view of the objectives of the Commission and to enable comparison, the reports also cover other media such as radio, press, outdoor advertising, cinema, and Internet.

The study was carried out, realised and presented using an identical layout for each of the countries studied to achieve a harmonised readable approach, and facilitate comparison .

Therefore, as well as the main definitions and general rules in the field of advertising and teleshopping directed at minors, each national report contains the regulation by sector and by media, as well as an identification of specific marketing techniques. Moreover, each national report is preceded by a summary which gives the essential characteristics of the country in question. An Excell table has been drawn up, using the same layout for each country, as well as a comparative table for the 18 States studied.

Finally a report has been drawn up on European and international regulation and self-regulation concerning advertising directed at minors.

II. SUMMARY

Pursuant to the Broadcasting Act of 1990, the ITC is empowered to draw up and enforce a code of standards in television, advertising and sponsorship. The ITC code of advertising standards and practice, the ITC rules on the amount and scheduling of advertising, the ITC code of Programme sponsorship and the ITC rules on the amount and scheduling of advertising (last edition 1998) contain detailed rules on advertising in relation to children. The European Directive “Television without Frontiers” has been implemented in these codes.

The ITC code on Advertising Standards will be updated in the near future but there will be no significant modifications on the content of the rules concerning children.

1. Definitions

Under the Children’s Act 1989 and the Family Law Reform Act, a minor or a child is a person under the age of 18. The Children and young people’s Act uses the term “child” for a person under the age of 14 years and the term “young person” to designate a person who has attained the age of 14 and is under the age of 18.

2. Regulation

a. General

The Control of Misleading Advertisements Regulations 1998 implement the EEC Council Directive 84/450 and impose a duty upon the Director General of Fair Trading, the Independent Television Commission, the Radio Authority and the Welsh Authority to consider complaints made to them that an advertisement is misleading.

b. Media

General principles for **television** advertising are contained in the ITC Code of advertising standards and practice (CASP). For the purpose of this Code, children are those under the age of 15. The Code states that particular care must be taken with advertising that is likely to be seen by many children or in which children are employed. The Code covers wider issues than those

covered by the Television without Frontiers directive (TWF)¹ such as toys and games, direct exhortation, safety, and appeals to loyalty and inferiority.

Concerning transmission time regulation, the CASP provides that advertisements, in which personalities that appear regularly in children's programmes, must not be transmitted before 9pm. Advertisements for merchandise based on children's programmes must not be broadcast in either of the two hours preceding or succeeding transmission of the relevant programme. Advertisements containing material that might frighten or cause distress to children must be subject to appropriate restrictions on times of transmission.

The CASP apply in full to teleshopping and to self-promotional spots, windows or channels.

The ITC Family viewing policy contains rules providing that material unsuitable for children should not be broadcast at times when large numbers of children are expected to be watching, and sets up a progressive decline throughout the evening, in which nothing should be shown that is unsuitable for children, with a time being fixed at 9.00pm

Finally, the ITC rules on the amount and scheduling of advertising contain very similar rules to the CASP rules.

With regards to **radio** advertisements, the Radio Authority Advertising and Sponsorship Code also contains similar rules to the aforementioned CASP. For the purpose of this Code children are individuals aged 15 and younger. The Code covers issues such as a clear identification of advertisements, the exclusion of advertisements from some types of programmes, misleading advertisements, protection of privacy,...

The Radio Authority Programme Code provides that when programming is specifically directed at a young audience or there is evidence of a substantial young audience care must be taken to avoid contents such as strong language, explicit news reports, « phone in » programmes which cover explicit violent or sexual topics in a frank manner, musical items with violent or sexually explicit lyrics,...For the purpose of this Code, children and young persons are those below adult age , that is under 18 years.

Other organisations provide their own rules, such as the ICSTIS (regulatory body for the premium rate telecommunications industry) supervises the

¹ Directive 89/552 of 3 October 1989 and Directive 97/36 of 30 June 1997 amending Directive 89/552 on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the pursuit of television broadcasting activities.

content of promotional material for premium rate services. Some rules concern children's programmes defined as those, which are aimed at persons under 16 years of age.

c. Specific provisions

The ITC and Radio Authority Codes generally contain stricter rules than those of the TWF directive.

Alcohol

Under the ITC Rules on Amount and Scheduling of Advertising, **alcoholic drinks** containing 1.2% alcohol or more by volume may not be advertised in or adjacent to children's programmes or programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18.

Drinks containing less than 1.2% alcohol by volume when presented as low or 'no-alcohol' versions of an alcoholic drink and liqueur chocolates may not be advertised in or adjacent to children's programmes.

The CASP and ITC Programme Code prevent any advertisement for alcoholic drinks to be transmitted during children's programmes or immediately before or after them.

The Radio Authority Scheduling and Advertising Code contains a specific appendix regarding alcoholic drink advertising and minors.

Tobacco

Under the provisions of the ITC Programme Code, particular care is needed with programmes likely to be seen by children and young people. Smoking should not be prominently presented in programmes shown before 9.00pm (or 8.00pm on premium pay channels) as a normal and attractive activity. Exceptions may be made where there are strong editorial reasons for its inclusion or where (for example, in cinema films) it would be unreasonable or impractical to remove it (rule 5.9)

Under the Radio Authority Advertising and Sponsorship Code Advertisements for cigars and pipe tobacco must not be broadcast in or around programmes/features directed particularly at people under 18.

Medicinal products

The Medicine Act 1968 and the Medicine Regulations 1994 are universally for the advertisement of **medicinal products**. These rules comply with article 15 of the TWF directive.

Regulation 91d of this act states, that no one shall issue any advertisement relating to any medicinal product containing any material directed at children. The same rule applies to radio advertisement.

ITC rules provide that medicine, vitamins and other dietary supplements may not be advertised in or adjacent to children's programmes.

Financial services

It is an offence for a person, with a view to financial gain, to send a minor any document inviting him to borrow money, to obtain goods and services on credit or to apply for information on any of the above.

3. Proposals of law

The ITC Code on Advertising Standards is under revision. There will be no significant modifications but some rules have to be updated.

The Radio Authority has drafted a draft proposal of revision of its Advertising and Sponsorship Code.

4. Self regulation

The British Code of advertising and sales promotion (BCASP) contains the general principles of **non-broadcast advertising**. For the purpose of this Code, a child or young person is someone under the age of 16. Advertisements and promotions addressed to or featuring children should contain nothing that is likely to result in physical, mental or moral harm to the children. The Advertising Standards Authority enforces this code.

BACC ensures pre-clearance of TV advertising. Almost every British TV Channel is a member of BACC and submits its TV advertising for pre-clearance (examination of the compliance with the ITC codes).

The Broadcasting Standards Commission produces a code on Fairness and Privacy. This Code contains a special section regarding children

The Internet Watch Foundation addresses the problem of illegal material on the Internet with particular reference to child pornography.

5. Handling of complaints

Authorities

The ITC licence holders must ensure that any advertising they transmit complies with the ITC Code of advertising Standards and Practice. Viewers can contact the television company or the ITC directly, who will raise the matter with the television company concerned. Final decisions are taken by the ITC's Director of Advertising and Sponsorship. If the complaint is upheld, the ITC will notify the relevant television company, and they may order the company to make changes, including the withdrawal of the advertisement in question. The ITC may also issue a formal warning to the company or even impose a fine, or in extreme cases withdraw the company's broadcasting licence.

The Radio Authority issues guidelines for listeners who wish to complain about an item. Upheld complaints are published in the Authority's quarterly bulletin, which is sent out to the stations, to the press or to any other interested party. The Authority has also the power to issue formal warnings, request a broadcast apology, a correction, or impose a penalty. In case of misleading or offensive advertising, they can require that the advertisement concerned be immediately withdraw or amended.

Self-regulation

The ASA Codes of advertising and Sales Promotion. Non broadcast advertisers bear the principal responsibility for the advertisements and promotions they produce. The sanctions vary from the withholding of services or the denial of access to space by the media, contractors and service providers.

III. REPORT

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I. DEFINITIONS

Minors

Family Law Reform Act 1969 section 12 :

A person who is not of full age may be described as a 'minor'. However:
Children Act 1989 :

This Act repeals much of the earlier legislation and uses the term 'child' throughout which is defined under section 105(1) as 'a person under the age of 18'.

Full Age

Family Law Reform Act 1969 s.1(1) : a person attains full age on attaining the age of 18. One exception to this general rule is that in law, the Sovereign is **never** a minor.

Under s.9(1) of this Act, the time at which a person attains a particular age expressed in years is the commencement of the relevant anniversary of the date of his birth.

Majority

Under s. 1(2) of the Family Law Reform Act 1969, the provision of full age above applies for the purposes of any rule of law and in the absence of a definition or of any indication of a contrary intention for the construction of 'full age', 'infant', 'minor', 'minority' and similar expressions in any statutory provision, whether passed or made before, on or after 1 January 1970 and in any deed, will or other instrument of whatever nature (not being a statutory provision) made on or after that date.

Legal entitlement to contract

The law affecting minors' contracts is found in common law as amended by the Minors' Contracts Act 1987. A child's contract is generally voidable at the instance of the child, although it is binding upon the other party. Exceptions to this rule include contracts of service and apprenticeship – if they are clearly for the child's benefit they will be valid and binding upon a child. Contracts which are obviously prejudicial to a child are wholly void, such as loan contracts.

Protection of children

Children Act 1989 :

This Act contains provisions intended to improve the effectiveness of the law on protecting children at risk. There are a variety of other statutory provisions creating criminal offences in respect of conduct which is harmful to children, such as cruelty, negligence and begging.

Under part V of the Act, local authorities have specific duties to investigate where they have reasonable cause to suspect that a child is or is likely to suffer significant harm, and in certain other circumstances. Section 46 of the Act gives the police power to take a child into protection.

Under s. 43 of the Act, if attempts to have a child examined or assessed voluntarily have failed, application may be made to the court for a child assessment order which will require the child to be produced and made available in accordance with the court's directions. The court must however have regard to the principle that the child's welfare must be the court's paramount importance in determining any application under Part V of the Act, to the presumption against making an order, and to the general principle that delay is likely to prejudice the welfare of the child.

Public sex offences

Children and Young Persons Act 1933 :

This Act creates an offence for a person having responsibility for a child or young person who has attained the age of four years and is under the age of sixteen years who allows that child or young person to reside in or frequent a brothel (s. 3(1)). The Act uses the term 'child' to mean a person under the age of 14 years, and the term 'young person' to mean a person who has attained the age of 14 and is under the age of 18 years (s. 107 (1) – definition of 'young person' substituted by the Criminal Justice Act 1991 s. 68, Sch 8 para 1(3)).

Sexual Offences Act 1956 :

This Act creates various offences in relation to minors. Such offences include:

- a person who causes or encourages the prostitution of or the commission of unlawful sexual intercourse with or of an indecent assault on a girl under the age of sixteen for whom he is responsible (s. 28(1));
- a man who has unlawful sexual intercourse with a girl under the age of 16 (subject to certain exceptions) (ss. 5, 6(1));

Protection of Children Act 1978 :

Under ss. 1(1)(a)-(c), 7(2) of this Act, it is an offence for a person to take, distribute, show or have in his possession with a view to distribution or showing any indecent photograph (including data held on computer disc) or film of a child, where 'child' means a person under 16 years of age (s. 1(1)(a)). The advertising of such a distribution or showing is also an offence (s. 1(1)(d)).

Protection against immaturity and inexperience

In 1967, the Report of the Committee on the Age of Majority (the "Latey Report") set out the social policy behind special rules for minors and their contracts which is to protect the minor against his or her own immaturity and inexperience (para 289 of the Latey Report). It tries to achieve this purpose generally by allowing minors to go back on contracts or at least enabling them to do so when adults put pressure on them to do so.

