



CODE OF STANDARDS FOR ADVERTISING AND MARKETING COMMUNICATIONS IN IRELAND - 7TH EDITION

CHANGES TO 6TH EDITION

IMPLEMENTATION DATE 1ST MARCH 2016



Introduction

- The name of the Code has been changed in order to shorten the title.
- As with earlier editions we set out the Essence of Good Advertising in the opening page of the Code and our Chairman then sets the context with a Foreword.
- There is an introduction to the Code, which aims to put self-regulation and the ASAI into context for the end user of the Code whether this is a member of industry or a member of the public. In particular we draw attention to and encourage industry members to include a responsibility clause in their advertising contracts.
- The structure of the Code has been substantially changed in order to make it more user-friendly both for members of the public and industry.
- The definitions contained in Scope and Application have been moved to a new Section 1: Definitions. The provisions of the Code dealing with Honesty and Truthfulness have been moved to a new section 'Misleading'. The rules on Online Behavioural Advertising (introduced as Appendix III to the 6th Edition of the Code) are now contained with Section 18 of this edition of the Code.
- The procedure for handing complaints about marketing communications and complaints in relation to Online Behavioural Advertising are set out in Appendix I, Parts A and B.
- Appendices II and III explain the Copy Advice and Monitoring Services provided by the ASAI.
- Appendix IV sets out the procedure followed when requests for reviews of the Decisions of the Complaints Committee are made.
- The list of Statutes, Legislation and Other Codes relevant to marketing communications will be available online as will the Index to the Code.

Text shown in bold italics is Code text. Other text is commentary. The numbering in the left hand margin refers to the revised Code.

Code of Standards for Advertising and Marketing Communications in Ireland (7th Edition)

1. Definitions

New Section bringing all definitions together from the Scope and Application Section.

1.1 (a) Was 1.3(a)
“the Board, the Complaints Committee, the Review Panel and the Executive.” added to clarify that references to the ASAI mean a reference to any one and all of the various components of the ASAI.

1.1 (b) Was 1.3 (b)

1.1 (c) Was 1.3 (c)
“or in a space that would generally be provided for in return for payment.” added to ensure that marketing communications in ‘commercial’ space would be within remit, even in situations where it had been for example, donated by the media owner.

1.1 (d) Was 1.3 (d)

1.1 (e) Was 1.3 (e)

1.1 (f) Was 1.3 (f)
“whether in the course of business or not” added to clarify that consumers for the purposes of the code includes all members of the public acting in their private capacity and also consumers acting in their professional or business capacity.

1.1 (g) Was 1.3 (g)
In some Code provisions ‘children’ are defined as other than under 18 years of age. *“Unless otherwise stated in a particular provision, for the purposes of the Code,”* has been added to provide one general definition for children subject to particular exceptions.

1.1 (h) Was 1.3 (h)
“The name of a product can constitute a claim” has been added to clarify that product names in marketing communications can be considered as a claim, and therefore subject to for example the requirement that all claims must be substantiated.

For example if a product name is “fresh orange” and the name of the product is included in a marketing communication, then it must be substantiated to be fresh. It does not matter that there is no claim in any other part of the advertisement claiming that the product is fresh; the name of the product constitutes the claim.

1.1 (i) Was 1.3 (i)

1.1 (j) Was 1.3 (j)

1.1 (k) Was 1.3 (k)

1.1 (l) Was 1.3 (l)

1.1 (m) Was 1.3 (m)

1.1 (n) Was 2.58

1.1 (o) New
“An advergame is an electronic game to promote a product or brand by the brand/product owner.”

1.2 (a) Was 1.2 (a)

1.2 (b) Was 1.2 (b)

1.2 (c) **Was 1.2 (c) which has been deleted and replaced with new text**
“Every word importing a reference to a gender should be construed as if it also imported any other gender, unless the contrary intention appears. This includes people who have a gender identity different to the gender assigned at birth and those people who wish to portray their gender identity in a different way to the gender assigned at birth.”

The definition of ‘gender’ has been amended to reflect the ASAI’s approach when dealing with issues of the gender.

2. Scope and Application

- 2.1 Was 1.1
“ensuring, so far as possible, that all marketing communications are prepared with a sense of responsibility both to the consumer and to society” added to emphasise that the focus of the Code is on consumers and society.
- 2.2 (a) Was 1.4 (a)
“free distribution newspapers and magazines” replaced *“free sheets”*.
- 2.2 (b) Was 1.4 (b)
“and digital screens” added.
- 2.2 (c) Was 1.4 (c)
- 2.2 (d) Was 1.4 (d)
“or with video, DVD or Blu-ray.” added.
- 2.2 (e) Was 1.4 (e)
“any digital and” added before *“electronic storage”*
- 2.2 (f) Was 1.4 (f)
- 2.2 (g) Was 1.4 (g)
“advertorials” replaces *“Advertisement features”*
- 2.2 (h) Was 1.4 (i)
“that are directly connected with the supply or transfer of goods, services, facilities, opportunities, prizes and gifts or which consist of direct solicitations for donations” added.
- 2.3 (a) Was 1.5 (a)
- 2.3 (b) Was 1.5 (b)
- 2.3 (c) Was 1.5 (c)
- 2.3 (d) Was 1.5 (d)
- 2.3 (e) Was 1.5 (e)
Section 5 cross-referenced in this rule.
- 2.3 (f) Was 1.5 (f)
- 2.3 (g) Was 1.5 (g)
- 2.3 (h) Was 1.5 (h)
- 2.3 (i) Was 1.5 (i)
- 2.3 (j) Was 1.5 (j)
- 2.3 (k) Was 1.5 (k)
- 2.3 (l) Was 1.5 (l)

- 2.3 (m) Was 1.5 (m)**
 Minor amendment to clarify that while the Code does not apply to the content of premium rate calls, it does, however, apply to the marketing communications for such services.
- 2.3 (n) Was 1.5 (n)**
 Deleted “(complaints are normally dealt with by the self-regulatory authority in the country of origin of the media).”
- Added “Direct marketing communications that originate outside Ireland and sales promotions and marketing communications on non-Irish websites, if targeted at Irish consumers, are subject to the jurisdiction of the relevant authority in the country from which they originate if that authority operates a cross-border complaint system. If it does not, the ASAI will take what action it can. Most members of the European Union, and many non-European countries, have a self-regulatory organisation that is a member of the EASA. The EASA co-ordinates the cross-border complaints system for its members (which includes the ASAI).”*
- Additional text to explain the jurisdiction of the Code and the cross-border complaint system operated by EASA.
- 2.3 (o) Was 1.5 (o)**
- 2.3 (p) Was 1.5 (p)**
- 2.3 (q) Was 1.5 (q)**
 Cross-referencing of sections updated.
- 2.3 (r) Was 1.5 (r)**
 Cross-referencing of sections updated.
- 2.4 (a) Was 1.6 (a)**
 “Authority” replaced by “ASAI”.
- 2.4 (b) Was 1.6 (b)**
- 2.4 (c) Was 1.6 (c)**
- 2.4 (d) Was 1.6 (d)**
- 2.4 (e) Was 1.6 (e)**
- 2.4 (f) Was 1.6 (f)**
 “Authority” replaced by “ASAI”.
- 2.4 (g) Was 1.6 (g)**
 “Authority” replaced by “ASAI”.
- 2.4 (h) Was 1.6 (h)**
 “Advertising Standards Authority for Authority” replaced by “ASAI”.
- 2.5 Was 1.7**
 “and information on the ASAI and its structures are set out in Chapter 2” deleted and replaced by “are set out in Appendix I”.

