

24 United Kingdom (UK)

24.1 Introduction

The regulatory system for broadcast advertisements (i.e. TV and radio) changed radically in 2004 with the start of a ‘co-regulatory’ system, an agreement between Government (in the form of Ofcom) and a self-regulatory body (the ASA, which has been set up by the advertising industries). The agreement is reflected in a contract between the two parties, setting out the expectations for what the ASA is meant to achieve, and also noting where statutory accountability and sanctions apply. As will be seen in the detail of the regulations below, this allows for a certain degree of democratic oversight of the co-regulatory system, although this is much less direct than is generally the case in purely statutory systems.

The two main broadcast codes themselves (3 and 4 below) are a product of this recent agreement, with the codes primarily being adaptations of the codes previously in operation. Noting concerns over alcohol however, Ofcom initiated a programme of consultation about changes to the alcohol codes, which was completed under the new co-regulatory system. Aside from meaning that the codes are very recent (and indeed only came into full force during the course of the ELSA project), the public debate around the consultation has also meant a high level of scrutiny of the text of the codes in recent years.

Outside of the TV and radio restrictions in this co-regulatory system, the advertising regulations for other media are less developed. Both the Portman Group code and the Sales Promotion code count as more conventional self-regulation, and therefore have a lower level of accountability (e.g. they are not accountable to Parliament). Aside from the content of the regulations – which is less strict than the co-regulatory codes – there are also substantial differences in process between these codes and the broadcast codes that are embedded in law. The Portman Group code, for example, only allows appeals by the drinks producer, while the co-regulatory system has the ‘Independent Reviewer of ASA Adjudications’ available to both sides.

Regulation		Statutory / Non-statutory
1	Portman Group Code of Practice on the Naming, Packaging, and Promotion of Alcohol Drinkers	Non-statutory
2	The British Code of Advertising, Sales Promotion and Direct Marketing	Non-statutory
3	Television Advertising Standards Code	Co-regulation
4	Radio Advertising Standards Code	Co-regulation
5	Broadcast Committee of Advertising Practice (BCAP) rules on the Scheduling of Advertising	Co-regulation

24.2 Portman Group Code of Practice

Name of regulation:

1 Portman Group Code of Practice on the Naming, Packaging, and Promotion of Alcohol Drinkers

Is this statutory or non-statutory regulation?

Non-statutory

Who made the text of this regulation?

The Portman Group sees itself as a producer-led organisation, but some pub companies contribute.

Which types of marketing are controlled by in this regulation?

Naming and packaging;

Sale activities and materials;

Websites, sponsorship, press releases, branded merchandise, advertorials and sampling;

Does not apply to any materials or activities whose purpose is solely and clearly to educate under 18s about the use and misuse of alcohol.

Does not apply to any marketing covered under the ASA codes (below).

Which alcoholic beverages are subject to this regulation? (in VOL.)

Alcoholic beverages > 0.5% VOL.

Alcoholic 'drinks', even if they are classified as foodstuffs rather than drinks for the purposes of licensing or customs and excise legislation, or even if they appear to be solid or heavily textured, rather than liquid.

Whom is this regulation directed at or who has to adhere to it?

"2.10 It is the responsibility of all companies connected with the alcoholic drinks industry in the UK (whether as producers, importers, wholesalers or retailers) to comply with this Code. This includes the provision of adequate and appropriate briefings to external agencies from whom companies may commission design or promotional work."

"2.6 The Code does not apply to wholesaler- or retailer-led promotions, other than where a wholesaler's or retailer's own brand is concerned, and in that case, references in this Code to 'producer' or 'UK distributor' will be deemed to include wholesalers or retailers when promoting their own brands. On-trade promotions, however, should comply with the guidelines, issued by the British Beer and Pub Association, which are also supported by the Association of Licensed Multiple Retailers."

"Companies may indicate their support for the Code and their willingness to abide by the decisions of the Independent Complaints Panel by becoming Code Signatories. Not doing so, however, does not mean that their products are outside the provisions of the Code."

Additional comments

Membership of the Portman Group and adherence to the Code of Practice are voluntary.

24.2.1 Bans

Any bans on alcohol marketing practices in this regulation or code regarding the following marketing or advertising aspects are indicated with 'yes' in the following table. If a ban regarding this aspect is absent it is indicated with 'no'.

BANS						
	Location	Time	Media-channel	Type of product	Target-group*	Advertiser
Yes or No	No	No	No	No	No	No

* other than young people

24.2.2 Elements of Council Recommendation

Any elements of the Council Recommendation that are forbidden by this regulation or code (either literally or formulated in other words) are indicated with 'yes' in the following table. If an element is not forbidden at all, it is indicated with 'no'.

