



**JOINT OIREACHTAS COMMITTEE ON CHILDREN AND YOUTH  
AFFAIRS SUBMISSION ON “TACKLING CHILDHOOD OBESITY”**

**SUBMISSION FROM  
THE BROADCASTING AUTHORITY OF IRELAND  
27<sup>th</sup> June 2018**



## **1. Introduction**

The Broadcasting Authority of Ireland (the “BAI”) thanks the Joint Oireachtas Committee on Children and Youth Affairs for providing it with an opportunity to contribute to the ongoing and important debate on tackling childhood obesity.

The BAI is the independent regulator for broadcasting in Ireland established further to the Broadcasting Act 2009 (the “2009 Act”). Further to the 2009 Act, the BAI has responsibility for a broad range of activities including the licensing, regulation and support of independent and public service broadcast media in Ireland. In broad terms, the objectives of the BAI are to ensure the provision of open and pluralistic broadcasting services that meet the needs of the people of Ireland and which support and uphold democratic values.

The BAI’s Mission is set out in its Strategy Statement (2017-2019) and references three distinct elements:-

- To regulate, foster and support broadcasting in the public interest.
- To promote a plurality of voices, viewpoints, outlets and sources in Irish media.
- To foster diverse and culturally relevant quality content for Irish audiences.

Arising from its Mission, the BAI has identified five strategic themes that guide its work. They are:-

- Promoting Diversity and Plurality.
- Enhancing Innovation and Sectoral Sustainability.
- Empowering Audiences.
- Communicating and Influencing.
- Excellence and Accountability.

## **2. BAI Broadcasting Codes and Rules**

In the context of the strategic theme of Empowering Audiences, the BAI develops and reviews broadcasting codes and rules, assesses compliance against these codes and rules and facilitates complaints from the public about broadcasting content. In particular, the BAI has developed and reviewed codes governing commercial communications (advertising, teleshopping, sponsorship, product placement and other types of commercial promotions).



The codes that the BAI has implemented which are relevant to the debate on tackling childhood obesity include: -

- The Children's Commercial Communications Code adopted pursuant to Section 42(2)(f) and Section 42(4) of the 2009 Act.
- The General Commercial Communications Code adopted pursuant to Section 42(2)(h) and Section 42(2)(j) of the 2009 Act.

In developing these codes, the 2009 Act required the BAI to have regard to the need to:-

- "Protect the interests of children taking into account the vulnerability of children and childhood to undue commercial exploitation" - section 25(2)(f);
- "Protect the interests of children having particular regard to the general public health interests of children" - section 42 (2)(g)

Regarding foods that are high in fat, salt and sugar, the 2009 Act empowers the BAI to:-

- "Prohibit the advertising in a broadcasting service of a particular class or classes of foods and beverages considered by the Authority to be the subject of public concern in respect of the general public health interests of children, in particular those which contain fat, trans-fatty acids, salts or sugars" – section 42(4).

The 2009 Act defines children as those who are under the age of 18 years of age.

### **3. The BAI Children's Commercial Communication Code**

The BAI Children's Commercial Communication Code deals specifically with advertising, sponsorship, product placement and other forms of commercial promotion aimed at children, including the promotion of foods that are high in fat, salt and sugar ("HFSS foods"). In line with the 2009 Act, a child is considered to be any person under 18 years of age though certain aspects of the code apply exclusively to commercial communications aimed at younger age groups. This recognises that younger children will need stronger and different types of protections than older children.



The objectives of the BAI Children's Commercial Communications Code are:

- To offer protection for children from inappropriate and/or harmful commercial communications;
- To acknowledge the special susceptibilities of children and ensure that commercial communications do not exploit these susceptibilities;
- To ensure that commercial communications are fair and present the product or service promoted in a way that is easily interpreted by children and does not raise unrealistic expectations of the capabilities or characteristics of the product or service being promoted, and;
- To provide unambiguous guidelines to broadcasters, advertisers, parents, guardians and children on the standards they can expect from commercial communications on Irish broadcasting services.

The code covers a range of different practices including:

- Advertising;
- Sponsorship;
- Misleading, Comparative, Surreptitious and Subliminal Commercial Communications;
- Teleshopping;
- Television Product Placement;
- Virtual, interactive and Split-Screen Advertising.

In particular, the rules in the code apply to any commercial communication that promotes products, services, or activities that are deemed to be of particular interest to children and/or broadcast during and between children's programmes. The code also applies to communications for products, services, etc., of particular interest to children broadcast in adult viewing times.

## **2.1 Rules applying to food advertising**

Section 11 of the code deals specifically with Diet and Nutrition. In addition to any other rules which may be applicable, Sections 11 and 13 of the code place a number of obligations on broadcasters with respect to commercial communications for food that are aimed at children.



