

The Online Safety and Media Regulation Bill 2022 was published in January 2022. It proposes to amend the Broadcasting Act 2009 (as amended) otherwise referred to as 'the Principal Act'.

To make it easier to read this Bill without having to refer to multiple pieces of legislation, the Children's Rights Alliance has consolidated the provisions of the existing legislation – using the revised 2021 version of the Principal Act published by the Law Reform Commission – and the proposed provisions into a single document. We have tracked changes to indicate where there is a proposed insertion or a deletion of text. We will make this document available to support our members and sectoral colleagues working on this important piece of legislation.

We would like to thank Noeleen Healy BL, former Catherine McGuinness Fellow with the Children's Rights Alliance, for her work in preparing this consolidated legislation.

**Disclaimer:** While the Children's Rights Alliance has taken every care in the preparation of this consolidated Bill, it assumes no responsibility for and gives no guarantees, undertakings or warranties concerning the accuracy, completeness or up-to-date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions.



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*Number 18 of 2009*

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**BROADCASTING ACT 2009**

**REVISED**

**Updated to 14 July 2021**

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This revised Act is an administrative consolidation of the *Broadcasting Act 2009*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Act 2021* (21/2021), enacted 14 July 2021, and all statutory instruments up to and including the *Broadcasting (Transfer of Departmental Administration and Ministerial Functions) Order 2021* (S.I. No. 402 of 2021), made 14 July 2021, were considered in the preparation of this Revised Act.

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**Introduction**

This revision presents the text of the Act as it has been amended since enactment, and preserves the format in which it was first passed.

**Related legislation**

**Broadcasting (Offences) Acts 1968 to 2009:** this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Broadcasting Act 2009* (18/2009), s. 180(2)). The Acts in this group are:

- *Broadcasting (Offences) Act 1968* (35/1968)
- *Broadcasting and Wireless Telegraphy Act 1988* (19/1988), other than ss. 2, 9, 10, 11, 12, 16, 17 and 19
- *Broadcasting Act 1990* (24/1990), ss. 9 to 16
- *Broadcasting Act 2009* (18/2009), ss. 181(8), (10) and (11)

**Wireless Telegraphy Acts 1926 to 2009:** this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Broadcasting Act 2009* (18/2009), s. 180(1)). The Acts in this group are:

- *Wireless Telegraphy Act 1926* (45/1926)
- *Broadcasting Authority Act 1960* (10/1960), in so far as it amends the *Wireless Telegraphy Acts 1926 and 1956*
- *Wireless Telegraphy Act 1972* (5/1972)
- *Broadcasting and Wireless Telegraphy Act 1988* (19/1988), ss. 2, 9, 10, 11, 12, 14, 15, 16, 17 and 19
- *Broadcasting Act 2009* (18/2009), ss. 181(1) to (7) and (9), 182

Acts previously included in the group but now repealed are:

- *Wireless Telegraphy Act 1956* (4/1956)
- *Broadcasting Authority (Amendment) Act 1964* (4/1964), in so far as it amends the *Wireless Telegraphy Acts 1926 and 1956*
- *Broadcasting Authority (Amendment) Act 1966* (7/1966), in so far as it amends the *Wireless Telegraphy Acts 1926 and 1956*
- *Broadcasting Authority (Amendment) Act 1971* (2/1971), in so far as it amends the *Wireless Telegraphy Acts 1926 and 1956*

**Annotations**

This revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

**Material not updated in this revision**

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1972, may be found in the Legislation Directory at [www.irishstatutebook.ie](http://www.irishstatutebook.ie).



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*Number 18 of 2009*

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**BROADCASTING ACT 2009**

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**Updated to 14 July 2021**

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Registration of Clubs (Ireland) Act 1904	4 Edw. 7, c. 9
Road Traffic Act 1961	1961, No. 24
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Number 18 of 2009

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**BROADCASTING ACT 2009**

**REVISED**

**Updated to 12 November 2020**

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AN ACT TO REVISE THE LAW RELATING TO BROADCASTING SERVICES AND CONTENT AND FOR THAT PURPOSE TO ESTABLISH AN AUTHORITY TO BE KNOWN AS, IN THE ENGLISH LANGUAGE, THE BROADCASTING AUTHORITY OF IRELAND OR, IN THE IRISH LANGUAGE, ÚDARÁS CRAOLACHÁIN NA hÉIREANN, TO DISSOLVE THE BROADCASTING COMMISSION OF IRELAND AND THE BROADCASTING COMPLAINTS COMMISSION, TO AMEND AND REPEAL CERTAIN ENACTMENTS RELATING TO BROADCASTING, TO PROVIDE FORMATTERS RELATING TO TELEVISION LICENCES, TO PROVIDE FOR THE REGULATION AND PROVISION OF TELECOMMUNICATIONS SERVICES AND TO PROVIDE FOR CONNECTED MATTERS.

[12th July, 2009]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

**PART 1**

PRELIMINARY AND GENERAL MATTERS

Short title.           **1.**— This Act may be cited as the Broadcasting Act 2009<sup>1</sup>.

Definitions.           **2.** ~~(1)~~— In this Act—<sup>2</sup>

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<sup>1</sup> The 2022 Bill states that the Principal Act and the 2022 Act may be cited as the Broadcasting and Other Media Regulation Acts 2009 and 2022 (s.1(2) of 2022 Bill

<sup>2</sup> The 2022 Bill provides the following additional definitions in s.2 which do operate as an amendment the 2009 Act: In this Act—

“Authority” means the Broadcasting Authority of Ireland;

“Commission” means Coimisiún na Meán established under section 6 of the Principal Act as inserted by section 7;

“Compliance Committee” means the Compliance Committee established by section 6 of the Principal Act as that section had effect immediately before the date of coming into operation of section 7;

“Contract Awards Committee” means the Contract Awards Committee established by section 6 of the Principal Act as that section had effect immediately before the date of coming into operation of section 7;

“establishment day” means the establishment day appointed under section 5 of the Principal Act as substituted by section 7;

“Minister” means the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media; “Principal Act” means the Broadcasting Act 2009;

“Act of 1926” means Wireless Telegraphy Act 1926;

“Act of 1972” means Wireless Telegraphy Act 1972;

“Act of 1988” means Broadcasting and Wireless Telegraphy Act 1988;

“Act of 1998” means Referendum Act 1998;

“Act of 2001” means Broadcasting Act 2001;

“‘advertisement’ includes a commercial communication;

‘audiovisual broadcasting service’ means an audiovisual media service provided for simultaneous or near-simultaneous viewing of audiovisual programmes on the basis of a programme schedule; 5

‘audiovisual commercial communication’ means a commercial communication consisting of images with or without sound;

‘audiovisual media service’ means a service, within the meaning of Articles 56 and 57 of the Treaty on the Functioning of the European Union, where— 10

(a) the principal purpose of the service is devoted to, or

(b) the principal purpose of a dissociable section of the service is devoted to,

providing audiovisual programmes, by electronic communications networks, to the general public, under the editorial responsibility of the provider of the service, in order to inform, entertain or educate; 15

‘audiovisual on-demand media service’ means an audiovisual media service provided for the viewing of programmes at the moment chosen by the user and at the user’s request on the basis of a catalogue of programmes selected by the provider of the service; 20

‘audiovisual programme’ means a set of moving images with or without sound which, in the case of an audiovisual media service, constitutes an individual item, irrespective of its length, within a programme schedule or a catalogue;”.

“Authority” means Broadcasting Authority of Ireland;

~~“BCC” means Broadcasting Complaints Commission;~~

“BCI” means Broadcasting Commission of Ireland;



PT. 1 S. 2.

[No. 18.]

*Broadcasting Act 2009*

[2009.]

“broadcast” means the transmission, relaying or distribution by electronic communications network of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;

“broadcaster” means a person who supplies a compilation of programme material for the purpose of its being transmitted, relayed or distributed as a broadcasting service (whether that person transmits, relays or distributes that material as such a service or not);

~~“broadcasting code” means a code prepared under section 42;~~

“broadcasting contract” means a contract entered into under section 63, 64 , 68 or 70 ;

“broadcasting contractor” means a person holding a broadcasting contract;

~~“broadcasting rules” means rules prepared under section 43;~~

“broadcasting service” means a service which comprises a compilation of programme material of any description and which is transmitted, relayed or distributed by means of an electronic communications network, directly or indirectly for simultaneous or near-simultaneous reception by the general public, whether that material is actually received or not, and where the programmes are provided in a pre-scheduled and linear order, but does not include:

(a) a service provided in a non-linear manner where each user of the service chooses a programme from a catalogue of programmes, or

(b) any other service which is provided by way of the internet, if the service does not provide audiovisual programmes;”

~~other audio and audiovisual services provided by way of the Internet;~~

“category 1 offence’ means an offence the penalties for which are specified in section 139ZZ(1);

‘category 2 offence’ means an offence the penalties for which are specified in section 139ZZ(2);

‘category 3 offence’ means an offence the penalties for which are 35 specified in section 139ZZ(3);

‘Charter’ means the Charter of Fundamental Rights of the European Union;”

“children’ means persons under the age of 18 years;

~~“commercial communication’ means images or sound or both—~~

- (a) designed to promote, directly or indirectly, the goods, services or image of a person pursuing an economic activity, and
  - (b) included in or accompanying a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes;
- ‘Commissioner’ has the meaning given by section 11(2);’

“Communications Regulator” means Commission for Communications Regulation;

“communications media” means—

- ~~(a) the provision of a broadcasting service,~~
- ~~(b) the provision of a broadcasting services platform, or~~
- ~~(c) the publication of newspapers or periodicals consisting substantially of news and comment on current affairs;~~

- (a) broadcasting services,
- (b) audiovisual on-demand media services,
- (c) designated online services, or
- (d) newspapers or periodicals consisting substantially of news and comment on current affairs;’

“community broadcaster” means a person holding a contract under *sections 64, 68(1)(b) or 72*;

“community of interest” means a group of persons with a shared interest, association or bond;

~~“Compliance Committee” means the committee of the Authority established to undertake the functions set out in *section 28*;~~

“content provision contract” has the meaning assigned to it in *section 71*;

~~“Contract Awards Committee” means the committee of the Authority established to undertake the functions set out in *section 27*;~~

“corporation” means RTÉ or TG4 or both, as the case may be;

“Council Directive” means Council Directive 89/552/EEC of 3 October 1989 <sup>1</sup> on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities as amended by Directive 97/36/EC of the European Parliament and of the Council of

<sup>1</sup>OJ No. L 298/23, 17.10.1989

30 June 1997<sup>2</sup> and by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007<sup>3</sup>;

“Data Protection Regulation’ means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>3</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 2009/46/EC (General Data Protection Regulation);

‘designated online service’ means a service designated under section 139E;

‘Directive’ means Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010<sup>1</sup> on the coordination of certain 25 provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018<sup>2</sup>;”,

“director general” means a person appointed as the director general of a corporation under *section 89 (1)*;

“‘editorial responsibility’, in relation to providing programmes, means effective control—

(a) over the selection of the programmes, and

(b) over their organisation in a programme schedule or in a catalogue;”,

“electronic communications network” means transmission systems including, where applicable—

- (a) switching equipment,
- (b) routing equipment, or
- (c) other resources,

which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, and such conveyance includes the use of—

- (i) satellite networks,
- (ii) electricity cable systems, to the extent that they are used for the purposes of transmitting signals,
- (iii) fixed terrestrial networks (both circuit-switched and packet-switched, including the Internet),
- (iv) mobile terrestrial networks,
- (v) networks used for either or both sound and television broadcasting, and
- (vi) cable television and internet protocol television networks,

irrespective of the type of information conveyed;

“EEA Agreement” has the meaning assigned to it in the European Communities (Amendment) Act 1993;

~~“electronic programme guide” has the meaning assigned to it by section 74;~~

~~“electronic programme guide contract” has the meaning assigned to it by section 74;~~

“employment” includes—

- ~~(a) full-time employment,~~
- ~~(b) part-time paid employment, where such employment is ongoing in the year of appointment or which arises in subsequent years,~~
- ~~(c) temporary paid employment, being for a period of 16 weeks or more in the year of appointment or in subsequent years, or~~
- ~~(d) being retained under contract, directly or indirectly, in any capacity as an adviser, consultant or lobbyist, or for the provision of services, by or in any business related to the functions of the public body concerned;~~

(a) full-time paid employment,

(b) part-time paid employment,

(c) temporary paid employment for a period of 16 weeks or more in the period of a year, or

(d) being retained under contract, directly or indirectly, in any capacity as an adviser, consultant or lobbyist, or for the provision of services;”,

~~“establishment day” means the day appointed by the Minister under section 5 to be the establishment day for the purposes of Part 2, sections 49, 157 and Part 12;~~

“‘establishment day’ means the day appointed by the Minister under section 5 to be the establishment day for the purposes of this Act;”,

~~“excepted person” means a person who is under the jurisdiction of another Member State and, for the purposes of this definition, the Council Directive applies for the purpose of determining the state under the jurisdiction of which the person falls;~~

<sup>2</sup>OJ No. L 202/60, 30.07.1997

<sup>3</sup>OJ No. L 332, 18.12.2007

“exploitation of commercial opportunities object” means an activity undertaken by a corporation in pursuance of *paragraph (j) of section 114(1) or paragraph (i) of section 118(1)*;

“free-to-air service” means a broadcasting service for the reception of which no charges made by the person providing the service;

“harmful online content’ has the meaning given by section 139A(1);”