ELEMENTS											
	A Production	B Styles	C Children	D Drugs	E Violence	F Success	G Encouragement	H Events	I Media	J Free	K Other
Yes or No	Yes	No	Yes	Yes	Yes	Yes	No	No	No	No	No

Remarks on elements

- A 3.2 A drink, its packaging and any promotional material or activity (as defined in section 2 and Annex I) should not in any direct or indirect way: (g) have a particular appeal to under 18s;
- C 3.2 A drink, its packaging and any promotional material or activity (as defined in section 2 and Annex I) should not in any direct or indirect way: (h) incorporate images of people who are, or look as if they are, under twenty-five years of age, unless there is no suggestion that they have just consumed, are consuming or are about to consume alcohol;
- D 3.2 A drink, its packaging and any promotional material or activity (as defined in section 2 and Annex I) should not in any direct or indirect way: (c) suggest any association with, acceptance of, or allusion to, illicit drugs;
- E 3.2 A drink, its packaging and any promotional material or activity (as defined in section 2 and Annex I) should not in any direct or indirect way: (b) suggest any association with bravado, or with violent, aggressive, dangerous or anti-social behaviour.
- F 3.2 A drink, its packaging and any promotional material or activity (as defined in section 2 and Annex I) should not in any direct or indirect way: (d) suggest any association with sexual success; (e) suggest that consumption of the drink can lead to social success or popularity;

24.2.3 Procedures connected to the regulation

It is indicated whether the following procedures are ('yes' or 'no') connected to the regulation.

PROCEDURES						
	Pre-launch advice	Systematically searching for violations	Possibility to complain and to start a procedure	System of appeal	Sanctions in case of violators	Results published or publically announced
Yes or No	Yes	No	Yes	*Yes	Yes	Yes

*The system of appeal is only for the drinks producers, not for the member of the public.

Pre-launch advice is provided by The Portman Group. Advice may also be sought about proposals for any other form of promotional material or activity covered by this Code. Any views expressed or advice given by the Advisory Service will not be binding on the Independent Complaints Panel.

Complaints are sent to 'the Complaints Officer' at the Portman Group. The 'Code Secretariat' then passes these on to the 'Independent Complaints Panel'.

The possibility of complaining is made known to the public by the Portman Group website only, although the website has not been widely publicised e.g. as part of the relevant alcohol marketing practices. The Portman Group is quite a well known organisation.

Sanctions, where appropriate, are imposed by the Portman Group and can be asking retailers not to stock the relevant product in future, and for TPG members, expelling them from TPG. *"The Code Secretariat may notify retailers of a decision taken by the Independent Complaints Panel and request them not to replenish stocks of any such product or to display any such point of sale material, until the decision has been complied with. For the avoidance of doubt, any such request will not require retailers to dispose of existing product stocks other than by normal retail sale and shall not require retailers to terminate any existing contractual commitment for the purchase or sale of such a product"*. If a retailer continues to stock products or display point of sale materials which have been found in breach of the Code by the Independent Complaints Panel, the Code Secretariat may notify the relevant licensing authority and request it to take this into account, subject to legal requirements, when considering whether to grant, transfer, renew or revoke licences. In some cases (mainly for POS and packaging), the panel will produce a timetable for making the changes, and retailers will be asked not to replenish stocks after a certain date. After making the changes, the Code Secretariat can decide that the changes didn't comply with the panel's verdict and refer it back to the panel. Finally, if a TPG member company refuses to make changes then they will be expelled from TPG. Non-member signatories will be removed from the list of signatories for refusing to make changes.

The results of procedures are publicly announced by the Portman Group website. If the decision is controversial then it is usually followed up by articles in the trade press (esp. The Publican).

The minimum and maximum amount of time the procedure officially takes is total 21 days (minimum) or 49 days + extra time for defendant responses and expert opinion (maximum). This does not include internal delays in the process (days are counted from defendant receiving documents, hence will probably be slightly longer in practice)

Note also that *"The time limits set out above may be extended or shortened at the discretion of the Code Secretariat."*

24.3 The British Code of Advertising, Sales Promotion and Direct Marketing

Name of regulation:

2 The British Code of Advertising, Sales Promotion and Direct Marketing

Is this statutory or non-statutory regulation?

Non-statutory

Who made the text of this regulation?

The Committee of Advertising Practice (Non-Broadcast division), generally known as CAP Non-broadcast

Which types of marketing are controlled by in this regulation?

- a) Advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions, fax transmissions, catalogues, follow-up literature and other electronic and printed material;
- b) Posters and other promotional media in public places, including moving images;

- c) Cinema and video commercials;
- d) Advertisements in non-broadcast electronic media, including online advertisements in paid-for space (eg banner and pop-up advertisements);
- e) Viewdata services;
- f) Marketing databases containing consumers' personal information;
- g) Sales promotions;
- h) Advertisement promotions;

Which alcoholic beverages are subject to this regulation? (in VOL.)

Alcoholic beverages > 1.2% VOL.

Whom is this regulation directed at or who has to adhere to it?

60.21 Marketers bear principal responsibility for the marketing communications they produce and must be able to prove the truth of their claims to the ASA; they have a duty to make their claims fair and honest and to avoid causing serious or widespread offence. Agencies have an obligation to create marketing communications that are accurate, ethical and neither mislead nor cause serious or widespread offence. Publishers and media owners recognise that they should disseminate only those marketing communications that conform with the Code. This responsibility extends to any other agent involved in producing, placing or publishing marketing communications. They accept the rulings of the ASA Council as binding.