Note : The provisions of the Family Law Reform Act 1969 and the Minors Contracts Act 1987 apply to England and Wales only. The provisions of all the other Acts referred to above extend (except for the Children Act 1989 which does not extend to Northern Ireland) do not extend to Scotland and Northern Ireland.

II. LEGAL PROVISIONS

1. General statutory provisions : Classification by support

1.1. All media

Control of misleading advertisements regulations 1998, si 1998/915

These regulations were made on 23 May 1983 under the European Communities Act 1972, section 2(2), and came into force on 20 June 1988. They implement EEC Council Dir. 84/450 relating to misleading advertising.

They impose a duty upon the Director General of Fair Trading (in his case the duty is a non-mandatory one and arises only if a complaint is referred to him by one of the self-regulatory bodies such as the ITC, ASA etc – see also part V below), the Independent Television Commission, the Radio Authority and the Welsh Authority to consider complaints made to them that an advertisement is misleading, unless “the complaint appears to be frivolous or vexatious”.

The Regulations do not apply to investment advertising and certain advertisements referred to in section 58(1)(d) of the Financial Services Act 1986 (Reg. 3 (1)(a)-(b)).

Once the Director General of Fair Trading is satisfied that the complaint is genuine and that the advertisement concerned is misleading he may, if he considers it appropriate, make an application to the Court for an injunction preventing publication or continued publication of the advertisement (Reg. 5).

Sale of goods act 1979

The Sale of Goods Act 1979 came into force on 1 January 1980 and applies to all contracts of sale of goods made on or after 1 January 1980, including those to people dealing as consumers. As such it forms a major part of the legislative framework concerned with consumer protection.

The Act does not deal with advertising specifically nor does it afford particular protection to minors. However the Act does imply terms into every contract for the sale of goods, specifically:

- the goods will conform to a description (including one given in a catalogue) or a sample;
- the goods will be of reasonable quality;
- the goods will be fit for the particular purpose the buyer intends (ss12-15).

Moreover where one party acts as a consumer these terms cannot be excluded under the Unfair Contract Terms Act 1977 s 6(2). Consequently a seller of goods to children must be aware not only of the various statutory and self-regulatory provisions concerning advertising. He is also under a statutory duty to ensure that goods sold (or offered for sale) according to a description or a sample, or by way of reference to the suitability of the goods for a particular purpose for which it is reasonable to assume the goods was purchased, do indeed accord with any such claims made.

Consumer protection act 1987

The Act received its Royal Assent on 15 May 1987. It is divided into three main parts dealing with:

- Part I; liability for damage caused by defective products;
- Part II; safety of goods; and
- Part III; misleading price indications.

Again, the Act does not deal with advertising specifically nor does it afford particular protection to minors. However Part III of the Act, which came into force on 1 March 1987 (by virtue of the Consumer Protection Act 1987 (Commencement No 3) Order 1988, SI 1988/2076) makes it an offence to give a misleading price indication in respect of goods, services, accommodation or facilities, or to fail to correct any such misleading price indication (section 20). Section 21 lists five ways in which a price may be considered to be misleading including that it is less than in fact it is or that the price quoted is incomplete and there will be “additional charge(s)”.

Therefore, any misleading price indications will fall within the legislative ambit of the Act as well as within the appropriate self-regulatory code of practice.

Parts I and III do not apply to Northern Ireland.

1.2. Television

ADVERTISING

The **Independent Television Commission** (ITC) is the regulatory body responsible for licensing and regulating terrestrial, cable and satellite commercial channels in the UK.

Pursuant to the Broadcasting Act 1990, the ITC is empowered to draw up and enforce a code of standards in television advertising and sponsorship. The BBC is governed by a Royal Charter and does not carry any advertising but BBC Worldwide is permitted to take advertising and these programmes are therefore required to conform to the ITC Codes.

The ITC Code of advertising standards and practice (“CASP”)

A. General principles

The Code contains the general principles of advertising providing for example that television advertising must not mislead, cause serious offence or lead to harm, especially to children (cfr Directive TV Without Frontiers (hereinafter referred to as TVWF), art. 22,1)

B. Specific rules

It also contains specific rules on advertising and Children (Rule 41 and Appendix 1)

For the purposes of this Code, unless otherwise stated, the Commission normally regards as children those aged 15 years and under.

- Particular care must be taken over advertising that is likely to be seen by many children or in which children are employed (rule 41).

1.2.1. The Child Audience

At times when large numbers of children are likely to be viewing, no product or service may be advertised and no method of advertising may be used which might result in harm to them physically, mentally or morally, and no method of advertising may be employed which takes advantage of the natural credulity and sense of loyalty of children (cfr. art. 16 European Directive TV without Frontiers).

1.2.2. Misleading information

No unreasonable expectation may be stimulated, for example, of the performance of toys and games by the excessive use of imaginary backgrounds or special effects.

1.2.3. Toys and games

Advertisements for toys, games and other products of interest to children must not mislead, taking into account the child's immaturity of judgement and experience. For example, the true size of the product must be made easy to judge.

1.2.4. Competitions

If there is to be a reference to a competition for children in an advertisement, the published rules must be submitted in advance to the licensee and the value of the prizes and the chances of winning one must not be exaggerated.

1.2.5. Direct exhortation

Also, advertisements must not exhort children to purchase or to ask their parents or others to make enquiries or purchases. No advertisement may invite children to purchase products or services by mail, telephone or e-mail.

1.2.6. Appeals to loyalty and inferiority

No advertisement may imply that unless children themselves buy or encourage other people to buy a product or service they will be failing in some duty or lacking in loyalty or will be inferior in some way to other children or liable to be held in contempt or ridicule.

1.2.7. Scheduling

Scheduling rules are more detailed than those contained in Directive TVWF.

- **Not before 9pm** : Advertisements in which personalities or other characters (including puppets, etc) who appear regularly in any children's television programme on any UK television channel, present or positively endorse products or services of particular interest to children must not be transmitted before 9pm.
- **Not within two hours preceding or succeeding transmission of a relevant programme** : Advertisements for merchandise based on children's programmes must not be broadcast in any of the two hours preceding or succeeding transmission of the relevant programme or of episodes or editions of the relevant programme.
- **Other time restrictions:** Advertisements which contain material which might frighten or cause distress to children must be subject to appropriate restrictions on times of transmission designed to minimise the risk that

children in the relevant age group will see them. Trailers for 15 or 18 rated films must not be shown in or around children's programmes and, depending on content, may require more rigorous timing restrictions.

1.2.8. Prices

This section draws up rules providing that advertisements for expensive toys, games and similar products must include a clear indication of their price.

1.2.9. Safety

Safety should carefully be considered when children appear in advertisements, especially as it might encourage dangerous emulation. Amongst other things, particular attention should be given to road safety.

1.2.10. Danger

No advertisement may encourage children to enter strange places or to converse with strangers (for example, in an effort to collect coupons, wrappers, labels, etc). The details of any collecting scheme must be submitted to the licensee who must be satisfied that it contains no element of danger to children.

1.2.11. Exploitative Presentation

Advertisements must not portray children in a sexually provocative manner. Treatments in which children appear naked or in a state of partial undress require particular care and discretion.

1.2.12. Clubs

No advertisement dealing with the activities of a club may be accepted without the submission of satisfactory evidence to the licensee that the club is properly and responsibly supervised.

1.2.13. Good Manners and Behaviour

Children in advertisements should be reasonably well-mannered and well-behaved.

1.2.14. Children as Presenters

Children must not be used formally to present products or services which they could not be expected to buy themselves. This applies whether or not such products are of interest to them. Nor may they make in relation to any product or service, significant comments on characteristics of which they cannot be expected to have direct knowledge.

1.2.15. Testimonials

Children must not be used to give formalised personal testimony. This does not, however, preclude children giving spontaneous comments on matters in which they would have an obvious natural interest.

The Code's format has remained largely unchanged for many years. In recent times, it has been supplemented by separate Guidance Notes which aim to assist the television companies (who are ITC's licensees and who must ensure that the advertising they intend to carry complies with the ITC codes) to interpret and apply the code rules.

In some cases the reason for the existence of the rules is not obvious from the wording of the code.

An actual code review is intended :

- to check whether any absolute prohibitions on the right to advertise are still valid and proportionate
- to amend some long-established rules so that they more clearly reflect policy as it has developed over the years
- to simplify the language and rationalise the layout to make the codes easier to use
- to include where appropriate an explanation of why a rule exists and what it is intended to achieve
- to incorporate guidance into the code in the form of Notes. It would not be compulsory to comply with the guidance but the ITC would expect licensees to be able to defend any deviation from the guidance on the grounds that the spirit and the intentions of the rules had been met by some other means.

The ITC Programme Code

A. Legal basis of the Code

Section 6(1)(a) of the Broadcasting Act 1990 requires that the ITC does all it can to secure that every licensed service includes nothing in its programmes which offends against good taste or decency or is likely to encourage or incite to crime or lead to disorder or be offensive to public feeling. Section 7(1)(a) requires the ITC to draw up a code giving guidance as to the rules to be observed with respect to the showing of violence, or the inclusion of sounds suggestive of violence, in programmes included in licensed services, particularly when large numbers of children and young persons may be expected to be watching the programmes.

B. The Family viewing policy

The Code contains rules of the Family Viewing Policy.

These rules provide that material unsuitable for Children should not be broadcast at times when large numbers of children may be expected to be watching and sets up a progressive decline throughout the evening, 9.00pm being fixed as the time up to which nothing should be shown that is unsuitable for children (rule 1.2(i)) (cfr Directive TVWF, art. 22,2)

The policy also covers programme trailers and promotional clips, warnings, violence, interviewing of children, etc...

Finally, appearances by children in programmes, apart from those appearances expressly exempted under the Children and Young Persons Acts, require a license from the Local Education Authority in whose area the child lives.

The ITC rules on the amount and scheduling of advertising

A. General Principles (Rules 4.1.1 and 4.1.2)

The ITC expects its licensees to exercise responsible judgement on the scheduling of advertising and in particular to operate internal systems capable of identifying in advance, and avoiding, inappropriate juxtapositions between advertising material and programmes, particularly those which could cause distress or offence to viewers.

Particular sensitivity is required in relation to advertising inserted in or around news programmes where a news item, especially one of a tragic nature, may completely transform the context in which an advertisement having some apparent connection with it may be perceived by viewers. In some cases of this kind a separation from news references may be insufficient and it may be preferable to suspend the advertising altogether in order to avoid distress or offence.

B. Specific rules on Children and Young People

Most of the rules contained in this Code are very similar to the CASP rules (see above).

- The following may not be advertised in or adjacent to children's programmes or programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18 :
 - (i) alcoholic drinks containing 1.2 per cent alcohol or more by volume; (*See also 4.2.5 below*) (cfr Directive TVWF, art. 15a).
 - (ii) bingo;
 - (iii) religious matter subject to the rules in Appendix 5, Religious Advertising, of the ITC Code of Advertising Standards and

Practice; (Rule 13(b) of Appendix 5 of the Code makes limited exceptions to this restriction);

- (iv) slimming products, treatments or establishments.

- The following may not be advertised in or adjacent to children's programmes or programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 16:
 - (i) lotteries;
 - (ii) pools.

- The following may not be advertised in or adjacent to children's programmes or programmes which are of particular appeal to children under the age of 10:
 - (i) female sanitary protection products.

- The following may not be advertised in or adjacent to children's programmes:
 - (i) drinks containing less than 1.2% alcohol by volume when presented as low or no-alcohol versions of an alcoholic drink;
 - (ii) liqueur chocolates;
 - (iii) matches;
 - (iv) medicines, vitamins and other dietary supplements; and
 - (v) trailers for films or videos carrying an 18 or 15 certificate.