3. General Rules

Principles

- 3.1 **Was 2.6**
“Advertisers cannot disclaim responsibility where they have caused, directly or indirectly, advertising to be created by direct agents or other third parties on their behalf.” and *“affiliates”* added to clarify that if advertisers cause to have advertising created they cannot disclaim responsibility for it. For example, where affiliates create advertising to direct traffic to an advertiser’s website.
- 3.2 **Was 2.1**
- 3.3 **Was 2.2**
- 3.4 **Was 2.3**
- 3.5 **New**
“The ASAI will take into account the impression created by marketing communications as well as specific claims. It will adjudicate on the basis of the likely effect on consumers, when taken as a whole or in context, not the advertiser’s intention.”
- Added to clarify that the advertiser’s intention is not the primary consideration when assessing an impression created by a marketing communication.
- 3.6 **Was 2.5**
- 3.7 **New**
“Marketing communications should not glamorise products that are otherwise not permitted, by law, to be advertised.”
- Where a product cannot be advertised, a marketing communication does not glamorise the product, for example, advertisements showing stills from films should not contain glamorised depictions of people smoking, a product which it is illegal to advertise.
- 3.8 **New**
“The media play an important role in applying the provisions of the Code. While the media will refuse to publish a marketing communication that contravenes the Code, they are under no obligation to publish every marketing communication offered and will exercise discretion in each case. The fact that a marketing communication conforms to the Code is not a guarantee that it will be accepted.”
- Explains the importance of media in the application of the Code.
- 3.9 **Was 2.4**
- 3.10 **Was 2.7**
- 3.11 **Was 2.8**
“Authority” replaced by *“ASAI”*
- 3.12 **Was final sentence of 2.9**
“Normally” added.

- 3.13** New
“Rules in Section 18 relate to Online Behavioural Advertising (OBA), and apply only to OBA third parties as defined in Section 18. If the ASAI is unable to identify the relevant OBA third party, the advertiser – on behalf of whom the OBA advertisement is delivered to web users – must, in good faith, co-operate with the ASAI to help determine the identity of the OBA third party.”

Advertisers should assist the ASAI when identifying OBA Third Parties.

Existing 2.9 – 2.12 moved to Misleading Section

Legality

- 3.14** Was 2.14
“primarily” deleted.
- 3.15** New
“Advertisers should not state or imply that a product can legally be sold if it cannot. It is not a matter, however, for the ASAI to determine whether a product can or cannot be legally sold in Ireland.”

Decency and Propriety

- 3.16** New which incorporates what was 2.15
“Humour and satire are natural and accepted features of the relationship between individuals and groups within society. Humorous and satirical treatment of people and groups of people is acceptable, provided that, taking into account generally prevailing societal standards, the portrayal is not likely to cause grave or widespread offence, or to cause hostility, contempt, abuse or ridicule.”
- Amendment of existing provision to clarify that humour and satire are acceptable in marketing communications but that their use should not cause ‘grave or widespread offence, or to cause hostility, contempt, abuse or ridicule’.
- 3.17** Was 2.16
“civil” added.
- 3.18** Was 2.17
- 3.19** Was 2.18
“within the groups mentioned in 2.16” changed to *“minority groups or vulnerable people”*
- Change to reflect the importance the ASAI places on assessing whether a particular group is vulnerable or a minority in the context of the marketing communications.
- 3.20** Was 2.19
- 3.21** Was 2.20

3.22 Was 2.21

Deleted *“taking account of the characteristics of the likely audience, the media by means of which the marketing communication is communicated, the location and context of the marketing communication, the nature of the advertised product and the nature, content and form of any associated material made available or action recommended to consumers*

Added *“In this regard, attention is drawn to Section 2.4(c)”*.

Deleted text was a restatement of Section 2.4(c).

Existing 2.22 – 2.27 moved to new Misleading Section

Fear and Distress

3.23 Was 2.28
Minor drafting change.

Safety

3.24 Was 2.29
Drafting change to clarify that while it is permissible to show unsafe practices in the context of promoting safety, there should be no implication of such practices being encouraged or condoned.

Violence and Anti-Social Behaviour

3.25 Was 2.30
Language was changed for clarity.

Portrayal of Persons or Property

3.26 Was 2.31

3.27 Was 2.32

3.28 Was 2.33
Minor drafting change.

3.29 Was 2.34

3.30 Was 2.35
Minor drafting change.

Existing 2.36 to 2.56 moved to new Misleading Section

Recognisability

3.31 Was 2.57
The definition element of this provision has been moved to Section 1: Definitions. The requirement that advertorial comply with the Code is covered in a new provision, 3.33, below.

3.32 Was 2.61
“user-generated content, private blogs, or independent reviews” added to give further more modern examples of the type of material that should be clearly flagged as advertising if its purpose is to promote a product.

- 3.33 New
“Advertorials should be clearly identified, should be distinguished from editorial matter and should comply with the Code”.
- 3.34 Was 2.59
- 3.35 Was 2.60
- 3.36 Was 2.62
“(e.g. an entry form in a publication)” deleted as it was felt that giving an example was restrictive.
- 3.37 Was 2.63
Minor drafting change.

Other Regulatory Requirements - Data Protection

- 3.38 New
“Attention is drawn to the requirements of the Data Protection Acts, 1988 and 2003, and the ePrivacy Directive (S.I. No. 336/2011) in regard to the collection, processing, keeping, use and disclosure of personal data.”

4. Misleading Advertising

Truthfulness

- 4.1 Was 2.24
- 4.2 Was 2.25
Minor drafting amendment.
- 4.3 Was 2.26

Honesty

- 4.4 Was 2.22
- 4.5 Was 2.23
“Where footnotes or “small print” sections are used, they should be of sufficient size and prominence and easily legible; where appropriate they should be linked to the relevant part of the main copy.”
- Deleted and incorporated in a new more comprehensive provision, 4.6, below.
- 4.6 New
“Disclaimers, asterisked, footnoted or “small print” information should not contradict more prominent aspects of the message. Such information should be of sufficient size and/or prominence and be located and presented in such a manner as to be clearly and easily legible and/or audible; where appropriate such information should be linked to the relevant part of the main copy.”
- This new more comprehensive provision provides that qualification in ‘small print’ should not contradict the more prominent aspects of a message.
- 4.7 New
“Whether the presentation of information is insufficient or likely to mislead depends on the context, the medium and, if the medium of the marketing communication is constrained by time or space, the measures that the advertiser takes to make that information available to the consumer by other reasonably accessible means.”
- This new provision acknowledges that in some marketing communications it might not be possible to include all relevant information but that in these cases, the information should be made available to consumers elsewhere in a manner that is reasonably accessible.

Matters of Opinion

- 4.8 Was 2.27

Substantiation

Was 2.9 – amended and split into two rules – 4.9 and 4.10

- 4.9 *“A marketing communication should not contain claims - whether direct or indirect, expressed or implied - which a consumer would be likely to regard as being objectively true unless the objective truth of the claims can be substantiated.”*
- 4.10 *“Before offering a Marketing Communication for publication advertisers should satisfy themselves that they will be able to provide documentary evidence to substantiate all claims that consumers are likely to regard as objective. Relevant evidence should be sent without delay if requested by the ASAI and should be adequate to support both detailed claims and the overall impression created by the marketing communication.”*

The existing 2.9 was amended and split into two provisions.

The concepts of claims that consumers would be likely to regard as ‘*objective*’ or as ‘*being objectively true*’ has been introduced. This builds on the new provision in Principles, 3.5 which states *“The ASAI will take into account the impression created by marketing communications as well as specific claims. It will adjudicate on the basis of the likely effect on consumers, when taken as a whole or in context, not the advertiser’s intention.”*

- 4.11 Was 2.12
- 4.12 Was 2.10
- 4.13 Was 2.11
- 4.14 Was 2.13

Testimonials and Endorsements

- 4.15 Was 2.36
- 4.16 Was 2.37
- 4.17 Was 2.38
- 4.18 Was 2.39
Minor drafting change.
- 4.19 Was 2.40
- 4.20 New
“Marketing communications should not display a trust mark, quality mark or equivalent without the necessary authorisation. Marketing communications should not claim that the advertiser (or any other entity referred to), the marketing communication or the advertised product has been approved, endorsed or authorised by any public or other body if it has not. Such a claim should not be made without complying with the terms of the approval, endorsement or authorisation from the relevant body. It shall not be for the ASAI to determine this, but evidence will be accepted from the relevant body.”

For example, a food product should not carry a particular quality mark, unless it has been awarded that by the awarding body.

- 4.21 New
“Advertisers should not refer in a marketing communication to Copy Advice received from the ASAI or imply endorsement by the ASAI.”

Prices

- 4.22 Was 2.41
- 4.23 Was 2.42
- 4.24 Was 2.43
- 4.25 Was 2.44
- 4.26 New
“If a marketing communication involves a claim or creates an impression that a product was previously offered at a different price or at a particular price, it should be the case that the product was in fact previously offered at the specified price openly and in good faith and for a reasonable period of time.”

New provision to provide clarity that previous price indications should only be used where in fact the product was offered at the previously indicated price.