60.22 The ASA Council judges whether marketing communications are contrary to the Code. Everyone responsible for commissioning, preparing, placing and publishing a marketing communication that breaches the Code will be asked to act promptly to amend or withdraw it.

Also, more generally:

1.3 g) a marketer includes an advertiser, promoter or direct marketer;

1.4 c) the Code is indivisible; marketers must conform with all appropriate rules.

24.3.1 Bans

Any bans on alcohol marketing practices in this regulation or code regarding the following marketing or advertising aspects are indicated with 'yes' in the following table. If a ban regarding this aspect is absent it is indicated with 'no'.

BANS						
	Location	Time	Media-channel	Type of product	Target-group*	Advertiser
Yes or No	No	No	No	No	No	No

* other than young people

24.3.2 Elements of Council Recommendation

Any elements of the Council Recommendation that are forbidden by this regulation or code (either literally or formulated in other words) are indicated with 'yes' in the following table. If an element is not forbidden at all, it is indicated with 'no'.

ELEMENTS											
	A Production	B Styles	C Children	D Drugs	E Violence	F Succes	G Encouragement	H Events	I Media	J Free	K Other
Yes or No	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	No

Remarks on elements

- B 56.5 Marketing communications should not be directed at people under 18 through the ...style of presentation, content or context in which they appear.
- 56.7 Marketing communications should not be associated with people under 18 or reflect their culture
- C 56.6 People shown drinking or playing a significant role should neither be nor look under 25 and should not be shown behaving in an adolescent or juvenile way. Younger people may be shown in marketing communications, for example in the context of family celebrations, but should be obviously not drinking.
- D 3.6 Marketing communications should not encourage or condone the use of illegal drugs.
- E 56.12 Drinking alcohol should not be portrayed as a challenge, especially to the young. Marketing communications should neither show, imply or refer to aggression or unruly, irresponsible or anti-social behaviour nor link alcohol with brave, tough or daring people or behaviour.
- F 56.8 Marketing communications should not suggest that any alcoholic drink has therapeutic qualities or can change moods or enhance confidence, mental or physical capabilities or performance, popularity or sporting achievements.
- 56.9 Marketing communications must neither link alcohol with seduction, sexual activity or sexual success nor imply that alcohol can enhance attractiveness, masculinity or femininity.
- 56.11 Marketing communications should not suggest that drinking alcohol is a reason for the success of any personal relationship or social event. A brand preference may be promoted as a mark of, for example, the drinker’s good taste and discernment.
- I 56.5 Marketing communications should not be directed at people under 18 through the selection of media, style of presentation, content or context in which they appear. No medium should be used to advertise alcoholic drinks if more than 25% of its audience is under 18 years of age.
- 29.2 Alcoholic drinks should not feature in promotions directed at people under 18.

24.3.3 Procedures connected to the regulation

It is indicated whether the following procedures are (‘yes’ or ‘no’) connected to the regulation.

PROCEDURES						
	Pre-launch advice	Systematically searching for violations	Possibility to complain and to start a procedure	System of appeal	Sanctions in case of violators	Results published or publically announced
Yes or No	Yes	Yes	Yes	Yes	Yes	Yes

Pre-launch advice is provided by The CAP Copy Advice team (60.17). The CAP Copy Advice team gives advice to marketers, their agencies, the media and others on the likely conformity with the Code of marketing communications before they are published or distributed. In addition, it checks marketing communications produced by marketers subject to mandatory prevetting (for example, those who due to previous code breaches are required to submit all poster advertisements for pre-vetting). Copy advice is free and confidential from competitors. The

vast majority of written enquiries are dealt with within 24 hours although lengthy submissions may take longer, particularly those that include detailed evidence that needs to be reviewed by external expert consultants. Favourable pre-publication advice does not automatically protect marketers from complaints being investigated and upheld by the ASA. It is, however, a highly authoritative guide to what is likely to comply with the Code. Advice on the most common issues is available by accessing the AdviceOnline database on www.cap.org.uk. AdviceOnline is updated regularly by the Copy Advice team.

The search for violations is performed by The CAP Compliance team (60.18) The CAP Compliance team ensures that marketing communications conform with the Code to protect consumers and ensure a level playing-field. It enforces ASA decisions in individual cases and when a decision has ramifications for a whole sector. It takes action against marketers who persistently break the Code. In exceptional cases where a clear breach of the Code is evident, for example if a marketing communication contains claims that are blatantly misleading, the team takes immediate compliance action to stop the obviously problematic marketing communications from reappearing. On occasion, that compliance action is taken while an ASA investigation proceeds (see 60.35 and 61.3).

As a matter of course the marketing practice can be used, but in exceptional circumstances the ASA can remove it (60.35; 61.3).

Publicity: there's a very thorough website (with an online complaints section) and the ASA are currently doing their own advertising campaign (see <http://www.asa.org.uk/asa/adcampaign/>) so that people know who they are. There's a subscribers email list that can be joined automatically through the website that sends weekly updates of new adjudications, as well as more general news 4 times per year. Further information can be obtained by subscribing to the CAP quarterly e-mail newsletter.