Merchandise Based on Children's Programmes (rule 4.2.2, same rule as in CASP) (see section 2.1.1 of this note)

Treatments Unsuitable for Children (rule 4.2.3, very similar to the CASP rule) (see section 2.1.1 of this note)

Advertisements which might frighten or cause distress to children of particular ages or which are otherwise unsuitable for them (eg, because they refer explicitly to sexual matters) must be subject to appropriate restrictions on times of transmission designed to minimise the risk that children in the relevant age group will see them. This does not preclude well-considered daytime slotting for such material but licensees should take account of factors such as school holidays, which may affect child viewing levels. In some cases, material which would be incomprehensible to pre-school children and could, therefore, reasonably be shown when they are viewing with parents, may be more problematic in relation to older children. (cfr Directive TVWF, art. 22,2).

Post Watershed (rule 4.2.4)

This is the same rule as in CASP (see 2.1.1 of this note)

- Advertisements in which personalities or other characters (including puppets etc.) who appear regularly in any children's television programme on any UK television channel present or positively endorse products or services of special interest to children may not be advertised before 9pm. The following may not be advertised before 9pm without the prior agreement of the Commission:
 - (i) advertisements in which children are shown having any medicine, or vitamin or other dietary supplement administered to them;
 - (ii) advertisements for medicines, vitamins or other dietary supplements which use techniques that are likely to appeal particularly to children, such as cartoons, toys or characters of special interest to children;
 - (iii) condoms.

Rule 4.2.7, same as CASP

Advertisements in which persons (including puppets, etc.) who appear regularly in any children's television programme on any UK television channel present or positively endorse products or services of special interest to children, must not be broadcast before 9pm.

The Broadcaster Advertising Clearance Centre (“BACC”) is responsible for the pre-transmission examination and clearance of Television advertisements.

TELESHOPPING

The ITC Code of Advertising Standards and Practice

Features of programme length in which goods and services are described or demonstrated and offered for sale, purchase or hire to viewers are regarded by the Commission as advertisements and must comply with all requirements of this Code (rule 37)

The ITC rules on the Amount and Scheduling of Advertising

Section 8 of this Code contains general rules on teleshopping, teleshopping channels and self promotional channels.

The following rules apply, as relevant, to channels other than Channels 3-5.

A. General Rules

- Teleshopping on Channels is dealt with in Rule 8.1.4.
- Teleshopping (also known as home shopping, advertorials, infomercials, etc.) is a form of advertising involving the broadcast of direct offers to the public with a view to the supply of goods or services, including immovable property, or rights and obligations, in return for payment.
- Teleshopping offers of any kind must contain the direct offer for sale to the public within the teleshopping transmission itself. Where the offer for sale is only contained elsewhere (eg: in a text service) the material may not be classed as teleshopping.
- For the avoidance of doubt, for the purposes of all aspects of compliance teleshopping spots and teleshopping windows are part of the service on which they appear, even when supplied by another licensee. Teleshopping spots and teleshopping windows count towards the teleshopping allocation of the service on which they appear.

- Where a teleshopping service is transmitted between other services or in intervals between two parts of one service, both licensees must make it clear in sound and in vision when their respective services begin and end.
- Licensees are reminded that the requirements of the ITC Code of Advertising Standards and Practice apply in full to teleshopping spots, teleshopping windows or channels devoted to teleshopping, and to any claims made in them.
- Except where otherwise specified the requirements of Section 7 (Long Advertisements) apply to teleshopping material.

B. Teleshopping Spots 8.1.1(B)

Up to 5 per cent of daily transmission time above the spot advertising maximum of 15 per cent of transmission time may be devoted to teleshopping spots. This 5 per cent may be increased by any balance of 15 per cent of transmission time not devoted to spot advertising. (See Section 1.1.2(B).) (cfr Directive TVWF, art.18).

C. Teleshopping Windows 8.1.2(B)

Teleshopping windows are extended teleshopping features with a minimum uninterrupted duration of 15 minutes. They may be broadcast on channels not exclusively devoted to teleshopping subject to the following (cfr; art.18 and 18bis European Directive TV without frontiers):

- (i) there may be no more than eight teleshopping windows per day;
- (ii) the overall duration of teleshopping windows may not exceed three hours per day;
- (iii) teleshopping windows of whatever length may not be interrupted by any other material, whether advertising or teleshopping spots or by editorial. Advertising and teleshopping spots may, however, be inserted between adjacent teleshopping windows.
- (iv) teleshopping windows may comprise a collection of separate teleshopping spots, provided that the window as a whole is presented as a single entity and identified as such in listings of any kind.
- (v) teleshopping windows must be identified both in vision and in sound at both the beginning and end of each window in a way which makes clear to viewers its commercial nature;

- (vi) teleshopping windows must be separately identified in published programme listings. *(See also Section 2.1 Note (vi) on promotion of teleshopping material).*

D. Teleshopping Channels 8.1.3(B)

- (i) Channels otherwise devoted exclusively to teleshopping may carry other forms of advertising up to the limits set out in Section 1.1(B).
- (ii) Sections 1.2 and 8.1.2 above do not apply to such channels.

NOTE:

For the avoidance of doubt, dedicated home shopping channels will no longer have to own title to the goods they sell.

Additional Rules for Channels 3 – 5:

E. Teleshopping on Channels 3 – 5 8.1.4(A)

There is no additional airtime for teleshopping on Channels 3 – 5. Between midnight and 6 a.m. these channels may run long-form advertisements, including teleshopping. This airtime will, however, count towards the daily maximum referred to in Section 1.1(A).

Any such advertisements exceeding 7 minutes' duration must be separately identified in published programme listings. *(See also Section 2.1 Note (vi))*

Licensees are reminded that for the purposes of Section 1.2, which implements an EU Directive requirement, any advertising other than a teleshopping feature of a minimum duration of 15 minutes will count towards the 12 minute maximum in any one clock hour.

SELF PROMOTIONAL CHANNELS (RULE 8.2(B))

Self promotional activities are deemed to be a particular kind of advertising in which the broadcaster promotes its own products, services or channels (Directive TVWF, art.1).

Licensees are reminded that the requirements of the ITC Code of Advertising Standards and Practice apply in full to self-promotional channels and to any claims made in them and channels devoted exclusively to self-promotion are permitted and their self-promotional content is not subject to the quantitative limits on advertising in these rules.

SPONSORSHIP – SPONSORING

ITC Code of Programme Sponsorship

No company with betting or gaming interests may sponsor programmes specifically designed for or aimed at children (rule 4.2 (iii))

Licensees should consider carefully the appropriateness of any sponsorship of children's programmes. In particular, for programmes addressed to younger children, it is important to remember that the status of a sponsorship relationship may be difficult for younger children to understand. Some parents may also have reservations about how far those producing goods and services for use by children should be able to use for commercial purposes children's enthusiasm for a particular programme or programme character through the particularly close association that sponsorship involves (Rule 17 Children's programmes).

1.3. Radio :

The **Radio Authority** is a statutory body set up by Government and it derives its powers from the Broadcasting Acts 1990 and 1996. The Authority licences and regulates all commercial radio services. These comprise national, local, cable national FM subcarrier, satellite and restricted services. The Radio Authority does not license or regulate any BBC Radio Services. Some categories of advertisement, such as advertisements directed specifically at children (i.e. those aged 15 and below) , require advance central clearance by an organisation approved by the Radio Authority , currently the Radio Advertising Clearance Centre ("RACC").

The Radio Authority Advertising and Sponsorship Code

1.3.1. General rules

This Code, which can be compared to the aforementioned CASP, contains the general principles of advertising, as well as specific measures for the protection of minors.

The general principles cover the clear identification of advertisements, the exclusion of advertisements from some types of programmes, misleadingness, protection of privacy, etc...

1.3.2. Specific rules

For the purposes of this Code, unless otherwise stated, the Authority normally regards as children those aged 15 years and below.

Licensees must exercise responsible judgements when scheduling categories unsuitable for children.

Advertisements should not encourage people under 18 to call live conversation services (rule 20) (see also Premium – Rate Telephone Services below).

Pursuant to rule 28 of this Code, advertisements likely to be heard by a significant number of children (i.e. those aged 15 and below) must not include any material which might result in harm to them either physically, mentally or morally.

Specific rules are set under appendix 3 and include almost identical rules as in the aforementioned CASP regarding misleadingness, appeals to loyalty, direct exhortation children as presenters, testimonials, etc.

The Radio Authority Programme Code

The Broadcasting Act 1990 requires the Radio Authority to have special regard to programmes included in licensed services in circumstances such that large numbers of children and young persons may be expected to be listening to the programmes.

Proper regard for taste and decency and the manner of portrayal of violence should be considered.

For the purpose of this Code, children and young persons are those below adult age, that is under 18 years.

When programming is specifically directed at a young audience or there is evidence of a substantial young audience; care must be taken to avoid content such as strong language, explicit news reports, “phone-in” programmes which cover explicit violent or sexual topics in a frank manner; musical items with violent or sexually explicit lyrics, fictional material with strong language or violent scenarios.

Rule 3.5 of this Code covers interviewing of children which requires care. Children should not be interrogated to elicit views on private family matters, nor asked for expressions of opinion on matters likely to be beyond their judgment.

It is an offence to publish the names or addresses of persons aged 17 or under who are involved in Court proceedings (rule 4.6).

As regards appearances of children in programmes, the same rule as in the ITC rules on the amount and scheduling of advertising apply (see above, licence from the Education Authority).

The Radio Authority Programme Sponsorship Code

The Sponsorship Code for radio is included in the Radio Authority Programme Code.

It contains general rules of sponsorship such as the definition of sponsorable programmes, editorial control rules, sponsor credit, etc.

Rule 9 relates to prohibited sponsors and refers specifically to minors. Programmes and features directed particularly at children (i.e. those aged fifteen and below) must not be sponsored by companies whose commercial interests involve sanitary protection, family planning, contraceptives, pregnancy-testing or anti-aids and anti-drugs products.

Programmes or features directed particularly at people under 18 must not be sponsored by companies whose commercial interests involve alcohol, cigars or pipe tobacco.

Companies with gambling interests may not sponsor programmes specifically designed for or aimed at children (i.e. those aged 15 or below) (rule 10).

This Code is also reproduced in the Radio Authority Advertising and Sponsorship Code.

2. Special provisions: classification by sector

2.1. General rules

2.1.1. INTOXICATING LIQUOR :

The Licensing Act 1964

The Act came into force on 1st January 1965.

The Act is the principle UK statute governing the sale of alcoholic beverages or intoxicating liquor, whether through off-licence sales or through pubs, clubs, bars, hotels or other outlets. In general terms any person wishing to sell alcohol can only do so after a successful application has been made to the local magistrates for a justices' licence (see section 3 "Grant of justices' licence", section 4 "New licences" and section 5 "Removals"). The licence controls not merely the sale of alcohol but also those people who are legally permitted to enter premises where alcohol is served.

General Provisions

The following general provisions apply:

1. it is an offence for any person to sell alcohol without a licence (s 160(1)), punishable by a term of imprisonment of not more than six months and/or a fine (s 160(3));
2. the offence extends to any individual who is an occupier of the premises proven to be the point of sale of alcohol without a licence (s 160 (2));
3. it is an offence to sell alcohol in breach of the terms of the licence (s 161(1)) and this will include the sale of alcohol by the holder of the licence to persons he knows are not permitted to purchase or consume alcohol on the premises – clearly this will include children under the age of fourteen prohibited from bars under the provisions of s 168 (below).

Provisions specifically aimed at children

Serving or delivering intoxicating liquor to or for consumption by persons under 18.

Under s 169 of the Licensing Act 1964, the following provisions apply:

- in licensed premises the holder of the licence or his employee shall not sell alcohol to a person under 18, or allow a person under 18 to consume alcohol on the premises (s 169(1)) or off the premises (s 169(5));
- a person under 18 is not permitted to buy or consume alcohol on licensed premises (s 169(2));
- it is an offence for a person over 18 to buy alcohol for a person under 18 (s 169(3));
- the above provisions do not apply to a person over the age of 16 in relation to the sale and consumption of beer, cider, or perry for consumption at a meal in a part of the premises usually set apart for the service of meals which is not a bar (s 169(4));
- a person charged with any of the above offences may have a defence if he can prove that he exercised all due diligence to avoid the commission of the offence or that he had no reasonable suspicion that the person was under 18 (s 169(4A), as amended by the Licensing Act 1988 s 16(1)).