For example, a store is not permitted to offer a product at a price of €20 for one day only and then to reduce the price to €10 and advertise this new price as “50% off the original sales price.” This is not a product being offered for a reasonable period of time.

Free Offers

- New
See Sections 5.22 to 5.28 in Promotional Marketing Practices.

Availability of Products

- 4.27 Was 2.45
“unavailable for any reason” and “to meet demand” added for clarity.
- 4.28 Was 2.46
- 4.29 Was 2.47
- 4.30 Was 2.48

Comparisons

- 4.31 Was 2.49
“Marketing communications that do not identify a specific competitor can still be considered to contain an implicit comparative claim as a comparison could be made with all competition within an industry, for example, unqualified superlative claims.”
added to provide clarity that a marketing communications does not have to name a competitor in order to constitute a comparative claim.

For example if an advertiser from a large supermarket chain states “Our Jam is cheaper than any other Irish Supermarkets” or “Cheapest jam in Ireland” These are implicit comparative claim and can be regarded as being made against all competition within an industry.

- 4.32 **Was 2.50**
“*be so designed that there is no*” deleted and “*not give rise to a*” added.

In line with other changes such as the addition of 3.5, this provides clarity that it is not the advertiser’s intention in the design that is relevant but that impression that the marketing communication conveys that will determine compliance or otherwise with the Code.

- 4.33 **Was 2.51**
Minor drafting addition.

- 4.34 **Was 2.52**
“*Advertisers*” deleted and “*marketing communications*” added. “*Denigrate*” added to “*unfairly attack and discredit*” and “*trademarks, trade names or other distinguishing marks*” are added to provide clarity that as well as not unfairly attacking, etc., other businesses or products, marketing communications should not unfairly attack, etc. “*trademarks, trade names or other distinguishing marks*”.

Exploitation of Goodwill

- 4.35 **Was 2.55**
“*Advertisers*” deleted and “*marketing communications*” added. “*trade names, other distinguishing marks*” are added elements, belonging to another entity or person, which marketing communications should not exploit or make unfair use of the goodwill attaching to these elements.

Imitation

- 4.36 **Was 2.56**

Guarantees

- 4.37 **Was 2.53**
Drafting changes to provide greater clarity in relation to substantial limitations.

- 4.38 **Was 2.54**

- 4.39 **New**
“*Marketing communications should not claim or imply that after-sales service is available in a European Economic Area (EEA) member state in which the advertised product or such a service is not available for sale.*”

New provision which reflects the increased cross-border economic activity and reflects European legislation.

- 4.40 **New**
“**If a marketing communication (in a language other than an official language of the EEA state where the trader is located) offers after-sales service but the after-sales service is not available in the language of the marketing communication, the advertiser should explain this to the consumer before the contract or agreement to purchase is concluded.**”

New provision which reflects the increased cross-border economic activity and reflects European legislation.

5. Promotional Marketing Practices

Introduction

- 5.1 **Was 3.1**
Minor drafting changes.

New addition of “*competitions*” for clarity, as competitions were already within the remit of the Code.
- 5.2 **Was 3.2**
- 5.3 **New**
“*Promoters are responsible for all aspects and all stages of their promotions.*”

New provision reflecting the principle that promoters and advertisers have responsibility for their sales promotions and marketing communications. See Principles 3.1.
- 5.4 **Was 3.3**

Presentation

- 5.5 **Was 3.12**
- 5.6 **Was 3.13**
Minor drafting change.

Protection of Consumers

- 5.7 **Was 3.4**
- 5.8 **Was 3.5**
- 5.9 **Was 3.6**

Suitability

- 5.10 **Was 3.7**

Availability

- 5.11 **Was 3.8**
- 5.12 **Was 3.9**
- 5.13 **Was 3.10**
“*type*” included to reflect the fact that where substitutes have to be made, promoters should attempt to provide a similar type of promotional product, as well as similar or greater quality.

Quality

5.14 Was 3.11

5.15 Was 3.15
“*and conditions*” added for consistency

In (b) “*or continually accessed*” added to reflect the increased use of online platforms to provide information to consumers.

In (c) “*for entry or the submission of claims should be*” added for clarity.

In (d) “*normally*” substitute for “*ideally*” as “*normally*” is considered a stronger provision.

In (f), minor drafting amendment

In (h) “*or prizes*” deleted as prizes are covered in Sections 5.29 – 5.40 below.

5.16 Was 3.16

5.17 New
“*Marketing communications that include a promotion and are significantly limited by time or space should include as much information about significant terms and conditions as practicable and should direct consumers clearly to an easily accessible alternative source where all terms and conditions of the promotion are prominently stated. Participants should be able to retain this information or easily access it throughout the promotion.*”

New provision requiring that as much information as possible should be included in marketing communications. Where there are additional terms or information consumers should be directed to it and should be able to retain or access the full terms and conditions throughout the promotion.

Administration

5.18 Was 3.17

5.19 Was 3.18

5.20 Was 3.19

5.21 Was 3.20
Minor drafting amendments.

Free Offers

5.22 Was 3.21
Drafting amendment to clarify that the list is not mutually exclusive.

In (a) “*or other digital communication*” added to reflect the increased use in digital communications and online platforms by promoters.

In (c) “*offer*” replaced with “*product or service offered*” for clarity.

5.23 Was 3.22

5.24 Was 3.23

- 5.25 Was 3.24
- 5.26 Was 3.25
- 5.27 Was 3.26
- 5.28 Was 3.14
“*of the products*” added for clarity.

Promotion with Prizes

- 5.29 Was 3.27
- 5.30 Was 3.28
Minor drafting amendments.

In (h) “*Any limit on the number of prizes that an individual consumer or household may claim or win,*” added to strength the provision.

In (n) (new) “**whether the consumer may be liable to pay tax as a result of winning a prize**” added requiring that the potential for a tax liability is flagged.
- 5.31 Was 3.29
Minor drafting amendments.
- 5.32 Was 3.30
- 5.33 Was 3.31
Minor drafting amendments.
- 5.34 Was 3.32
Deletion of “*major*” the effect of which is that promoters should either publish or make available on request the name and country of residence of all prize-winners. “*pin pointed*” replaced with “*identified*”.
- 5.35 Was 3.33
- 5.36 Was 3.34
- 5.37 Was 3.35
- 5.38 Was 3.36
- 5.39 Was 3.37
“*An individual who has been given a gift should not be included in a list comprising prize-winners.*” added to add further clarity that there should be no confusion between gifts and prize winners.
- 5.40 Was 3.38

- 5.41 New
“Promoters should:
 (a) *Specify the number and nature of available prizes or gifts, if applicable. If the exact number cannot be predetermined, a reasonable estimate of the number and a statement of their nature should be made.*
 (b) *Distinguish those prizes that could be won, including estimated prize funds, from those prizes that will be won by one individual at the end of the promotional period.*
 (c) *State whether prizes are to be awarded in instalments and*
 (d) *State whether prizes are to be shared among prize-winners.”*

- 5.42 New
“Promoters should not claim or imply that consumers are more lucky, fortunate or successful than they are. In particular, promoters should not use terms such as “finalist” or “final stage” in a way that implies that consumers have progressed, by chance or skill, to an advanced stage of a promotion if they have not.”

For example, on entry to a competition, all entrants cannot be told that they have made the **“grand final”** if all that was required to reach the **“grand final”** was entry to the competition.

- 5.43 New
“Promoters should not claim or imply that the consumer has already won or will win, (including conditionally on carrying out a particular act) a prize or other equivalent benefit if the consumer must incur a cost to claim the prize or benefit if this is not the case, or if the prize or benefit does not exist.”

- 5.44 New
“Promoters should not claim that consumers must respond by a specified date or within a specified time if they need not.”

Advertisement Promotions

- 5.45 Was 3.39
 5.46 Was 3.40
 5.47 Was 3.41
 ` *“are informed”* replaces *“know”* and *“major”* deleted in relation to qualification.

Charity-linked Promotions

- 5.48 Was 3.42
 Minor drafting amendments.

Promotions and the Trade

- 5.49 was 3.43
 5.50 was 3.44
 Minor drafting amendments for clarity.
 5.51 was 3.45

Other Regulatory Requirements

Data Protection

5.52 **Was 3.46**
Updated legislation.

Gaming and Lotteries

5.53 **Was 3.47**

6. Distance Selling

Introduction

“*buyer*” replaced by “*consumer*” and “*seller*” by “*advertiser*”.