Sanctions, where appropriate, are imposed by The ASA and CAP (together) and can be 5 levels of sanctions:

- 1 Adverse publicity
2. Ad Alerts (61.6) - "CAP may issue Ad Alerts to its members, including the media, advising them to withhold their services from non-compliant marketers or deny the latter access to advertising space. Ad Alerts are issued at short notice, are carefully targeted for greatest impact, are sent electronically and, once issued, are available on a secure section of www.cap.org.uk to those who may need to consult them. They contain the name and contact details of the non-compliant marketer, a description of the compliance problem and, if possible, a scanned image of the marketing communication in question.
- 3 Trading privileges and recognition (61.7) - "Many CAP trade associations and professional bodies offer their members, and others, recognition and trading privileges. They may revoke, withdraw or temporarily withhold those. For example, agency recognition offered by the print media members of CAP may be withdrawn or the substantial direct mail discounts offered by the Royal Mail on bulk mailings withheld. In exceptional cases of non-compliance, CAP members may expel companies from membership.
- 4 Pre-publication vetting - persistent offenders may be forced to have ads vetted by the Copy Advice Team (this is more likely for posters than other media, where competitors can decide that a poster firm requires pre-vetting)
- 5 Legal backstop [but this doesn't appear to be applicable for the alcohol clauses - see the first question on self- v. co-regulation above]

The results of procedures are publicly announced by weekly email with news of new adjudications, available through website, sometimes reported through the media.

24.4 Television Advertising Standards Code

Name of regulation:

3 Television Advertising Standards Code

Is this statutory or non-statutory regulation?

Co-regulation (all licence holders have to comply with the Ofcom code as terms of their licence. Ofcom has the right to contract out its functions and decided that the industry should regulate themselves within this statutory framework - meaning that there is a contract between Ofcom (statutory) and BCAP (non-statutory). Ofcom have general obligations under the Communications Act 2003 (e.g. “to protect children”, as well as TVWF), which are presumably in the contract.)

Who made the text of this regulation?

The Committee of Advertising Practice (Broadcast division), generally known as CAP Broadcast or BCAP (the Broadcast Committee of Advertising Practice). Changes to the code must be approved by the statutory body Ofcom. The Memorandum of Understanding between Ofcom and the self-regulatory organisations (ASA(B), BCAP, and BASBOF - see http://www.ofcom.org.uk/consult/condocs/reg_broad_ad/bcast_ad_mou.pdf) notes that “10 (b)...Ofcom retains all its legal powers stemming from the Act, and is therefore ultimately able to make Code changes. It will however not normally seek to do so...The Parties further note that, via consultation with Ofcom, the Secretary of State may (in accordance with s.321 of the Act) issue directions in relation to prohibited categories of advertising. Such directions will be complied with by BCAP if so notified by Ofcom.”

Which types of marketing are controlled by in this regulation?

Terrestrial TV services - Introduction (a) “This Code applies to all the Ofcom licensees, satellite television services provided by broadcasters within UK jurisdiction, licensable programme services, local delivery services, digital programme services and services provided under Restricted Service Licences (local television). The Code also applies to the Welsh Fourth Channel which is regulated by S4C. (Advertising on regulated text services is subject to the BCAP Code for Text Services.)”

Which alcoholic beverages are subject to this regulation? (in VOL.)

Separate rules for:

Alcoholic beverages > 1.2% VOL.

Alcoholic beverages < 1.2% VOL. (“low alcohol drinks”)

Whom is this regulation directed at or who has to adhere to it?

“It is the responsibility of the broadcasters themselves to ensure the advertising they transmit complies with both the spirit and the letter of the Code. Licensees must therefore satisfy Ofcom that they themselves have the staff and procedures to manage compliance. The Broadcast Advertising Clearance Centre (BACC) can offer its clients a useful pre-transmission advertising checking and approval service (including Notes of Guidance). However, not all licensees use the service and its use does not remove the licensee’s own responsibility.”

24.4.1 Bans

Any bans on alcohol marketing practices in this regulation or code regarding the following marketing or advertising aspects are indicated with ‘yes’ in the following table. If a ban regarding this aspect is absent it is indicated with ‘no’.

BANS						
	Location	Time	Media-channel	Type of product	Target-group*	Advertiser
Yes or No	No	No	No	No	No	No

* other than young people

24.4.2 Elements of Council Recommendation

Any elements of the Council Recommendation that are forbidden by this regulation or code (either literally or formulated in other words) are indicated with ‘yes’ in the following table. If an element is not forbidden at all, it is indicated with ‘no’.