2.1.2. REPRESSION OF DRUNKENNESS :

There are no specific provisions that govern this issue in respect of children. However, there are general provisions under section 172 of the Licensing Act 1964 which prevent the licence holder from permitting “drunkenness or any violent, quarrelsome or riotous conduct to take place in the licensed premises” (s 172(1)). Further, the licence holder is expressly prohibited from selling intoxicating liquor to a drunken person (s 172(2)).

2.1.3. ACCESS OF MINORS TO LICENSED PREMISES :

1. Children prohibited from bars

Under s 168 of the Licensing Act 1964, the following provisions apply:

- the holder of a justices licence shall not allow a person under 14 to be in the bar of a licensed premises during the permitted hours (s 168(1));
- no person shall cause or attempt to cause any person under 14 to be in the bar of a licensed premises during the permitted hours (s 168(2));
- a person charged with any of the above offences may have a defence if he can prove that he exercised all due diligence to avoid the commission of the offence or that the person under 14 had apparently attained that age(s 168(3)).

Note that under s 168(4) the above provisions do not apply to:

- the licence-holder’s children; or
- any person who resides in the bar but is not employed there.

2. Children's certificates

Under the provisions of s 168A of the Licensing Act 1964 (as amended by the Deregulation And Contracting Out Act 1994, s 19(2)), the holder of a licence may apply to the licensing justices "for the grant of a certificate in relation to any area of the premises for which the licence is in force" for a "children's certificate" (s 168A(1)).

The application will be successful if the licensing justices are satisfied that "the area...constitutes an environment in which it is suitable for persons under 14 to be present" and "that meals and beverages other than intoxicating liquor will be available for sale for consumption in that area" (s 168A (2)(a) and (b)).

The granting of the children's certificate does not allow the licence holder to disregard the provisions relating to children and alcohol outlined in the preceding paragraphs.

3. Persons under 18 not to be employed in bars

Section 170 of the Licensing Act 1964 prevents anybody under the age of 18 from working in a licensed establishment at a time when that establishment is open for the sale or consumption of intoxicating liquor (s 1). The licence holder shall be liable to a fine if found to be in contravention of this provision (s 2).

However, under s170A of the Act (as amended by the Deregulation (Employment in Bars) Order 1997, SI 1997/957, art 2(2)), the Secretary of State may approve any training scheme which relates to the employment in bars of licensed premises of persons under 18. The criteria for the Secretary of State's approval are rigorous and numerous and are found in s 170A(1)(a)-(f). In essence the Secretary of State must be satisfied as to:

- the suitability of the intended trainees;
- the provision of documentary evidence of those approved to run such schemes; and
- the quality of the training provided and its monitoring.

Additionally, under s 171A of the Act (as amended by the Licensing Act 1988, s 18) a person under the age of 18 may sell intoxicating liquor for consumption off the premises or from any off-sales department of on-licensed premises provided:

- the sale has been expressly approved by the licence holder; or
- the sale has been expressly approved by a person over the age of 18 acting on behalf of the licence holder.

The provisions of the Act quoted above do not apply in Northern Ireland or Scotland.

2.2. Rules relating to Advertising

A. General rules

B. Rules by media

2.2.1. Television

The ITC Code of Advertising Standards and Practice (“CASP”)

Advertisements for alcoholic drinks must not be transmitted during children's programmes or in the advertisement breaks immediately before or after them.

The ITC Programme Code

No programme intended for children should contain any drinking of alcohol unless there is a strong editorial case for its inclusion.(rule 5.9)

The ITC Rules on Amount and Scheduling of Advertising

Alcoholic drinks containing 1.2% alcohol or more by volume may not be advertised in or adjacent to children's programmes or programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18.

Drinks containing less than 1.2% alcohol by volume when presented as low or no-alcohol versions of an alcoholic drink and liqueur chocolates may not be advertised in or adjacent to children's programmes.

2.2.2. Advertising on radio

The Radio Authority Advertising and Sponsorship Code

Rule 2(b)(ii) excludes advertisements for alcoholic drinks in or around programmes/features directed particularly at people under 18.

Appendix 2 of the Code contains specific rules for the protection of minors regarding alcoholic drink advertising.

Alcoholic drink advertising should :

- not be directed at people under 18
- not include any personality of particular appeal to people under 18

- use voiceovers of those who sound to be at least 25 years old (or 18 for drinks containing less than 1.2%)
- should not include children's voices.

2.3. Tobacco

A. General rules

Children and Young Persons (Protection from Tobacco) Act 1991, section 4: Display of warning statements in retail premises and on vending machines

The Provisions of the Act quoted below came into force on 20th February 1993.

B. Retail premises

Section 4(1) provides that a notice displaying the following statement must be exhibited at all premises at which tobacco is sold by retail:

“It is illegal to sell tobacco products to anyone under the age of 16”

Furthermore, this notice must be exhibited in a prominent position where it is readily visible to persons at the point of sale of the tobacco.

Under the Protection from Tobacco (Display of Warning Statements) Regulations 1992, SI 1992/3228, such a warning must be not less than 297mm by 100mm and the size of the statement to be displayed on the notice is to be such that no character is less than 36mm high.

C. Vending machines

Section 4(2) provides that a notice displaying the following statement must be exhibited on every automatic vending machine for the sale of tobacco:

“This machine is only for the use of people aged 16 or over”

The notice must also be exhibited in a prominent position where it is readily visible to persons using the machine.

Under the Protection from Tobacco (Display of Warning Statements) Regulations 1992, SI 1992/3228, such a warning must be not less than 60 mm by 100mm and the size of the statement to be displayed on the notice is to be such that no character is less than 6mm high.

The Provisions of the Act quoted above do not apply in Northern Ireland.

2.3.1. Rules relating to advertising

A. General rules

B. Rules by media

2.3.1.1. Television

The ITC Programme Code

Particular care is needed with programmes likely to be seen by children and young people. Smoking should not be prominently presented in programmes shown before 9.00pm (or 8.00pm on premium pay channels) as a normal and attractive activity. Exceptions may be made where there are strong editorial reasons for its inclusion or where (for example, in cinema films) it would be unreasonable or impractical to remove it (rule 5.9)

2.3.1.2. Radio

The Radio Authority Advertising and Sponsorship Code

Advertisements for cigars and pipe tobacco must not be broadcast in or around programmes/features directed particularly at people under 18.

2.4. Drugs and health

2.4.1. General Rules

2.4.1.1. Rules relating to advertisement

A. General rules

Medicines Act 1968, section 93: False or misleading advertisements and representations

The Act came into force on the passing of SI 1972/1225.

The provisions of this Act make no specific reference to children but apply universally.

Under section 1 of the Act it is an offence for any person to issue, or cause another person to issue, a false or misleading advertisement relating to medicinal products of any description, provided that person:

- is a commercially interested party; or
- acts at the request of a commercially interested party (defined in section 92).

The power to regulate advertisements and representations is given to the appropriate Ministers of State under the provisions of section 95(1). This includes specifying the particulars such advertisements must contain, their form, the duration of any cinematic or television advertisements and their contents (s 95(3)(a)-(c)).

The purpose of this control over advertising is to ensure that the public are given adequate information about the products and are prevented from receiving misleading information. Additionally, these measures are designed to ensure and promote the safety of such products (s 95(4)).

The provisions of the Act quoted above do apply to Northern Ireland and Scotland.

DRUGS FOR HUMAN CONSUMPTION :

The Medicines (Advertising) Regulations 1994, SI 1994/1932

The Regulations came into force on 9th August 1994 in respect of the Medicine Act, 1968, and were amended by the Medicine (Advertising) Amended Regulations 1996, SI 1996/1552.

These Regulations stipulate different bans or conditions regarding the advertising of drugs for human consumption. They make reference to the Medicine Act 1968. They make a distinction between advertising targeting the public and advertising targeting professional care providers.

A. General provisions

General prohibitions on advertising

In respect of the general public (as opposed to health professionals) certain advertisements are prohibited from being issued by any person. These include:

- any diseases specified in Schedule 1 (Reg. 6(1));
- products for the purposes of the prevention of neural tube defects (Reg. 6(2));
- products for the purposes of inducing an abortion in women (Reg. 6(3));
- medicinal products available by prescription only (Reg. 7);
- medicinal products listed in Schedules I, II or IV to the Narcotics Drugs Convention or in Schedules I to IV of the Psychotropic Substances Convention (Reg. 8(a) and (b)).

Regulation 9: Prohibition of certain material in advertisements

Regulation 9 of the Regulations prohibits any person from issuing an advertisement relating to any relevant medicinal product containing any material which:

- gives any impression that a medical consultation or surgical operation is unnecessary, i.e. by offering a diagnosis or suggesting treatment by post, fax or telephone;
- suggests that the taking the product will guarantee a result or will not have any side effects, or that such effects are better than or equivalent to those of another identifiable treatment or product;
- suggests one's health will be enhanced by either taking or not taking the product;
- relies upon the recommendation of a scientist, health professional or celebrity;
- suggests that the safeness and effectiveness of the product is due to the fact that the product is natural;
- refers in improper terms or misleading or alarming terms to claims of recovery;

- mentions that the medicinal product has been granted a product licence.

[Regs. 9 (a)-(d), (f), (h), (j) and (l)]

It should be noted that the provisions contained in Regulations 6(1), 7, 8 and 9 (1)(d) do *not* apply to any advertisement used as part of a vaccination campaign approved by the Health Minister (Regulation 11)

Regulation 10: Form and content of advertisements

Regulation 10 prescribes the form and content of advertisements:

- the advertisement must be set out in such a way that it is clear that the message is an advertisement and so that the product is clearly identified as a medicinal product;
- where the product contains only one active ingredient, the common name of the product;
- the advertisement must name the product, all information necessary for the correct use of the product; and
- an express and legible invitation to read carefully the instructions on the leaflet contained either within the package or on the label (Reg. 10(1)(a) and (b)).

However these provisions do *not* apply to advertisements for homeopathic medicinal products (Reg. 10(2)(a)) or if the advertisement is intended as a reminder (Reg. 10 (2)(b)).

The provisions of the Regulation quoted above do apply to Northern Ireland and Scotland.

B. Provisions specifically aimed at children

Regulation 9(1)(d)

Regulation 9(1)(d) specifically states that:

“no person shall issue an advertisement relating to any relevant medicinal product which contains any material which is directed exclusively or principally at children”

It should be noted that there is no exception to this Regulation, even where the advertisement in question is part of a vaccination campaign or serum campaign approved by the Health Minister.

Regulation 9(1)(g)

Regulation 9(1)(g) specifically states that:

“no person shall issue an advertisement relating to any relevant medicinal product which contains any material which suggests the product is a foodstuff, cosmetic or other consumer product”

FOOD :

Food Safety Act 1990

The Act came into force on 29 June 1990. The following provisions specifically refer to the description or presentation of food:

- Section 15: it is an offence to attach a label to food that falsely describes the food or is likely to mislead as to the nature or substance or quality of the food (s 15(1)(a)-(b));
- Section 15: any person who publishes or advertises such a label is also guilty of an offence (s 15 (2)(a)-(b)).

The Act does not extend to Northern Ireland.

Individual foodstuffs are governed by their specific Statutory Instruments and Regulations, which are listed in the Act at pages 502-506 of Halsbury's Statutes Vol. 18 ("Food"), 4th Edition.

Food Labelling Regulations 1996, SI 1996/1499

These regulations, which came into force on 1 July 1996, implement several EC Directives, notably Council Directive 79/112/EEC (on the approximation of the laws of the member states relating to the labelling, presentation and advertising of foodstuffs) and Council Directive 90/496/EEC (on the nutritional labelling for foodstuffs).