The rules in question are as follows:-

- i. Children's commercial communications shall be responsible in the manner in which food is portrayed. They should not encourage an unhealthy lifestyle or unhealthy eating or drinking habits such as immoderate consumption, excessive or compulsive eating. *Under 18*
- ii. Children's commercial communications representing mealtimes should clearly and adequately depict the role of the product or service within the framework of a balanced diet. *Under 18*
- iii. Children's commercial communications must not contain any misleading or incorrect information about the nutritional value of a product. They must not make misleading or incorrect comparisons between foods. They must not imply that particular foods are a substitute or replacement for fruit and/or vegetables. *Under 18*
- iv. Commercial communications for HFSS food products and/or services shall not be permitted in children's programmes as defined by this code. *Under 18*
- v. Children's commercial communications for HFSS food products and/or services shall not include licensed characters. *Under 18*
- vi. Children's commercial communications for HFSS food products and/or services shall not include health and nutrition claims. *Under 13*
- vii. Children's commercial communications for HFSS food products and/or services shall not include promotional offers. *Under 13*
- viii. All children's commercial communications for fast food products, outlets and/or brands must display an acoustic or visual message stating 'should be eaten in moderation and as part of a balanced diet'. 'Fast food' is defined as 'food coming under the recognised character of fast food and/or inexpensive cooked food which is prepared and served quickly and is readily accessible for purchase by children'. *Under 18*



- ix. Children's commercial communications for confectionery products must display an acoustic or visual message stating that 'snacking on sugary foods and drinks can damage teeth.' 'Confectionery' in this instance includes sugar, honey, preserves, chocolate covered bars (excluding biscuits), non-chocolate confectionery – e.g. cereal bars – and artificial sweeteners. Carbonated drinks are included, with the exception of water. *Under 18*
- x. Children's commercial communications shall not portray or refer to celebrities or sports stars to promote food or drink products (including HFSS food products and/or services), unless the commercial communication is part of a public health or education campaign. Celebrities in this instance are defined as persons who are widely acclaimed, or honoured and/or known to children. It does not include those persons or characters that become known to children solely as a result of their participation in commercial communications. *Under 15*
- xi. Characters and personalities from children's programmes which are currently broadcast on indigenous services shall not be used to promote products or services (including HFSS food products and/or services) in children's commercial communications. In this instance 'currently' means regular programming that is due for return in the next broadcast season. *Under 18*

It is also important to note that the code contains a range of general rules which apply to all commercial communications. This means that any advert for food products would also have to comply with these general rules as well as the food-specific rules. In concert, these obligations are intended to ensure a rigorous and proportionate scheme for the protection of children that empowers parents/guardian and members of the public to hold broadcasters to account while also recognising the shared responsibility of broadcasters, parents/guardians to protect the interests of children.

In technical terms, HFSS foods are identified by use of a Nutrient Profiling Model. This model was developed for use by the UK broadcast regulator OFCOM. Before being adopted for Irish audiences, it was reviewed by an Expert Working Group consisting of representatives from the Department of Health, the Food Safety Authority of Ireland, the H.S.E. and safefood. This group was tasked with assessing whether the model was suitable having regard to the specific public health interests of children in Ireland. The working group endorsed the model. The model is detailed at Appendix 1.



## **2.2 Other relevant regulations**

In addition to the aforementioned rules, the BAI's Children's Commercial Communications Code also includes a number of other restrictions which are relevant to the broader moral, mental and physical health interests of children. In particular, the code prohibits during children's programmes the promotion of slimming products and services, surgical and non-surgical cosmetic procedures and betting and gambling products and services.

## **3. The BAI General Commercial Communications Code**

The BAI General Commercial Communications Code complements the children's code. It sets rules for commercial communications broadcast outside of children's programming and section 16 includes requirements in respect of Food, Nutrition and Health, which are intended to provide additional protection for children. In this regard:-

Rule 16.10 specifies that:-

- "A maximum of 25% of sold advertising time and only one in four advertisements for High Fat Salt Sugar (HFSS) food products and/or services products are permissible across the broadcast day....]"

Rule 10.4 specifies that:-

- "Prop placement in children's programmes is not permitted in the case of products/ services that may not feature in children's programmes (e.g. alcohol and HFSS foods) and in the case of other relevant restrictions."

In the context of both codes, Irish-based broadcasters are required to comply with the above codes. The BAI has also monitored UK opt-out channels for compliance with these codes. Furthermore, any member of the public is entitled to make a complaint on foot of these codes and it will be adjudicated upon through the BAI complaints procedure and if necessary escalated through the BAI Compliance and Enforcement Policy where infringements of these codes can lead to fines being imposed. In practice, the BAI has received a low number of complaints in relation to the food rules contained in these codes. In addition, monitoring of the food rules has not highlighted any significant issues with their implementation.



#### **4. European Context**

Much of the broadcasting regulation in Ireland is underpinned by European Directives that are transposed into Irish law by legislation. In particular, the Audiovisual Media Services Directive (“the Directive”) sets out minimum harmonisation rules (i.e. minimum standards that Member States must adopt) for broadcast regulation of this kind in European Union. In this regard, the Irish government and the BAI has opted to implement stronger, statutory rules than the minimum required by European Union law, which currently only includes a general encouragement for Member States to develop self-regulatory measures in this area.

The Directive is currently being amended and it is anticipated that a final text of the Directive will be agreed by the European institutions in the final quarter of 2018. The material scope of the Directive will be extended to impose stronger rules on On-demand services (e.g. RTÉ Player, 3 Player, Netflix) and it will also likely be extended to partially cover Video Sharing Platform Services (e.g. You Tube). Member States may be required to ensure that Video Sharing Platform services take appropriate measures to protect minors from programmes, user-generated videos and audiovisual commercial communications that may impair the physical, mental and moral development of minors. In respect of food advertising under the new Directive, the scope of the Directive will apply to on-demand and video-sharing platforms and Ireland will be required to encourage the development of self- and co-regulatory measures with a view to reducing exposure to commercial communications for HFSS foods.