“holder” means—

- (a) in relation to a contract entered into under this Act, the person with whom the Authority has entered into the contract,
- (b) in relation to a licence granted under this Act or any other enactment, the person to whom the licence has been granted;

“holding company” has the same meaning as in the ~~Companies Act 1963~~ Companies Act 2014;

~~“interests” includes—~~

- ~~(a) employment by or on behalf of—
 
  - ~~(i) any business related to the functions of the public body concerned,~~
  - ~~(ii) any organisation representative of any business related to the functions of the public body concerned,~~~~
- ~~(b) ownership of any business related to the functions of the public body concerned,~~
- ~~(c) shares in, bonds or debentures of, or other like investments in any business related to the functions of the public body concerned, where the aggregate of such holdings exceeds €13,000,~~
- ~~(d) a directorship or shadow directorship (within the meaning of the Companies Acts) in any business related to the functions of the public body concerned, held currently or during the previous two years, or~~
- ~~(e) gifts of travel, holidays, transport or other benefits (in excess of €650), including benefits from any beneficial interest in or connected with any business related to the functions of the public body concerned, during the previous two years which were received by the person concerned or by his or her spouse;~~

“Joint Oireachtas Committee” means a Joint Committee of the Houses of the Oireachtas to which those Houses have assigned the role of examining matters ~~relating to broadcasting to which this Act relates~~;

“local community” means the community of a town or other urban or rural area;

~~“media literacy” means to bring about a better public understanding of:~~

- ~~(a) the nature and characteristics of material published by means of broadcast and related electronic media,~~
- ~~(b) the processes by which such material is selected, or made available, for publication by broadcast and related electronic media,~~
- ~~(c) the processes by which individuals and communities can create and publish audio or audio-visual material by means of broadcast and related electronic media, and~~
- ~~(d) the available systems by which access to material published by means of broadcast and related electronic media is or can be regulated;~~

“media literacy’ means public understanding of material published in print.

broadcast, online or other media, including understanding of—

(a) the nature and characteristics of published material,

(b) how material is selected, or made available, for publication,

(c) how individuals and communities can create and publish material, \_\_\_\_\_ and

(d) how access to published material is or can be regulated;”

‘media service code’ means a code made under section 46N;

‘media service provider’ means a person who provides an audiovisual media service;

‘media service rules’ means rules made under section 46O;”.

“Member State” includes a state that is a contracting state to the EEA Agreement;

“Minister” means Minister for Communications, Energy and Natural Resources;

~~“MMD system” means a multipoint microwave distribution system used for the transmission of broadcasting services on a point to multipoint basis;~~

“multiplex” has the meaning assigned to it by *section 129*;

“multiplex contractor” means the holder of a contract entered into under *section 131*;

“multiplex licence” has the meaning assigned to it by *section 129*;

“national emergency” means an emergency declared under *section 10* of the Act of 1926;

‘online safety code’ means a code made under *section 139K*;

~~“ownership” includes any proprietary interest in any business related to the functions of the public body concerned, whether that interest is freehold, leasehold or beneficial, and applies where the interest—~~

~~(a) is held solely by the person concerned or shared with one or more persons, and~~

~~(b) has a value of €5,000 or more;~~

‘personal data’ has the same meaning as it has in the Data Protection Regulation;

‘programme’ means a sound programme or audiovisual programme;

“programme material” subject to *section 153* means audio-visual material or audio material and includes advertisements ~~and material which, when transmitted, will constitute a direct offer to the public for the sale or supply to them of goods or other property (whether real or personal) or services;~~

“‘programme schedule’ means a chronological schedule of audiovisual programmes;

“provide a broadcasting service” means to supply a compilation of programme material for the purpose of its being transmitted, relayed or distributed as a broadcasting service;

‘provider of communications media’ means—

(a) in the case of a broadcasting service, the broadcaster of the service,

(b) in the case of an audiovisual on-demand media service, the media service provider who provides the service,

(c) in the case of a designated online service, the person who controls the service, and in the case of newspapers or periodicals consisting substantially of news and comment on current affairs, the person who controls the newspaper or periodical;

“public service broadcaster” means RTÉ, TG4, the Houses of the Oireachtas Channel and the Irish Film Channel;

“public service broadcasting licence” means a licence issued under *section 121*;

“public service objects” shall mean an activity undertaken by a corporation in pursuance of *paragraphs (a) to (i) of section 114 (1) or paragraphs (a) to (h) of section 118 (1)*;

“Raidió Teilifís Éireann” means the authority established under *section 3* of the Broadcasting Authority Act 1960;

‘relevant online service’ means—

(a) a video-sharing platform service the provider of which is under the jurisdiction of the State, or

(b) any other information society service, within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015<sup>4</sup>—

(i) the provider of which is under the jurisdiction of the State, and

(ii) on which user-generated content is made available (directly or through providing access to another service),



but does not include an audiovisual on-demand media service;

“RTÉ” means Raidió Teilifís Éireann;

“sectoral” means pertaining to the provision of broadcasting and broadcasting related services;

~~“sound broadcasting service” means a broadcasting service which transmits, relays or distributes, by wireless telegraphy, communications, sounds, signs or signals intended for direct reception by the general public whether such communications, sounds, signs or signals are actually received or not;~~

‘sound broadcasting service’ means a service, within the meaning of Articles 56 and 57 of the Treaty on the Functioning of the European Union, where—

- (a) the principal purpose of the service is devoted to providing programmes, by electronic communications networks, to the general public, under the editorial responsibility of the provider of the service, in order to inform, entertain or educate, and
- (b) the service is provided for simultaneous or near-simultaneous listening to programmes on the basis of a programme schedule;

“statutory committee” means the Contract Awards Committee or the Compliance Committee or both, as the case may be;

“subscription or pay-per-view basis”, in relation to the making available of a broadcasting service, means any basis for making a charge on a person in respect of the reception by him or her of a broadcasting service, and includes the basis of making such a charge by reference to the number of items of programme material viewed by him or her;

“subsidiary” has the same meaning as in the ~~Companies Act 1963~~Companies Act 2014;

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[No. 18.]

*Broadcasting Act 2009*

[2009.]

“superannuation benefits” means pensions, gratuities or other allowances payable on resignation, retirement or death;

“Teilifís na Gaeilge” means the body established by section 44 of the Act of 2001; “TG4” means Teilifís na Gaeilge;

“television programme service” means a service which comprises a compilation of audio-visual programme material of any description and is transmitted, distributed or relayed by means of wireless telegraphy directly or indirectly for reception by the general public;

“television programme service contract” and “television programme service contractor” have the same meaning as they have in *section 70*;

“television licence fees” means a fee paid on a licence granted under *section 143* in respect of a television set (within the meaning of *section 140*);

“terrestrial means”, in relation to the transmission of a broadcasting service, means any means of transmitting such a service by wireless telegraphy, other than by means of ~~a MMD system~~ or a satellite device and “digital terrestrial means” shall be read accordingly;

~~“transmission” includes, in the case of a MMD system, distribution and “transmit” and “re-transmit” shall be read accordingly;~~

‘user-generated content’, in relation to a relevant online service, means content created by a user of the service and uploaded to the service by that or another user;

‘user-generated video’ means user-generated content consisting of a set of moving images with or without sound;

‘video-sharing platform service’ has the meaning given by subsections (2) and (3);

~~“website” means a website maintained on the Internet;~~

“wireless telegraphy” has the same meaning as in the Act of 1926.

(2) In this Act ‘video-sharing platform service’ means, subject to subsection (3), a service, within the meaning of Articles 56 and 57 of the Treaty on the Functioning of the European Union, where—

(a) the principal purpose of the service is devoted to, or

(b) the principal purpose of a dissociable section of the service is devoted to, or

(c) an essential functionality of the service is devoted to,

providing audiovisual programmes or user-generated videos, or both, by electronic communications networks, to the general public, in order to inform, entertain or educate.

(3) A service is a video-sharing platform service within subsection (2) only if the provider of the service—

(a) does not have effective control over the selection of the programmes and videos referred to in that subsection, but

(b) determines their organisation, by automatic means or algorithms (including displaying, tagging and sequencing) or otherwise.

2A.

(1) For the purposes of this Act, the question whether a media service provider is under the jurisdiction of the State (or another Member State) is to be determined in accordance with this section.

(2) A media service provider is under the jurisdiction of a Member State if under subsection (5) it is established in that state.

(3) If a media service provider is not, under subsection (5), established in a Member State, then the provider is under the jurisdiction of a Member State if—

- (a) it uses a satellite up-link situated in that state, or
- (b) it uses satellite capacity appertaining to that state.

(4) If subsections (2) and (3) do not determine the question in relation to a media service provider, then the provider is under the jurisdiction of the Member State in which it is established within the meaning of Articles 49 to 55 of the Treaty on the Functioning of the European Union.

(5) The following provisions apply to a media service provider for the purposes of subsections (2) and (3):

(a) if the provider has its head office in a Member State, and the relevant editorial decisions are taken in the same Member State, the provider is established in that Member State;

(b) if the provider has its head office in a Member State, and the relevant editorial decisions are taken in another Member State, then—

(i) if a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in the Member State where the provider has its head office, the provider is established in that Member State,

(ii) if subparagraph (i) does not apply but a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in the Member State where relevant editorial decisions are taken, the provider is established in that Member State, and

(iii) if neither subparagraph (i) nor subparagraph (ii) applies, the provider is established in the Member State where it first began its activity in accordance with the law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;

(c) if the place where the provider has its head office and the place where the relevant editorial decisions are taken are different, and only one of them is in a Member State, the provider is established<sup>5</sup> in that Member State, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in that Member State.

(6) In this section—

‘audiovisual media service activity’ means activity relating to the audiovisual media service concerned;

‘relevant editorial decisions’ means editorial decisions about the audiovisual media service concerned.

2B. (1) For the purposes of this Act, the question whether the provider of a video-sharing platform service is under the jurisdiction of the State (or another Member State) is to be determined in accordance with this section. 20

(2) The provider of a video-sharing platform service is under the jurisdiction of a Member State if the provider is established in the territory of that state.

(3) If the provider of a video-sharing platform service is not established in a Member State, then the provider is under the jurisdiction of a 25 Member State if—

(a) it has a parent undertaking or a subsidiary undertaking that is established in the territory of that state, or

(b) it is part of a group, and another undertaking of that group is established in the territory of that state. 30

(4) For the purposes of subsection (3), if in the provider's case there are different undertakings (parent undertaking, subsidiary undertakings, or other undertakings in the same group) that are established in different Member States, the provider shall be deemed to be established—

(a) if it has a parent undertaking that is established in a Member State, 35

in that Member State,

(b) if paragraph (a) does not apply but it has a subsidiary undertaking established in a Member State, in that Member State, and

(c) if paragraphs (a) and (b) do not apply but another undertaking in the group is established in a Member State, in that Member State. 40

(5) If subsection (4)(b) applies but there are different subsidiary undertakings established in different Member States, the provider shall be deemed to be established in the Member State where one of the subsidiary undertakings first began its activity, provided that it maintains a stable and effective link with the economy of that Member State. 5

(6) If subsection (4)(c) applies but there are different undertakings in the group established in different Member States, the provider shall be deemed to be established in the Member State where one of the undertakings first began its activity, provided that it maintains a stable and effective link with the economy of that Member State. 10

(7) In this section—

(a) 'established' has the meaning given by Article 3(1) of Directive No. 2000/31/EC of the European Parliament and of the Council of 8

June 2000<sup>5</sup> on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market; 15

(b) 'parent undertaking' means an undertaking that controls one or more subsidiary undertakings;

(c) 'subsidiary undertaking' means an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking; 20

'group' means a parent undertaking, all its subsidiary undertakings and all other undertakings having economic and legal organisational links to them."

2C. (1) Where a provision of this Act provides for a notice to be given to a person, the notice shall be given in one of the following ways:

(a) by delivering it to the person (where the person is an individual);

(b) by leaving it addressed to the person at a relevant address; 30

(c) by sending it, addressed to the person, to a relevant address by pre-paid registered post or other pre-paid recorded delivery service;

(d) by sending it to the person by electronic means in accordance with subsection (5).

(2) Subsection (1) does not apply to a notice under section 147, a reminder notification or fixed payment notice under section 149, or a notification under Part 11. 35

(3) In subsection (1)(b) and (c), 'relevant address' means any of the following:

- (a) the address at which the person ordinarily resides;
- (b) an address at which the person carries on business;
- (c) a postal address at which the person has agreed in writing to receive notices under this Act.

(4) For the purposes of subsection (3)(a), a company registered under the 5 Companies Act 2014, or an existing company within the meaning of that Act, is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

(5) For the purposes of subsection (1)(d), a notice is sent to a person by 10 electronic means in accordance with this subsection if—

- (a) it is sent to an email address, fax number, or other electronic contact point, at which the person has agreed in writing to receive notices under this Act, and
- (b) a record that the email, fax, or other electronic message has been 15 sent is made for the sender by the email system, fax machine, or other electronic system used.

(6) A notice to which subsection (1) applies—

- (a) if given in accordance with subsection (1)(a), is given at the time when it is delivered, 20
- (b) if given in accordance with subsection (1)(b), is given at the time when it is left at the relevant address,
- (c) if given in accordance with subsection (1)(c), is deemed, unless the contrary is proved, to be given at the time when it would be delivered in the ordinary course of the post or other service used, 25

and

- (d) if given in accordance with subsection (1)(d), is deemed, unless the contrary is proved, to be given at the time stated in the record referred to in subsection (5)(b).

In this section ‘notice’ includes notification.”.

Repeals. **3.—** The enactments mentioned in *Schedule 1* are repealed to the extent specified in the *third column* of *Schedule 1*.