“*In this section of the Code (and only this section) “consumer” does not include those acting in the course of their business.*” added.

Generally, “*consumer*” does include those acting in the course of their business, but for the purposes of this Section, it does not.

6.1 Was 4.1

Minor drafting amendments to 6.1.

6.2 Was 4.2

In (b), “*Specify*” replaces “*include*” and “*and should include details of any applicable delivery costs*” added to ensure that where delivery charges are applicable consumers are advised of this fact in the marketing communication.

In (c) “*Wireless Application Protocol (WAP)*” replaced by “*or other electronic delivery system*”.

“*it is not possible for all details to be*” replaces “*all details cannot be*”

6.3 Was 4.3

Minor drafting amendment.

6.4 Was 4.4

6.5 Was 4.5

In (a) “*If they prefer to wait, consumers should be given a firm dispatch date or fortnightly progress reports.*” added to recognize that consumers may wish to wait for goods but in such circumstance they should be advised of when the goods will be delivered or provided with fortnightly progress reports.

In (c) “*(subject to the requirements in 6.7);*” added to provide cross-referencing clarity.

6.6 New

“*If the consumer exercises their right of cancellation in respect of goods which are not damaged or faulty, they shall not incur any charges or penalties for so doing, except the direct cost of returning the goods.*”

6.7 Was 4.6

New part (c) “*Betting, gaming or lottery services provided all contractual and statutory obligations to the consumer are met.*”

6.8 Was 4.7

- 6.9** **New**
“If the consumer exercises their right of cancellation as listed above, the advertiser shall be obliged to reimburse any sums paid by the consumer without deduction of costs, interest or penalties (other than the direct cost of returning any goods). However, unless there is agreement between the advertiser and the consumer to the contrary, the consumer may not exercise the right of cancellation referred to above in respect of a distance contract:
 (a) *For the provision of services if performance has begun, with the consumer’s agreement, before the end of the cancellation period referred to in the preceding paragraphs.*
 (b) *For the supply of goods and services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier.”*
- 6.10** **Was 4.8**
 Language changed for clarity.
- 6.11** **Was 4.9**
“or email contact” added as an acceptable method to allow consumers to refuse a home visit.
- 6.12** **Was 4.10**
- 6.13** **Was 4.11**
- 6.14** **New Section**
“Advertisers should not imply that consumers have already ordered the marketed product when they have not done so and in particular, they should not include in marketing material an invoice or similar document that seeks payment.”
- New provision which provides that advertisers should not imply that consumers have ordered a product when they have not, nor should marketing material contain a document that seeks payment.
- 6.15** **New**
“Advertisers should not ask consumers to pay for, or return, unsolicited products, except for substitute products.”
- New provision that provided where advertisers have sent unsolicited products they should not require that consumers pay for the product or return the products. Where the products concerned were substitutes for products the consumer had ordered, advertisers may ask for either payment or their return.

Media Requirements

- 6.17** **Was 4.12**

Other Regulatory Requirements

Data Protection

- 6.17** **Was 4.13**
 Updated to reflect change in legislation

EU Legislation Regarding Distance Contract

- 6.18** **Was 4.14**
 Legislation reference updated.

7. Children

5.1 deleted as already included in Definitions Section (Section 1).

7.1 Was 5.2

7.2 Was 5.3

7.3 Was 5.4

7.4 Was 5.5
Minor drafting amendments.

At (d) *“where children appear as pedestrians or cyclists they should be seen to observe the Rules of the Road. Special attention should be paid, where relevant, to the use of child car seats and the wearing of car seat-belts and safety helmets.”* deleted and moved to stand alone rule at 7.4(e).

At (h) *“whether directly or indirectly”* added to clarify that encouragement does not need to be explicit.

7.5 Was 5.6
Minor drafting amendments.

7.6 Was 5.7
Minor drafting amendments.

New sub-section (e)
“Should make it clear if extra items are needed to use the product (for example, batteries) or to produce the result shown or described (for example, paint, dolls clothes).”

New provision that if additional items are needed to use a product or to produce the result shown, this should be clear in the marketing communication.

Promotions and Children

7.7 Was 5.11
In (c) *“expensive and/or inappropriate”* added and *“Examples include but are not limited to animals, bicycles, outings, concerts and holidays;”* deleted.

Rather than include a list which might be considered exhaustive advertisers will be required to consider on a case by case basis whether a particular prize is likely to cause conflict between children and their parents.

8. Food and Non-Alcoholic Beverages

This section has been updated to refer to and reflect relevant EU legislation.

Introduction **New**

“These rules apply to all marketing communications for food products and should be read in conjunction with the relevant legislation:

- 1) *Regulation (EU) No. 1169/2011 of the European Parliament and of the Council of 25 October, 2011, on the provision of food information to consumers as amended, including Commission Implementing Regulation (EU) No. 1337/2013 and its implementing legislation in Ireland, European Union (Provision of Food Information to Consumers) Regulations, 2014 (S.I. No. 556/2014).*
- 2) *Regulation (EC) No. 1924/2006 on nutrition and health claims made on foods (the EU Regulation) together with the amending legislation. They apply to all marketing communications for food products.*

The EU Regulation on nutrition and health claims is mandatory and seeks to protect consumers from misleading or false claims. It came into force in July, 2007, but was subject to a series of complex transitional periods (see www.fsai.ie). Specific conditions of use associated with authorised health and nutrition claims are determined at a European level. The EU Register of nutrition and health claims (the EU Register) lists all authorised nutrition and health claims as well as non-authorised health claims that have been rejected.

Some transitional periods still apply, for instance, those affecting trademarks or brand names in use prior to 1 January, 2005. In addition, there are certain claims which the European Commission has placed “on hold” whilst discussions take place on the best way forward for these types of claims. Claims that are on hold are subject to an extended transition period and are still permitted for use.

The ASAI encourages advertising industry stakeholders to take expert advice on the effect of the EU Regulation.

8.1 New Definitions Section reflecting relevant EU Legislation

“Definitions

For the purposes of the rules in this section:

- (a) *“Nutrition claim” means any claim which states, suggests or implies that a food has particular beneficial nutritional properties due to:*
 - (i.) *the energy (calorific value) it provides; provides at a reduced or increased rate; or does not provide; and/or*
 - (ii.) *the nutrients or other substances it contains; contains in reduced or increased proportions; or does not contain.*
- (b) *“Health claim” means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health.*
- (c) *“Reduction of disease risk claim” means any health claim that states, suggests or implies that the consumption of a food category, a food or one of its constituents significantly reduces a risk factor in the development of a human disease.”*

- 8.2 New
“References to food apply also to non-alcoholic beverages and food supplements.”

This has been added in for clarity across the whole section where reference can simply be made to “*food*” but this reference encompasses non-alcoholic beverages and food supplements. All references in subsequent provisions to “*and non-alcoholic beverages*” has been deleted.

- 8.3 New
“Marketing communications for food should not make reference to consumer taste or preference tests in any way that might imply statistical validity if there is no such validity, and should not use scientific terms to ascribe validity to an advertising claim which is not valid.”

Diet and Lifestyle

- 8.4 Was 6.1

- 8.5 Was 6.2

- 8.6 New
“Marketing communications for food should not disparage good dietary practice or the selection of options that accepted dietary opinion recommends should form part of the average diet.”

- 8.7 Was 6.3
Deletion of “*as well as nutritional and health benefits*” as new Section (8.8 – 8.15) deals with Nutrition and Health Claims.

Nutrition and Health Claims

New sub-section in Food and Non-Alcoholic Beverages. These rules refer to and reflect EU legislation.

- 8.8 New
“Only nutrition claims listed in the updated Annex of the EU Regulation (as reproduced in the EU Register) may be used in marketing communications.

Only health claims listed as authorised in the EU Register, or claims that would have the same meaning to the consumer, may be used in marketing communications.”

- 8.9 New
“Marketing communications that contain nutrition or health claims should be supported by documentary evidence substantiating that they meet the conditions of use associated with the relevant claim, as specified in the EU Register.”

- 8.10 New
“Claims should be presented clearly and without exaggeration.”

- 8.11 New
“References to general benefits of a nutrient or food for overall good health or health-related well-being are acceptable only if accompanied by a specific authorised health claim.”

- 8.12 New
“A comparison may only be made between foods of the same category, taking into consideration a range of foods of that category. The difference in the quantity of a nutrient and/or the energy value shall be stated and the comparison shall relate to the same quantity of food.”

