

Energy labelling

CAP and BCAP Consultation

CAP and BCAP consultation on energy labelling

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1. Executive Summary

On 20 July 2011, the Energy Information Regulations 2011 ('the Regulations') which transpose European Directive 2010/30/EU will come into effect in the UK. The Regulations establish a framework for energy labelling and standard product information requirements for specific energy-related products. The Regulations contain two provisions for advertising and CAP and BCAP¹ are seeking views on how the Advertising Codes² should reflect the new legislation.

¹ Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP).

² CAP Code: the UK Code of Advertising, Sales Promotion and Direct Marketing and BCAP Code: Code of Broadcast Advertising

2. Introduction to CAP, BCAP and the ASA

The Committee of Advertising Practice

The Committee of Advertising Practice (CAP) is the self-regulatory body that creates, revises and enforces the CAP Code: the UK Code of Advertising, Sales Promotion and Direct Marketing.

The CAP Code covers non-broadcast marketing communications, which include advertisements placed in traditional and new media, sales promotions, direct marketing communications and marketing communications on marketers' own websites. The advertiser has primary responsibility for complying with the CAP Code and compliance is not voluntary. Parties that do not comply with the CAP Code could be subject to adverse publicity resulting from adjudication by the Advertising Standards Authority (ASA) or sanctions including the denial of media space, for example.

CAP's members include organisations that represent the advertising, sales promotion and direct marketing and media businesses. Through their membership of CAP member organisations, or through contractual agreements with media publishers and carriers, those businesses agree to comply with the Code so that marketing communications are legal decent, honest and truthful, and consumer confidence is maintained.

By practising self-regulation, the marketing community ensures the integrity of advertising, promotions and direct marketing. The value of self-regulation as an alternative to statutory control is recognised in EC Directives, including on misleading advertising (Directive 2005/29/EC). Self-regulation is accepted by the Department for Business, Innovation and Skills and the Office of Fair Trading as a first line of control in protecting consumers and the industry.

Information about CAP is available at www.cap.org.uk, which includes a copy of the present CAP Code.

The Broadcast Committee of Advertising Practice

The Broadcast Committee of Advertising Practice (BCAP) is the regulatory body responsible for maintaining the UK Code of Broadcast Advertising (the BCAP Code) under a contracting-out agreement with the Office of Communications (Ofcom).

Ofcom has statutory responsibility, under the Communications Act 2003, for maintaining standards in TV and radio advertisements. Ofcom entrusted BCAP and the broadcast arm of the ASA with the regulation of broadcast advertisements in 2004 in recognition of CAP and the ASA's successful regulation of non-broadcast advertisements for over 40 years and in line with better regulation principles.

The BCAP Code regulates all advertisements on television channels and radio stations licensed by Ofcom and all advertisements on Sianel Pedwar Cymru (S4C) and S4C digital, including teleshopping channels and any additional television service (including television text services and interactive television services). The BCAP Code is enforced against Ofcom-licensed broadcasters, Sianel Pedwar Cymru (S4C) and S4C digital. Broadcasters are required by the terms of their Ofcom licence, and, for S4C, by statute, to observe the standards set out in the BCAP Code.

The members that make up BCAP include broadcasters and trade associations representing advertisers, broadcasters and agencies. BCAP must seek advice on proposed Code changes from an expert consumer panel, the Advertising Advisory Committee (AAC). In accordance with section 324 of the Communications Act 2003, BCAP must consult on proposed Code changes. BCAP strives to ensure that its rule drafting is transparent, accountable, proportionate, consistent and targeted where action is needed, in accordance with the Communications Act 2003. Ofcom must approve Code changes before BCAP implements them.

Information about BCAP and the AAC is available at www.cap.org.uk, which includes the BCAP Code.

Information about Ofcom is available at www.ofcom.org.uk.

The Advertising Standards Authority

The Advertising Standards Authority (ASA) is the independent body responsible for administering the CAP and BCAP Codes so that all marketing communications are legal, decent, honest and truthful, ensuring that the self-regulatory system works in the public interest.

The ASA receives and investigates complaints from the public and industry. Decisions on investigated complaints are taken by the independent ASA Council. The ASA Council's adjudications are published on the ASA's website, www.asa.org.uk, and made available to the media. An Independent Review Procedure exists for interested parties.

If the ASA Council upholds a complaint, the marketing communication must be withdrawn or amended. CAP conducts compliance, monitoring and research to enforce the ASA Council's decisions.

The ASA's work in regulating non-broadcast marketing communications is funded by a levy on the cost of advertising space, administered by the Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards Board of Finance (Basbof). Both finance boards operate independently of the ASA to ensure there is no question of funding affecting the ASA's decision-making.

Information about the ASA, including the complaint-handling and investigations procedures and the ASA's independent review procedure, is available at www.asa.org.uk. Information about Asbof and Basbof F is available at www.asbof.co.uk.

3. Policy background

The Energy Information Regulations 2011, which come into force on 20 July 2011, transpose European Directive 2010/30/EU and establish a framework for energy labelling and standard product information requirements for specific energy-related products. Under this framework, the European Commission is empowered to bring forward individual product-specific measures (delegated acts) introducing labelling and information requirements on a product by product basis.