#### **5. Future Action**

The BAI appreciates that the audiovisual content and advertisements that the public consume can influence culture, attitudes and behaviours that may lead to obesity. The BAI recognises the Irish public’s expectation that broadcasters should conduct themselves in a responsible manner and reflects this sentiment in the codes and standards we implement.

In this environment, the BAI notes the importance of ensuring that, as audiovisual offerings available to consumers, and particularly children, develop, it is necessary to ensure that regulation remains relevant and appropriate. In this context, the BAI and its predecessor – the Broadcasting Commission of Ireland (BCI) – were amongst the first European regulators to develop codes dealing with the advertising and promotion of food products towards children.





Later this year, the BAI will undertake a full review of the current rules dealing with food advertising to children. Any revisions resulting from the review will take into account any new requirements arising from new European law.

The BAI will also continue to co-operate with State agencies as it has done in the past, including most recently in the development of the codes of practice for the regulation of food marketing in non-broadcast media under the aegis of the Department of Health.



## **Appendix 1**

### **BAI Children's Commercial Communications Code**

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**August 2013**

Introduction.....	3
1. Objectives.....	4
2. Definitions.....	4
3. Scheduling.....	6
4. Compliance & Assessment.....	6
5. Social Values.....	6
6. Inexperience and Credulity.....	7
<b>Factual Presentation.....</b>	<b>7</b>
<b>Price of product/service .....</b>	<b>8</b>
7. Undue Pressure.....	9
8. Special Protection for Children.....	9
<b>Children Endorsing Products/Services.....</b>	<b>9</b>
<b>Sexualisation of Children .....</b>	<b>9</b>
<b>Privacy and Provision of Information.....</b>	<b>10</b>
<b>Adults pretending to be Children.....</b>	<b>10</b>
9. General Safety.....	10
<b>Behaviour.....</b>	<b>11</b>
10. Violence.....	11
11. Diet and Nutrition.....	11
12. Parental Responsibility.....	13
13. Programme Characters.....	13
14. Children's Advertising, Children's Sponsorship and Children's Product Placement	14
15. Prohibitions and Restrictions.....	14
Appendices	

## **Introduction**

Section 42 of the Broadcasting Act, 2009, provides that:

(1) The Authority shall prepare, and from time to time as occasion requires, revise, in accordance with this section, a code or codes governing standards and practice ("broadcasting code") to be observed by broadcasters.

(2) Broadcasting codes shall provide –

(g) that advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, in particular advertising and other such activities which relate to matters likely to be of direct or indirect interest to children, protects the interests of children having particular regard to the general public health interests of children.

The Children's Commercial Communications Code ("the Code") has been developed by the Broadcasting Authority of Ireland in accordance with its statutory obligations.

## **Scope**

The Code shall apply specifically to commercial communications that promote products, services, or activities that are deemed to be of particular interest to children and/or broadcast during and between children's programmes i.e. children's commercial communications.

## **Jurisdiction**

Broadcasters within the jurisdiction of the Republic of Ireland must comply with the provisions of the Code. It shall not apply to other services commonly received in this State but licensed in the United Kingdom or in other jurisdictions.

## **Complaints**

Any viewer or listener may make a complaint if they are dissatisfied with the manner in which a broadcaster is complying with this Code. Further information on the complaints process is available on [www.bai.ie](http://www.bai.ie) or by phoning 01 6441200.

## **Guidance**

Further information on this Code is provided in Guidance Notes available on [www.bai.ie](http://www.bai.ie). The Authority does not provide broadcasters, advertisers or the general public with a copy clearance service.

The effective date of this Code is September 2<sup>nd</sup> 2013.

## 1. Objectives

The objectives of the Code are:

- To offer protection for children from inappropriate and/or harmful commercial communications;
- To acknowledge the special susceptibilities of children and ensure that commercial communications do not exploit these susceptibilities;
- To ensure that commercial communications are fair and present the product or service promoted in a way that is easily interpreted by children and does not raise unrealistic expectations of the capabilities or characteristics of the product or service being promoted, and;
- To provide unambiguous guidelines to broadcasters, advertisers, parents, guardians and children on the standards they can expect from commercial communications on Irish broadcasting services.

## 2. Definitions

- (a) **Child** refers to any person under 18 years of age and references to **Children** should be construed accordingly.

The Code recognises the principle that children of different ages require different levels of protection. In order to give this principle practical effect, the Code stipulates general principles that apply to children's commercial communications and also stipulates a number of protections that apply to children under 6 years of age, those under 13 years of age and those under 15 years of age. The provisions that apply to each of these age groups are clearly marked.

- (b) For the purpose of this Code, the definitions for the following types of commercial communications contained in the **General Commercial Communications Code** will apply:-

- Advertising;
- Sponsorship;
- Misleading, Comparative, Surreptitious and Subliminal Commercial Communications;
- Teleshopping;
- Television Product Placement;
- Virtual, Interactive and Split-screen Advertising.