Expenses. **4.—** The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of monies provided by the Oireachtas.

## PART 2

### ~~BROADCASTING AUTHORITY OF IRELAND~~

Establishment  
day.

~~5.— The Minister may by order appoint a day to be the establishment day for the~~

~~purposes of this Part, sections 49, 157 and Part 12.~~

~~Establishment of Authority, Contract Awards and Compliance Committees.~~

~~6.— There stands established, on the establishment day—~~

~~(a) a body to be known as, in the English language, the Broadcasting Authority of Ireland, or in the Irish language, Údarás Craolacháin na hÉireann, to perform the functions conferred on it by this Act, and~~

~~(b) two committees of the Authority to be known as the Contract Awards Committee and the Compliance Committee, to perform the functions conferred on these committees by this Act.~~

~~Body corporate and seal.~~

~~7.— (1) The Authority shall be a body corporate, with perpetual succession and the power to sue and be sued and to acquire, hold and dispose of land and other property.~~



~~(2) The Authority shall, as soon as may be after its establishment, provide itself with a seal.~~

~~(3) The seal of the Authority shall be authenticated by the signature of—~~

~~(a) the chairperson of the Authority or another member of the Authority, or~~

~~(b) a member of the staff of the Authority,~~

~~authorised by the Authority to act in that behalf.~~

~~(4) Judicial notice shall be taken of the seal of the Authority and every document purporting to be an instrument made by the Authority and to be sealed with the seal of the Authority shall be received in evidence and be deemed to be such instrument without further proof unless the contrary is shown.~~

~~(5) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Authority by any person generally or specially authorised by the Authority in that behalf.~~

~~(6) The Contract Awards Committee and Compliance Committee shall perform their functions under the seal of the Authority.~~

Appointment of Authority, Contract Awards Committee and Compliance Committee.

~~8.—(1) The members of the Authority shall be 9 in number, of which—~~

~~(a) 5 of them shall be appointed by the Government on the nomination of the Minister, and~~

~~(b) subject to subsection (2), 4 of them shall be appointed by the Government on the nomination of the Minister.~~

~~(2) Where an appointment is to be made by the Government under subsection (1)(b) or under that paragraph arising from a vacancy referred to in section 10 (11)—~~

~~(a) the Minister shall inform the Joint Oireachtas Committee of the proposed appointment,~~

~~(b) the Minister in respect of an appointment under subsection (1) (a) shall provide a statement to the Joint Oireachtas Committee indicating the relevant experience and expertise of the persons or person nominated by the Minister for appointment or appointed by the Government on the nomination of the Minister, and such other matters as the Minister considers relevant,~~

~~(c) the Joint Oireachtas Committee shall within the period of 90 days of being so informed, advise the Minister of the names of the persons or name of the person it proposes that the Minister should nominate under subsection (1)~~

~~(b) giving reasons, such as relevant experience and expertise, in relation to the proposed named persons or person,~~

~~(d) the Minister shall have regard to the advice and may accept the proposed named persons or some of them or the named person or decide to nominate as he or she sees fit other persons or another person, and~~

~~(e) inform the Joint Oireachtas Committee of his or her decision.~~

~~(3) Not less than 4 of the members of the Authority shall be men and not less than 4 of them shall be women.~~

~~(4) The members of the Contract Awards Committee shall be 8 in number, of which—~~

~~(a) 4 shall be appointed by the Government on the nomination of the Minister, and~~

~~(b) 4 shall be appointed by the Authority, being 2 of the members, and 2 of the members of staff, of the Authority.~~

~~(5) The Government and the Authority shall, insofar as is practicable, endeavour to ensure that among the members of the Contract Awards Committee there is an equal balance between men and women.~~

~~(6) The members of the Compliance Committee shall be 8 in number, of which—~~

~~(a) 4 shall be appointed by the Government on the nomination of the Minister, and~~

~~(b) 4 shall be appointed by the Authority, being 2 of the members, and 2 of the members of staff, of the Authority.~~

~~(7) The Government and the Authority shall, insofar as is practicable, endeavour to ensure that among the members of the Compliance Committee there is an equal balance between men and women.~~

~~(8) The Joint Oireachtas Committee for the purposes of providing advice to the Minister under subsection (2) may establish a panel, for such duration, and consisting of such number of persons as the Joint Oireachtas Committee thinks proper.~~

~~(9) Persons placed on a panel established under subsection (8) shall have experience of or have shown capacity in one or more of the areas stated in section 9 (1) and shall be chosen with a view to representing the public interest in respect of broadcasting matters.~~

~~(10) The Joint Oireachtas Committee shall, insofar as is practicable, endeavour to ensure that among the persons placed on a panel under subsection (8) there is an equal balance between men and women.~~

~~(11) The Joint Oireachtas Committee shall have sole responsibility for the selection and placing of candidates on a panel established under subsection (8).~~

Criteria for membership.

~~9.—(1) A person shall not be appointed by the Government to be a member of the Authority or a statutory committee unless he or she has had experience of or shown capacity in one or more of the following areas—~~

~~(a) media affairs,~~

~~(b) public service broadcasting, commercial broadcasting or community broadcasting,~~

~~(c) broadcast content production,~~

~~(d) digital media technologies,~~

~~(e) trade union affairs,~~

~~(f) business or commercial affairs,~~

~~(g) matters pertaining to the development of the Irish language,~~

~~(h) matters pertaining to disability,~~

~~(i) arts, music, sport or culture,~~

~~(j) science, technology or environmental matters,~~

~~(k) legal or regulatory affairs, and~~

~~(l) social, educational or community affairs or Gaeltacht affairs.~~

~~(2) Each member of the Authority and a statutory committee shall be appointed for a period not exceeding 5 years and shall represent the public interest in respect of broadcasting matters.~~

~~(3) The Government and the Authority in setting a term of appointment under subsection (2) shall consider the need for continuity of membership of the Authority and a statutory committee.~~

~~(4) A member of the Authority or a statutory committee whose term of office expires by the effluxion of time is eligible for re-appointment.~~

~~(5) A member of the Authority or a statutory committee shall not serve more than 2 consecutive terms of office.~~

~~(6) A member of the Authority or a statutory committee appointed by the Government may at any time resign his or her office by letter addressed to the Government and the resignation shall take effect on the date specified therein or upon receipt of the letter by the Government, whichever is the later.~~

~~(7) A member of the Authority or a member of staff of the Authority who is appointed by the Authority to serve on a statutory committee may at any time resign his or her position on such committee by letter addressed to the chairperson of the Authority and the resignation shall take effect on the date specified therein or upon receipt of the letter by the chairperson of the Authority, whichever is the later.~~

Terms and  
removal:

~~10. — (1) There shall be paid to the members of the Authority and a statutory committee appointed by the Government, out of money at the disposal of the Authority such remuneration (if any) as the Minister, with the consent of the Minister for Finance, from time to time determines.~~

~~(2) There shall be paid to the members of the Authority and a statutory committee, out of money at the disposal of the Authority, such allowances for expenses incurred by them in the performance of their functions as the Minister, with the consent of the Minister for Finance, from time to time determines.~~

~~(3) Subject to this Part, a member of the Authority or a statutory committee shall hold office on such terms (other than the payment of remuneration and allowances for expenses) as the Minister determines at the time of his or her appointment.~~

~~(4) The Minister shall cause a statement in writing specifying the expertise or experience, terms of office and remuneration of the members of the Authority and a statutory committee to be laid before both Houses of the Oireachtas and published in the *Irish Official Gazette*.~~

~~(5) A member of the Authority or a statutory committee may at any time be removed from membership of the Authority or the statutory committee, as the case may be, by the Government if, in the Government's opinion, the member has become incapable through ill health of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the Government to be necessary for the effective performance by the Authority or the statutory committee, as the case may be, of its functions, and only if, resolutions are passed by each House of the Oireachtas calling for his or her removal.~~

~~(6) A member of the Authority or a statutory committee shall cease to be and shall be disqualified from being a member of the Authority, or the statutory committee where such member—~~

~~(a) is adjudicated a bankrupt,~~

~~(b) makes a composition or arrangement with creditors,~~

~~(c) on conviction on indictment by a court of competent jurisdiction is sentenced to a term of imprisonment,~~

~~(d) is convicted of an offence involving fraud or dishonesty, or~~

~~(e) is disqualified or restricted from being a director of any company.~~

~~(7) A member of staff of the Authority who is appointed by the Authority to serve on a statutory committee shall cease to be a member of the committee on the cessation of his or her contract of service with the Authority.~~

~~(8) Where a member of the Authority or a statutory committee fails—~~

~~(a) for a consecutive period of 6 months, to attend a meeting of the Authority or the statutory committee, as the case may be, unless the member demonstrates to the Minister's satisfaction that the failure to attend was due to illness,~~

~~(b) to comply with the requirements of section 21, or~~

~~(c) to make a declaration in accordance with the requirements of section 17 of the Ethics in Public Office Act 1995,~~

~~the Minister may, with the consent of the Government, by order remove the member from membership of the Authority or the statutory committee, as the case may be.~~

~~(9) (a) An order made under subsection (8) shall be laid before each House of the Oireachtas as soon as practicable after it is made.~~

~~(b) Either House of the Oireachtas may, within 21 sitting days after the day on which an order was laid before it in accordance with paragraph (a), pass a resolution annulling the order.~~

~~(c) The annulment under paragraph (b) of an order takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under the order before the passing of the resolution.~~

~~(10) If a member (other than a member referred to in subsection (11)) of the Authority, or a statutory committee appointed by the Government on the nomination of the Minister dies, resigns, becomes disqualified or is removed from office or for any other reason ceases to be a member of the Authority, or the statutory committee, as the case may be, the Government on the nomination of the Minister, may appoint a person to be a member of the Authority or a statutory committee to fill the casual vacancy so occasioned and the person so appointed shall be appointed for the unexpired period of the term of membership of, and in the same manner as, the member of the Authority or the statutory committee, as the case may be, appointed by the Government on the nomination of the Minister who occasioned the casual vacancy.~~

~~(11) If a member of the Authority appointed by the Government on the nomination of the Minister under paragraph (b) of section 8(1), dies, resigns, becomes disqualified or is removed from office or for any other reason ceases to be a member of the Authority, the Government on the nomination of the Minister, the Minister having regard to the advice of the Joint Oireachtas Committee, may appoint a person to be a member of the Authority to fill the casual vacancy so occasioned and the person so appointed shall be appointed for the unexpired period of the term of membership of, and in the same manner as, the member of the Authority appointed by the Government on the nomination of the Minister under paragraph (b) of section 8(1) who occasioned the casual vacancy.~~

~~(12) If a member of a statutory committee appointed by the Authority dies, resigns, becomes disqualified or is removed from office or for any other reason ceases to be a member of the committee, the Authority may appoint one of its members or a member of staff of the Authority to be a member of the committee to fill the casual vacancy so occasioned and the person so appointed shall be appointed for the unexpired period of the term of membership of, and in the same manner as, the~~

~~member of the committee appointed by the Authority who occasioned the casual vacancy.~~

Chairperson of Authority or statutory committee.

~~11.—(1) The Government shall from time to time as occasion requires appoint, on the nomination of the Minister—~~

~~(a) a member of the Authority to be the chairperson of it,~~

~~(b) a member of the Contract Awards Committee appointed by the Government under section 8 (4) (a) to be chairperson of it, and~~

~~(c) a member of the Compliance Committee appointed by the Government under section 8 (6) (a) to be chairperson of it.~~

~~(2) A chairperson shall, unless he or she sooner dies, resigns the office of chairperson or ceases to be chairperson under subsection (4), hold office until the expiration of his or her period of office as a member of the Authority or statutory committee, as the case may be.~~

~~(3) A chairperson may at any time resign his or her office as chairperson by letter sent to the Government and the resignation shall, unless it is previously withdrawn in writing, take effect at the commencement of the meeting of the Authority or statutory committee, as the case may be, held next after the body has been informed by the Government of the resignation.~~

~~(4) Where a chairperson ceases during his or her term of office as chairperson to be a member of the Authority or statutory committee, as the case may be, he or she shall also cease to be chairperson of the body.~~

~~(5) In this section “chairperson” means chairperson of the Authority or a statutory committee, as the case may be.~~

Exclusions from membership of Authority or statutory committee.

~~12.—(1) Where a member of the Authority or a statutory committee is nominated as a candidate for election to the European Parliament, or to either House of the Oireachtas, he or she shall thereupon stand suspended from membership of the Authority or the statutory committee, as the case may be, and shall not be entitled to participate in meetings of the Authority or the statutory committee or receive from the Authority any remuneration or allowances in respect of the period commencing on such nomination and ending when such person is so regarded as not having been elected as the case may be.~~

~~(2) Where a member of the Authority or a statutory committee is—~~

~~(a) nominated as a member of Seanad Éireann,~~

~~(b) elected as a member of either House of the Oireachtas or the European Parliament, or~~

~~(c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament to fill a vacancy,~~

~~he or she shall thereupon cease to be a member of the Authority or the statutory committee, as the case may be.~~

~~(3) Where the person who is the chief executive officer or a member of the staff of the Authority is—~~

~~(a) nominated as a member of Seanad Éireann,~~

~~(b) nominated as a candidate for election to either House of the Oireachtas or the European Parliament, or~~

~~(c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament to fill a vacancy,~~

~~he or she shall thereupon stand seconded from employment by the Authority and shall not be paid by, or be entitled to receive from, the Authority any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected as the case may be, and ending when such person ceases to be a member of either such House or that Parliament.~~

~~(4) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament, shall, while so entitled or such a member, be disqualified from becoming a member of the Authority or a statutory committee or the chief executive officer or a member of the staff of the Authority.~~

~~(5) Without prejudice to the generality of subsection (3), that subsection shall be read as prohibiting, *inter alia*, the reckoning of a period mentioned in that subsection as service with the Authority for the purposes of any superannuation benefits.~~

~~(6) A person who holds employment or an interest in a broadcasting undertaking, including but not limited to a public service broadcaster, or an undertaking holding a contract under this Act shall be disqualified from becoming or ceases to be a member of the Authority or a statutory committee.~~

~~(7) A person who holds an interest in an undertaking which publishes a newspaper in the State shall be disqualified from becoming or ceases to be a member of the Authority or a statutory committee.~~

~~(8) A person who holds membership of the Contract Awards Committee shall be disqualified from becoming or ceases to be a member of the Compliance Committee.~~

~~(9) A person who holds membership of the Compliance Committee shall be disqualified from becoming or ceases to be a member of the Contract Awards Committee.~~

Meetings of Authority or statutory committee.