The Regulations replace a number of UK energy efficiency labelling regulations and stakeholders should contact Defra for further details on the Regulations that will be replaced.

The new Regulations establish a regime for the labelling of products which fall within the scope of delegated regulations. The Regulations are intended to ensure that consumers are provided with full information about energy consumption to allow them to make informed choices about the products they buy. Key concepts include:

- “Energy efficiency class”: every product is rated on a scale, from highly energy efficient (dark green) to the least energy efficient (red). The classes are also rated from A (most efficient) to G (least efficient). Additional classes (A+, A++ and A+++) may be added to the label if the top classes become saturated with products.
- “Label”: this is attached to the product and included in any advertisement and contains summary information about energy consumption.
- “Fiche”: this is a document containing information about the technical specification and performance of the product.

The Energy Information Regulations 2011 transpose two provisions for advertising:

- Part 6, clause 10 (2)

If a product is offered for sale, hire, hire-purchase, displayed to end users directly or indirectly by any means of distance selling including the internet and that product is built or installed, the information need only be displayed if required by the relevant EU measure.

- Part, 6, clause 10 (3)

Any person who advertises a specific model of a product regulated by an EU measure must, when energy-related or price information is disclosed, include a reference to the energy efficiency class of the product as set out in the EU measure.

The Secretary of State for Environment Food and Rural Affairs (Defra) is responsible for enforcing the requirements of the Energy Information Regulations 2011. The Secretary of State has nominated the National Measurement Office (NMO) to enforce the Regulations on her behalf.

Following an approach from Defra for the ASA and B/CAP to be the first line of control for the provisions in the Regulations that relate to advertising, B/CAP proposes to introduce new rules into the Codes. The Codes do not include all statutory provisions relating to advertising but they do include those that are significant, especially in terms of their coverage. In the case of energy labelling, the Regulations will affect most ads for products subject to a delegated regulation. B/CAP considers that it would be useful for advertisers of these products, especially manufacturers and retailers, if the requirements were made clear in the Codes.

NMO, Defra and Trading Standards will, if appropriate, pass all such complaints which they receive to the ASA. All complaints received by the ASA relating to the presence of a product’s energy efficiency class rating or fiche in an advertisement would be dealt with in accordance the ASA’s published complaints handling procedures.³ For non-compliance with the rules B/CAP will apply its existing sanctions which may include ad alerts, trade body pressure, removal of mail sort contract discounts and compulsory pre-vetting of non-broadcast advertising by CAP’s Copy Advice team. In the event

³ <http://www.asa.org.uk/Complaints/Complaints-Procedure.aspx>

that B/CAP was unable to secure advertiser compliance through its self-regulatory sanctions it would refer the matter to the NMO for further consideration and possible action, which may include statutory sanctions.

4. Proposed additions to the Codes

Regulation	Proposed additions to the Codes
<p>Part 6, clause 10 (2)</p> <p>If a product is offered for sale, hire, hire-purchase, displayed to end users directly or indirectly by any means of distance selling including the internet and that product is built or installed, the information need only be displayed if required by the relevant EU measure.</p>	<p>Proposed additions to the Codes</p> <p>CAP Code</p> <p>Distance Selling section:</p> <p>This rule must be read in conjunction with Directive (EC) No 2010/30/EU and the Energy Information Regulations 2011 on labelling and standard product information of the consumption of energy and other resources by energy-related products and its subsequent delegated regulations. The Directive introduces an information and labelling framework whereby delegated regulations will detail which products need to contain an energy efficiency rating or fiche. The rule only applies to products which are subject to a delegated regulation. For more information on delegated regulations, go to http://ec.europa.eu/energy.</p> <p>9.10 Marketers must make product fiche information about products that fall under delegated regulations available to consumers before commitment.</p> <p>BCAP Code</p> <p>Distance Selling section:</p> <p>This rule must be read in conjunction with Directive (EC) No 2010/30/EU and the Energy Information Regulations 2011 on labelling and standard product information of the consumption of energy and other resources by energy-related products and its subsequent delegated regulations. The Directive introduces an information and labelling framework whereby delegated regulations will detail which products need to contain an energy efficiency rating or fiche. The rule only applies to products which are subject to a delegated regulation.</p> <p>For more information on delegated regulations, go to http://ec.europa.eu/energy.</p> <p>8.6 Advertisers must make product fiche information available about products that fall under delegated regulations to consumers before commitment.</p>

Part 6, clause 10 (3)

Any person who advertises a specific model of a product regulated by an EU measure must, when energy-related or price information is disclosed, include a reference to the energy efficiency class of the product as set out in the EU measure.

CAP Code

Environmental section:

This rule must be read in conjunction with Directive (EC) No 2010/30/EU and the Energy Information Regulations 2011 on labelling and standard product information of the consumption of energy and other resources by energy-related products and its subsequent delegated regulations. The Directive introduces an information and labelling framework whereby delegated regulations will detail which products need to contain an energy efficiency rating or fiche. The rule only applies to products which are subject to a delegated regulation.