- (c) **Commercial Communications** are images with or without sound and radio announcements which are designed to promote, directly or indirectly, the products, services or image of a natural or legal entity pursuing an economic activity. Such images and radio announcements accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of commercial communication include, inter alia, advertising, sponsorship, teleshopping and product placement, but do not include public service announcements and charity appeals broadcast free of charge.
- (d) **Children's Commercial Communications** are commercial communications that promote products, services, or activities that are deemed to be of particular interest to children and/or broadcast during and between children's programmes.
- (e) **Children's Advertising, Children's Sponsorship and Children's Product Placement** are advertising, sponsorship and product placement (as defined in the General Commercial Communications Code) that promote products, services or activities that are deemed to be of particular interest to children and/or broadcast during and between children's programmes.
- (f) **Children's programmes** are programmes that are commonly referred to as such and/or have an audience profile of which over 50% are under 18 years of age. Where provisions of the Code are categorised as pertaining to those under 15 years, those under 13 years or those under 6 years of age, these provisions will apply to (i) commercial communications targeting these age groups, (ii) commercial communications broadcast during programmes where over 50% of the audience are of these age groups.
- (g) **HFSS foods** are those that are assessed as high in fat, salt or sugar in accordance with the Nutrient Profiling Model developed by the UK Food Standards Agency as adopted by the BAI.<sup>1</sup>
- (h) **Programme characters** are characters and personalities from children's programmes currently broadcast on indigenous services and used to promote products or services in children's commercial communications. In this instance 'currently' means regular programming that is due for return in the next broadcast season.

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<sup>1</sup> An overview of the Nutrient Profiling Model and how to apply it is provided in Appendix 2.

- (i) **Licensed characters** are characters and personalities that are licensed to feature in a commercial communication but which have no direct association with the product or service promoted. Licensed characters include characters and personalities from a cinema release, video game, amongst others.

### **3. Scheduling**

A children's programme is defined with reference to the type of programme and/or the profile of those watching or listening to that programme i.e. programmes that have an audience profile of which over 50% are under 18 years of age. When scheduling children's commercial communications, broadcasters shall comply with guidelines issued by the BAI and updated from time to time.

### **4. Compliance & Assessment**

1. Broadcasters shall observe the provisions of the Code.
2. Children's commercial communications shall be considered in whole and in context against the provisions contained in this Code. The following contextual factors shall apply: -
  - Time of broadcast;
  - Type of programme;
  - Channel/service type;
  - Nature of the product or service;
  - Target audience of the product or service;
  - Likely composition of the audience listening to, or watching, the programme.
3. Broadcasters shall comply with the spirit as well as the letter of the Code.

### **5. Social Values**

1. Children's commercial communications shall not cause moral, mental or physical detriment to children.



2. Children's commercial communications shall not reflect a range of values which are inconsistent with the moral or ethical standards or diversity of contemporary Irish society. They shall respect human dignity and not discriminate on grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community. They shall not be offensive to religious or political beliefs or encourage behaviour which is damaging to the environment. They shall respect the principle of equality and avoid gender stereotyping and any exploitation or the demeaning of men, women or children. **U/18**
3. Except where indicated otherwise, children's commercial communications coming within the scope of this Code must comply with Sections 3.1, 3.2 and 3.3 of the General Commercial Communications Code. **U/18**

#### **6. Inexperience and Credulity**

1. Children's commercial communications shall not take advantage of the natural credulity and sense of loyalty of children. They must not by implication, omission, ambiguity or exaggerated claim, mislead or deceive or be likely to mislead or deceive children, abuse their trust or exploit the lack of knowledge of children. They shall not exploit or, without justifiable reason, play on fear. **U/18**

#### ***Factual Presentation***

Children's commercial communications shall:

2. Clearly indicate what parts, elements or accessories are included as part of the normal purchase of the product or service and differentiate between those which are only available at extra cost. **U/18**
3. Ensure that on-screen messages and 'small print' are clear, simple and legible and remain on screen for a sufficient length of time to enable a child to read it. **U/15**
4. Give children an indication of the actual size of the product. **U/15**
5. Clearly indicate when batteries are required for the operation of the product and whether these are supplied with the product. **U/15**
6. Clearly indicate when a product has to be assembled and what age level is generally required to assemble the product. **U/15**

7. Avoid the use of language, special effects or imaginative scenes which could confuse the child or have them believe that the product or service has capabilities or characteristics that it does not have in reality. **U/15**
8. Children's commercial communications shall not, in the case of toys or children's possessions, make direct comparisons between existing and 'improved' versions/models of the product, even when the statements or claims are valid.<sup>2</sup> **U/15**
9. State orally any on-screen messages or small print in order to ensure that children of this age understand the message. **U/6**

#### ***Price of product/service***

With regard to how the price of a product or service is presented in children's commercial communications, the following rules shall apply:

10. The price, when given, shall be in euro and be inclusive of VAT or any other extra or related charges. **U/18**
11. If the price is dependent on the purchase of another item, then this must be made clear in the commercial communication. **U/18**
12. If there are a number of products or services in the children's commercial communication and the price of an item/or items is highlighted, then it must be made clear that the price refers to this item/items only. **U/18**
13. Children's commercial communications that refer to 'free gifts' or offers must specify any and all qualifying terms and conditions, e.g. any time limit, how many products need to be bought, how many wrappers need to be collected etc. Children's commercial communications must not offer prizes or rewards to children for attracting new purchasers for the product or service. **U/18**
14. The price shall be presented in clear, simple and legible font and where appropriate be voiced as part of the audio. **U/15**
15. The language used in presenting the price shall not minimise its cost, e.g. through the use of words such as 'only' or 'just'. **U/15**

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<sup>2</sup> These are products that persons under 15 years of age could ordinarily be expected to possess.