~~13.— (1) The Authority and a statutory committee shall hold such and so many meetings as may be necessary for the due performance of their functions.~~

~~(2) The Minister may fix the date, time and place of the first meeting of the Authority and a statutory committee.~~

~~(3) Subject to this Part, the Authority and a statutory committee shall regulate their procedure and practice by rules made under this section.~~

~~(4) Any rules made under this section shall be published on a website on the Internet to be maintained by the Authority.~~

~~(5) At a meeting of the Authority or a statutory committee—~~

~~(a) the chairperson of the Authority or the committee, as the case may be, shall, if present, be chairperson of the meeting, and~~

~~(b) if and so long as the chairperson is not present or the office of chairperson is vacant, the members of the Authority or the committee, as the case may be, who are present shall choose one of their number to be the chairperson of the meeting.~~

~~(6) At a meeting of the Authority or a statutory committee, each member of the Authority or the committee, as the case may be, present, including the chairperson, shall have a vote and any question on which a vote is required in order to establish the Authority's or committee's view shall be determined by a majority of the votes~~

~~of the members of the Authority or statutory committee, as the case may be, present when the vote is called and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second and casting vote.~~

~~(7) The quorum for a meeting of the Authority shall be 5.~~

~~(8) The quorum for a meeting of the Contract Awards Committee shall be 5 of which 2 shall be members appointed by the Government under section 8 (4) (a).~~

~~(9) The quorum for a meeting of the Compliance Committee shall be 5 of which 2 shall be members appointed by the Government under section 8 (6) (a).~~

~~(10) The Authority or a statutory committee may act notwithstanding one or more vacancies among its members.~~

~~(11) Subject to any rule made under subsection (3), meetings of the Authority or a statutory committee shall be capable of being held by telephone or other suitable electronic means whereby all the members of the Authority or the relevant statutory committee can hear and be heard.~~

Chief executive  
officer of  
Authority.

~~14.— (1) There shall be a chief executive officer of the Authority (“ chief executive”).~~

~~(2) The chief executive shall perform his or her functions subject to such policies as may be determined from time to time by the Authority and shall be accountable to the Authority for the efficient and effective management of the administration of the Authority, Contract Awards Committee and Compliance Committee and for the due performance of his or her functions.~~

~~(3) The chief executive may delegate his or her functions to a member of staff of the Authority, subject to such conditions as the chief executive considers appropriate, unless they are delegated to the chief executive subject to the condition that they shall not be sub-delegated, and the member of staff concerned shall be accountable to the chief executive for the performance of the functions so delegated to him or her.~~

~~(4) Notwithstanding any delegation under subsection (3) the chief executive shall at all times remain accountable to the Authority for the performance of the functions so delegated.~~

~~(5) The chief executive of the Authority shall hold office for such period and on such terms and conditions (including terms and conditions relating to remuneration and allowances for expenses) as may be determined by the Authority, with the consent of the Minister and the Minister for Finance.~~

~~(6) The chief executive shall be appointed, by means of a public competition, by the Authority with the consent of the Minister.~~

~~(7) The Minister may appoint the chief executive of the BCI to be the interim chief executive of the Authority.~~

~~(8) Subject to subsection (10), the interim chief executive of the Authority shall hold office for such period (which period shall not in any case exceed one year after the establishment of the Authority) and on such terms and conditions (including terms and conditions relating to remuneration and allowances for expenses) as may be determined by the Minister.~~

~~(9) Where an interim chief executive appointed under subsection (7) ceases to hold office for any reason (other than under subsection (10)) before the expiration of the period of his or her appointment, the Minister may appoint a person who shall be known as the interim chief executive who shall hold office for such period (which period shall not in any case exceed the remainder of the term of office of the person who occasioned the vacancy he or she is appointed to fill) and on such terms and~~

~~conditions (including terms and conditions relating to remuneration and allowances for expenses) as may be determined by the Minister.~~

~~(10) When a chief executive is appointed under subsection (6) or (12) the interim chief executive of the Authority shall cease to hold office.~~

~~(11) Until the appointment to the Authority of a chief executive under subsection (6) or (12), the interim chief executive of the Authority shall perform all of the functions of a chief executive under this Act.~~

~~(12) Notwithstanding subsection (6) the Authority may with the consent of the Minister appoint, without selection by means of a public competition, a person who immediately before the establishment day, was chief executive of the BCI, to be the first chief executive of the Authority.~~

~~(13) The chief executive shall not hold any other office or employment or carry on any other business without the consent of the Authority.~~

~~(14) The chief executive shall furnish the Authority with such information (including financial information) in relation to the performance of his or her functions as the Authority may from time to time require.~~

~~(15) The functions of the chief executive may be performed in his or her absence or when the position of chief executive is vacant by such member of the staff of the Authority as may, from time to time, be designated for that purpose by the Authority.~~

~~(16) The chief executive may be removed from office by the Authority with the consent of the Minister for stated reasons.~~

~~Staff. 15. (1) The Authority shall, as well as appointing the chief executive, appoint such and so many other persons to be members of the staff of the Authority as the Authority from time to time thinks proper, subject to the prior consent of the Minister and the Minister for Finance.~~

~~(2) A person shall not be appointed under this section to be a member of the staff of the Authority unless he or she has been selected by means of a public competition.~~

~~(3) The requirement under subsection (2) of being selected by means of a public competition does not apply in relation to:~~

~~(a) a person who, immediately before the establishment day, was a member of staff of the BCI,~~

~~(b) an appointment consisting of the promotion of a person who is already a member of staff of the Authority,~~

~~(c) an office for which, in the opinion of the Authority, specialised qualifications not commonly held are required, or~~

~~(d) an office to which appointments are made for limited periods only, being periods not exceeding 2 years.~~

~~(4) A member of staff of the Authority shall hold his or her office or employment on such terms and conditions as the Authority from time to time determines, subject to the consent of the Minister and the Minister for Finance.~~

~~(5) The Authority may perform any of its functions through or by any of its members of staff duly authorised by the Authority in that behalf.~~

~~(6) The Authority shall accept into its employment, on the establishment day in accordance with this section, every person who immediately before the establishment day is a member of staff of the BCI.~~



~~(7) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a member of staff of the BCI who is transferred on the establishment day to the Authority shall not, while in the service of the Authority, receive a lesser scale of pay or be subject to less beneficial conditions of service than the scale of pay to which he or she was entitled and the conditions of service to which he or she was subject immediately before the establishment day.~~

~~(8) Until such time as the scales of pay and conditions of service of members of staff so transferred are varied by the Authority, following consultation with recognised trade unions or staff associations, the scales of pay to which they were entitled and the conditions of service, restrictions, requirements and obligations to which they were subject before their transfer shall continue to apply to them and may be exercised or imposed by the Authority or the chief executive, of the Authority as the case may be, while they are in its service. As provided in subsection (7), no such variation shall operate to worsen the scales of pay and conditions of service applicable to such members of staff immediately before the establishment day, save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned.~~

~~(9) The conditions in regard to tenure of office which are granted by the Authority in relation to a member of staff so transferred shall not, while he or she is in the service of the Authority, be less favourable to him or her than those prevailing on establishment day in the BCI. Any alteration in the conditions in regard to tenure of office of any such member shall not be less favourable to him or her than the prevailing conditions in the BCI at the time of such alteration, save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned. If a dispute arises between the Authority and any such member of staff as to conditions prevailing in the BCI on the establishment day, the matter shall be determined by the Minister for Finance.~~

~~Superannuation.—16.—(1) As soon as may be after the establishment day, the Authority, with the consent of the Minister and the consent of the Minister for Finance, shall make a scheme or schemes for the granting of superannuation benefits to or in respect of the members of staff, including the chief executive, of the Authority.~~

~~(2) A superannuation scheme shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons.~~

~~(3) The Authority may, with the consent of the Minister and the consent of the Minister for Finance, make a scheme amending or revoking a superannuation scheme including a scheme under this subsection.~~

~~(4) A superannuation scheme submitted by the Authority shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Authority in accordance with its terms.~~

~~(5) Each superannuation scheme shall include a provision for appeals from a decision relating to a superannuation benefit under the scheme.~~

~~(6) No superannuation benefits shall be granted by the Authority to or in respect of a person on ceasing to be chief executive or a member of the staff of the Authority otherwise than—~~

~~(a) in accordance with a superannuation scheme or schemes, or~~

~~(b) with the consent of the Minister and the Minister for Finance.~~

~~(7) Every superannuation scheme shall provide for not less favourable conditions in respect of persons who, immediately before establishment day, were members of staff of the BCI than those to which they were entitled immediately before establishment day.~~

~~(8) Disbursement of superannuation benefits which may be granted to or in respect of persons who, immediately before the establishment day, were members of staff of the BCI shall not be on less favourable conditions than would apply if the benefits referred to had continued to be paid out of monies provided by the BCI.~~

~~(9) Where a superannuation benefit falls due for payment to or in respect of a person to whom subsection (7) applies in the period beginning on the establishment day and ending immediately before the coming into operation of a scheme submitted by the Authority and approved of under this section, the allowance shall be calculated and paid by the Authority in accordance with such superannuation arrangements or such enactments in relation to superannuation, as applied to such person immediately before the establishment day and, for that purpose, his or her pensionable service with the Authority shall be aggregated with his or her previous pensionable service.~~

~~(10) (a) A superannuation scheme shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is made.~~

~~(b) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which a scheme was laid before it in accordance with paragraph (a), annul the scheme.~~

~~(c) The annulment of a scheme under paragraph (b) takes effect immediately on the passing of the resolution concerned but does not affect anything that was done under the scheme before the passing of the resolution.~~

Advisory committees.

~~17. — (1) The Authority may establish advisory committees to advise and assist it or a statutory committee in the performance of its functions.~~

~~(2) Where advisory committees include members other than members of the Authority or a statutory committee or staff of the Authority, such members may be paid such remuneration (if any) and allowances for expenses as the Authority considers reasonable, subject to the consent of the Minister and the Minister for Finance.~~

~~(3) The Authority may regulate the procedure of its advisory committees, but subject to such regulation, an advisory committee may regulate its own procedure.~~

~~(4) The Authority or a statutory committee and the chief executive shall have regard to, but shall not be bound by, the advice of any advisory committee under this section.~~

Consultants and advisers.

~~18. — (1) The Authority may from time to time engage such consultants or advisers as it or a statutory committee may consider necessary for the performance of the functions of the Authority or a statutory committee, and any fees due to a consultant or adviser engaged under this section shall be paid by the Authority out of monies at its disposal.~~

~~(2) The Authority or a statutory committee and the chief executive shall have regard to, but shall not be bound by, the advice of any consultant or adviser under this section.~~

Accountability of chief executive to Committee of Public Accounts.

~~19. — (1) The chief executive shall, whenever he or she is required to do so by a Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and the reports of the Comptroller and Auditor General, give evidence to that Committee on —~~

~~(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Authority is required by or under statute to prepare,~~

~~(b) the economy and efficiency of the Authority in the use of its resources,~~

- ~~(c) the systems, procedures and practices employed by the Authority for the purpose of evaluating the effectiveness of its operations,~~
- ~~(d) any matter affecting the Authority referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in paragraph (a), (b) or (c)) that is laid before Dáil Éireann, and~~
- ~~(e) all matters pertaining to the expenditure by the Authority of monies received under section 34.~~

~~(2) The chief executive, if required under subsection (1) to give evidence, shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.~~

Accountability of chief executive and chairpersons of Authority and statutory committees to other Oireachtas Committees.

~~20. — (1) In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a Committee.~~

~~(2) Subject to subsection (4), the chief executive shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Authority and a statutory committee.~~

~~(3) Subject to subsection (4), the chairperson of the Authority or a statutory committee shall at the request in writing of a Committee, attend before it to represent the views of the Authority or a statutory committee.~~

~~(4) The chief executive or chairperson shall not be required to give account before, or represent the views of the Authority or a statutory committee to, a Committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.~~

~~(5) Where the chief executive or chairperson is of the opinion that a matter in respect of which the chief executive or chairperson is requested to give an account before, or represent the views of the Authority or a statutory committee to, a Committee is a matter to which subsection (4) applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the chief executive or chairperson is before it, the information shall be so conveyed in writing.~~

~~(6) Where the chief executive or chairperson has informed a Committee of his or her opinion in accordance with subsection (5) and the Committee does not withdraw the request referred to in subsection (2) or subsection (3) in so far as it relates to a matter the subject of that opinion —~~

- ~~(a) the chief executive or chairperson may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which subsection (4) applies, or~~
- ~~(b) the chairperson of the Committee may, on behalf of the Committee, make such an application,~~

~~and the High Court may determine the matter.~~

~~(7) Pending the determination of an application under subsection (6), the chief executive or chairperson shall not attend before the Committee to give account for or represent the views of the Authority or a statutory committee in respect of the matter the subject of the application.~~

~~(8) If the High Court determines that the matter concerned is one to which subsection (4) applies, the Committee shall withdraw the request referred to in subsection (2) or subsection (3), but if the High Court determines that subsection (4) does not apply, the chief executive or chairperson shall attend before the Committee to give account for or represent the views of the Authority or a statutory committee in respect of the matter.~~

Disclosure by members of Authority and statutory committee of certain interests.