Essentially the Regulations add further weight to the Food Safety Act 1990 by implementing the EC Directives quoted above and revoking a number of earlier Statutory Instruments. Suppliers of foodstuffs must take account of the provisions of both the Act and the SI.

The Regulations are divided into 5 Parts, with an additional 9 Schedules. Of particular relevance is Part II "Food to be delivered as such to the ultimate consumer or to caterers", in particular:

- Reg. 5:** General Labelling Requirements;
Reg. 7: Customary name;
Reg. 8: Indication of the true nature of the food;

- Reg. 9:** Form of name;
Reg. 10: Trade marks, brand names and fancy names;
Reg. 11: Indication of physical condition or treatment.

The following regulations lay down specific guidelines for certain categories of food:

- Reg. 29:** food sold from vending machines;
Reg. 30: prepacked alcoholic drinks other than Community controlled wine;
Reg. 31: Raw milk;
Reg. 33: foods packaged in certain gases;
Reg. 34: Foods containing sweeteners, added sugar and sweeteners, aspartame or polyols.

Part III makes provisions in respect of misleading descriptions.
Part IV details Offences and Legal Proceedings.

COSMETICS :

Cosmetic Products (Safety) Regulations 1996, SI 1996/2925

These Regulations were made on 21 November 1996 under the Consumer Protection Act 1987, and were fully implemented by 30 June 2000. They are general regulations prohibiting a person from supplying, offering or agreeing to supply or exposing or possessing for supply any cosmetic product which is liable to cause damage to human health when it is applied under normal conditions of use. The prohibition extends to manufacturers and importers.

2.4.2. Rules by media

2.4.2.1. Television

TV advertising for slimming Products.

The ITC Code of Advertising Standards and Practice

Advertisements for slimming products, treatments and establishments must not be transmitted during children's programmes or in the advertisement breaks immediately before or after such programmes.

The ITC rules on the Amount and Scheduling of Advertising

Slimming products, treatments or establishments may not be advertised in or adjacent to children's programmes or programmes commissioned for,

principally directed at or likely to appeal particularly to audiences below the age of 18.

TV and radio advertising for medicines and health products

The ITC Code of Advertising Standards and Practice

- (a) Advertisements for medicines, vitamins or other dietary supplements must not be transmitted during children's programmes or in the advertisement breaks immediately before or after them.
- (b) Except in circumstances approved by the Commission, the following will be acceptable only after 9pm:
 - (i) Advertisements in which children are shown having any medicine, or vitamin or other dietary supplement administered to them; and
 - (ii) advertisements for medicines, or vitamins or other dietary supplements which use techniques that are likely to appeal particularly to children, such as cartoons, toys or characters of special interest to children.
- (c) Children must not be shown self-administering medicines or vitamins or other dietary supplements unless prior permission is given by the Commission.

In addition, Appendix 3 to the Code sets out additional obligations in relation to medicines, treatments, health claims, nutrition and dietary supplements. The ITC state that medicines require great care in their advertising, and health claims for any product require very close scrutiny.

All advertisements for products subject to licensing under the Medicines Act 1968 (see Part II above) must comply with the requirements of the Act and Regulations made under it and any conditions laid down in the product licence.

With regard to children, Rule 14 of this Appendix states that no advertisement for a medicinal product may be directed at people under the age of 16.

The ITC rules on the Amount and Scheduling of Advertising

Medicines, vitamins and other dietary supplements may not be advertised in or adjacent to children's programmes.

Female sanitary protection products

The ITC rules on the amount and scheduling of advertising

Female sanitary protection products may not be advertised in or adjacent to children's programmes or programmes which are of particular appeal to children under the age of 10.

2.4.2.2. Radio

The Radio Authority Advertising and Sponsorship Code

Particular care is required for sanitary protection products, family planning services, contraceptives, pregnancy testing services/kit, anti-AIDS and anti-drugs messages and solvent abuse devices. For the purpose of this rule, children are aged 15 and below. There might be exceptional circumstances when advertising messages may be targeted at those aged 12-15 (anti-AIDS information,...)

Advertisements for medicinal products and treatments must not be directed exclusively or principally at children (i.e. those aged 15 and below).

2.5. Vehicles

2.5.1. General rules

Road Traffic Act 1988

The Act came into force on 15th May 1989 and was amended by the Driving Licence Regulations 1996, SI 1996/1974.

The Act provides for the classification of vehicles in categories, driver's licence, and to juridical decisions pertaining to the licence to drive and the terms of admittance to motor vehicles drivers' schools:

1. Section 101: Disqualification of persons under age

Section 101(1) establishes the minimum age requirements for holding or obtaining a licence to drive a range of motor vehicles. They are:

<i>Class of motor vehicle</i>	<i>Age (in years)</i>
Invalid carriage	16

Moped	16
Motor bicycle	17
Agricultural or forestry tractor	17
Small vehicle	17
Medium-sized goods vehicle	18
Other motor vehicle	21

A person is disqualified from holding or obtaining a licence to drive any of these types of vehicles if they are under the relevant specified age.

2. Motor Vehicles (Driving Licences) Regulations 1994, SI 1994/2864

These Regulations provide for the nature and content of driving tests in the UK. In general, and for the majority of classes of vehicle, an applicant for a licence must pass both a theoretical test and a practical test of driving skills and behaviour. The theoretical test must be passed before the applicant can take the practical test. The theoretical test takes the form of 35 multiple choice examination questions, the test to last 40 minutes (except where the candidate has special reading difficulties in which case the test shall last 80 minutes). The practical test must involve at least 30 minutes driving on the highway (Regulation 40(1)-(11)).

Regulation 42 outlines exemptions from the theory test.

2.5.2. Rules relating to advertising

There are no specific provisions regarding advertising for vehicles targeting minors.

The provisions of the Act and Regulations quoted above do not apply to Northern Ireland.

2.6. Education

2.6.1. General rules

Education Act 1996

The Act came into force on 1st November 1996.

Section 8/Schedule 40(1): Compulsory school age

A person is said to be of “compulsory school age” between the ages of 5 and 16; therefore:

- a person begins to be of compulsory school age when he attains the age of 5; and
- ceases to be of compulsory school age at the end of the school year in the year in which he attains the age of 16.

Section 2: Definition of primary, secondary and further education

Under s.2, education in the UK is defined as follows:

1. Primary education

Full-time education suitable to the requirements of “junior pupils” who have not attained the age of 10 years and six months, and other junior pupils above that age for whom it is considered suitable to educate in this way (s 2(1)(a)(b)).

2. Secondary education

Full-time education suitable to the requirements of pupils of compulsory school age who are either “senior pupils” or junior pupils for whom it is considered suitable to educate in this way (s 2(2)(a)(1)-(11)).

3. Further education

Full and part-time education suitable to the requirements of persons who are over compulsory school age, and organised leisure-time occupation provided in connection with the provision of such education (s 2(3)(a)(b)).

Section 3: Definition of a pupil

A “junior pupil” is defined as a child who has not yet attained the age of 12.
A “senior pupil” is defined as a person who has attained the age of 12 but not the age of 19 (s 3 (2)).

The provisions of the Act quoted do not apply in Northern Ireland or Scotland.

2.6.2. Rules regarding advertising

There is no legislation governing the advertisement of education.

2.7. Toys and objects for children

2.7.1. General rules

Generally speaking, toys and other objects for children will come within the ambit of the sale of goods and consumer protection legislation outlined at the beginning of Section 2. Certain areas are dealt with under specific legislation.

1. TOYS:

Toys (Safety) Regulations 1995, SI 1995/204

The Regulations came into force on 24th February 1995 under the Consumer Protection Act 1987. This implemented the requirements of EEC Council Directive 88/378 as amended by Directive 93/68.

The Regulations are principally concerned with safety standards in the manufacture of toys, and provisions connected with CE marking. However they do specify what information must be displayed either on the toy or its packaging. Accordingly the following regulations are relevant:

Regulation 3: Interpretations

Defines a “toy” as “any product or material designed or clearly intended for use in play by children of less than 14 years of age”.

Schedule 3: Products not regarded as toys for the purpose of these regulations

Regulation 10: CE marking and other information on or accompanying toys

No person shall supply any toy without the CE mark attached to it and/or its packaging (Reg. 10(1)), nor shall he provide such marking unless all provisions in these Regulations and in all national legislation which relate to the toy have been complied with (Reg. 10(2)). The CE mark is a European Community mark indicating that the toy is of a certain safety standard in respect of its manufacture.

Regulations 10(3)-(12) specify further provisions in respect of the form and content such marking must take.

Regulation 11: Requirements to keep available and give information about toys which bear the CE marking

Regulation 12: Requirements to keep available and give information about toys which do not bear the CE marking

The Regulations quoted above apply to Northern Ireland and Scotland.

2. FIREWORKS

Fireworks (Safety) Regulations 1997, SI 1997/2294

The Regulations came fully into force on 31st December 1997 and were under the Consumer Protection Act 1987.

Regulation 6 prohibits the sale of fireworks (as defined in Regulation 2), with certain minor exceptions, to any person under the age of 18 (Reg. 6(1)).

The Regulations quoted above do not apply to Northern Ireland.

3. HARMFUL PUBLICATIONS

Children and Young Persons (Harmful Publications) Act 1955

The Act came into force on 6th June 1955.

The Act applies to any book (including any magazine or other like work) which is of a kind likely to fall into the hands of children or young persons. Specifically it refers to those books consisting “wholly or mainly of stories told in pictures portraying:

- the commission of crimes;
- acts of violence or cruelty; or
- incidents of a repulsive or horrible nature;

in such a way that the work as a whole would tend to corrupt a child or young person into whose hands it might fall”.

It is an offence under section 2 of the Act to “print, publish, sell or let on hire” a work to which the Act applies. It is also an offence to possess any such work for the purpose of selling it or letting it on hire (s 2(1)).

Under section 4 it is an offence to import any such work to which the Act applies.

The provisions of the Act quoted above do not apply to Northern Ireland.

2.7.2. Rules regarding advertising

There are no specific statutory provisions covering the advertising of toys and other objects for children.

2.8. Financial services

2.8.1. General rules

2.8.2. Rules relating to advertising

CONSUMER CREDIT

Consumer Credit Act 1974, Part IV: Seeking business

The provisions of the Consumer Credit Act quoted below came into force on 31st July 1974. Part IV of the Act applies to any advertisement to provide credit:

- published for the purposes of a business carried on by the advertiser;
- that does not exceed £25,000 (where no security is required or the security is to consist of property other than land); and
- to any person other than a body corporate.

1. General Provisions

- Section 44 of the Act specifies the form and content any such advertisement must take; the exact requirements are set out in the Consumer Credit (Advertisement) Regulations 1989, SI 1989/1125 (see below);
- section 46 makes it an offence to convey information in an advertisement which is, in a material respect, false and/or misleading.

2. Specific provisions for children

Section 50 of the Act makes it an offence for a person, with a view to financial gain, to send a minor any document inviting him to:

- borrow money;
- obtain goods on credit;
- obtain services on credit; or
- apply for information on any of the above.

Consumer Credit (Advertisement) Regulations 1989, SI 1989/1125

The Regulations came into force under the Consumer Credit Act 1974 on 1st February 1990.

The Regulations govern advertisements by persons carrying on consumer credit businesses, consumer hire businesses and businesses in the course of

which credit secured on land is provided to individuals. They also apply to advertisements published by credit-brokers. The Regulations contain provisions with a view to ensuring that an advertisement conveys a fair and reasonably comprehensive indication of the nature of the credit or hire facilities offered by the advertiser and of their true cost to the persons using them.

The Regulations make no specific reference to children, who are in any event protected by s 50 of the Consumer Credit Act 1974 (above), but apply universally.

Please note that the provisions and regulations quoted above also apply to Scotland and Northern Ireland.

BANKING

The Banking Act 1987

The Act came into force on 1st October 1987. It was then amended by the Banking Act 1987 (Advertisements) Regulations 1988, SI 1988/645.