16. Expensive toys shall state the price in the children's commercial communication. A toy will not be regarded as expensive if it, plus any essential accessories, are generally available at a retail price below a figure specified by the Authority from time to time. This figure is currently €30 but is subject to review. **U/15**

## **7. Undue Pressure**

1. Children's commercial communications shall not directly encourage or exhort children to ask adults to buy them the products or services being promoted. **U/18**
2. Children's commercial communications should not imply that possession or use of a product or service will make the child or his/her family superior, either physically, socially or psychologically. **U/18**
3. Children's commercial communications shall not imply that the child or his/her family will be inferior or open to ridicule or contempt if they do not possess a particular product or service. They should not imply that the product or service is affordable to all families. **U/18**
4. Children's commercial communications must be particularly careful to avoid the implication that possession or use of a product or service will contribute to or detract from the child's popularity or acquisition of friends. **U/18**
5. Children's commercial communications should not make the child feel inferior, disloyal or doubtful about their self-image. **U/18**

## **8. Special Protection for Children**

### ***Children Endorsing Products/Services***

1. The use of children to comment on or endorse products or services in children's commercial communications is only permitted for products and services that they could reasonably be expected to use and would usually be interested in themselves.

Children may appear in children's commercial communications for adult products if their appearance is as a natural element in the depicted environment or necessary to explain or demonstrate the use of the product or service. **U/18**

### ***Sexualisation of Children***

2. Children's commercial communications shall not portray a child in a sexually provocative manner or provoke anxiety in children over their bodily appearance. **U/18**

### ***Privacy and Provision of Information***

3. Children's commercial communications shall not ask children to submit private information or details regarding themselves, their family or friends, unless the commercial communication is as part of a campaign that relates to their safety, health or wellbeing. When this practice is used, children's commercial communications should state, where reasonable, that children must seek adult approval before sending the information. **U/18**

### ***Adults pretending to be Children***

4. The use of adults pretending to be children in children's commercial communications must not be offensive to the dignity of children. **U/18**

## **9. General Safety**

1. Children's commercial communications shall not encourage children to enter into unsafe situations or strange places or to talk to strangers. **U/18**
2. Children's commercial communications shall not show children in morally or physically dangerous situations or behaving dangerously in the home or outside, including street and road scenes, except when the sole purpose of the commercial communication is to promote safety. **U/18**
3. Children's commercial communications shall show children using appropriate safety equipment and respecting all applicable safety rules, when engaged in activities that require such and with adult supervision where appropriate, for example, as passengers in vehicles, pedestrians, cyclists, when rollerblading, skateboarding, swimming, water-sports or horse riding. **U/18**
4. Children's commercial communications should not show children using the internet without appropriate adult supervision. **U/18**
5. Children's commercial communications should not unreasonably show children using or close to dangerous substances or dangerous equipment, for example, matches, gas appliances, petrol, certain household substances or in possession of, or administering medicines unless under appropriate adult supervision. **U/15**

### ***Behaviour***

6. Children's commercial communications shall not encourage children to engage in, or be portrayed engaging in, anti-social behaviour, in particular bullying, taunting or teasing other children, unless the sole purpose of the commercial communication is to discourage such behaviour. **U/18**
7. Children's commercial communications should not disparage education or condone aggression or greed as admirable qualities. **U/18**

### **10. Violence**

1. Children's commercial communications should not generally, as a principle, include violence or include scenes that will cause distress to children. **U/18**
2. In instances where the inclusion of violent scenes may be necessary as part of a public service message or in order to demonstrate the product or service, broadcasters must schedule responsibly so as to ensure that such children's commercial communications do not cause distress to children of this age group. **U/6**

### **11. Diet and Nutrition**

1. Children's commercial communications shall be responsible in the manner in which food is portrayed. They should not encourage an unhealthy lifestyle or unhealthy eating or drinking habits such as immoderate consumption, excessive or compulsive eating. **U/18**
2. Children's commercial communications representing mealtimes should clearly and adequately depict the role of the product or service within the framework of a balanced diet. **U/18**
3. Children's commercial communications must not contain any misleading or incorrect information about the nutritional value of a product. They must not make misleading or incorrect comparisons between foods. They must not imply that particular foods are a substitute or replacement for fruit and/or vegetables. **U/18**

## **Children's commercial communications for HFSS food products and/or Services**

The following rules shall apply to children's commercial communications for HFSS food products and/or services.

4. Commercial communications for HFSS food products and/or services shall not be permitted in children's programmes as defined by this Code. **U/18**
5. Children's commercial communications for HFSS food products and/or services shall not include licensed characters. **U/18**
6. Children's commercial communications for HFSS food products and/or services shall not include health and nutrition claims. **U/13**
7. Children's commercial communications for HFSS food products and/or services shall not include promotional offers. **U/13**

## **Fast Food and Confectionery**

8. All children's commercial communications for fast food products, outlets and/or brands must display an acoustic or visual message stating 'should be eaten in moderation and as part of a balanced diet'. 'Fast food' is defined as 'food coming under the recognised character of fast food and/or inexpensive cooked food which is prepared and served quickly and is readily accessible for purchase by children'. It is not the intention of the definition to include prepared and convenience foods or food which is purchased for preparation and cooking in the home. Fast food in this instance does not refer to the actual amount of time required to cook the food but rather the speed and ease with which the food can be procured and consumed. **U/18**
9. Children's commercial communications for confectionery products must display an acoustic or visual message stating that 'snacking on sugary foods and drinks can damage teeth.' 'Confectionery' in this instance includes sugar, honey, preserves, chocolate covered bars (excluding biscuits), non-chocolate confectionery – e.g. cereal bars – and artificial sweeteners<sup>3</sup>. Carbonated drinks are included with the exception of water. **U/18**

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<sup>3</sup> This definition of 'confectionery' is in accordance with the Food Safety Authority of Ireland. Samples are classified by EU category as defined by the European Communities. See Food Safety Authority of Ireland (2001), Guidance Note on the EU Classification of Food No. 2, p.15. For further clarification on the foodstuffs identified, see FSAI (2001) - Appendix 1, p.44.