~~21.—(1) A member of the Authority or a statutory committee who has—~~

~~(a) any interest in any body or concern with which the Authority has made a contract or proposes to make a contract, or~~

~~(b) any interest in any contract which the Authority has made or proposes to make,~~

~~shall disclose to the Authority or the committee the fact of such interest and the nature of it and shall not be present at any deliberation or decision of the Authority or the committee relating to the contract.~~

~~(2) Where at a meeting of the Authority or a statutory committee, any of the following matters arise, namely—~~

~~(a) an arrangement to which the Authority or the committee is a party or a proposed such arrangement, or~~

~~(b) a contract or other agreement with the Authority or a proposed such contractor other agreement,~~

~~then, any member of the Authority or a statutory committee present at the meeting who otherwise than in his or her capacity as such a member has an interest in the matter shall—~~

~~(i) at the meeting disclose to the Authority or the committee the fact of such interest and the nature of it,~~

~~(ii) neither influence nor seek to influence a decision to be made in relation to the matter,~~

~~(iii) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed,~~

~~(iv) take no part in any deliberation of the Authority or the committee relating to the matter, and~~

~~(v) not vote on a decision relating to the matter.~~

~~(3) Where an interest is disclosed under this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being considered or discussed by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.~~

~~(4) Where at a meeting of the Authority or a statutory committee a question arises as to whether or not a course of conduct, if pursued by a member of the Authority, or a statutory committee of the Authority, would constitute a failure by him or her to comply with the requirements of subsections (1) or (2), the question may be determined by the Authority or the committee, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.~~

~~(5) For the purposes of this section and section 22 a person shall not be regarded as having an interest in any matter by reason only of an interest of that person, or of any company in which he or she has an interest, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering,~~

~~discussing or in voting on, any question relating to the matter, or in performing any function in relation to that matter.~~

~~Disclosure by staff of Authority of certain interests.~~

~~22.—(1) Where a member of the staff of the Authority or a consultant or adviser engaged under section 18, in a category specified before engagement by the Authority, has an interest, otherwise than in his or her capacity as such, in any contract, or any proposed contract to which the Authority is or is proposed to be a party, or in any agreement or arrangement or proposed agreement or arrangement to which the Authority or a statutory committee is or is proposed to be a party, that person—~~

~~(a) shall disclose to the Authority his or her interest and the nature of it,~~

~~(b) shall take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by members of the Authority or the committee or members of the staff of the Authority in relation to it,~~

~~(c) shall not influence or seek to influence a decision to be made in the matter, and~~

~~(d) shall not make any recommendation in relation to the contract, agreement or arrangement.~~

~~(2) Subsection (1) does not apply to a person as regards a contract or proposed contract of employment of that person as a member of the staff of the Authority.~~

~~(3) Subsection (1) does not apply to a person as regards a contract or proposed contract for services in respect of that person.~~

~~(4) In this section “member of staff” includes the chief executive officer.~~

~~(5) Where a person to whom subsection (1) applies fails to comply with a requirement of this section, the Authority shall decide the appropriate action (including removal from office or termination of contract) to be taken.~~

~~Code of conduct. 23.—(1) The Authority shall, as soon as may be, draw up and adopt a code of conduct in respect of controls on interests and ethical behaviour to apply to each member of the Authority, a statutory committee, an advisory committee and each member of the staff of the Authority.~~

~~(2) The Authority shall, as soon as may be, draw up a code of conduct in respect of controls on interests and ethical behaviour to apply to such categories of contractors for services as the Authority may specify before engagement.~~

~~(3) The Authority shall publish on a website maintained by the Authority any code of conduct drawn up under subsections (1) and (2).~~

~~Independence. 24.—Subject to this Act, the Authority and each statutory committee shall be independent in the performance of their functions.~~

~~Objectives of Authority.~~

~~25.—(1) The Authority and the statutory committees, in performing their functions, shall endeavour to ensure—~~

~~(a) that the number and categories of broadcasting services made available in the State by virtue of this Act best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity,~~

~~(b) that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld, and~~

~~(c) the provision of open and pluralistic broadcasting services.~~

~~(2) Without prejudice to the generality of subsection (1), the Authority, and the statutory committees, shall—~~

- ~~(a) stimulate the provision of high quality, diverse and innovative programming by commercial, community and public service broadcasters and independent producers,~~
- ~~(b) facilitate public service broadcasters in the fulfilment of their public service objects as set out in this Act,~~
- ~~(c) promote diversity in control of the more influential commercial and community broadcasting services,~~
- ~~(d) provide a regulatory environment that will sustain independent and impartial journalism,~~
- ~~(e) provide a regulatory environment that will sustain compliance with applicable employment law,~~
- ~~(f) protect the interests of children taking into account the vulnerability of children and childhood to undue commercial exploitation,~~
- ~~(g) provide a regulatory environment that will facilitate the development of a broadcasting sector in Ireland that is responsive to audience needs and in particular is accessible to people with disabilities, and~~
- ~~(h) promote and stimulate the development of Irish language programming and broadcasting services.~~

~~(3) The Authority and the statutory committees, in performing their functions, shall seek to ensure that measures taken—~~

- ~~(a) are proportionate having regard to the objectives set out in this section,~~
- ~~(b) are applied across the range of broadcasting services taking account of the degree of influence that the different types of broadcasting services are able to exert in shaping audience views in the State,~~
- ~~(c) are mindful of the objects, functions and duties set for public service broadcasters in Parts 7 and 8,~~
- ~~(d) will produce regulatory arrangements that are stable and predictable, and~~
- ~~(e) will readily accommodate and encourage technological development, and its application, by the broadcasting sector.~~

Functions of Authority.

~~26.—(1) The principal functions of the Authority are to—~~

- ~~(a) prepare a strategy for the provision of broadcasting services in the State additional to those provided by RTÉ, TG4, the Houses of the Oireachtas Channel and the Irish Film Channel,~~
- ~~(b) prepare a statement under section 29 (1),~~
- ~~(c) liaise and consult with the Communications Regulator in the preparation of the allocation plan for the frequency range dedicated to sound and television broadcasting,~~
- ~~(d) make a levy order under section 33 (1),~~
- ~~(e) prepare or make broadcasting codes and rules,~~
- ~~(f) prepare a scheme for the exercise of the right of reply,~~

- (g) ~~direct the Contract Awards Committee to make arrangements, in accordance with Parts 6 and 8, to invite, consider and recommend to the Authority, and the Authority shall follow such recommendation, proposals for the provision of—~~
- (i) ~~broadcasting services additional to any broadcasting services provided by RTÉ, TG4, the Houses of the Oireachtas Channel and the Irish Film Channel under Part 7, and~~
- (ii) ~~multiplex services additional to any multiplex services provided by RTÉ under Parts 7 and 8,~~
- (h) ~~prepare rules and enter into contracts in respect of electronic programme guides,~~
- (i) ~~determine disputes arising under section 76(2) and section 77(5),~~
- (j) ~~make a report to the Minister under section 77 (15),~~
- (k) ~~consult with the Minister under sections 101(3), 102(3), 103(4), 104(1), (2) and (3), 106(3), 107(3), 111(4), 112(2), (7) and (11), 116(5), 127(6), 130(1) and 130(12),~~
- (l) ~~prepare and issue guidance to RTÉ and TG4 as to the fulfilment of their obligations under sections 109 (11) and 112 (2),~~
- (m) ~~undertake a review under section 124 (2) and (8) and section 128 (3),~~
- (n) ~~make a recommendation under section 124 (5) and (12),~~
- (o) ~~make a request under section 115, section 130 (10), section 132 (3) or section 133 (3) or (4),~~
- (p) ~~make a report to the Minister under section 139 (1) in respect of preparedness for analogue switch-off,~~
- (q) ~~provide information to the public on the availability of services by means of television multiplexes, and~~
- (r) ~~prepare and implement schemes for the granting of funds under Part 10.~~
- (2) ~~The Authority has the following ancillary functions—~~
- (a) ~~to collect and disseminate information on the broadcasting sector in the State,~~
- (b) ~~to monitor developments in broadcasting internationally,~~
- (c) ~~to initiate, organise, facilitate and promote research relating to broadcasting matters,~~
- (d) ~~to collect and disseminate information in relation to the skills requirements of the broadcasting sector,~~
- (e) ~~to co-operate with other bodies, including representative bodies within the broadcasting sector, to promote training activities in areas of skill shortages in the broadcasting sector,~~
- (f) ~~to co-operate with other bodies outside the State which perform similar functions to the Authority, and~~
- (g) ~~to undertake, encourage and foster research, measures and activities which are directed towards the promotion of media literacy, including co-operation with broadcasters, educationalists and other relevant persons.~~
- (3) ~~In fulfilling its function under subsection (1) (a) the Authority shall consider the needs of community broadcasters in respect of digital broadcasting.~~

~~(4) For the purposes of the independent discharge of their functions and duties as set out in this Part, the Authority or a statutory committee may enter into agreements with one another.~~

~~(5) The Minister may confer on the Authority by order such other additional functions in relation to broadcasting services as he or she may from time to time consider necessary.~~

~~(6) (a) An order made under subsection (5) shall be laid before each House of the Oireachtas as soon as practicable after it is made.~~

~~(b) Either House of the Oireachtas may, within 21 sitting days after the day on which an order was laid before it in accordance with paragraph (a), pass a resolution annulling the order.~~

~~(c) The annulment under paragraph (b) of an order takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under the order before the passing of the resolution.~~

Functions of  
Contract Awards  
Committee.

~~27.— The principal functions of the Contract Awards Committee, at the direction of the Authority, are to make arrangements in accordance with Parts 6 and 8, to invite, consider and recommend to the Authority, and the Authority shall follow such recommendation, proposals for the provision of—~~

~~(a) broadcasting services additional to any broadcasting services provided by RTÉ, TG4, the Houses of the Oireachtas Channel and the Irish Film Channel under Part 7, and~~

~~(b) multiplex services additional to any multiplex services provided by RTÉ under Parts 7 and 8.~~

Functions of  
Compliance  
Committee.

~~28.— (1) The principal functions of the Compliance Committee are to—~~

~~(a) monitor compliance by contractors with the terms and conditions of any contract entered into by the Authority on the recommendation of the Contract Awards Committee under this Act,~~

~~(b) enforce the terms and conditions of any contract entered into by the Authority on the recommendation of the Contract Awards Committee under this Act,~~

~~(c) monitor compliance by—~~

~~(i) broadcasters with sections 39, 40 and 41,~~

~~(ii) RTÉ and TG4 with section 106 (3), and~~

~~(iii) the Irish Film Channel with section 127 (6),~~

~~(d) enforce compliance by—~~

~~(i) broadcasters with sections 39, 40 and 41,~~

~~(ii) RTÉ and TG4 with section 106 (3), and~~

~~(iii) the Irish Film Channel with section 127 (6),~~

~~(e) monitor compliance by broadcasters with any broadcasting code or rule,~~

~~(f) enforce compliance by broadcasters with any broadcasting code or rule,~~

~~(g) investigate and decide upon a complaint made under section 48, and~~

~~(h) investigate and decide upon a request made under section 49.~~



~~(2) The Compliance Committee has the following additional functions—~~

- ~~(a) at the request of the Minister, to report on compliance by a corporation under sections 108 (3), 109 (13), 111 (11), and 112 (10),~~
- ~~(b) at the request of the Minister, to report on the proportion of the television programme service of a broadcaster which is—~~
  - ~~(i) produced in the State or in another Member State, and~~
  - ~~(ii) devoted to original programme material produced therein by persons other than the broadcaster, his or her subsidiary, his or her parent or existing broadcasting organisations.~~

~~(3) The Compliance Committee may delegate some of its functions to a member of staff of the Authority, who is not a member of the Compliance Committee, subject to such conditions as the Compliance Committee considers appropriate and the member of staff concerned shall be accountable to the Compliance Committee for the performance of the functions so delegated to him or her.~~

~~(4) The Compliance Committee may delegate some of its functions to a subcommittee of the Compliance Committee, subject to such conditions as the Compliance Committee considers appropriate.~~

~~(5) The Compliance Committee shall review on an ongoing basis the extent to which the television broadcasts of broadcasters under the jurisdiction of another Member State which are wholly or mainly directed towards audiences in the State comply with broadcasting codes, in particular the codes referred to in section 42 (2) (g) and (h).~~

~~(6) The Compliance Committee shall each year make a report to the Minister in respect of the matters in subsection (5).~~

~~(7) The Minister shall cause a copy of the report referred to in subsection (6) to be laid before each House of the Oireachtas.~~

Strategy  
statements.