For more information on delegated regulations, go to <http://ec.europa.eu/energy>.

11.8 Marketing communications for specific energy-related products, subject to a delegated regulation, that include energy-related information or disclose price information, must include a reference to the product's energy efficiency class i.e. in the range A+++ to G.

BCAP Code

Environmental section:

This rule must be read in conjunction with Directive (EC) No 2010/30/EU and the Energy Information Regulations 2011 on labelling and standard product information of the consumption of energy and other resources by energy-related products and its subsequent delegated regulations. The Directive introduces an information and labelling framework whereby delegated regulations will detail which products need to contain an energy efficiency rating or fiche. The rule only applies to products which are subject to a delegated regulation.

For more information on delegated regulations, go to <http://ec.europa.eu/energy>.

9.9 Advertisements for specific energy-related products, subject to a delegated regulation, that include energy-related information or disclose price information must include a reference to the product's energy efficiency class i.e. in the range A+++ to G.

5. How to respond to this consultation

Consultation question

Do you agree to the wording of the proposed new CAP and BCAP rules? If not, please explain why.

CAP and BCAP invite written comments on the proposals contained in this document and the consultation question above, by 5.00pm on 22 August 2011.

When responding, please state whether you are doing so as an individual or are representing an organisation. Also, please make clear what your individual interest is or who your organisation represents. It will be helpful if you explain fully and clearly why you hold your opinion.

We strongly prefer to receive responses as e-mail attachments, in Microsoft Word format, because that helps us to process the responses. Please send your response to hayleyf@cap.org.uk.

If you are unable to reply by e-mail, you may submit your response by post or fax (+44 (0)20 7404 3404), marked with the title of the consultation, to:

Hayley Fletcher
Committee of Advertising Practice
Mid City Place
71 High Holborn
London WC1V 6QT

More information

If you have any questions about this consultation or need advice on the form of response, please telephone the Code Policy team on +44 (0)20 7492 2200.

Confidentiality

CAP and BCAP consider that everyone who is interested in the consultation should see the consultation responses. We shall publish all non-confidential responses on our website, www.cap.org.uk, usually within three months of the end of the consultation.

All comments will be treated as non-confidential unless you state that all or a specified part of your response is confidential and should not be disclosed. If you reply by e-mail or fax, unless you include a specific statement to the contrary in your response, the presumption of non-confidentiality will override any confidentiality disclaimer generated by your organisation's IT system or included as a general statement on your fax cover sheet.

If part of a response is confidential, please put that in a separate annex so that non-confidential parts can be published with your identity. Confidential responses will be included in any statistical summary of the number of comments received.

6. List of consultees

In addition to the consultees listed here, B/CAP has asked Defra to send this document to their own list of relevant stakeholders.

ADVERTISING STANDARDS AUTHORITY FOR IRELAND

ALDI STORES LIMITED

ARGOS LTD

ASDA STORES LIMITED

BCAP MEMBERS

BRITISH AND IRISH OMBUDSMAN ASSOCIATION

BARTLE BOGLE HEGARTY LTD

BETTER REGULATION COMMISSION

BRITISH RETAIL CONSORTIUM

CAP MEMBERS

CENTRAL OFFICE OF INFORMATION

CHARTERHOUSE ADVERTISING & MARKETING LTD

CMS CAMERON MCKENNA LLP

COMET GROUP PLC

CONSUMER FOCUS LTD

DEPARTMENT FOR BUSINESS, INNOVATION AND SKILLS

DEPARTMENT FOR CULTURE MEDIA & SPORT

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

DSG RETAIL LIMITED

ELECTRONIC RETAILERS' ASSOCIATION

EURO RSCG LONDON LIMITED

EUROPEAN ADVERTISING STANDARDS ALLIANCE

FRIENDS OF THE EARTH LIMITED

GREENPEACE LIMITED

HALFORDS LTD

HOMEBASE LIMITED

INTERNATIONAL CHAMBER OF COMMERCE UK

J SAINSBURY PLC

JOHN LEWIS PARTNERSHIP PLC

IDEAL SHOPPING DIRECT P L C

LAW SOCIETY OF ENGLAND AND WALES

LAW SOCIETY OF NORTHERN IRELAND

LAW SOCIETY OF SCOTLAND

LG ELECTRONICS UK LTD

LEWIS SILKIN LLP

LOCAL BETTER REGULATION OFFICE

LOVELLS LLP

MARKS & SPENCER P.L.C

MINISTRY OF JUSTICE

NATIONAL CONSUMER FEDERATION

NATIONAL CONSUMER RIGHTS PROTECTION BOARD

OFCOM TELEVISION AND RADIO LICENCEES

OFFICE OF FAIR TRADING

OSBORNE CLARKE

QVC

RADIOCENTRE LIMITED

SOLICITORS REGULATION AUTHORITY

TESCO STORES LIMITED

THE NATIONAL ASSOCIATION OF CITIZENS ADVICE BUREAUX

THE TRADING STANDARDS INSTITUTE

WHICH?