ELEMENTS											
	A Production	B Styles	C Children	D Drugs	E Violence	F Success	G Encouragement	H Events	I Media	J Free	K Other
Yes or No	No	Yes	Yes	No	Yes	Yes	No	Yes	No	No	No

Remarks on elements

B 11.8.2 (a) “(1) Advertisements for alcoholic drinks must not be likely to appeal strongly to people under 18, in particular by reflecting or being associated with youth culture”. A ‘Guidance note’ States that the purpose of this rule is to prevent advertisements that might encourage those under 18 to drink, or think they should drink, alcohol. Thus themes that are likely to appeal strongly to those under 18 are unacceptable. [...] as a guide, particular caution should be exercised as follows: a) Personalities. Avoid those who are likely to have a strong appeal to the young; [...] b) Avoid themes that are associated with youth culture; [...] c) Teenage fashion or clothing mostly associated with those under 18. d) Avoid music or dance that is likely to appeal strongly to under 18s. But an advertisement that, for example, features an old recording that, perhaps as a result of its use in the advertisement, becomes popular with the young once again, will not necessarily be challenged. Announcements of alcohol-sponsored events may be made but the emphasis must be on the event, not the alcohol. e) Language commonly used by the young but rarely by an older generation; [...] f) Cartoons, rhymes or animation. Avoid those likely to have strong appeal to children and teenagers. Mature themes are likely to be acceptable. g) Caution is needed in the use of all sports. In addition, certain sports have a strong appeal to the young, for example, skateboarding or “extreme sports”; they should be avoided. h) Avoid puppets or cute lovable animals that are likely to inspire strong affection in the young. Humorous treatments cannot be used to circumvent the rule and, in any case, immature, adolescent or childish humour must be avoided. This rule requires particularly sensitive judgements. If they have any doubts about an advertising idea, advertisers or agencies are strongly advised to consult the BACC (or broadcaster compliance team) at the earliest stage of script development.

- C 11.8.2 (a) “(2) Children must not be seen or heard, and no-one who is, or appears to be, under 25 years old may play a significant role in advertisements for alcoholic drinks. No-one may behave in an adolescent or juvenile way.
Notes: (1) See the exception in 11.8.2 (a)(3)
(2) In advertising for low alcohol drinks, anyone associated with drinking must be, and appear to be, at least 18 years old.
(3) There is an exception to 11.8.2 (a)(2) for advertisements in which families are socialising responsibly. In these circumstances, children may be included but they, and anyone who is, or appears to be, under 25 must only have an incidental role. Nevertheless, it must be explicitly clear that anyone who appears to be under the age of 18 is not drinking alcohol.
- E 11.8.1(b) Advertisements must not link alcohol with daring, toughness, aggression or anti-social behaviour. [This applies to all advertising, not just advertising for alcoholic drinks]
11.8.2(b) Advertisements for alcoholic drinks must not show, imply or refer to daring, toughness, aggression or unruly, irresponsible or anti-social behaviour.
- F Rule 11.8.1(a)
(1) Advertisements must not suggest that alcohol can contribute to an individual’s popularity or confidence, or that refusal is a sign of weakness. Nor may they suggest that alcohol can enhance personal qualities.
(2) Advertisements must not suggest that the success of a social occasion depends on the presence or consumption of alcohol.
Rule 11.8.1(c)
Advertisements must not link alcohol with sexual activity or success or imply that alcohol can enhance attractiveness.
11.8.2(e) Alcoholic drinks must not be advertised in a context of sexual activity or seduction but may include romance and flirtation subject to rule 11.8.2 (a) (Youth appeal). Guidance to this rule: the purpose of this rule is, for example, to allow a couple to sit together sharing affectionate kisses or glances but not to allow sexual contact, an erotic atmosphere or implications of a sexual motive. The rule is not designed to prevent the use of glamorous images. Advertisements may not suggest that alcohol has a positive role to play in sexual relationships. Alcohol should not be used as an aid to seduction or seem to enhance a person’s attractiveness.
- H 11.8.2 (a) “(1) Advertisements for alcoholic drinks must not be likely to appeal strongly to people under 18, in particular by reflecting or being associated with youth culture”. a) Personalities (...); d) Music or dance (...); g) Sports (...);

24.4.3 Procedures connected to the regulation

It is indicated whether the following procedures are (‘yes’ or ‘no’) connected to the regulation.

PROCEDURES						
	Pre-launch advice	Systematically searching for violations	Possibility to complain and to start a procedure	System of appeal	Sanctions in case of violators	Results published or publically announced
Yes or No	Yes	No	Yes	Yes	Yes	Yes

Pre-launch advice is provided by Broadcast Advertising Clearance Centre (BACC) - *“The BACC is funded by commercial broadcasters who pay a quarterly copy clearance fee.”*

There is a search for violations (of sorts) done by ASA(B) and BCAP, but this is not systematical. More generally, ASA(B) and BCAP have agreed with Ofcom to conduct independent and public research into the working of the code as a whole (of which only a small part is focused on alcohol).

Complaints can be made to The Advertising Standards Authority (Broadcast division), known as ASA(B). This is a self-regulatory body funded in the same way as the CAP. The ASA is funded by a coluntary levy on the advertising industry.