~~29.— (1) The Authority shall draw up and adopt a statement of strategy (“strategy statement”) reflecting the statutory functions of the Authority, the Contract Awards Committee and the Compliance Committee.~~

~~(2) A strategy statement shall—~~

- ~~(a) comprise the key objectives, outputs and related strategies, including use of resources,~~
- ~~(b) be prepared in a form and manner in accordance with any directions issued from time to time by the Minister,~~
- ~~(c) have regard to the need to ensure the most beneficial, effective and efficient use of resources,~~
- ~~(d) except for the first strategy statement, include a review of the efficiency and effectiveness of the statement during the preceding 3 year period,~~
- ~~(e) be adopted within 12 months of the establishment day and every 3 years thereafter,~~
- ~~(f) consider any policy communication under section 30, and~~
- ~~(g) include the Authority’s plans as to the number, nature and scope of contracts that it proposes to enter into on the recommendation of the Contract Awards Committee during the period covered by the statement.~~

~~(3) The Authority shall present a copy of the strategy statement to the Minister and to such committees of either or both Houses of the Oireachtas as the Minister may, from time to time, direct.~~

~~(4) The Authority shall consult with the members of the Contract Awards Committee and the Compliance Committee in drawing up a strategy statement under subsection (1).~~

~~(5) Prior to the adoption of a strategy statement and its presentation to the Minister, the Authority shall undertake a public consultation process on a draft of the strategy statement.~~

Policy  
communications.

~~30.— (1) In the interests of the proper and effective regulation of the broadcasting sector and the formulation of policy applicable to such proper and effective regulation, the Minister may issue such policy communications to the Authority as he or she considers appropriate to be followed by the Authority in the performance of its functions. The Authority in performing its functions, shall have regard to any such communications.~~

~~(2) Before issuing a communication, the Minister shall give to the Authority and publish a draft of the proposed communication and—~~

~~(a) give the reasons for it, and~~

~~(b) specify the period (being not less than 21 days from the date of giving it to the Authority or such publication, whichever is the later) within which representations relating to the proposal may be made by interested parties.~~

~~(3) The Minister, having considered any representations made under subsection (2), may issue the communication with or without amendment.~~

~~(4) Where the Minister proposes to prepare a communication which, in the opinion of the Minister, has or may relate to the functions of another Minister of the Government, the Minister shall not issue to the Authority or publish a draft of the proposal under subsection (2) without prior consultation with that other Minister of the Government.~~

~~(5) The Minister shall not issue a communication in respect of the performance of the functions of the Authority in respect of individual undertakings or persons.~~

~~(6) The Minister shall not issue a communication under subsection (1) in respect of the performance of the functions of the Contract Awards Committee or the Compliance Committee.~~

~~(7) A communication shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is made.~~

~~(8) In this section “communication” means a policy communication under this section.~~

Powers.

~~31.— (1) The Authority and a statutory committee shall have all the powers necessary, incidental or conducive to their functions.~~

~~(2) Without prejudice to the generality of subsection (1), the Authority shall have power necessary, incidental or conducive to its functions—~~

~~(a) to make contracts, agreements and arrangements,~~

~~(b) to require contractors to enter into financial bonds with the Authority on the recommendation of the Contract Awards Committee,~~

~~(c) to acquire and make use of copyrights, patents, licences, privileges and concessions,~~

~~(d) to compile, prepare, publish and distribute, with or without charge, printed, audio and audio-visual material,~~

~~(e) subject to the consent of the Minister, to arrange for the provision of broadcasting and related services for and on behalf of any Minister of the Government, and~~

~~(f) to undertake, sponsor or commission research.~~

~~(3) The Authority may invest any of its funds in any manner in which a trustee is empowered by law to invest trust funds.~~

Duties of  
Authority and  
statutory  
committees.

~~32. (1) In this section “commercially sensitive information” means—~~

~~(a) financial, commercial, technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the party to which it relates, or could prejudice the competitive position of that party in the conduct of its business, or~~

~~(b) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the party to which it relates.~~

~~(2) It is the duty of the Authority to so conduct its affairs as to secure that its revenue becomes as soon as possible, and thereafter continues to be, at least sufficient to meet its expenses.~~

~~(3) The Authority and its statutory committees shall have a duty to keep the performance of their functions under review with a view to securing that regulation by the Authority and its statutory committees does not involve—~~

~~(a) the imposition of administrative burdens which are unnecessary, or~~

~~(b) the maintenance of administrative burdens which have become unnecessary.~~

~~(4) In reviewing its duty under subsection (3) the Authority and its statutory committees shall, from time to time, publish a statement setting out how they propose, during the period for which the statement is made, to ensure that regulation by the Authority and the statutory committees does not involve the imposition or maintenance of unnecessary administrative burdens.~~

~~(5) The first statement to be published under this section must be published within a period of 2 years after the establishment day and shall be for a period of 3 years.~~

~~(6) A subsequent statement—~~

~~(a) must be published during the period to which the previous statement related, and~~

~~(b) must be a statement for the period of 3 years beginning with the end of the previous period.~~

~~(7) It is the duty of the Authority and the statutory committees in performing their functions at times during a period for which a statement is in force under this section, to have regard to that statement.~~

~~(8) The Authority or a statutory committee may, if they think fit, revise a statement under this section at any time before or during the period for which it is made.~~

~~(9) Where the Authority or a statutory committee revise a statement, they must publish the revision as soon as practicable.~~

~~(10) The Authority shall not disclose commercially sensitive information obtained from a corporation or the holder of a contract under Part 6 or 8 in pursuance of the Authority’s functions under this Act.~~

~~(11) The Authority is not contravening subsection (10) if the disclosure—~~

- ~~(a) is made with the consent of the corporation or the holder of a contract under Part 6 or 8 to which it relates, or~~
- ~~(b) is required by law.~~

~~Levy. 33.— (1) For the purpose of meeting expenses properly incurred by the Authority, the Contract Awards Committee and the Compliance Committee in the performance of their functions, the Authority shall make an order imposing a levy on public service broadcasters and broadcasting contractors.~~

~~(2) Whenever a levy order is made there shall be paid to the Authority by public service broadcasters and each broadcasting contractor such amount as shall be appropriate having regard to the terms of the levy order.~~

~~(3) The Authority may make separate levy orders for public service, commercial and community broadcasters and for particular classes of broadcasting contractors.~~

~~(4) A levy order shall provide for the collection, payment and administration of a levy, including all or any of the following—~~

- ~~(a) the method of calculation of the levy,~~
- ~~(b) the times at which payment will be made and the form of payment,~~
- ~~(c) the keeping, inspection and provision of records relating to the levy, and~~
- ~~(d) any exemptions, deferrals or refunds of the levy.~~

~~(5) Any surplus of levy income over the expenses incurred by the Authority in the discharge of its functions relevant to that levy in a particular financial year shall either—~~

- ~~(a) be retained by the Authority to be offset against levy obligations for the subsequent year, or~~
- ~~(b) be refunded proportionately to the providers of broadcasting services on whom the levy is imposed.~~

~~(6) The Authority may recover as a simple contract debt in any court of competent jurisdiction a levy from any person by whom it is payable.~~

~~(7) (a) A levy order shall be laid before each House of the Oireachtas by the Authority as soon as may be after it is made.~~

~~(b) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which a levy order was laid before it in accordance with paragraph (a), pass a resolution annulling the order.~~

~~(c) The annulment under paragraph (b) of a levy order takes effect immediately on the passing of the resolution concerned but does not affect anything that was done under the order before the passing of the resolution.~~

~~(8) In this section “levy order” means an order imposing a levy under subsection (1).~~

~~Exchequer  
funding.~~

~~34.— (1) Where in the opinion of the Minister an expense incurred by the Authority in performing its functions is of an exceptional nature, the Minister, after consultation with the Authority and with the consent of the Minister for Finance, may from time to time pay to the Authority such an amount as he or she determines to be reasonable~~

~~for the purposes of defraying expenses incurred by the Authority and its statutory committees in performing their functions under this Act.~~

~~(2) The Minister, with the approval of the Minister for Finance, may pay to the Authority such amount as he or she considers reasonable in respect of the expenses of the Authority and its statutory committees for the one year period from the establishment day.~~

~~Borrowings. 35. (1) The Authority may, with the approval of the Minister, given with the consent of the Minister for Finance, borrow temporarily such sums as it may require for the purpose of providing for current expenditure.~~

~~(2) The Authority may, with the approval of the Minister, given with the consent of the Minister for Finance, borrow money by means of the creation of stock or other forms of security to be issued, transferred, dealt with and redeemed in such manner and on such terms and conditions as the Authority, with the consent of the Minister for Finance, may determine.~~

~~(3) The borrowing powers conferred by subsection (2) on the Authority may, subject to the consent of the Minister, be exercised for any purpose arising in connection with the performance of its functions, but there may be attached to a consent to borrow the condition that the monies shall be utilised only for the purpose of a programme of capital works approved by the Minister.~~

~~(4) The terms upon which monies are borrowed under subsection (2) may include provisions charging the monies and interest thereon upon all property of whatsoever kind for the time being vested in the Authority or upon any particular property of the Authority and provisions establishing the priority of such charges amongst themselves.~~

~~Deposits and charges for services.~~

~~36. (1) A deposit may be payable by a person, of such an amount as the Contract Awards Committee considers reasonable, in respect of an application made by the person to the Contract Awards Committee for the entry into, by the Authority, on the recommendation of the Contract Awards Committee, with the person, of a broadcasting contract.~~

~~(2) The Authority may make a charge for services or facilities provided by it.~~

~~(3) Any surplus of income over the expenses incurred by the Authority in respect of subsection (2) in a particular financial year shall be applied in such manner as the Minister, after consultation with the Authority and with the approval of the Minister for Finance, may direct, and any such direction may require that all, or part as may be specified in the direction, of such excess be paid into the Central Fund.~~

~~(4) The Authority may recover as a simple contract debt in any court of competent jurisdiction from the person by whom it is payable any amount due and owing to it under this section.~~

~~Accounts and audits.~~

~~37. (1) The chief executive, following the agreement of the Authority, shall not later than 30 September in each year, submit estimates of income and expenditure to the Minister in respect of the subsequent three financial years, in such form as may be required by the Minister, and shall furnish to the Minister any information which the Minister may require in relation to such estimates, including proposals and future plans relating to the performance by the Authority, the Contract Awards Committee and the Compliance Committee of their functions, as required.~~

~~(2) The chief executive, under the direction of the Authority, shall cause to be kept, on a continuous basis, all proper books and records of account of all income and expenditure of the Authority, and of the sources of such income and the subject~~

~~matter of such expenditure, and of the property, assets and liabilities of the Authority and shall keep and shall account to the Authority for all such special accounts required by Part 10, and as the Authority, with the consent of the Minister, or the Minister may from time to time direct should be kept.~~

~~(3) (a) The Authority, the chief executive and any relevant member of the staff of the Authority shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the books or other records of account of the Authority in respect of any financial year or other period and shall facilitate any such examination.~~

~~(b) In this subsection “relevant member of the staff of the Authority” means a member of the staff of the Authority in respect of whom there have been duly assigned duties which relate to the books or other records of account referred to in paragraph (a).~~

~~(4) The accounts of the Authority for each financial year shall be kept in such a form and manner as may be specified by the Minister with the consent of the Minister for Finance and be prepared by the chief executive and approved by the Authority as soon as practicable but not later than 3 months after the end of the financial year to which they relate for submission to the Comptroller and Auditor General for audit.~~

~~(5) A copy of the accounts referred to in subsection (4) and the report of the Comptroller and Auditor General thereon shall, immediately after the audit of the Comptroller and Auditor General, be presented to the members of the Authority and to the Minister as soon as may be but not later than 6 months after the end of the financial year to which they relate and the Minister shall cause a copy of these documents to be laid before each House of the Oireachtas.~~

~~(6) The financial year of the Authority shall be the period of 12 months ending on 31 December in any year, and for the purposes of this section the period commencing on the establishment day and ending on the following 31 December is deemed to be a financial year.~~

~~(7) The Authority shall publish, with the consent of the Minister and the Minister for Finance, on a website maintained by the Authority, such estimates of income and expenditure as are required to be prepared under subsection (1) or a summary of them.~~

Reports to  
Minister.

~~38.— (1) The Authority shall, not later than 30 June in each year, make a report to the Minister (in this section referred to as an “annual report”) in such form as the Minister may approve, on the performance of its functions and on its activities, during the preceding year. The Minister shall cause copies of each annual report to be laid before each House of the Oireachtas.~~

~~(2) An annual report shall include details of any scheme approved under Part 10.~~

~~(3) An annual report shall include a report to the Minister by each statutory committee in such form as the Minister may approve, on the performance of its functions and on its activities, during the preceding year.~~

~~(4) An annual report shall include a report to the Minister on progress made towards increasing accessibility of broadcasting services to people with disabilities, and in particular, on progress made to achieve the targets set out in any broadcasting rules.~~

~~(5) An annual report shall include a report to the Minister in respect of contracts entered into by the Authority under section 67 and any consequent strategy the Authority proposes to adopt to encourage competition in respect of the award of sound broadcasting contracts, excluding contracts entered into under sections 64 and 68.~~



~~(6) An annual report shall include a report to the Minister of the attendance of members of the Authority and each statutory committee at their meetings during the preceding year.~~

~~(7) An annual report shall include information in such form and regarding such matters as the Minister may direct.~~

~~(8) The Authority and each statutory committee may, from time to time, make such other reports to the Minister relating to their functions as they think fit or as the Minister may require.~~

~~(9) In addition to information provided by the Authority in its annual report and in any reports made under subsection (8), the Authority and each statutory committee shall supply to the Minister such information as the Minister may from time to time require regarding the performance of their functions.~~

## "PART 2

### COIMISIÚN NA MEÁN

#### Establishment day

5. The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act. 5

#### Establishment of Commission

6. (1) There shall stand established on the establishment day a body which shall be known as *Coimisiún na Meán* (in this Act referred to as the 'Commission').