Under section 32 of the Act, the Treasury in consultation with the Financial Services Authority may make regulations in respect of the issue form and content of deposit advertisements.

Banking Act 1987 (Advertisements) Regulations 1988

Regulation 2 of the Regulations provides a lengthy list of those advertisements to which the Regulations do *not* apply.

Regulation 3 (“Control of advertisements”) provides that no advertisement shall be issued unless it complies with the Regulations.

Regulation 4 (“General requirements for advertisements”) specifies the form and content that controlled advertisements must take and the information that such advertisements should state, including the full name and country or territory of the deposit-taker’s principal place of business.

Regulation 7 (“Interest”) provides for the form and content for controlled advertisements which specify the rate at which interest will be payable in respect of invited deposits.

The provisions and regulations quoted above do apply to Northern Ireland and Scotland.

2.9. Leisure

2.9.1. General rules

ACCESS OF MINORS TO CERTAIN PUBLIC FACILITIES :

1. Licensed Premises

For details of provisions concerning the rights of minors to enter premises where intoxicating liquor is on sale, please refer to “Access Of Minors To Licensed Premises” (above).

2. Cinemas

The Cinematographic (Children)(No 2) Regulations 1955, SI 1955/1909 prohibit the admission [to cinemas] of any child apparently under the age of 5, or under the age of 12 if after 7:00 p.m., unless accompanied by a person over the age of 16 (Reg.s 2 & 3).

Under the Cinemas Act 1985, a film exhibition licence must be obtained from a licensing authority in order to show cinematic films (s 1(3)). In respect of children, the licensing authority must, in deciding if to award such a licence, consider imposing:

- (1) *“conditions or restrictions prohibiting the admission of children involving the showing of works designated...as works unsuitable for children;*
- (2) *conditions and restrictions ...as to the admission of children to other film exhibitions involving the showing of works designated...as works of such other description as may be so specified” (s 2(2))”*

3. British Board of Film Classification (BBFC)

Film censorship and classification in the UK falls within the remit of the BBFC, which categorises films according to their content. The BBFC is a body funded by the film and video industries and examines films and videos for a fee.

In respect of films, the BBFC has no statutory powers and so the exhibition of a film not passed by them is, in general, no offence. However, the classification guidelines provide the following age restrictions for each category:

- **Universal;** a film suitable for the whole family, including children as young as 4;
- **Parental Guidance (PG);** unaccompanied children of any age may watch a PG film;

- **12**; no-one under the age of 12 may see a 12 film in a cinema;
- **15**; no-one under the age of 15 may see a 15 film in a cinema;
- **18**; no-one under the age of 18 may see an 18 film in a cinema.

It is the case that submitting to the BBFC's censorship will generally assist a film to have the widest possible distribution. Equally, a licensing authority is unlikely to look favourably upon a licence-holder who knowingly allows minors in to see films for which they are, by the BBFC's standards, too young.

In respect of video releases, the BBFC does have statutory power under the Video Recordings Act 1984. Of particular relevance to this study is that it is an offence to supply any unclassified videos, or to supply classified videos to the wrong age group. The classification system for videos is the same as for films, with the exception of an additional category "R 18"; namely, videos for restricted distribution through licensed cinemas or sex shops to which no-one under 18 can be admitted.

2.9.2. Rules relating to advertising

2.10. Arms / violence

Firearms Act 1968

Under the provisions of this Act, it is an offence:

- for a person under the age of 17 to purchase or hire any firearm or ammunition (s 22(1));
- for a person under 14 to have in his possession firearms as specified in s 1, or ammunition (s 22(2) with certain minor exceptions);
- for any person to sell, let on hire, make a gift of or lend any firearm or ammunition to a person under the age of 14 (s 24(1) and (2)(a) with certain exceptions);
- for a person under the age of 15 to have with him an assembled shotgun except if under the supervision of a person of or over the age of 21 or while the shotgun is so covered that it cannot be fired (s 22(3));
- for any person to make a gift of or lend an assembled shotgun to a person under the age of 15 (s 24(3));
- for a person under the age of 14 to have with him an air weapon or ammunition for an air weapon, except when he is under the supervision of a person of or over the age of 21 or when that person is using the weapon as a member of an approved miniature rifle club (s 22(4));
- for a person under the age of 17 to have with him an air weapon in a public place except if the air weapon is so covered that it cannot be fired (s 22(5)).

As regards advertising, no specific rule is stipulated for minors.

2.11. Gambling

2.11.1. General rules

Gaming Act 1968, section 42

The Act came into force on 25 October 1968. It provides that it is an offence to issue any advertisement informing the public of, or inviting the public to participate in, gaming activities (s 42(1)). There are various exceptions to this rule, of which the most important are:

- in respect of lotteries and bingo (s 42(2) (d) and (f));
- the display of a sign that gaming takes place within the premises (s 42(3)(a));
- publication of a notice stating that a gaming licence has been awarded (s 42 (3)(c));
- advertising in a newspaper whose circulation is wholly or mainly outside the UK (s 42 (4)).

The Act does not extend to Northern Ireland.

National Lottery Regulations 1994, SI 1994/189

Regulation 3 prohibits the sale of a NATIONAL Lottery ticket by or to a person under the age of 16.

2.11.2. Rules relating to advertising

2.11.2.1. Television

The ITC Code of Advertising and Practice

No advertisement for lotteries, football pools and bingo may be directed at people under the age of 16 (or 18 for bingo) or use treatments likely to be of particular appeal to them.

The ITC rules on the Amount and Scheduling of Advertising

Bingo may not be advertised in or adjacent to children's programmes or programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18.

Lotteries and pools may not be advertised in or adjacent to children's programmes or programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 16.

3. Proposals of law relating to advertisement aimed at children

3.1. Revised Draft Advertising and Sponsorship Code (February 2000)

The Radio Authority has drafted one draft proposal of revision of its Advertising and Sponsorship Code (for the current version see section 111 below). This proposal aims to strengthen consumer protection by sharpening current Rules on Transparency, Misleading information, Taste and Decency, and the provision of bona fides, while removing prohibitions on some product categories and updating all categories to reflect current and imminent legislation. Sponsorship and Promotions proposals give much more scope, so long as sponsor mentions are scripted and given advance copy clearance, as for advertisements

3.1.1. General rules

The Code comprises some general rules, such as :

- Advertising must be clearly distinguishable from programming;
- Radio Licensee must not unreasonably discriminate either against or in favour of any particular advertiser;
- The Radio Authority has a duty to investigate complaints about alleged misleading advertisements (i.e. scripts should not contain complicated technical jargon, adverts should not falsely suggest or imply official approval for a product).

3.1.2. Specific rules for children and young listeners (rule 9)

Advertisements likely to be heard by a significant number of children (for the purpose of this Rule, those aged below 16 years) must not include any material which might result in harm to them, whether physically, mentally or morally.

- Advertisements addressed to young listeners must not exaggerate or mislead about the size, qualities or capabilities of products, or about the sounds they might produce.
- Prices of products advertised to younger listeners must not be minimised by words such as 'only' or 'just'.
- Advertisements must not take advantage of the immaturity or natural credulity of children.
- Advertisements must not lead children to believe that unless they have or use the product advertised they will be inferior in some way to other

children or liable to be held in contempt or ridicule or suggest that, unless children buy or encourage others to buy a product or service, they will be failing in some duty or lacking in loyalty.

- Advertisements must not directly urge children to buy products or to ask adults to buy products for them and must not invite children to purchase products by mail or telephone.
- References to competitions for children are acceptable provided that any skill required is appropriate to the age of likely participants, and the values of the prizes and the chances of winning are not exaggerated.
- References to 'free' gifts for children in advertisements must include all qualifying conditions.
- Children must not be encouraged to eat frequently throughout the day.
- Children may take part in radio commercials, subject to all relevant legal requirements. However, they must not feature in advertisements in ways which might cause them moral harm or give concern about their welfare.
- Children employed in commercials must not be used to present selling messages about products or services which are likely to be beyond their understanding or which the law prevents them from buying themselves.
- Children must not personally testify about products and services.

3.2. EU Directive 97/7/EC

This Directive (known as the “Distance Selling Directive”) was required to be implemented in the UK by 4 June 2000 (see Part IV below for more information).

In June 2000 the UK Government launched a consultation on “A Nutritional Debate on the Future of the Food Chain” (Foresight Programme). A task force will explore the role and mechanics of advertising, within the context of “fostering demand for a healthy diet”.

III. SELF-REGULATION

1. General rules

Advertising is governed by different authorities dependent upon the media.

The various codes enacted by those authorities are based on the ICC Code.

Non broadcast advertising in the UK is administrated by the **Advertising Standards Authority** (“ASA”). The ASA Codes are written and enforced by the (Committee of Advertising Practice (“CAP”) for the advertising industry and apply to :

- (a) advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, fax transmissions, catalogues, follow-up literature and other electronic and printed material
- (b) posters and other promotional media in public places
- (c) cinema and video commercials
- (d) advertisements in non-broadcast electronic media
- (e) view data services
- (f) marketing databases containing consumers' personal information
- (g) sales promotions
- (h) advertisement promotions
- (i) advertisements and promotions covered by the Cigarette Code.
- (j) Advertisements on the Internet.

The British Codes of advertising and sales promotion (“BCASP”)

A. General rules

Following rule 2, all advertisements should be legal, decent, honest and truthful.

They should be prepared with a sense of responsibility to consumers and to society. All advertisements should respect the principles of fair competition generally accepted in business. No advertisement should bring advertising into disrepute.

B. Rules regarding Children

For the purpose of the BCASP, a child or young person is someone under the age of 16.

- Following rule 47, advertisements and promotions addressed to or featuring children should contain nothing that is likely to result in their physical, mental or moral harm, for example young persons should not be encouraged to copy any practice that might be unsafe for a child. Adverts should not exploit their credulity, loyalty, vulnerability or lack of experience i.e. they should not be made to feel inferior or unpopular for not buying the advertised product.
- Advertisements and promotions addressed to children should not actively encourage them to make a nuisance of themselves to parents or others.
- Moreover, they should not make a direct appeal to purchase unless the product is one that would be likely to interest children and that they could reasonably afford (see also Part IV below).
- Distance selling advertisers should take care when using youth media not to promote products that are unsuitable for children (see also Part IV below).
- Advertisements and promotions should not exaggerate what is attainable by an ordinary child using the product being advertised or promoted.
- Finally, advertisements and promotions should not actively encourage children to eat or drink at or near bedtime, to eat frequently throughout the day or to replace main meals with confectionery or snack foods.

2. Rules by media

2.1. Internet

The ITC's powers under the Broadcasting Act 1990 extend to television programmes on the Internet and to advertisements which contain still or moving pictures. The ITC is not seeking to apply these powers at present, although in the area of programmes it is contributing to the self-regulatory system which is being established for the internet through the Internet Watch Foundation (see below) and the programme of research which it has underway into users' attitudes towards Internet content. The ITC is also participating in an experts group (Incore) which is hoping to develop a content rating and filtering system designed to enable users to control more easily what they and their children access.

UK advertising on the Internet is currently the province of the Advertising Standards Authority (as to which see below).

2.2. Television

2.2.1. The Broadcasting Standards Commission

The B.S.C. produced a code on Fairness and Privacy in fulfilment of its statutory duty under the 1996 Broadcasting Act.

Through those codes, the Commission seeks to inform and sustain the debate about issues of fairness and standards in broadcasting. Within the areas of the Commission's particular responsibilities, these codes express the considerations which the commission believes should be kept in the mind of everyone concerned with standards in broadcasting, whether as providers, citizens or consumers.

There is a special section regarding children (section 32).

2.3. Other Organisations

The Independent Committee for the Supervision of Standards of Telephone Information Services ("ICSTIS")

Who Is ICSTIS

ICSTIS is the non-profit making regulatory body for the premium rate telecommunications industry whose committee consists of around 10 members all appointed in their individual capacity. It supervises the content of promotional material for premium rate services and enforces the Codes of Practice set by it in consultation with the industry and other interested parties.