During a procedure a marketing practice can generally carry on, unless the ASA decide that immediate action needs to be taken: Introduction (f) *Given the frequency of repetition of many advertisements, anything misleading or harmful needs to be quickly dealt with. The ASA and BCAP will on occasion require the suspension of an advertisement during investigation of the case, and before the adjudication is finalised.*

The ASA are currently doing their own advertising campaign (see <http://www.asa.org.uk/asa/adcampaign>) so that people know who they are. The Memorandum of Understanding between Ofcom and the ASA notes j) *Publicity. The new self-regulatory system for the handling and resolving of advertising standards complaints will be required to be publicised by licensees in accordance with section 328 of the Act. The Parties will liaise and agree as to the appropriate level, content and timing of such publicity so as to ensure that the way in which advertising standards complaints can be made is brought to the attention of the public through a variety of media as appropriate.*

ASA(B) have no power to sanction (e.g. fine licensees), although Ofcom does (see Memorandum of Understanding point 24). Basically, the ASA will expect compliance, and refer the broadcaster to Ofcom for any enforcement. Sanctions are a fine (not specified), formal reprimand, warning about possible revocation of broadcaster’s licence, or actual termination of the licence.

There is a subscribers email list that sends out the decisions every week, and decisions are often also reported in the newspapers. Only decisions are publicised however (sanctions are not publicly discussed, although some examples are mentioned in the annual report by way of illustration).

The minimum and maximum amount of time the procedure officially takes relates to agreements within the co-regulatory system, cf. the Memorandum of Understanding:

58 It is agreed by the Parties that benchmarks for average complaints turnaround times to be achieved by ASA(B) will be set at 80% of the average turnaround times achieved by the ITC in its last six months of operation. It is noted that data analysis has indicated that the following benchmarks would be broadly consistent with average turnaround times achieved by the ITC of:

- 5 working days for straightforward complaints requiring no investigation
- 10 working days for complaints where the advertisement must be viewed
- 8 weeks for cases requiring standard investigations and contact with licensees
- 3 months for complex cases, requiring high level and extended investigations.

NOTE: Complex cases can have extentions.

24.5 Radio Advertising Standards Code

Name of regulation:

4 Radio Advertising Standards Code

Is this statutory or non-statutory regulation?

Co-regulation (all licence holders have to comply with the Ofcom code as terms of their licence. Ofcom has the right to contract out its functions and to decide that the industry should regulate themselves within this statutory framework - meaning that there is a contract between Ofcom (statutory) and BCAP (non-statutory). Ofcom have general obligations under the Communications Act 2003 (e.g. “to protect children”, as well as TVWF), which are presumably in the contract.)

Who made the text of this regulation?

The Committee of Advertising Practice (Broadcast division), generally known as CAP Broadcast or BCAP (the Broadcast Committee of Advertising Practice). Changes to the code must be approved by the statutory body Ofcom. The Memorandum of Understanding between Ofcom and the self-regulatory organisations (ASA(B), BCAP, and BASBOF - see http://www.ofcom.org.uk/consult/condocs/reg_broad_ad/bcast_ad_mou.pdf) notes that “10 (b)...Ofcom retains all its legal powers stemming from the Act, and is therefore ultimately able to make Code changes. It will however not normally seek to do so...The Parties further note that, via consultation with Ofcom, the Secretary of State may (in accordance with s.321 of the Act) issue directions in relation to prohibited categories of advertising. Such directions will be complied with by BCAP if so notified by Ofcom.”

Which types of marketing are controlled by in this regulation?

Advertising on all services licensed by Ofcom (spot advertisements, promotions, sponsorship; etc.; does not cover product placement). This Rule excludes promotion of radio stations' own-branded activities, goods and events (such as websites, T-shirts and concerts) which enhance listener involvement and are not designed to make a profit or promote commercial partnerships.

Which alcoholic beverages are subject to this regulation? (in VOL.)

Alcoholic beverages > 1.2% VOL.

Whom is this regulation directed at or who has to adhere to it?

1. Licensees must make it a condition of acceptance that advertising complies fully with all legal requirements.

4.1 All compliance matters (copy clearance, content, scheduling etc) are the ultimate responsibility of each Licensee. This is the case whether or not advertising also requires central clearance.

24.5.1 Bans

Any bans on alcohol marketing practices in this regulation or code regarding the following marketing or advertising aspects are indicated with ‘yes’ in the following table. If a ban regarding this aspect is absent it is indicated with ‘no’.

BANS						
	Location	Time	Media-channel	Type of product	Target-group*	Advertiser
Yes or No	No	No	No	No	No	No

* other than young people

24.5.2 Elements of Council Recommendation

Any elements of the Council Recommendation that are forbidden by this regulation or code (either literally or formulated in other words) are indicated with 'yes' in the following table. If an element is not forbidden at all, it is indicated with 'no'.

ELEMENTS											
	A Production	B Styles	C Children	D Drugs	E Violence	F Success	G Encouragement	H Events	I Media	J Free	K Other
Yes or No	No	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No	No