- 8.13 New
“Comparative nutrition claims shall compare the composition of the food in question with a range of foods of the same category, which do not have a composition which allows them to bear a claim, including foods of other brands.”
- 8.14 New
“The following are not acceptable in marketing communications for food products:
 (a) *Claims that state or imply health could be affected by not consuming a food.*
 (b) *Claims that state or imply a food prevents treats or cures human disease. Reduction of disease risk claims are acceptable if authorised by the European Commission.*
 (c) *Health claims that refer to the recommendation of an individual health professional. Health claims that refer to the recommendation of an association are acceptable only if that association is a health-related charity or a national representative body of medicine, nutrition or dietetics.*
 (d) *References to changes in bodily functions that could give rise to, or exploit, fear in the audience.*
 (e) *Claims of a nutrition or health benefit that give rise to doubt about the safety or nutritional adequacy of another product.*
 (f) *Health claims that refer to a rate or amount of weight loss.”*
- 8.15 New
“Marketing-communications for food should not mislead as to the nutritive value of any food.”

Children

- 8.16 Was 5.9
“In addition to all other rules is added to ensure it is clear that the rules for children are extra, and not exclusive of the other rules.”
- 8.17 New
“Marketing communications should not disparage good dietary practice or the selection of options that accepted dietary opinion recommends should form part of the average diet.”
- Restatement of new provision at 8.6 to acknowledge societal concerns about children’s health.
- 8.18 New
“Marketing communications should not condone or encourage poor nutritional habits or an unhealthy lifestyle in children.”

Promotional Offers

- 8.19 New
“Marketing communications featuring a promotional offer should be prepared with a due sense of responsibility”
- New provision reflecting a general overarching principle of the Code that marketing communications should be prepared with a sense of responsibility both to the consumer and to society.
- 8.20 New
“Marketing communications for food products that are targeted through their content directly at pre-school or primary school children should not include a promotional offer, subject to the exceptions listed below:
 (i) *Marketing communications for fresh fruit and/or fresh vegetables;*

- (ii) Marketing communications carried in media subject to the BAI Children’s Commercial Communications Code for products characterised by that code as being permitted to be advertised to children;*
- (iii) Point of sale displays, packages, wrappers, labels, tickets, timetables and menus. See Guidance Note on Food and Non-Alcoholic Beverages on www.asai.ie”*

8.21

New

“Additionally, for children under 16:

- (a) Except those for fresh fruit or fresh vegetables, marketing communications should not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Marketing communications featuring a promotional offer should ensure a significant presence for the product.*
- (b) Marketing communications featuring a promotional offer linked to a food product of interest to children should avoid creating a sense of urgency or encouraging the purchase of an excessive quantity for irresponsible consumption.*
- (c) Marketing communications should not encourage children to eat more than they otherwise would.*
- (d) Marketing communications for collection-based promotions should not seem to urge children or their parents to buy excessive quantities of food.”*

New provision which provides that children should not be encouraged to buy or consume more of a food product (except for fresh fruit and vegetables) merely to attain a promotional offer.

Licensed Characters and Celebrities

8.22

New

- (a) Licensed characters and celebrities popular with children should always be used with a due sense of responsibility.*
- (b) Marketing communications for food products that are targeted through their content directly at pre-school or primary school children should not include licensed characters or celebrities popular with children, subject to the exceptions listed below:*
 - (i) Marketing Communications for fresh fruit and/or fresh vegetables;*
 - (ii) Marketing Communications carried in media subject to the BAI Children’s Commercial Communications Code for products characterised by that code as being permitted to be advertised to children;*
 - (iii) Point of sale displays, packages, wrappers, labels, tickets, timetables and menus;*
 - (iv) The prohibition does not apply to advertiser-created equity brand characters (puppets, persons or characters), which may be used by advertisers to sell the products they were designed to sell;*
 - (v) Licensed characters and celebrities popular with children may present factual and relevant generic statements about nutrition, safety, education or similar.*

See Guidance Note on Food and Non-Alcoholic Beverages on www.asai.ie

New provision to ensure that licensed characters and celebrities are not used in marketing communications targeted at pre-school or primary school children.

Nutrition and Health Claims

- 8.23 New
“Claims referring to children’s development and health are acceptable if authorised by the European Union (see Section 8.8).”

Pressure to Purchase

- 8.24 New
“Although children might be expected to exercise some preference over the food they eat or drink, marketing communications should be prepared with a due sense of responsibility and should not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases for them.”

New provision to acknowledge that while children might exercise some preference over the food they eat, they should not be asked to request their parents or other adults to for example purchase food products for them.

Food Supplements, including Vitamins and Minerals

This sub-section was moved from Health and Beauty to Food and Non-Alcoholic Drinks

- 8.25 New
“Advertisers should ensure that claims for dietary supplements and other vitamins and minerals comply with the requirements of the EU Regulations.”

- 8.26 New
“Marketing communications that contain nutrition or health claims should be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim as specified in the EU Register.”

- 8.27 Was 8.14

- 8.28 Was 8.15

- 8.29 Was 8.16

Infant & Follow-on Formula

New provisions to reflect the legislation in this area

- 8.30 New
“These rules should be read in conjunction with the relevant legislation including the ‘European Communities (Infant Formulae and Follow On Formula) Regulations, 2007’ (S.I. No 852/2007).”

- 8.31 New
“Marketing communications for infant formula are prohibited unless they appear in scientific publications, or are for the purposes of trade before the retail stage, or are a publication for which the intended readers are not the general public.”

- 8.32 New
“Marketing communications should not confuse between infant formula and follow-on formula.”

- 8.33 New
“Marketing communications for follow on formula addressed to the general public should
(a) *be designed to provide the necessary information about the appropriate use of the products so as not to discourage breast-feeding;*
(b) *not use the terms ‘humanised’, ‘maternalised’, ‘adapted’ or similar terms.*

9. Alcohol Drinks

Introduction New

“The rules in this section are designed to ensure that the content of alcohol advertising and promotion is consistent with the need for demonstrating responsibility and moderation in consumption, and that it does not encourage consumption by children.

“The rules in this section apply to marketing communications for alcoholic drinks and to marketing communications that feature or refer to alcoholic drinks.

“Alcoholic drinks are defined as those that exceed 1.2% alcohol by volume. They include products that are classified as foodstuffs rather than drinks for the purposes of licensing or customs and excise legislation, or even if they appear to be gaseous, solid or heavily textured (or can be made to be, for example by freezing or shaking), rather than liquid.

“Where stated, exceptions are made for low-alcohol drinks (those that contain 2.8% alcohol by volume or less). But, if a marketing communication for a low-alcohol drink could be considered to promote a stronger alcoholic drink or if the drink's low-alcohol content is not stated clearly in the marketing communications, all the rules in this section apply.

“If a soft drink is promoted as a mixer, the rules in this section apply in full.

“These rules are not intended to inhibit responsible marketing communications that are intended to counter problem drinking or inform consumers about alcohol-related health or safety themes. Marketing communications of that type should not however be likely to promote an alcohol product or brand.”

New introductory text to set the context for alcohol marketing communications.

9.1 Was 7.1

9.2 Was 7.2

Minor drafting amendment to clarify.

This provision provides that even where the promotion of an alcohol product is not the main aim of a marketing communication, if there is any reference to alcohol, to an alcohol brand (for example, as part of a sponsorship message) or alcohol company, the ASAI may decide that the Code rules in this section should apply in a particular case.

9.3 Was 7.3

9.4 New

“Marketing communications for alcohol should include a responsibility message to drink alcohol responsibly.”

9.5 Was 7.4

Minor drafting amendment to clarify.

9.6 Was 7.5

Children

9.7 Was 7.6

New (a) (i)

“The preceding rule may not apply if the marketing communication shows an image of people attending an over 18s ticketed event which appears either on the advertiser’s owned media (such as, for example, an advertiser’s own website) or on an advertiser’s social media page provided such media are accessed through a secure and appropriate Age Verification System and provided the person depicted:

- *appears to be clearly over 18 years of age*
- *is not playing a significant role*
- *cannot be seen consuming alcohol*
- *does not appear to be under the influence of, or have consumed, alcohol prior to the events depicted in the marketing communication.”*

New provision which provides for PR type photographs taken at an 18+ ticketed event to be used on an alcohol brand’s owned media (advertiser owned website) or on their social media pages. Strict requirements about the content of the photographs ensure that no alcohol consumption is shown or implied. Independent of ASAI control, the equivalent type of PR photographs are currently used in other media provided they are subject to editorial control.