## **Celebrities**

10. Children's commercial communications shall not portray or refer to celebrities or sports stars to promote food or drink products (including HFSS food products and/or services), unless the commercial communication is part of a public health or education campaign. Celebrities in this instance are defined as persons who are widely acclaimed, or honoured and/or known to children. It does not include those persons or characters that become known to children solely as a result of their participation in commercial communications. **U/15**
11. Broadcasters shall comply with directions, issued from time-to-time by the Authority, in respect of this section of the Code. **U/18**

## **12. Parental Responsibility**

Parents and guardians have primary responsibility for children but those responsible for commercial communications (including broadcasters) should support the parent/guardian relationship with children by scheduling responsibly and by not undermining the authority, responsibility or judgment of parents or guardians in the content of children's commercial communications. This includes the use of plot lines that encourage children to deceive or manipulate adults into purchasing or providing the product or service promoted. Children's commercial communications shall not suggest that a parent, guardian or adult who purchases or provides a product or service for the child, is better, more intelligent or more generous than one who does not. **U/18**

## **13. Programme Characters**

Characters and personalities from children's programmes which are currently broadcast on indigenous services shall not be used to promote products or services (including HFSS food products and/or services) in children's commercial communications. In this instance 'currently' means regular programming that is due for return in the next broadcast season.

This provision does not apply to children's commercial communications for products, events or services, directly associated with programmes in which the characters or personalities normally appear.

In the case of children's commercial communications for products, events or services directly associated with the children's programme, these must not be broadcast for two hours prior to the beginning and following the end of the programme in question. **U/18**

#### **14. Children's Advertising, Children's Sponsorship and Children's Product Placement**

1. Except where otherwise indicated, children's advertising, children's sponsorship and children's product placement falling within the scope of this Code shall comply with Section 4 (Rules pertaining to Advertising & Teleshopping) Section 6 (Rules pertaining to Sponsorship) and Section 7 (Television Product Placement) of the General Commercial Communications Code. **U/18**
2. Children's Advertising shall be clearly separate from programme content and must not include excerpts from children's programmes that might blur the distinction between advertising and programme content. **U/18**
3. Christmas themed children's advertising may not be broadcast prior to November 1<sup>st</sup> each year. Christmas themed children's advertising refers to advertising that contains references, either visual or acoustic, to Christmas. **U/18**
4. A children's programme of less than 30 minutes scheduled duration may not be interrupted by advertising. Programmes with a scheduled duration of 30 minutes or greater may be interrupted by advertising once for each scheduled period of 30 minutes. **U/18**
5. Sponsor logos may not be shown during the editorial segments of Children's Programmes. **U/18**
6. Sponsors of Children's Programmes may not place their product and/or services in the sponsored programme. **U/18**

#### **15. Restrictions and Prohibitions**

1. Sections 8 and 9 of the General Commercial Communications Code detail restrictions and prohibitions on a range of products and services. Except where otherwise indicated, these prohibitions and restrictions shall apply to commercial communications falling within the scope of this Code. **U/18**



2. In addition to the restrictions and prohibition listed in the General Commercial Communications Code, children's commercial communications containing the following are prohibited:-

- Betting and Gaming services or products (except the National Lottery as permitted by the National Lottery Act 1986).
- Slimming products and services (slimming being defined as weight reduction, limitation or control).
- Introduction and dating services.
- Services of a sexual nature.
- Teleshopping.
- Paid product placement.
- Split-screen, interactive and virtual advertising.
- Surgical and non-surgical cosmetic procedures.
- Fortune Tellers, psychics etc.

Broadcasters should be aware that other classes of commercial communication are prohibited, limited or otherwise restricted by legislative or regulatory provisions. A guide to these provisions is contained in the Appendix to this Code and this guide should not be deemed to be exhaustive. **U/18**

**APPENDICES TO CHILDREN'S  
COMMERCIAL COMMUNICATIONS CODE**

## **1. Related Legislation**

The following is a non-exhaustive guide to the principal legislation which may restrict, control or otherwise affect commercial communications in Ireland. This list is for guidance only and it is entirely a matter for individual parties to ascertain any relevant legislative provisions that may apply in each case as well as any updates, repeals or amendments made to the relevant legislation.

### **Broadcasting Legislation:**

Broadcasting Authority Act, 1960  
Broadcasting Authority (Amendment) Act, 1976  
Broadcasting and Wireless Telegraphy Act, 1988  
Broadcasting Act, 1990  
Broadcasting Act, 2009

### **Other National Legislation:**

Adoption Acts 1952 to 1998.

Animal Remedies Act 1993.

Animal Remedies (Control of Sale) Regulations 1985-1991 (S.I. 258/1985, S.I. 244/1991).

Betting Act 1931.

Building Societies Act 1989 as amended by 2006 Act.