Remarks on elements

- B 11.2
 (a) Alcoholic drink advertising must not be aimed at those aged below 18 years or use treatments likely to be of particular appeal to them;
 (b) Advertisements for alcoholic drinks must not include any personality whose example is likely to be followed by those aged below 18 years, or who has a particular appeal to those aged below 18 years
- C 11.2
 (c) Advertisements for alcoholic drinks must only use voiceovers of those who are, and sound as if they are, at least 25 years of age;
 d) Advertisements for drinks containing less than 1.2% alcohol by volume must only use voiceovers of those who are, and sound as if they are, at least 18 years of age;
 e) Children's voices must not be heard in advertisements for alcoholic drinks.
- D 11.3 g) Advertisements must not offer alcohol as therapeutic, or as a stimulant, sedative, tranquilliser or source of nourishment/goodness, or link the product to illicit drugs...
- E 11.3
 d) Advertisements must not suggest or imply that drinking is an essential attribute of gender. References to daring, toughness or bravado in association with drinking are not acceptable;
 e) Alcoholic drinks must not be advertised in a context of aggressive, dangerous, anti-social or irresponsible behaviour;
- F 11.3
 a) Advertisements must not imply that drinking is essential to social success or acceptance, or that refusal is a sign of weakness. Nor must they imply that the successful outcome of a social occasion is dependent on the consumption of alcohol
 b) Advertisements must neither claim nor suggest that any drink can contribute towards sexual success or that drinking can enhance sexual attractiveness;
 g) ...While advertisements may refer to refreshment after physical performance, they must not give any impression that performance can be improved by drink;
- G 11.5 Advertisements for alcoholic drinks must not publicise sales promotions (including competitions) that appear to encourage excessive consumption.
 11.6 References to 'cut-price/happy hour drinks', 'buy two and get one free', 'money-off coupons' and the like must be considered with caution. References which encourage excessive or immoderate consumption are unacceptable. However, off-licences and alcoholic drink retailers may advertise price reductions for their stock.

- I II.1 Advertisements for alcoholic drinks must not be broadcast in or around ...programming aimed particularly at those aged below 18 years

24.5.3 Procedures connected to the regulation

It is indicated whether the following procedures are ('yes' or 'no') connected to the regulation.

PROCEDURES						
	Pre-launch advice	Systematically searching for violations	Possibility to complain and to start a procedure	System of appeal	Sanctions in case of violators	Results published or publically announced
Yes or No	Yes	No	Yes	Yes	Yes	Yes

Pre-launch advice is provided: “Central copy clearance is required.” This occurs through the Radio Advertising Clearance Centre (RACC). The RACC is a member of BASBOF (the funding organization described above), and communicates with the CAP Copy Advice team where common elements of the code exist. Where a pre-cleared advertisement is investigated by the ASA for breaching a code, the RACC often represents the advert to the ASA (rather than the company itself). There is no systematic search for violations but the ASA may raise issues about potential code breaches with advertising parties as well as investigating complaints that raise issues about compliance with the codes. Also in the course of undertaking monitoring and enforcement, BCAP may raise issues about apparent code breaches with advertising parties. And more generally, as part of the Memorandum of Understanding with Ofcom, the ASA(B) and BCAP undertake to conduct research on the extent to which the code is being met.

Complaints can be made to The Advertising Standards Authority (Broadcast division), known as ASA(B). The ASA is funded by a voluntary levy on the advertising industry. This is a self-regulatory body funded in the same way as the CAP. And during a procedure a marketing practices generally can carry on, unless the ASA decide that immediate action needs to be taken: 5.1 ...They [the ASA and BCAP] can require that the commercial be withdrawn immediately or amended; they can also ask that advertising is suspended while investigations are carried out.

The possibility of complaining is made known to the public. The ASA are currently doing their own advertising campaign (see <http://www.asa.org.uk/asa/adcampaign>) so that people know who they are. The Memorandum of Understanding between Ofcom and the ASA notes j) Publicity. The new self-regulatory system for the handling and resolving of advertising standards complaints will be required to be publicised by licensees in accordance with section 328 of the Act. The Parties will liaise and agree as to the appropriate level, content and timing of such publicity so as to ensure that the way in which advertising standards complaints can be made is brought to the attention of the public through a variety of media as appropriate.

Sanctions, where appropriate, are imposed by the same body and can be an unspecified fine, formal reprimand, warning about possible revocation of broadcaster’s licence, or actual termination of the licence.

The results of procedures are publicly announced. There is a subscribers email list that sends out the decisions every week, and decisions are often also reported in the newspapers as well. Only decisions are publicised however (sanctions are not

publicly discussed, although some examples are mentioned in the annual report by way of illustration).

The minimum and maximum amount of time the procedure officially takes relates to agreements within the co-regulatory system, cf. the Memorandum of Understanding:

58 It is agreed by the Parties that benchmarks for average complaints turnaround times to be achieved by ASA(B) will be set at 80% of the average turnaround times achieved by the ITC in its last six months of operation. It is noted that data analysis has indicated that the following benchmarks would be broadly consistent with average turnaround times achieved by the ITC of:

- 5 working days for straightforward complaints requiring no investigation
- 10 working days for complaints where the advertisement must be viewed
- 8 weeks for cases requiring standard investigations and contact with licensees
- 3 months for complex cases, requiring high level and extended investigations.

NOTE: Complex cases can have extensions).

24.6 Broadcast Committee of Advertising Practice

Name of regulation:

5 Broadcast Committee of Advertising Practice (BCAP) rules on the Scheduling of Advertising

Is this statutory or non-statutory regulation?

Co-regulation (Co-regulation (all licence holders have to comply with the Ofcom code as terms of their licence. Ofcom has the right to contract out its functions and decided that the industry should regulate themselves within this statutory framework - meaning that there is a contract between Ofcom (statutory) and BCAP (non-statutory). Ofcom have general obligations under the Communications Act 2003 (e.g. “to protect children”, as well as TVWF), which are presumably in the contract.