Other minor drafting amendments in 9.7

New (f) “Digital media, including apps, that primarily promote an alcohol brand should be age gated through a secure and appropriate Age Verification System. See Guidance Note on Alcohol Marketing Communications at www.asai.ie.”

Through the use of a guidance note, the ASAI will advise the industry on what it considers to be best practice in this area.

Health and Safety

9.8 (a) New

“Marketing communications should only depict or imply the responsible and moderate consumption of alcohol drinks.”

New provision requiring that only responsible consumption of shown. The existing provision at 9.8b provides that immoderate or irresponsible consumptions should not be shown, implied or encouraged.

9.8 (b) Was 7.7 (a)

9.8 (c) Was 7.7 (b)

9.8 (d) Was 7.7 (c)

9.8 (e) New

“Marketing communications should not attempt to influence non-drinkers of any age to drink or to purchase alcoholic beverages.”

9.8 (f) Was 7.7 (d)

“in respect of alcohol” added.

9.8 (g) Was 7.7 (e)
“or that it is or can be transformative of an individual or a situation” added to expand on the requirement that alcohol should not be shown as a mood-changer.

9.8 (h) Was 7.7 (g)
“direct” added before *“association”* and *“Where consumption is shown or implied it should not be represented as having taken place before or during engagement of the activity in question.”*

This provision now provides that in certain circumstances it may be acceptable to show locations where drinking alcohol would be otherwise regarded as unsafe, unwise or unacceptable provided there is no direct association (for example, people seen swimming in the sea as opposed to eating on a balcony overlooking the sea) and provided there is no suggestion that consumption of alcohol has or will take place.

9.8 (i) New from part of 7.7 (g)
“Marketing Communications should not associate the consumption of alcohol with operating machinery, driving, any activity relating to water or heights, or any other occupation that requires concentration in order to be done safely.”

9.8(j) Was 7.7 (h)
Provision re-ordered for clarity.

9.8 (k) Was 7.7(f)

Promotions

9.9 New
“Terms and Conditions for promotions involving alcohol should make it clear:
(a) *That entry is restricted to those 18 years of age and older.*
(b) *That prizes and/or gifts will only be awarded to those 18 years of age or older.”*

9.10 New
“Marketing communications or promotions should not combine alcohol with a gift that has particular appeal to under-18s.”

9.11 Was 7.8
“take care” deleted to strengthen the provision.

Other Requirements

9.12 Was 7.9
Language and legislation updated

10. Gambling – NEW SECTION

This is a new Section. While marketing communications for Gambling products/services is within the remit of the 6th Edition of the Code, given the increased level of marketing communications for this product sector and general societal concerns, it was decided to include specific rules.

The rules define what type of marketing communications will be considered under this Code Section, what type of content is generally not acceptable, and that children should not be targeted by nor featured in (in a significant manner) marketing communications for gambling.

- 10.1** *This section applies to any marketing communication which:*
- (a) promotes any gambling service or product; or*
 - (b) promotes the name, familiarity or reputation of gambling companies whether or not a gambling product is shown or referred to.*
- 10.2** *The rules in this section do not, however, apply to the marketing communications of the National Lottery, which are within remit of the National Lotteries Act, 2013. Such marketing communications are within remit of the other rules of the Code.*
- 10.3** *The rules in this section apply to, amongst other things, marketing communications for “play for money” gambling products and marketing communications for “play for free” gambling products that offer the chance to win a prize or explicitly or implicitly direct the consumer to a “play for money” gambling product, whether on-shore or off-shore.*
- 10.4** *Any marketing communication that depicts or refers to gambling may be considered under the rules of this Section, whether or not gambling is the main product or service being marketed.*
- 10.5** *The spirit as well as the letter of the rules in this section apply.*
- 10.6** *Gambling is defined as*
- a) gaming*
 - b) betting*
 - c) lotteries*
 - d) bingos*
 - e) amusement arcade games.*
- 10.7** *Gaming is defined as playing for a stake in a game of chance for a monetary prize or other form of reward, and includes the playing of games available in casinos.*
- 10.8** *Betting is defined as making or accepting a bet (including when made or accepted through a betting service or a betting exchange) on:*
- (a) the outcome of a race, competition or other event or process, including virtual events,*
 - (b) the likelihood of something occurring or not occurring, or*
 - (c) whether or not something is true,*
- and includes pool betting.*

10.9 *Unless they portray or refer to gambling, this section does not apply to marketing communications for non-gambling leisure events or facilities (such as, for example, hotels, cinemas, bowling alleys or ice rinks) that are in the same complex as, but separate from, gambling events or facilities.*

For example, a theme park may have a gambling facility annexed to it. That theme park's marketing communications does of course need to be compliant with all of the rules in this Code, however the rules in this Section do not apply to such marketing communications.

10.10 *All advertisements for gambling services or products shall contain a message to encourage responsible gambling and shall direct people to a source of information about gambling and gambling responsibly.*

10.11 *These rules are not intended to inhibit marketing communications to counter problem gambling where they are responsible and unlikely to promote a brand or type of gambling.*

10.12 *Marketing communications for gambling should not:*

- (a) Portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm.*
- (b) Suggest that gambling can provide an escape from personal, professional or educational problems such as loneliness or depression.*
- (c) State or suggest that gambling may be a way to solve financial or personal issues, or represent it as an alternative source of income or substitution for working.*
- (d) Portray gambling as indispensable or as taking priority in life; for example, over family, friends or professional or educational commitments.*
- (e) Suggest that gambling can enhance personal qualities including for example, that it might improve self-image or self-esteem, or is a way to gain control, superiority, recognition or admiration.*
- (f) Suggest peer pressure to gamble or disparage abstention from gambling.*
- (g) Link gambling to seduction, sexual success or enhanced attractiveness.*
- (h) Portray gambling in a context of toughness or link it to resilience or recklessness.*
- (i) Suggest gambling is a rite of passage.*
- (j) Suggest that solitary gambling is preferable to social gambling.*
- (k) State or imply a promise of winning or portray unrealistic outcomes.*

10.13 *Winning claims, success rate claims and profitability claims should be factual and capable of substantiation. Neither the chances of winning nor the size of the prize should be exaggerated.*

10.14 *Marketing communications should not state or imply that a player's skill can influence the outcome of a game unless the skill can actually be demonstrated to affect the outcome of the game.*

10.15 *Marketing communications for events or facilities that can be accessed only by entering gambling premises should make that condition clear.*

Children

10.16 *Marketing Communications should not harm or exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children.*

10.17

Marketing communications should not:

- (a) *Be likely to be of particular appeal to children, especially by reflecting or being associated with youth culture.*
- (b) *Make direct use of signs, symbols, drawings, fictitious characters or real people of primary or particular appeal to children.*
- (c) *Depict adolescent, juvenile or loutish behaviour.*
- (d) *Contain endorsements by recognisable figures who would be regarded as heroes or heroines of the young.*
- (e) *Feature children, except in an incidental manner.*
- (f) *Feature anyone who is, or seems to be, under 25 (18 - 24) years old, unless those individuals feature only to illustrate specific betting selections or options where that individual is:*
 - (i) *the subject of the bet offered,*
 - (ii) *is in a team that is the subject of the bet offered, or*
 - (iii) *is part of an event which is the subject of a bet offered. The image or other depiction used must show them in the context of the bet and not in any gambling role.*
- (g) *Be directed at those aged below 18 years through the selection of media or context in which they appear, or be placed in or through media, or parts of media, that are specifically intended for children (inserts, supplements, special (radio and TV) programmes, cinema films, etc.).*
- (h) *Be displayed within 100 meters of a school entrance.*
- (i) *Induce a child to regard gambling as a natural element of his or her leisure time/activities.*

10.18

The following marketing communications may include children, provided they are accompanied by an adult and are socialising responsibly:

- *marketing communications for family entertainment centres, travelling fairs, horse racecourses and dog race tracks*
- *marketing communications for non-gambling leisure facilities that incidentally refer to separate gambling facilities, for example, as part of a list of facilities on a cruise ship.*

11. Health and Beauty

The rules in this section have been updated to take into account recent updates in European legislation on Medical Products. Amendments have been made taking the European Legislation into account and in order to provide consistency of language with the rest of the Code.