Central Bank and Financial Services Authority of Ireland Acts 2003 and 2004.

Central Bank Acts 1942-1998.

Censorship of Films Acts 1923-1992.

Censorship of Publications Acts 1929 to 1967.

Censorship of Publications Regulations 1980 (S.I. 292/1980).

Child Trafficking and Pornography Act 1998.

Child Trafficking and Pornography (Amendment) Act, 2004.

Companies Acts 1963-2009.

Consumer Credit Act 1995.

Consumer Credit Act 1995 (Section 28) Regulations, 1996 (S.I. 245/1996).

Consumer Protection Act, 2007.

Consumer Information (Advertisement for Concert or Theatre Performances) Order 1997 (S.I. 103/1997).

Consumer Information (Advertisements)(Disclosure of Business Interest) Order 1984 (S.I. 168/1984).

Consumer Information (Advertisement for Airfares) Order, 2000 (S.I. 468/2000).

Consumer Information (Miscellaneous Goods)(Marking) Order, 1984 (S.I. 178/1984).

Copyright Act 1963.

Copyright and Related Rights Acts 2000 and 2004.

Credit Union Act 1997.

Criminal Justice (Theft and Fraud Offences) Act 2001.

Data Protection Acts 1988 and 2003.

Dairy Products Acts 1924 to 1947.

Defamation Act 2009.

Defence Acts 1954 to 2007.

Employment Agency Act 1971.

Employment Agency Regulations 1972 to 1993 (S.I. 27/1971, S.I. 255/1972, S.I. 49/1993).

Employment Equality Acts 1998 and 2004.

Gaming and Lotteries Acts 1956 to 1979.

Hallmarking Act 1981.

Health (Foods for Particular Nutritional Uses) Regulations 1991 (S.I. 331/1991).

Hire Purchase and Credit Sale (Advertising) Order 1961 (S.I. 183/1961).

Industrial and Commercial Property (Protection) Acts 1927 to 1958.

Industrial Research and Standard Acts 1961 and 1979.

Insurance Acts 1909 to 2000.

Investment Intermediaries Act 1995.

Licensing Acts 1833 to 2008.

Investor Compensation Act 1998.

Medicinal Products (Control of Advertising) Regulations 2007 (S.I. 541/2007).

Medical Preparations (Labelling and Package Leaflets) Regulations 1993-1999 (S.I. 71/1993, S.I. 440/1994, 187/1999).

Medical Preparations (Licensing, Advertisement and Sale) Regulations 1984 to 1994 (S.I. 210/1984, S.I. 347/1989, S.I. 70/1993, S.I. 439/1994).

Medicinal Products (Prescription and Control of Supply) Regulations 2003 as amended (S.I. 540/2003).

Medicinal Products (Licensing and Sale) Regulations 1998 (S.I. 142/1998) and 2001.

Merchandise Marks Act 1970.

Metrology Act 1996.

Milk and Dairies Acts 1935 and 1956.

Occasional Trading Act 1979 as amended by the Casual Trading Act 1995.

Official Languages Act 2003.

Opticians Acts 1956 and 2003.

Package Holidays and Travel Trade Act 1995.

Prices and Charges (Tax-Inclusive Statements) Order 1973 (S.I. 9/1973).

Public Health (Tobacco) Acts 2002 to 2009.

Red Cross Acts 1938 to 1954.

Sale of Goods and Supply of Services Act 1980.

Solicitors Acts 1954 to 2002 Solicitors (Advertising) Regulations 2002 (S.I. 518/2002).

Solicitors Acts 1954-2002.

Stock Exchange Act 1995.

Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations 1991-2009 (S.I. 326/1991, S.I. 215/2000, S.I. 243/2009).

Tourist Traffic Acts 1939 to 1988.

Trade Marks Act 1996.

Trustee Savings Banks Acts 1989 and 2001.

Unit Trusts Act 1990.

### **Rights**

Equal Status Acts 2000 to 2004.

Equality Act 2004.

European Convention on Human Rights Act 2003.

Prohibition on Incitement to Hatred Act 1989.

### **European-Based Legislation**

Council Directive 2010/13/EU (Audiovisual Media Services Directive)

S.I. No. 258/2010 (European Communities (Audiovisual Media Services) Regulations 2010).

Council Regulation (EC) No. 2200/96 as amended by 2699/2000 and European Communities (Fruit and Vegetables) Regulations 1997 (S.I. 122/1997).

European Communities (Authorisation, Placing on the Market, Use and Control of Plant Protection Products) Regulations 2003 as amended (S.I. 83/2003).

Electronic Commerce (Directive 2000/31/EC) Regulations 2003 (S.I. 68/2003).

European Communities (Definition, Description and Presentation of Spirit Drinks) Regulations 1995 (S.I. 300/1995).

European Communities (Definition, Description and Presentation of Aromatised Wines, Aromatised Wine-Product Cocktails) 1998 (S.I. No. 254/1998).

European Communities (Classification, Packaging and Labelling of Pesticides) Regulations 1994 (S.I. 138/1994).

European Communities (Classification, Packaging and Labelling of Plant Protection Products and Biocide Products) Regulations 2001 (S.I. 624/2001).

European Communities (Co-operation between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2006 (S.I. 290/2006).

European Communities (Cosmetic Products) Regulations 1997-2006 (S.I. 87/1997, S.I. 213/1998, S.I. 150/2000, S.I. 203/200, S.I. 373/2006).