- (2) The Commission— 10

(a) is a body corporate with perpetual succession and a seal,

(b) may sue and be sued in its corporate name,

(c) may, with the consent of the Minister, given with the approval of the Minister for Public Expenditure and Reform, acquire, hold and

dispose of land or an interest in land, and 15

(d) may acquire, hold and dispose of any other property.

- (3) The seal of the Commission must be authenticated by the signature of—

(a) a Commissioner, or

(b) a member of the staff of the Commission, authorised by the Commission to act in that behalf. 20

- (4) Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Commission by any person generally or specially authorised by the Commission in that behalf. 25

- (5) Judicial notice shall be taken of the seal of the Commission and any



document purporting to be an instrument made by, and to be sealed with the seal of, the Commission shall, unless the contrary is shown, be received in evidence and be deemed to be such an instrument without further proof.

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### Powers and functions of Commission

7. (1) The Commission shall have all such powers as are necessary or expedient for the performance of its functions and shall ensure that its functions are performed effectively and efficiently.

(2) In performing its functions the Commission shall endeavour to ensure—

(a) that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld,

(b) that the interests of the public, and in particular the interests of children, are protected,

40

- (c) that the broadcasting services and audiovisual on-demand media services available in the State are open and pluralistic, and that the Commission’s policies in relation to those services best serve the needs of the people of the island of Ireland, bearing in mind—
- (i) their languages and traditions, 5
  - (ii) their experiences, and the experiences of people of Irish ancestry living abroad,
  - (iii) their diversity, including religious, ethical, cultural, and gender diversity, and
  - (iv) as regards people with disabilities, their requirements for 10 accessibility to those services, and
- (d) that regulatory arrangements—
- (i) address programme material, user-generated videos, and othercontent, which are harmful or illegal,
  - (ii) take account of technological and societal change, and 15
  - (iii) operate proportionately, consistently and fairly.
- (3) Without prejudice to the generality of subsection (2), the Commission shall—
- (a) stimulate the provision of high quality, diverse, and innovative programmes by providers of broadcasting services and audiovisual 20 on-demand media services,
  - (b) endeavour to ensure diversity and transparency in the control of communications media operating in the State,
  - (c) provide a regulatory environment that will sustain independent and impartial journalism, 25
  - (d) promote and stimulate the development of—
    - (i) programmes in the Irish language, and
    - (ii) programmes relating to climate change and environmental sustainability,
  - (e) promote and encourage environmental sustainability in the policies 30 and practices of providers of broadcasting services, audiovisual on-demand media services, and relevant online services,
  - (f) encourage research, promote or endorse educational initiatives andactivities and co-operate for that purpose with educational bodies, 35 and otherwise promote public awareness, knowledge and understanding, in relation to matters connected to its functions,
  - (g) engage in evidence-based decision-making in the exercise of its

functions, and promote evidence-based decision-making by those with which it consults, and

<u>(h) encourage compliance with the provisions of this Act, and the provisions of any code, rule or other statutory instrument made under it, in any manner the Commission considers appropriate, including by the publication of guidance as to how those provisions may be complied with.</u>	5
<u>(4) In performing its functions the Commission shall have regard to policies of the Government and of the Minister for the Environment, Climate and Communications in respect of climate change and environmental sustainability.</u>	
<u>(5) The Commission shall, in so far as consistent with its other functions and its available resources—</u>	10
<u>(a) provide advice on matters to which its functions relate, if requested to do so by a Minister of the Government, educational or training institution, or public body whose activities are concerned with those matters,</u>	15
<u>(b) give effect to any arrangements entered into with the Minister to stimulate the provision of high quality, diverse and innovative news and comment on current affairs—</u>	
<u>(i) by publishers of newspapers or periodicals consisting substantially of news and comment on current affairs,</u>	20
<u>(ii) by broadcasters,</u>	
<u>(iii) by providers of programme material consisting substantially of news and comment on current affairs to a broadcaster, and</u>	
<u>(iv) by providers of services otherwise made available on an electronic communications network and providing content, consisting substantially of news and comment on current affairs, that is under the provider’s editorial control,</u>	25
<u>(c) conduct or commission research on matters relating to its functions, including on any development outside the State, and publish, in the form and manner that it thinks fit, the findings of such research, as it considers appropriate, and</u>	30
<u>(d) undertake strategic reviews of the broadcasting services sector, audiovisual on-demand media services sector, and relevant online services sector in respect of the following areas:</u>	
<u>(i) funding of those sectors;</u>	35
<u>(ii) technological and societal change;</u>	
<u>(iii) the protection of children;</u>	
<u>(iv) other areas relevant to its functions, that the Minister may direct.</u>	

## Delegation of functions

8. (1) Subject to subsection (2), the Commission may delegate the performance of any of its functions to a Commissioner, or to a member of the staff of the Commission, on such terms and conditions as it may determine, and the Commissioner or member of the staff of the Commission shall be accountable to the Commission for the performance of that function. 5
- (2) The Commission may not delegate the performance of its functions under—
- (a) section 17, 24, 29, or 31, 10
  - (b) section 48(3), (4) or (5),
  - (c) section 50 or 51,
  - (d) Part 6 or 8,
  - (e) section 139W(6) or (8),
  - (f) Part 8B, or 15
  - (g) Part 3A of the Competition Act 2002.
- (3) A function delegated by the Commission under subsection (1) continues to be vested in the Commission and is capable of being performed concurrently by either the Commission or the delegate.

## Conferral of additional functions 20

9. (1) The Minister may, after consulting with the Commission and any other Minister of the Government who, in the Minister's opinion, is concerned, by order confer on the Commission additional functions, connected with its existing functions and relating to the regulation of broadcasting services, audiovisual on-demand media services and designated online services, including as regards the protection of children, subject to such conditions as may be specified in the order. 25
- (2) An order under this section may contain such incidental, supplemental and consequential provisions as the Minister considers necessary or expedient to give full effect to the conferral of additional functions on the Commission. 30
- (3) An order made under this section shall be laid by the Minister before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which the House sits after that order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under it. 35

## Independence of Commission

10. The Commission shall be independent in the performance of its functions.

## Membership of Commission

11. (1) The membership of the Commission shall consist of a chairperson and such number of other whole-time members, not being less than 3 nor greater than 6, as the Minister determines.
- (2) Each member of the Commission, including the chairperson, shall be known as a Commissioner. 5
- (3) The chairperson and each of the other Commissioners shall be appointed by the Minister on the recommendation of the Public Appointments Service.
- (4) A Commissioner shall hold office for such term, not exceeding 5 years from the date of his or her appointment, as the Minister determines. 10
- (5) A Commissioner whose term of office expires or is due to expire shall be eligible for reappointment to the Commission.
- (6) A Commissioner who has served 2 terms of office shall not be eligible for reappointment to the Commission. 15
- (7) Notwithstanding subsection (3), a person who immediately before the establishment day was the chief executive officer of the Authority may be appointed by the Minister to be a Commissioner for such period as the Minister determines (which period shall be no longer than one year from the establishment day). 20
- (8) A person who becomes a Commissioner under subsection (7) shall be eligible for appointment as a Commissioner under subsection (3) at any time during or after the period referred to in subsection (7).
- (9) The period referred to in subsection (7) shall not be considered a term of office for the purposes of subsection (6). 25

## Conditions of office of Commissioner

12. (1) A Commissioner shall hold office on such terms and conditions as may be fixed by the Minister following consultation with the Minister for Public Expenditure and Reform.
- (2) A Commissioner shall be paid such remuneration as the Minister, with the consent of the Minister for Public Expenditure and Reform, determines. 30
- (3) A Commissioner holds office until his or her term of office expires, unless he or she ceases to be a Commissioner under any other provision of this section. 35
- (4) A Commissioner may resign from the Commission by letter addressed to the Minister and the resignation shall take effect on the date specified in the letter, or on the date on which the Minister receives the letter, whichever is the later.

|

(5) The Government may at any time remove a Commissioner from office 40  
if it is satisfied that—

- (a) the Commissioner has become incapable through ill-health or otherwise of performing the functions of the office,
- (b) the Commissioner has engaged in serious misconduct,
- (c) the Commissioner has a conflict of interest of such significance that the Commissioner should cease to hold office, or 5
- (d) the Commissioner has failed without reasonable cause to perform his or her functions for a continuous period of at least 3 months.
- (6) Where the Government proposes to remove a Commissioner from office under subsection (5), the Government shall give notice in writing to the Commissioner of that proposal. 10
- (7) A notice under subsection (6) shall contain a statement—
- (a) of the reasons for the proposed removal,
- (b) that the Commissioner may make representations to the Government in such form and manner as may be specified by the Government, 15
- (c) that any such representations must be made within a period of 20 working days from the date of the giving of the notice, or such longer period as the Government may, having regard to the requirements of natural justice, specify in the notice, and
- (d) that at the end of the period referred to in paragraph (c) or the period specified in the notice, whether or not any representations are made, the Government shall decide whether to remove the Commissioner from office. 20
- (8) In considering whether to remove a Commissioner from office under subsection (5), the Government shall take into account— 25
- (a) any representations made by the Commissioner in accordance with paragraphs (b) and (c) of subsection (7), and
- (b) any other matter the Government considers relevant.
- (9) Where, after giving notice under subsection (6), the Government decides not to remove the Commissioner from office, the Government shall notify the Commissioner in writing of the decision. 30
- (10) Where, after giving notice under subsection (6), the Government decides to remove a Commissioner from office, the Government shall—
- (a) notify the Commissioner in writing of the decision, the reasons for it and the date from which it shall take effect (which shall be a date not earlier than the date of the notice under this paragraph), 35
- (b) shall lay before each House of the Oireachtas a statement in writing of the decision and the reasons for it, and
- (c) shall provide a copy of that statement to the Commissioner. 40



- (11) A person shall cease to hold office as a Commissioner if he or she—
- (a) is adjudicated bankrupt,
  - (b) makes a composition or arrangement with his or her creditors,
  - (c) is convicted of an indictable offence in relation to a company, a body corporate or a trust, 5
  - (d) is convicted of an offence involving fraud or dishonesty,
  - (e) is nominated as a member of Seanad Éireann,
  - (f) is elected to be a member of either House of the Oireachtas or to be a member of the European Parliament,
  - (g) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament, 10
  - (h) is elected or co-opted as a member of a local authority,
  - (i) becomes, or acquires a relevant interest in, a provider of communications media, or 15
  - (j) enters into employment with a provider of communications media, or with an organisation representative of providers of communications media.
- (12) References to a relevant interest in a provider of communications media in subsection (11)(i) are to be read in accordance with subsections (13) and (14).
- (13) A person has a relevant interest in a provider of communications media if the person, or a connected person—
- (a) holds shares or any other proprietary interest in the provider, where the value of the interest exceeds €5,000, 25
  - (b) holds bonds, debentures, or other like investments in the provider, where their aggregate value exceeds €13,000,
  - (c) holds a directorship or shadow directorship (within the meaning of the Companies Act 2014) in the provider, or
  - (d) receives gifts or other benefits from the provider, where their aggregate value exceeds €650. 30
- (14) A person also has a relevant interest in a provider of communications media if the person or a connected relative of the person is a party to an arrangement or agreement concerning land (whether or not enforceable) with the provider. 35
- (15) In this section—
- ‘civil partner’ means a civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

'connected person', in relation to a person, means—

- (a) a connected relative of the person,
- (b) a nominee of the person or of a connected relative of the person,
- (c) a company or other body of which the person or a connected relative of the person, or a nominee of either of them, is a member, 5
- (d) a partnership in which the person or a connected relative of the person is a partner, or
- (e) an employer of the person, or of a connected relative of the person;

'connected relative', in relation to a person, means a spouse, partner, civil partner, parent, brother, sister, or child of the person, or a spouse, partner or civil partner of a child of the person (and 'child' in this definition includes an adult child). 10

### Appointment of Acting Commissioner

13. (1) If a vacancy occurs in the office of a Commissioner, or if a Commissioner is absent from the State or is, for any other reason, unable to perform the functions of a Commissioner, the Minister may appoint a member of the staff of the Commission to perform the functions of the Commissioner (referred to in this section and in section 14 as an 'Acting Commissioner', and the term 'Commissioner' shall be construed as including an Acting Commissioner). 15 20

(2) An appointment under subsection (1)—

- (a) shall be made for a period of not more than 6 months, and
- (b) subject to paragraph (a), may be made for all or part of the period of vacancy, absence or inability.

(3) If, in a case of vacancy, the Minister is satisfied that it is not reasonably practicable for an appointment under section 11 to be made before the end of the period referred to in subsection (2), the Minister may extend the appointment by such further period, not exceeding 6 months, as he or she is satisfied is necessary for an appointment to be made under that section. 25 30

### Chairperson of Commission

14. (1) The chairperson shall carry on, manage, and control generally the staff, administration and business of the Commission.

(2) If a vacancy occurs in the office of the chairperson, or if the chairperson is absent from the State or is, for any other reason, unable to perform the functions of the chairperson, the Minister may appoint a Commissioner, other than an Acting Commissioner or a Commissioner appointed under section 11(7), to perform the functions of the chairperson, for all or part of that period of vacancy, absence or inability, and references in this Act to the chairperson of the 35 40

Commission shall, unless the context otherwise requires, be construed as including references to that Commissioner.