ICSTIS Code of Practice

Who Does the Code Apply To?

It applies to all premium rate services by means of a public telecommunications network which are accessed by a customer in the UK. Service providers are responsible for ensuring that the content and promotion of all their premium rate services comply with all the provisions of the Code (rule 2.1).

2.3.1. General Rules

All service providers are required to provide to ICSTIS certain information before providing services such as the name, address and contact details for the person representing the service provider and any changes or additions must be notified to ICSTIS immediately.

ICSTIS can require that particular categories of service must not be provided unless ICSTIS has given its prior permission for any service within that category (rule 2.3).

Services and promotional material must not contain material inciting violence, sadism or cruelty or be of a horrible or repulsive nature and must not involve the use of foul language. In addition, such material must not be of a kind that is likely to result in any unreasonable invasion of privacy, cause grave or widespread offence etc (rules 3.2.1 and 3.2.2).

2.3.2. Specific Rules

Promotional Material

As well as complying with the relevant provisions in the BCASP, the ITC and the Radio Authority Codes, service providers should take account of rules 3.4 to 3.11 of the ICSTIS Code of Practice. These rules relate to such things as pricing information (such as ensuring that the charge for calls to each service is clearly stated in all promotion), address information (identity and contact details of either the service or information provider must be clearly stated), and use of the word “free” (no premium rate service may be promoted as being free).

Content

Services must not be unreasonably prolonged or delayed (rule 3.12), nor must they contain incorrect information (rule 3.14).

Children’s Services and Promotional Material

These are defined in rule 4.1.1 as “those which, either wholly or in part, are aimed at or would reasonably be expected to be particularly attractive to persons under 16 years of age.”

Rule 4.1.2 sets out the requirements for what promotional material for such services should contain. These are the maximum possible cost of the service and that the service should only be used with the agreement of the person responsible for paying the phone bill.

2.3.3. The Internet Watch Foundation

This Foundation (the “IWF”) was launched in 1996 with the purpose of addressing the problem of illegal material on the Internet with particular reference to child pornography. It is an independent organisation to

implement jointly agreed proposals between the government, the police, the 2 major UK service provider trade associations (Internet Service Providers Association “ISPA” and the London Internet Exchange “LINX”), and the founder of IWF.

The 2 main aims of the IWF are:

To hinder the use of the Internet to transmit illegal material, particularly child pornography; and

To encourage the classification of legal material on the Internet in order to enable users to customise the nature of their experience of the Net to their own requirements.

The IWF is funded by the UK industry on a subscription basis and some of its current members include representatives from Childnet International, National Union of Students, BT, UUNet, Cable & Wireless and AOL Europe.

The IWF operates a “hotline” for reporting criminal content on the Internet, in particular child pornography, and if the material is judged to be illegal, they will report the site to the police and the service provider(s).

3. Rules per sector

3.1. Alcohol

- The British Code of Advertising and Sales Promotion (“BCASP”)

Following rule 46 of the BCASP, advertisements for alcoholic drinks (defined as those that exceed 1.2% alcohol by volume) should not be directed at people under 18 through the selection of media, style of presentation, content or context in which they appear and no medium should be used to advertise alcoholic drinks if more than 25% of its audience is under 18 years of age. People shown drinking should not be, nor should they look, under 25. Younger models may be shown in advertisements, for example in the context of family celebrations, but it should be obvious that they are not drinking.

Finally, adverts should not feature or portray real or fictitious characters that are likely to appeal particularly to people under 18 in a way that might encourage them to drink.

- The Portman Group Code of practice on the naming, packaging and merchandising of alcoholic drinks

The Portman Group was founded by the major drinks producers to promote sensible drinking and reduce alcohol misuse.

The Portman Group Code of Practice seeks to prevent the supply to, and purchase of, alcoholic drinks by under 18s by requiring that brand names, packaging or merchandising are not specifically, primarily or predominantly targeted to under 18s (for example by including generic names for soft drinks, such as lemonade or cola that may cause confusion with drinks popular to under 18s) and retailers should take particular care to ensure that alcohol is not purchased by under 18s. The Code is intended for use in the UK.

3.2. Slimming

- The British Code of Advertising and Sales Promotion

Following rule 51 of the Code, adverts for any slimming regime or establishment should not be directed at, nor contain anything that will appeal particularly to, people who are under 18.

3.3. Betting and gaming

- The British Code of Advertising and Sales Promotion

Pursuant to rule 56, care should be taken not to exploit the young, the immature or those who are mentally or socially vulnerable.

Advertisements should not be directed at people under 18 through the selection of media, style of presentation, content or context in which they appears. No medium should be used to advertise betting and gaming if more than 25% of its audience is under 18 years of age.

3.4. Cigarettes, tobacco products

- The British Code of Advertising and Sales Promotion

The BCASP contains a Cigarette Code with specific clauses for the protection of minors.

Pursuant to clause 66.22, no advertisement should play on the susceptibilities of those who are physically or emotionally vulnerable, particularly the young or immature and advertisements should therefore avoid employing any approach which is more likely to attract the attention or sympathy of those under the age of 18.

Pursuant to clause 66.23, anyone shown smoking should always be, and clearly be seen to be, over 25.

3.5. Matches

Matches may not be advertised in or adjacent to children's programmes

3.6. Commercial activities in schools

- UK ASA (non-broadcast)

No specific rules.

The British Codes of Advertising and sales Promotion cover the content of all non-broadcast advertising in the UK. Advertisements which appear in schools are subject to the Codes' rules as well as relevant UK law relating to advertising. The Codes contain specific rules on advertising to children.

Sponsored material falls outside the scope of the Codes but the ASA did contribute to the production of the NCC (National Consumer Council) Guidelines on Educational Sponsorship released in 1996. In addition, teachers usually reject promotions that do not follow the NCC Guidelines.

Trustees of the NCPTA (national Confederation of Parent teachers' Associations) recently negotiated an Agreement with the company which had devised Jazzy Books (exercise books produced with the support of particular sponsors.)

The UK Department for Education and Employment has made clear that it considers the responsibility for deciding whether schools should accept advertising (and what types of advertising) to belong to the Head Teachers and School governing bodies.

- UK BACC (TV)

BACC is responsible for pre-transmission clearance of television advertising. Therefore, there are no specific rules in its code relating to commercial activities in schools, as there would be no circumstance in which this would be needed.

See also response to question 1a regarding programmes designed and broadcast for reception in schools.

IV. SPECIAL MEANS OF COMMUNICATION

1. Direct Marketing

1.1. General Rules

Direct marketing (otherwise known as “distance selling”) in non-broadcast media is governed by rule 52 of the British Codes of Advertising and Sales Promotion.

Direct marketing in broadcast media (radio, TV) is governed by rule 36 of the ITC Code of Advertising Standards and Practice and rule 25 of the Radio Authority Advertising and Sponsorship Code.

1.2. Proposed Legislation

The EU Directive 97/7/EC (the “Distance Selling Directive”) was required to be implemented in the UK by 4 June 2000. However, its implementation has been delayed due to a number of key and complex issues still being under consideration, such as the appropriate sanctions to ensure compliance by the suppliers and the approach which should be taken to tackle spam e-mail. Its implementation in the UK will be via the Consumer Protection (Contracts Concluded by means of Distance Communication) Regulations which are unlikely to come into force until later this year. Once these Regulations are in force, it is likely that the Codes of Practice for broadcast and non-broadcast media will need to be changed to bring them into line with the Regulations.

1.3. Non-Broadcast Media

Advertisers are required under rule 52.9 of the BCASP to take particular care when packaging products that may fall into children’s hands and which are the subject of direct marketing. In addition, under rule 47.4, advertisements and promotions addressed to children should not make a direct appeal to purchase unless the product is one that would be likely to interest children and that they could reasonably afford. Distance selling advertisers should also take care when using youth media not to promote products that are unsuitable for children.

Otherwise, distance selling advertisements with written response mechanisms should give the full name and address of the advertiser outside the coupon or such mechanism and the advertisements themselves should include:

- The main characteristics of the product/service;
- The amount and number of any transport charges;
- Any VAT payable (unless it is addressed exclusively to the trade);
- A statement that the goods can be return (if applicable);
- Any limitation on the offer and its conditions of validity; and
- The estimated delivery time.

In general, advertisers should take no longer than 30 days to fulfil orders (rule 52.4), and refunds do not have to be provided on such things as perishable, personalised or made-to-measure goods (rule 52.7).

1.4. Broadcast Media

Both the ITC Code and the Radio Authority Code prohibit advertisements which invite children to purchase products by telephone or mail (rule 36 ITC and appendix 3 rule 7 Radio Authority).

2. Promotional Sales Practices

2.1. General Rules

Promotions in non-broadcast media are governed by the BCASP (see above). Within these Codes, there is a separate Code dealing with promotions (the "Sales Promotion Code").

Promotions in broadcast media are governed by the ITC Code of Advertising Standards and Practice and the Radio Authority Advertising and Sponsorship Code.

If the promoter is holding and compiling lists from individual's data, then the relevant provisions of the Data Protection Act 1998 should also be taken into consideration and complied with.

2.2. Non-Broadcast Media

The Sales Promotion Code has the same overriding objectives as the Advertising Code, in that all sales promotions should be legal, honest and truthful (Rule 27.1 BCASP) and that the Code is applied in the spirit as well as in the letter (Rule 27.8). In addition, the Code must be read in conjunction with the entire BCASP.

This Code regulates the nature and administration of promotional marketing techniques, which generally involve providing a range of benefits designed to make goods or services more attractive to the consumer.

The Code defines children and young people as those under the age of 16. Where appropriate, sales promotions are required to conform with the BCASP Specific Rules on Children (see above), in particular rule 47.5 which states amongst other things that:

- Promotions addressed to children should not encourage excessive purchases in order to participate;
- Such promotions should make it clear that adult permission is required if prizes might cause conflict (for example animals, holidays etc); and
- Such promotions should make it clear when their closing date is.

Under Rule 33.4, promoters and those responsible for the administration of sales promotions should ensure that the way they compile and use personal information about consumers conforms to the rules on database practice (contained in the BCASP Rule 53). In summary, this rule and its subsections require database owners, brokers and users to ensure their databases are accurate and up to date, ensure they do not contact anyone who they have been notified is dead and comply with current data protection legislation. In addition, consumers should be informed at the time their personal information is collected who is collecting the data, why it is being collected and an opportunity to object to their data being disclosed to third parties (including associated companies).

2.2.1. Public Interest and Safety

Under Rule 28.1, sales promotions should not be designed or conducted in a way that conflicts with the public interest and they should not provoke violent or anti-social behaviour, nuisance, personal injury or damage to property. Promoters should make all reasonable efforts to ensure that their promotions are safe and special care is needed where the promotions are addressed to children or when products intended for adults may fall into the hands of children (rule 33.1).

2.2.2. Alcohol and Tobacco

These products should not feature in sales promotions addressed to people who are under 18 and tobacco promotions should only be addressed to existing smokers (rule 34.2).

2.2.3. Charity-Linked Promotions

Under Rule 42.1(h), promotions claiming that participation will benefit registered charities or causes should take particular care when appealing to children.

2.3. Broadcast Media

Both the ITC and Radio Authority Codes contain almost identical provisions relating to advertisements for sales promotions of alcohol and medicines. These are not specifically in relation to children but apply to all such promotions.

2.3.1. Alcohol

Advertisements for alcoholic drinks must not publicise sales promotions entailing multiple purchase which appear to encourage excessive consumption (ITC Rule 40(k) and RA Appendix 2 Rule 5). Advertisers should also have consideration to the general rules in relation to alcohol in the Portman Group Code of Practice (see above).

2.3.2. Medicines

No advertisement for a medicinal product or treatment may contain any reference to sales promotions (such as competitions, samples) (ITC Appendix 3 Rule 31 and RA Appendix 4 Rule 38).