European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 (S.I. 853/2004).

European Communities (Distance Marketing) of Consumer Financial Services) (Amendment) Regulations 2005 (S.I. 63/2005).

European Communities (Food Supplement) Regulations 2003 (S.I. 539/2003).

European Communities (Infant Formulae and Follow-on Formulae) Regulations 1998 to 2000 (S.I. 243/1998, S.I. 446/2000).

European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2000 and 2002 (S.I. 92/2000, S.I. 483/2002).

European Communities (Life Assurance) Framework Regulations 1994 (S.I. 360/1994).

European Communities (Misleading Advertising) Regulations 1988 (S.I. 134/1988).

Directives on Misleading and Comparative Advertising – 84/450/EEC, 97/55/EC, 05/29/EC.

European Communities (Names and Labelling of Textile Products) Regulations 1998 (S.I. 245/1998).

European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. 359/1994).

European Communities (Requirements to Indicate Product Prices) Regulations 2002 (S.I. 639/2002).

European Communities (Pesticides Residues) (Feeding Stuffs) Regulations 1992 (S.I. 40/1992).

European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations 2001 (S.I. 207/2001).

European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) (Amendment) Regulations 2005 (S.I. 71/2005).

European Communities (Protection of Geographical Indication and Designations of Origin for Agricultural Products and Foodstuffs) Regulations 1995 and 1999 (S.I. 148/1995, S.I. 275/1999).

European Communities (Supply of Information on the Origin Identification and Destination of Bovine Animals) Regulation 1999 (S.I. 258/1999).

European Communities (Television Broadcasting) Regulations 1999 (S.I. 313/1999).

European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations 2003 (S.I. 211/2003) (as amended).

Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. 342/2005).

Means of Distance Communications (Amendment) Regulations 2005 (S.I. 71/2005).

Poisons (Control of Residues in Foods of Animal Origin) Regulations 1985 and 1986 (S.I. 257/85, S.I. 236/86).

Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. 324/2005).

European Communities (Directive 1924/2006) on Nutrition and Health Claims Made on Foods.



## 2. Nutrient Profiling Model

For the purpose of this Code, the Nutrient Profiling Model developed by the UK Food Standards Agency should be used to assess whether commercial communications is for a product or service that is high in fat, salt or sugar and therefore subject to restrictions and regulation. There are three steps to working out the overall score of a food or drink.

### i) Work out total 'A' points

A maximum of ten points can be awarded for each nutrient.

Total 'A' points = (points for energy) + (points for saturated fat) + (points for sugars) + (points for sodium). The following table indicates the points scored, depending on the amount of each nutrient in 100g of the food or drink:

**Points Allocation 'A' Nutrients**

Points	Energy (kJ)	Sat Fat (g)	Total Sugar (g)	Sodium (mg)
0	≤ 335	≤ 1	≤ 4.5	≤90
1	>335	>1	>4.5	>90
2	>670	>2	>9	>180
3	>1005	>3	>13.5	>270
4	>1340	>4	>18	>360
5	>1675	>5	>22.5	>450
6	>2010	>6	>27	>540
7	>2345	>7	>31	>630
8	>2680	>8	>36	>720
9	>3015	>9	>40	>810
10	>3350	>10	>45	>900

If a food or drink scores 11 or more 'A' points then it cannot score points for protein unless it also scores 5 points for fruit, vegetables and nuts.

## ii) Work out total 'C' points

A maximum of five points can be awarded for each nutrient/food component.

Total 'C' points = (points for % fruit, vegetable & nut content) + (points for fibre [either NSP or AOAC]) + (points for protein)

The following table indicates the points scored, depending on the amount of each nutrient/food component in 100g of the food or drink:-

### Points Allocation 'C' Nutrients:

Points	Fruit, Veg and Nuts (%)	N&P Fibre (g)	Or AOAC Fibre <sup>4</sup> (g)	Protein (g)
0	≤40	≤0.7	≤0.9	≤1.6
1	>40	>0.7	>0.9	>1.6
2	>60	>1.4	>1.9	>3.2
3	-	>2.1	>2.8	>4.8
4	-	>2.8	>3.7	>6.4
5	>80	>3.5	>4.7	>8.0

## iii) Work out overall score

- If a food scores **less than 11 'A' points** then the overall score is calculated as follows:

Total 'A' points (energy + saturated fat + sugars + sodium) minus total 'C' points (fruit, veg and nuts + fibre + protein)

- If a food scores **11 or more 'A' points** but scores 5 points for fruit, vegetables and nuts then the overall score is calculated as follows:

Total 'A' points (energy + saturated fat + sugars + sodium) minus total 'C' points (fruit, veg and nuts + fibre + protein)

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<sup>4</sup> One or other of the dietary fibre columns should be chosen to how the fibre content of the food or beverage was calculated by the manufacturer.

- If a food scores **11 or more 'A' points, and less than 5 points for fruit, vegetables and nuts**, then the overall score is calculated as follows:

Total 'A' points (energy + saturated fat + sugars + sodium) minus total points for fibre + points for fruit, vegetables and nuts (not allowed to score for protein)

A **food** is classified as 'less healthy' where it scores **4 points or more and is subject to the restrictions in the Code**.

A **drink** is classified as 'less healthy' where it scores **1 point or more and is subject to the restrictions in the Code**.

For further detail on the application of this model, please refer to separate guidance provided by the BAI and published on [www.bai.ie](http://www.bai.ie).