Introduction New

“The rules in this section are designed to ensure that marketing communications for medicines, medical devices, treatments, health-related products and beauty products receive the necessary high level of scrutiny. The rules apply to marketing communications and not the products, which are regulated by health regulators such as the Health Products Regulatory Authority (HPRA) www.hpra.ie, the European Medicines Agency (EMA), www.ema.europa.eu, and the Department of Health, www.health.gov.ie.”

11.1 Was 8.1 - Updated and extended version

“Claims about health and beauty products and treatments should be backed by substantiation. Where relevant, this should include the results of robust and reputable trials on human subjects, of sufficient rigour, design and execution as to warrant general acceptance of the results.

Medicinal or medical claims and indications may be made for a medicinal product that is authorised by the HPRA or EMA, or for a CE-marked medical device. A medicinal claim is a claim that a product or its constituent(s) can be used with a view to making a medical diagnosis or can treat or prevent disease, including an injury, ailment or adverse condition, whether of body or mind, in human beings.

Secondary medicinal claims made for cosmetic products as defined in the appropriate European legislation should be backed by substantiation. These are limited to any preventative action of the product and may not include claims to treat disease.”

11.2 Was 8.4

11.3 Was 8.2

11.4 Was 8.3

11.5 Was 8.5 - Amended

“Advertisers should not discourage essential treatment for conditions for which medical supervision should be sought. For example, they should not offer specific advice on, diagnosis of or treatment for such conditions unless that advice, diagnosis or treatment is conducted under the supervision of a suitably qualified health professional. Accurate and responsible general information about such conditions may, however, be offered.

Health professionals are considered suitably qualified if they are regulated by a statutory body recognised by the Irish State.”

11.6 New

“Marketing communications for medical services should not cause unwarranted or disproportionate anxiety or suggest that any product or treatment is necessary for the maintenance of health.”

- 11.7(a) Was 8.8
“Practitioners should have relevant and recognised qualifications” and “including those that are physically invasive.” have been added for clarity
- 11.7 (b) New
“Marketing communications for individual treatments should take care not to minimise, trivialise or create unrealistic expectations, in particular in the use of photographs.”
- 11.8 Was 8.6
‘health and beauty’ added.
- 11.8 (a) New version of what was 8.6(b)
“Should not encourage consumers to use a product or treatment to excess and should hold substantiation before suggesting their product or therapy is guaranteed to work, is absolutely safe, or is without side-effects (subject to 11.19 for Medicinal Products).”
- 11.8 (b) Was 8.6(c)
- 11.8 (c) Was 8.6 (g)
- 11.9 Was 8.12
- 11.10 Was 8.13
- 11.11 Was 8.7
- 11.12 Was 8.9

Vitamins Minerals and Food Supplements (Moved to Food and Non-Alcoholic Beverages)

Medicinal Products

This section has been updated to take into account the European legislation on advertising of Medicinal Products.

- 11.13 New
“Title VIII of European Directive 2001/83/EC (as amended) concerns “The Advertising of Medicinal Products for Human Use” and has been implemented in Ireland by the Medicinal Products (Control of Advertising) Regulations, 2007 (S.I. No 541/2007). Advertisements for medicinal products must comply with the requirements of these Regulations and any conditions contained in the marketing authorisation, certificate, licence or traditional herbal registration for the advertised product.
- For more information on the advertising of medicinal products, see the HPRA’s website www.hpra.ie .”*
- 11.14 New
“Medicines should have an authorisation from the HPRA or under the auspices of the EMA before they are advertised. Marketing communications for medicines should conform with the authorisation the product’s summary of product characteristics.”
- 11.15 New
“Marketing communications should not suggest that a product is “special” or “different” because it has been granted an authorisation by the HPRA or under the auspices of the EMA.”

- 11.16 New
“Prescription-only medicines may not be advertised to the public.”
- 11.17 Was 8.6 (a)
- 11.18 New
“Marketing communications for medicines should not imply, directly or indirectly, that a medical consultation or surgical operation is unnecessary.”
- 11.19 New
“Marketing communications for a medicine should not claim that its effects are guaranteed, that it is absolutely safe or without side-effects, or as good as or better than those of another identifiable product.”
- 11.20 New
“Marketing communications for a medicine should not claim that a product is able to cure illness, dysfunction or malformations if this is not the case.”
- 11.21 New
“Marketing communications should not refer, in improper, alarming or misleading terms, to claims of recovery.”
- 11.22 New
“Marketing communications should not use, in improper, alarming or misleading terms, images of changes in the human body caused by disease, injury or a medicinal product.”
- 11.23 New
“Marketing communications should not suggest that using or avoiding a product can affect normal health. This rule does not apply to vaccination campaigns provided such campaigns have been approved by the Minister for Health.”
- 11.24 New
“Marketing communications for a medicine should not be addressed to children.”
- 11.25 New
“Marketing communications for medicinal products should not contain material that refers to a recommendation by scientists, health professionals or celebrities.”
- 11.26 New
“Marketing communications should not suggest that a medicinal product is either a food or a cosmetic.”
- 11.27 New
“Marketing communications for medicinal products should not present a description or detailed representation of a case history that could lead to erroneous self-diagnosis.”
- 11.28 Was 8.10
- 11.29 New
“Marketing communications which include a product claim for a medicinal product (including legible on-pack product claims within a pack shot) should include the name of the product, an indication of what it is for, text such as “Always read the label” and the common name of the sole active ingredient, if it contains only one.”
- 11.30 New
“Illustrations of the effect or action of a product should be accurate.”

- 11.31 New
“Marketing Communications for a medical device should be consistent with its intended purpose.”
- 11.32 New
“Consumer prize promotions for medicinal products should not encourage or require purchase of the products which would be greater than that associated with a rational use of the product and should not encourage the unnecessary purchase of the product.”
- 11.33 New
“Marketing communications should not offer free samples of medicinal products.”
- 11.34 New
“Marketing communications for a traditional herbal medicinal product should include mandatory information as required under S.I. No. 541/2007.”
- 11.35 New
“Marketing communications for a homeopathic medicinal product should include mandatory information as required under S.I. No. 541/2007.”
- 11.36 New
“Homeopathic medicinal products should be registered in Ireland. Any product information given in the marketing communication should be confined to what appears on the label. Marketing communications should include a warning to consult a doctor if symptoms persist. .

Alternative and Complementary Medicine

- 11.37 Was 8.19

Counselling Services

- 11.38 New
“Marketing communications for counselling services for unplanned pregnancies should not mislead in any way as to the nature or scope of the counselling service being offered.”

Hair and Scalp

- 11.39 Was 8.17
- 11.40 Was 8.18

Cosmetics

- 11.41 Was 8.11
- 11.42 New
“Non-users of a cosmetic product should not be shown in a negative light.”
- 11.43 New
“Marketing communications should not claim that a product has been authorised or approved by a competent authority within the EU.

Note: Attention is drawn to the requirements of the Guidelines to Commission Regulation (EU) No. 655/2013 laying down common criteria for the justification of claims used in relation to cosmetic products.”

Other Regulatory Requirements

- 11.44 Was 8.20
“Appendix II” deleted and *“www.asai.ie”* inserted in its place.

12. Slimming

Introduction New

“This section applies to marketing communications for weight control and slimming foodstuffs, aids (including exercise products that make weight-loss or slimming claims), clinics and other establishments, diets, medicines, treatments, and the like. The specific rules in this Section are in addition to those in other parts of the Code including Section 8: Food and Non-Alcoholic Beverages, and Section 11: Health and Beauty which may be relevant”.

12.1 Was 9.1 - split into two sections with language changed for clarity.

12.2 Was 9.1 - split into two sections with language changed for clarity.

12.3 Was 9.2
Extra text added for clarity, final sentence moved to separate rule at 12.5.

12.4 New
“Marketing communications for surgical clinics, establishments and the like, that comply with rule 11.7, may claim that weight or fat can be lost from specific parts of the body. Such marketing communications should not refer to the amount of weight that can be lost.”

For example, it is permissible to say in an advertisement that a surgical procedure will remove fat from the stomach area, however it is not permissible to say that it will remove “2 inches” or “1 stone”.