Who made the text of this regulation?

The Committee of Advertising Practice (Broadcast division), generally known as CAP Broadcast or BCAP (the Broadcast Committee of Advertising Practice). Changes to the code must be approved by the statutory body Ofcom. The Memorandum of Understanding between Ofcom and the self-regulatory organisations (ASA(B), BCAP, and BASBOF - see http://www.ofcom.org.uk/consult/condocs/reg_broad_ad/bcast_ad_mou.pdf) notes that “10 (b)...Ofcom retains all its legal powers stemming from the Act, and is therefore ultimately able to make Code changes. It will however not normally seek to do so...The Parties further note that, via consultation with Ofcom, the Secretary of State may (in accordance with s.321 of the Act) issue directions in relation to prohibited categories of advertising. Such directions will be complied with by BCAP if so notified by Ofcom.”

Which types of marketing are controlled by in this regulation?

Television advertising - “advertisements on any television channel licensed by Ofcom.”

Which alcoholic beverages are subject to this regulation? (in VOL.)

Alcoholic beverages > 1,2% VOL.

Whom is this regulation directed at or who has to adhere to it?

Broadcasters - as for TV code

24.6.1 Bans

Any bans on alcohol marketing practices in this regulation or code regarding the following marketing or advertising aspects are indicated with 'yes' in the following table. If a ban regarding this aspect is absent it is indicated with 'no'.

BANS						
	Location	Time	Media-channel	Type of product	Target-group*	Advertiser
Yes or No	No	No	No	No	No	No

* other than young people

24.6.2 Elements of Council Recommendation

Any elements of the Council Recommendation that are forbidden by this regulation or code (either literally or formulated in other words) are indicated with 'yes' in the following table. If an element is not forbidden at all, it is indicated with 'no'.

ELEMENTS											
	A Production	B Styles	C Children	D Drugs	E Violence	F Success	G Encouragement	H Events	I Media	J Free	K Other
Yes or No	No	No	No	No	No	No	No	No	Yes	No	No

Remarks on elements

- I Children and young people 4.2.1
 (a) 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;

GENERAL NOTES:

- The term 'adjacent' where used in these rules refers to a break immediately before or after the programme in question.
- The term 'children's programmes' means programmes made for children.
- Channels devoted to children's programmes, or where the programmes are or are likely to be of particular appeal to children, will be unlikely to be able to carry at any time advertising of the kind restricted under 4.2.1 and 4.2.2 below. Such channels should also take particular note of 4.2.3 and 4.2.4.
- For the avoidance of doubt, any given timing restriction subsumes any other less severe restriction. Thus, a 'post 9pm' subsumes both a 'post 7.30 pm' as well as the restriction on scheduling in or adjacent to children's programmes or programmes likely to have a significant child audience. Particular care needs to be exercised where a programme for, or likely to be of interest to, children is transmitted late in the evening or in the small hours, as for example at Christmas. Where such a programme is transmitted after 9pm, no advertisement carrying a timing restriction may be transmitted in or around that programme.

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- 3 Advertisements for alcoholic drinks...must 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
- 6 The ASA and BCAP will take the view that a programme will have ‘particular appeal’ to the relevant age range when audience measurement shows that it is likely to be relatively more popular with that age range than for the population as a whole.
- 7 In the case of products with a scheduling restriction of 16 or 18, the ASA and BCAP will normally regard the restriction as relevant to any programme where the 10–15 audience, indexed against the all-individuals audience, produces an index greater than 100. In the index range 100 to 120, particular circumstances may occasionally make the scheduling restriction not appropriate but licensees should assume that an index of 120 or more will automatically bring the programme within the scope of this restriction. If the restriction is not to apply to programmes at or beyond an index of 120 the ASA and BCAP must be satisfied in advance that the context of the programme justifies such an interpretation (eg if the high proportion of younger viewers is clearly not directly associated with the nature of the programme, such as a general news programme clearly not targeted at younger viewers). The ASA and BCAP believe it unlikely that there will be many programmes achieving a 120+ 10–15 index which will not attract the scheduling restriction
- 11 Nothing in this Guidance Note removes the need for all licensees to take into account, for the purposes of appropriate and sensitive scheduling, all characteristics of a programme in addition to the viewing index.

24.6.3 Procedures connected to the regulation

It is indicated whether the following procedures are (‘yes’ or ‘no’) connected to the regulation.

PROCEDURES						
	Pre-launch advice	Systematically searching for violations	Possibility to complain and to start a procedure	System of appeal	Sanctions in case of violators	Results published or publically announced
Yes or No	Yes	No	Yes	Yes	Yes	Yes

Pre-launch advice is provided by Broadcast Advertising Clearance Centre (BACC) - “The BACC is funded by commercial broadcasters who pay a quarterly copy clearance fee.” .

The search for violations is done by ASA(B) and BCAP.

Complaints can be made to The Advertising Standards Authority (Broadcast division), known as ASA(B). This is a self-regulatory body funded in the same way as the CAP.