V. HANDLING OF COMPLAINTS

1. Self-regulation

1.1. General Rules

The complaints systems for each of the self-regulatory Codes of Practice (described above) vary, but in general, the ASA and Portman Group have a number of sanctions available to them to counteract advertisements that breach their respective Codes and they can direct that advertisements be withdrawn or re-scheduled.

Complaints are received from a wide variety of sources including the public, consumer interest organisations, manufacturers and other organisations and the responses to the complaints are published regularly by the regulating bodies.

1.2. Specific Rules

1.2.1. The ASA

Self Discipline

The British Codes of Advertising and Sales Promotion contain a provision that advertisers and promoters bear principal responsibility for the advertisements and promotions they produce. They must be able to prove the truth of their claims to the ASA and they have a duty to make their claims fair and honest and to avoid causing offence. Obligations are also placed on advertising and sales promotion agencies. (Rule 68.21)

Self Regulatory System

As stated above, the CAP writes the BCASP and provides the majority of the sanctions to enforce this system of self-regulatory control. Under Rule 68.6 of the BCASP, the ASA investigates complaints from any source against advertisements and promotions in non-broadcast media.

Summary of the Complaints Procedure

The ASA Council (which is unconnected with the advertising business and comprises 12 members appointed by the Chairman) investigates complaints free of charge. Complaints must be made in writing within 3 months of the

appearance of the advertisement and should be accompanied by a copy of the advertisement or a note of where and when it appeared (rule 68.28).

The identity of members of the public who complain remain anonymous to advertisers unless they expressly authorise the ASA to reveal their identity, and only the courts or officials acting within their legal powers can compel the ASA to disclose to them information received by it in confidence. However, the ASA does release the identity of group and industry complainants such as competitors and if the complaint is to proceed, they must agree to identity disclosure (rule 68.29). However, the Codes require industry complainants wherever possible to endeavour to resolve their differences between themselves or through their trade or professional organisations (rule 68.30).

If the complaint forms part of legal proceedings, the ASA will not normally pursue such complaint (rule 68.32).

Under rule 68.33, complaints about advertisements and promotions that obviously conflict with the Codes are given priority. If the Council have already ruled on the same or similar advertisement or promotion, they will notify the complainant of its judgment.

The ASA Secretariat will conduct a fact-finding investigation into pursued complaints and most are dealt with within 6 weeks, although some may be dealt with within 48 hours. The Secretariat then produces a recommendation for the ASA Council, who have the final decision on complaints and interpretation of the Codes. The Secretariat has the power under rule 68.35 to ask advertisers or promoters to take interim action to withdraw a misleading advertisement or promotion if it appears necessary to avoid further harm.

Appeals (Rule 68.36)

If additional evidence becomes available or if a substantial flaw in the Council's adjudication can be demonstrated, the ASA Council can be asked by the complainant to reconsider its adjudication within 14 days of notification of such adjudication. An Independent Reviewer will evaluate the substance of the request with advice from the Chairman of the ASA and if they decide to proceed, the reviewer will investigate the file and compile a report and recommendation for the Council.

The ASA Council's adjudication on reconsidered cases is final.

Sanctions

Once the ASA Council has given its adjudication, a number of sanctions exist to counteract advertisements and promotions which breach the BCASP. Such

sanctions include adverse publicity acting as a deterrent and the withholding of services or the denial of access to space by the media, contractors and service providers.

The Government recognises the ASA as an effective means of controlling advertisements and promotions and as such, under the Control of Misleading Advertisements Regulations 1988, if a misleading advertisement or promotion continues to appear after the Council has given an adjudication against it, the ASA are able to refer the matter to the Director General of Fair Trading who can seek an undertaking from anyone responsible for preparing, commissioning or disseminating it that it will be discontinued. If this is not given or is not honoured, the Office of Fair Trading can seek an injunction from the Court to prevent any further appearance of it. If anyone to whom the order applies to defaults on it, that person or organisation can be held to be in contempt of court and is liable to be penalised accordingly (rule 68.40).

1.2.2. The Portman Group

Self Regulatory Body

The Portman Group monitors compliance with their Code, in the manner set out below.

Summary of the Complaints Procedure

Complaints about any drink which exceeds 0.5% alcohol by volume and which appear to be in contravention of the Code of Practice (for example if the complainant considers that the name, packaging or merchandising of the product is more likely to appeal to under 18's than adults) may be submitted to the Complaints Officer at the Portman Group, together with supporting evidence (such as a product sample). The complainant should note that the Group keeps confidential names of members of the public who complain except in exceptional circumstances, in which case that member will be asked for his or her permission before their name is released.

Upon receipt of a complaint, the Group will inform the company concerned who has 14 days to respond to the complaint before the Panel meets to consider it. Occasionally the Panel may request oral evidence and if so, the relevant company will be given 14 days' notice. Additionally, the Panel may seek expert assistance at any stage.

The Chair of the Group and two members of the Independent Complaints Panel constitute a quorum and decisions regarding complaints are made by a majority vote. If a complaint is not upheld, the decision is final. All decisions are published in the Portman Group's Code Report which is submitted to the

Government, alcohol interest groups, the media and members of the public who request it.

Appeals

If a complaint is upheld, the decision is provisional and if the company does not challenge it, that decision will become final. However, if it is challenged, the company can submit further written evidence to contest the provisional decision and the Panel will then make a final decision. No further appeal is allowed, unless the company can show that facts or information became available to it after the final decision.

Sanctions

The company concerned will be asked to make appropriate changes to the name, packaging or merchandising of the drink in question. These changes must be implemented within a timetable set by the Panel which will not exceed three months. Retailers are asked not to replenish stocks of any product against which a complaint has been upheld until the necessary changes have been made. Licensing authorities and trading standards officers are also informed of the upheld complaint and may be informed of any non-complying retailers.

If a Portman Group member against whom a complaint has been upheld does not comply with the decision, the company's representatives will be called to account before the Portman Group Council and the company could be expelled from membership of the Group.

2. Legislation

2.1. Statutory Bodies in the audiovisual sector

2.1.1. The ITC

As stated above, all ITC licence holders must ensure that any advertising they transmit complies with the ITC Code of Advertising Standards and Practice and that they have adequate procedures to fulfil this requirement.

The ITC monitors compliance with the Code, in the manner set out below.

Summary of the Complaints Procedure

The ITC Code of Advertising Standards and Practice Guidance Note number 8 sets out the ITC Complaint Procedures.

The viewer who wishes to complain about a programme or advertisement that has been shown on commercial television should first consider contacting the television company concerned directly (within 3 months (if a major network and 2 months if other networks) of the relevant broadcast) since the ITC require the companies to reply to such complaints and to inform the ITC of them. Alternatively, complaint can be made to the ITC directly, who will raise the matter with the television company concerned should they agree with the concerns.

The viewer should set out in his or her complaint the name of the television service (e.g. Channel 4) and the programme which they were watching (including teletext), whether it was an analogue or digital broadcast, the date and time of the broadcast (or the teletext page number), the exact nature of the complaint and the name of the product advertised (if any).

The ITC will then consider the complaint in line with the ITC Codes and will obtain information from the company concerned or the advertising agency or BACC regarding the item complained of. If it is alleged that the advertisement is misleading, the ITC has express powers under the Control of Misleading Advertisements Regulations 1988 (as amended by the Broadcasting Act 1990) to consider a factual claim inaccurate if adequate evidence is not furnished to it.

Final decisions are normally taken by the ITC's Director of Advertising and Sponsorship after full consideration of any comments on draft decisions from the advertising agency or advertiser and the licensee or BACC. The ITC aim to reply to the complainant within 4-6 weeks of receipt of their complaint.

The ITC's decisions of upheld complaints, of not upheld complaints but those which raise issues on which the ITC wish to give guidance for the future, of complaints about advertisements which have attracted relatively more complaints than most, and complaints which raise substantive issues of code interpretation are published in the ITC's Television Advertising Complaints Report (usually published each month).

Appeals

Any appeals of the ITC's decision must be made by close of business on the third working day after receipt by the company of the confirmed decision. Full written statements of the grounds for appeal should be sent by a director of the company concerned to the ITC's Chief Executive not later than close of business on the tenth working day after receipt of the decision being appealed.

The Chief Executive will consider the appeal and give a ruling on whether the appeal should be allowed or dismissed. If the appeal is dismissed, the

appellant may write to the ITC Chairman requesting that the matter be put before the full Commission. The Chairman will then decide whether it is appropriate for the matter to go before the Commission, and if he does so, the papers will be put before them at their earliest convenient meeting.

Sanctions

The ITC may uphold the complaint, it may uphold the complaint in part or it may dismiss the complaint. If the complaint is upheld (in full or in part), the ITC will notify the relevant television company of their decision to uphold the complaint and they may tell the company to make changes that will prevent a repetition, including the withdrawal of the advertisement complained of. For more serious or persistent breaches of the Codes, the ITC may issue a formal warning to the company. In the most serious cases, the ITC can tell the company to broadcast an apology or correction, impose a fine, shorten the term or in extreme cases withdraw the company's broadcasting licence.

It should be noted that once the ITC has confirmed a draft decision to uphold a complaint, licensees should cease broadcasting the advertisement as soon as practically possible irrespective of whether the decision may be appealed. In addition, the ITC reserves the right to suspend advertising at any stage during the investigation of a complaint pending final resolution of the case or if it encounters obstruction or unjustified delay in its pursuit of its investigations.

2.1.2. The Radio Authority

The Radio Authority's Advertising and Sponsorship Code contains provisions that stations should adopt appropriate procedures for the handling of written complaints about the content, style or scheduling of advertisements, and sponsored programming. They are required to keep written records for 12 months and inform members of the public that they may refer unresolved matters to the Radio Authority.

The Radio Authority issues guidelines for listeners who wish to complain about an item. The general rule is that stations must not broadcast material which is unfair, inaccurate or likely to cause widespread offence. As the Authority's duties are set out in legislation, it is a statutory body with its costs being met by fees paid by the stations it licences. Therefore the Authority is an impartial organisation.

Summary of the Complaints Procedure

The listener is requested by the Authority to firstly write to the station concerned and if it is not satisfied with its response, to contact the Authority for a complaints form (such form available on their web-site). The listener must write within 42 days of the date the offending item was broadcast setting out which station(s) broadcast the item, when it was broadcast and full details of the complaint.

The Authority will review the item complained about in line with their 3 Codes of Practice (described above) and decide whether to proceed with a full investigation. Since the Authority notifies the station(s) of a complaint, the complainant's name is made available to the station(s) concerned. The Authority aims to deal with complaints within 3 weeks.

Sanctions

Upheld complaints are published in the Authority's quarterly bulletin, which is sent out to all stations, the press and other interested parties and are also noted on the Authority's official records. In addition to negative publicity as a penalty, the Authority has the power to issue formal warnings, request a broadcast apology, correction or impose a penalty. In the case of misleading or offensive advertising, they can require that the advertisement concerned be withdrawn immediately or amended.

2.2. Other statutory complaints procedures

Medicines

The Medicines (Monitoring of Advertising) Regulations 1994, SI 1994/1933

The Regulations provide for a complaints procedure in respect of medicinal advertising, and in particular refer to the following legislation or bodies:

- Medicines Act 1968;
- Broadcasting Act 1990;
- Medicines (Advertising) Regulations 1994 (the "Advertising Regulations");
- The Independent Television Commission;
- The Radio Authority.

Complaints about the advertising of medicinal products should, in the first instance, be directed to the Health Minister that an advertisement, irrespective of if it has been published, may be in breach of the Advertising Regulations. However, this does not include those advertisements for which it is the duty of a complaints authority (such as the ITC) to consider, unless those authorities have not responded to a complaint sent directly to them within a reasonable time (Reg. 4).

The Health Minister may then make an application to the courts for an injunction against any person from proceeding with the advertisement (Reg. 6).

The Regulations do apply in Northern Ireland and Scotland.