12.5 Was final sentence of 9.2

12.6 Was 9.3

12.7 Was 9.4

12.8 Was 9.5

12.9 Was 9.6

12.10 Was 9.7

12.11 Was 9.8

12.12 Was 9.9

12.13 Was 9.10

12.14 Was 9.11

12.15 Was 9.12

12.16 Was 9.13

12.17 New
“Health claims in marketing communications for food products that refer to a rate or amount of weight loss are not permitted”

End Note: No Change

13. Financial Services and Products

Introduction New

“The Central Bank of Ireland has primary and statutory responsibility for the regulation of advertising for Financial Services and Products and their requirements are set out in Consumer Protection Code 2012.

All marketing communications are however also subject to the rules of the ASAI Code and the ASAI will, where appropriate, examine complaints submitted that refer, in general or in particular, to the provisions of the ASAI Code.

If however the ASAI considers that because of the particular provisions of the Central Bank Code or the substance of the complaint that the matter should more properly be dealt with by the Central Bank, complainants will be advised accordingly.”

The Introduction explains that although the ASAI Code applies to all marketing communications there may be occasions when a complaint should be more properly dealt with by the Central Bank.

13.1 Was 10.1

13.2 Was 10.2

“Finance marketing communications should make clear the advertiser’s identity and geographic address and that information should be given in a form that can be retained by customers or continually accessed by them. “

Added to clarify that consumers should be in a position to know the advertiser’s identity and geographic address and be in a position to either retain or continually access it.

13.3 Was 10.3

Text added for clarity.

13.4 Was 10.4

13.5 Was 10.5

Text added for clarity.

13.6 Was 10.6

10.7 Deleted as the relevant information is now included in the Introduction.

14. Employment and Business Opportunities

14.1 Was 11.1

Employment

14.2 Was 11.2

14.3 New
“Vacancies should be accurately described with sufficient detail to ensure that respondents are aware of the scope and duties likely to be involved, and whether the position is for temporary or permanent work.”

14.4 New
“Employment agencies and employment businesses should make clear in their marketing communications their full names and contact details.”

Business Opportunities

14.5 Was 11.3

Homework Schemes

14.6 Was 11.4
“of the company” deleted as it was considered superfluous language.

14.7 Was 11.5

14.8 Was 11.6
“be fully informed in advance as to the existence and content of” added for clarity.

14.9 New
“Advertisers should not exaggerate the support available to homeworkers.”

Training Courses

14.10 Was 11.7

Directories

14.11 Was 11.8

15. Environmental Claims

New Definitions added in order to provide better meaning and clarity to the rules in this section.

15.1 *“The following definitions apply in this Code Section:*

- a) *“Environment” includes but is not limited to, ecosystems and their constituent parts, including people and communities, natural and physical resources, and the qualities and characteristics or locations, places and areas.*
- b) *“Environmental claim” means, but is not limited to, any statement, symbol or graphic that indicates an environmental aspect of a service, product, component or packaging, and includes references to sustainability, recycling, carbon neutrality, energy efficiency, use of natural products or impact on animals and the natural environment.*
- c) *“Environmental impact” means any change to the environment, whether adverse or beneficial, wholly or partially resulting from an organisation’s activities or products.*
- d) *“Lifecycle” means consecutive and interlinked stages of a product from raw material acquisition or generation of natural resources to final disposal or use, and recycling.”*

15.2 **Was 12.1 – Amended and**

“Absolute claims should be supported by a high level of substantiation” added to the text in order to raise the standard of substantiation provided when the claims are absolute.

15.3 **Was 12.2**

Final sentence *“Qualified claims should also be capable of substantiation”* added for emphasis.

15.4 **Was 12.4**

The order of sections has changed for a more logical sequence to be presented.

15.5 **Was 12.3**

15.6 **New**

“Advertisers should base environmental claims on the full lifecycle of the advertised product, unless the marketing communication states otherwise, and should make clear the limits of the lifecycle. If a general lifecycle claim cannot be justified, a more limited claim about specific aspects of a product might be justifiable. Advertisers should ensure claims that are based on only part of the advertised product’s lifecycle do not mislead consumers about the product’s total environmental impact.”

This was added as there was a feeling expressed by contributors to our consultation process that often the environmental claims made about products relate to the completed product, but fail to mention any environmental damage caused during the creation or disposal of a product.

15.7 **Was 12.5**

15.8 **New**
“Marketing communications should not mislead consumers about the environmental benefit that a product offers; for example, by highlighting the absence of an environmentally damaging ingredient if that ingredient is not usually found in competing products or by highlighting an environmental benefit that results from a legal obligation if competing products are subject to that legal obligation.”

Added in order to ensure that a claim that a certain substance is not used is not made, in circumstances where you wouldn't find that substance in any competing products.

15.9 **Was 12.6**

15.10 **Was 12.7**
Expanded for clarity.

15.11 **Was 12.8**

15.12 **New**
“Marketing communications for waste oil burners should include a statement that the operator should have a licence to operate that oil burner.”

16. Occasional Trading

16.1 Was 13.1

16.2 Was 13.2
“*Marketing communications*” used for consistency of language.

16.3 Was 13.3

16.4 Was 13.4

17. E-Cigarettes – NEW SECTION

Section 17 ‘E-Cigarettes’ is a new addition to the Code. It was apparent from our consultation with Industry and the Public that there was a demand for some clarity around advertising and marketing of these products. In writing these rules, we were informed by the comments received during the consultation, and also the rules, and experience of other jurisdictions self-regulatory organisations.

Introduction

For the purposes of this Section “electronic cigarette” means a product that is intended for inhalation of vapour via a mouth piece, or any component of that product, including but not limited to cartridges, tanks or e-liquids. The rules in this section apply to marketing communications for, and which refer to, electronic cigarettes including but not limited to e-shisha and e-hookah products, whether or not they contain nicotine and to products which in the opinion of the ASAI are sufficiently similar to electronic cigarettes and such products so as to warrant application of the rules set out in this Section.

The majority of e-cigarettes are currently sold as consumer goods, however advertisers may seek a medicines licence for their product from the Health Products Regulatory Authority (HPRA). The rules in this Section also apply to marketing communications for electronic cigarettes which are authorised by the HPRA. For products authorised as medicines, the rules in Section 11: Health and Beauty also apply

Depending on the formulation of their product and the means by which it is supplied, advertisers may have obligations relating to their advertising under chemical classification, labelling and packaging legislation. Advertisers are encouraged to take legal advice to ensure compliance with the law.

Tobacco Products Directive

Directive 2014/40/EU (on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC) is now in force but has not yet been given effect in Irish law. The Irish Government is required to transpose its provisions by 20 May 2016, with a further transitional period for non-compliant e-cigarette products until 20 November 2016. Those provisions include restrictions on advertising.

- 17.1 *Marketing communications for e-cigarettes should be socially responsible.*
- 17.2 *Marketing communications should not contain anything which promotes any design, imagery or logo style that might reasonably be associated in the audience’s mind with a tobacco brand.*
- For example, if an E-cigarette were to use a well-known tobacco label’s colouring together with font, this would be in breach of this code rule.
- 17.3 *Marketing communications should contain nothing which promotes the use of a tobacco product or shows the use of a tobacco product in a positive light. This rule is not intended to prevent cigarette-like products being shown.*
- 17.4 *Marketing communications should make clear that the product is an e-cigarette and not a tobacco product.*

- 17.5** *Marketing communications should not contain health or medicinal claims unless the product is authorised for those purposes by the HPRA. E-cigarettes may be presented as an alternative to tobacco but advertisers should do nothing to undermine the message that quitting tobacco use is the best option for health.*
- 17.6** *Advertisers should not use health professionals or celebrities to endorse electronic cigarettes.*
- 17.7** *Marketing communications should state clearly if the product contains nicotine. They may include factual information about other product ingredients.*
- 17.8** *Marketing communications should not encourage non-smokers or non-nicotine-users to use e-cigarettes.*
- 17.9** *Marketing communications should not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18. People shown using e-cigarettes or playing a significant role should not be shown behaving in an adolescent or juvenile manner.*
- 17.10** *People shown using e-cigarettes or playing a significant role should neither be, nor seem to be, under 25. People under 25 may be shown in an incidental role but should be obviously not using e-cigarettes.*

The concept of this rule is already used in the Alcohol Code rules. If a person who appears in an advertisement using an e-cigarette looks to the objective observer to be under 25, then this will be a breach of the Code, notwithstanding the fact that the actor/model is indeed over 25.

- 17.11** *Marketing communications should not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise e-cigarettes if more than 25% of its audience is under 18 years of age.*

18. OBA

Full Section moved from Appendices with some small language change for consistency