## Eligibility for appointment as Commissioner or member of staff

15. (1) A person shall be ineligible for appointment as a Commissioner, or as a member of the staff of the Commission, while he or she—
- (a) is a member of either House of the Oireachtas,
  - (b) is a member of the European Parliament, 5
  - (c) is a member of a local authority, or
  - (d) is, or has a relevant interest in, a provider of communications media.
- (2) The reference to a 'relevant interest' in subsection (1)(d) shall be construed in accordance with section 12(13) and (14). 10

## Meetings of Commission

16. (1) The Commission shall hold such and so many meetings as it considers necessary for the performance of its functions.
- (2) At a meeting of the Commission—
- (a) the chairperson shall, if present, be the chairperson of the meeting, 15
  - (b) if the chairperson is not present, the Commissioners present shall choose one of their number to be the chairperson of the meeting.
- (3) Every question at a meeting on which a vote is required shall be determined by a majority of the votes of the Commissioners present 20 and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.
- (4) Subject to subsection (5), the Commission may act notwithstanding one or more vacancies among the Commissioners. 25
- (5) The quorum for a meeting of the Commission shall, unless the Minister otherwise directs, be 3.
- (6) A meeting of the Commission may take place by any means of communication by which all of the Commissioners participating can hear and be heard at the same time. 30
- (7) Subject to the provisions of this Act, the Commission shall regulate its procedures in such manner as it determines.

## Staff of Commission

17. (1) The Commission may, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, appoint 35 such and so many persons to be members of the staff of the Commission as it may determine.

or

(2) The terms and conditions of service of a member of the staff of the Commission shall, with the consent of the Minister given with the

approval of the Minister for Public Expenditure and Reform, be determined by the Commission.

(3) There shall be paid by the Commission to the members of its staff such remuneration and allowances as the Commission may, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, determine.

(4) A member of the staff of the Commission shall, unless otherwise provided for under subsection (2), stand seconded from employment by the Commission and shall not be paid by, nor entitled to receive from, the Commission any remuneration or allowances for the period of that secondment, if he or she is—

(a) nominated as a member of Seanad Éireann,

(b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,

(c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament, or

(d) elected or co-opted as a member of a local authority.

(5) Without prejudice to the generality of subsection (4), a period of secondment referred to in subsection (4) shall not be considered as service with the Commission for the purposes of any superannuation benefits.

### Superannuation

18. (1) The Commission may, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, make a scheme granting superannuation benefits to or in respect of—

(a) a Commissioner, or

(b) a member of the staff of the Commission.

(2) A scheme made under this section shall not provide for the granting of superannuation benefits to or in respect of any person where the Single Public Service Pension Scheme applies to or in respect of that person by virtue of Chapter 2 of Part 2 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012.

(3) A scheme made under this section shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme and different times and conditions may be fixed in respect of different classes of persons.

(4) The Commission may, with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform, amend or revoke a scheme.

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(5) A scheme shall be carried out by the Commission in accordance with its

|

terms.

- (6) A scheme shall include provision for appeals from a decision relating to a superannuation benefit under the scheme.
- (7) No superannuation benefits shall be granted by the Commission to or in respect of a person who is a member of a scheme under this section on ceasing to be a Commissioner or a member of the staff of the Commission otherwise than— 5
- (a) in accordance with a scheme or schemes under this section, or
- (b) with the consent of the Minister, given with the approval of the Minister for Public Expenditure and Reform.
- (8) A scheme shall be laid by the Commission before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House sits after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done under it. 10 15
- (9) Subsection (8) shall, with all necessary modifications, apply to an amendment to a scheme or a revocation of a scheme as it applies to a scheme.
- (10) A scheme shall not provide for less favourable conditions in respect of people who immediately before the establishment day were members of the staff of the Authority than those conditions to which they were entitled immediately before the establishment day.
- (11) Disbursement of superannuation benefits which may be granted to or in respect of persons who, immediately before the establishment day, were members of the staff of the Authority shall not be on less favourable conditions than would apply if the benefits had continued to be paid out of monies provided by the Authority. 25
- (12) In this section 'scheme' means a scheme made under subsection (1).

### Committees

- 19.** (1) The Commission may establish committees to assist and advise the Commission on matters relating to its functions or on such other matters as the Commission may determine. 30
- (2) A committee may include such number of members as the Commission considers appropriate, and may include Commissioners, members of the staff of the Commission or other persons. 35
- (3) The Commission shall specify in writing the purpose and terms of reference of each committee.
- (4) The acts of a committee are subject to confirmation in writing by the Commission unless the Commission dispenses with the necessity for



confirmation.

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(5) The Commission may, at any time, dissolve a committee, or for any reason remove any members of a committee.

(6) The Commission may regulate the procedures of a committee but, subject to any such regulation, a committee may regulate its own procedures.

(7) Any expenses of a committee shall be considered to be expenses of the Commission. 5

(8) There may be paid by the Commission to members of a committee such allowances for expenses (if any) incurred by them as the Commission may, with the consent of the Minister and the Minister for Public Expenditure and Reform, determine.

### Consultants and advisers 10

20. (1) The Commission may engage such consultants or advisers as it considers necessary for the performance of its functions.

(2) Any fees due to a consultant or adviser engaged under this section shall be paid by the Commission out of monies at its disposal.

(3) The Commission shall have regard to the advice of any consultant or adviser engaged under this section. 15

### Power to impose levies

21. (1) The Commission may make an order (a 'levy order') imposing a levy on any of the following:

(a) providers of audiovisual media services; 20

(b) providers of sound broadcasting services;

(c) providers of designated online services.

(2) A levy order shall specify the period in respect of which a levy is imposed (the 'levy period').

(3) Levy periods shall run successively, and shall be the same for all levies imposed. 25

(4) The Commission shall seek to ensure that the amount of all levies imposed under subsection (1) in respect of a levy period is sufficient to meet the Commission's expenses properly incurred in that period and its working capital requirements in that period, in so far as those expenses and requirements are not met in any other way. 30

(5) In calculating the amount of a levy under any paragraph of subsection (1) in respect of a levy period, the Commission—

(a) shall consider the Commission's expenses in that period in performing functions in relation to services mentioned in that 35

paragraph, as a proportion of its expenses in that period in performing functions in relation to all services mentioned in subsection (1), and

(b) shall seek to ensure that the total amount imposed by way of levy under that paragraph in respect of that period, represents a 40

corresponding proportion of the total amount imposed by way of levy under this section in respect of that period.

(6) A levy order shall provide for the collection, payment and administration of a levy, including—

(a) the method of calculation of the levy, 5

(b) the times at which payment is to be made and the form of payment,

(c) requirements for providers subject to the levy to keep relevant records, and to make them available to the Commission,

(d) any provision for exemptions, deferrals or refunds, and

(e) the consideration of applications by providers for the review of 10 decisions under the order.

(7) A levy order—

(a) shall not impose a levy on a provider providing only a community broadcasting service, and

(b) shall exempt any such service from the calculation of a levy 15 imposed on a provider also providing other services.

(8) In subsection (7) ‘community broadcasting service’ means a service provided under a contract under section 64, 68(1)(b), or 72.

(9) In making provision by levy order for the method of calculation of a levy and for any exemption or deferral, the Commission shall consider 20 the relevance of the following factors:

(a) the financing of a provider, including any public funding;

(b) the desirability of promoting new or innovative services;

(c) the nature and scale of services provided by a provider;

(d) any other factor that may affect the exercise by the Commission of 25 functions in relation to a provider, including, in the case of designated online services, matters referred to in section 139E(3) (d), (e) and (f).

(10) Levy orders may (subject to subsection (3)):

(a) make different provision for different providers, including 30 providers within the same paragraph of subsection (1);

(b) in the case of providers who fall within more than one of those paragraphs, make different provision under different paragraphs.

(11) Any surplus of income, from levies imposed in respect of a levy period, over the expenses properly incurred by the Commission in that 35 period and its working capital requirements in that period shall either—

(a) be retained by the Commission to be offset proportionately against subsequent levy obligations of the providers on whom the levy was imposed, or

(b) be refunded proportionately to those providers.

(12) In this section and section 22— 5  
'levy order' has the meaning given in subsection (1); 'levy period' has the meaning given in subsection (2).

### Levies under section 21: enforcement and procedure

22. (1) A levy payable under a levy order by any person may be recovered by the Commission from that person as a simple contract debt in any 10  
court of competent jurisdiction.

(2) A person shall be guilty of a category 2 offence if in purported compliance with a requirement imposed by or under a levy order, he or she provides information to the Commission which is to his or her  
knowledge false or misleading. 15

(3) A levy order shall be laid by the Commission before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House sits after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of 20  
anything previously done under it.

### Grant to Commission

23. In each financial year of the Commission, the Minister may advance to the Commission out of moneys provided by the Oireachtas such sums as the Minister may, with the consent of the Minister for Public Expenditure 25  
and Reform, determine.

### Power to borrow

24. The Commission may borrow money (including money in a currency other than the currency of the State) for the purpose of performing any  
of  
its functions, subject to the approval of the Minister, given with the 30  
consent of the Minister for Public Expenditure and Reform and the Minister for Finance, and any conditions they may determine.

### Deposits and charges for services

25. (1) The Commission may require a person to pay a deposit of such amount as the Commission considers reasonable in respect of an application 35  
made by the person to the Commission for a broadcasting contract.

(2) The Commission may charge for services or facilities provided by it.

(3) Any surplus of income under subsection (2) over the expenses incurred by the Commission in respect of the provision of the services or facilities concerned in a particular financial year shall be applied in such manner as the Minister, after consultation with the Commission and with the consent of the Minister for Finance and the Minister for 40

Public Expenditure and Reform, may direct and any such direction may require that all or part of such excess be paid into the Central Fund.

- (4) The Commission may recover any amount due and owing to it under this section from any person as a simple contract debt in any court of competent jurisdiction. 5

### Estimates and accounts

26. (1) The Commission shall submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times as may be required by the Minister and shall furnish to the Minister any information which the Minister may require in relation to those estimates, including proposals and future plans relating to the performance by the Commission of its functions over a specified period of years. 10
- (2) The Commission shall keep, in such form as may be approved by the Minister with the consent of the Minister for Public Expenditure and Reform, all proper and usual books or other records of account of— 15
- (a) all monies received or expended by the Commission,
- (b) the sources of all monies received and the reasons for all expenses, and 20
- (c) all property, assets and liabilities of the Commission.
- (3) The books and records referred to in subsection (2) shall include an income and expenditure account and a balance sheet and such special accounts, if any, as the Minister may from time to time direct.
- (4) The Commission shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the books or other records of account of the Commission in respect of any financial year, or other period, and shall facilitate any such examination, and the Commission shall pay such fee for the examination as may be required by the Minister. 25 30
- (5) Accounts kept under this section, signed by the chairperson and one other Commissioner or, in the absence of the chairperson, by two Commissioners, shall be submitted by the Commission to the Comptroller and Auditor General for audit as soon as practicable after the end of the financial year to which the accounts relate, but not later than 3 months thereafter. 35
- (6) When so audited, a copy of the accounts together with a copy of the report of the Comptroller and Auditor General thereon shall be presented by the Commission to the Minister who shall, as soon as practicable but not later than 3 months thereafter, cause copies of them to be laid before each House of the Oireachtas. 40

(7) The Commission shall publish, with the consent of the Minister and the Minister for Public Expenditure and Reform, on a website maintained by the Commission—

(a) such estimates of income and expenditure as are required to be submitted under subsection (1), and 5

(b) the audited accounts, or a summary of them, and the report of the Comptroller and Auditor General, presented to the Minister under subsection (6).

(8) The financial year of the Commission shall be the period of 12 months ending on the 31st day of December in any year, except that the period 10 commencing on the establishment day and ending on the following 31st day of December shall be the first financial year of the Commission.

### Accountability of chairperson to Public Accounts Committee

27. (1) The chairperson shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to the Committee in relation to— 15

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that the Commission is required by or under any enactment to prepare, 20

(b) the economy and efficiency of the Commission in the use of its resources, 25

(c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and

(d) any matter affecting the Commission referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in paragraph (a), (b) or (c)) that is laid before Dáil Éireann. 30

(2) In the performance of his or her duties under this section, the chairperson shall not question or express an opinion on the merits of— 35

(a) any policy of the Government or of a Minister of the Government,  
or

(b) the objectives of such a policy.

### Accountability of Commissioner to Oireachtas committees

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28. (1) The chairperson, if required in writing to do so by a committee, shall

attend before it to give account for the general administration of the Commission.



- (2) Any Commissioner, if required in writing to do so by a committee, shall attend before it to give account for the performance of any functions of the Commission delegated to him or her.
- (3) Subsections (1) and (2) do not require a Commissioner to give account before a committee for any matter which is or has been, or which may in the future be, the subject of proceedings before a court or tribunal.
- (4) Where a Commissioner is of the opinion that a matter in respect of which he or she is requested to give an account before a committee is a matter to which subsection (3) applies, he or she shall inform the committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the committee at a time when the Commissioner is before it, the information shall be so conveyed in writing.
- (5) Where the Commissioner has informed a committee of his or her opinion in accordance with subsection (4) and the committee does not withdraw the requirement referred to in subsection (1) or (2) in so far as it relates to a matter the subject of that opinion—
- (a) the Commissioner may, not later than 21 days after being informed by the committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which subsection (3) applies, or
- (b) the chairperson of the committee may, on behalf of the committee, make such an application, and the High Court shall determine the matter.
- (6) Pending the determination of an application under subsection (5), the Commissioner shall not attend before the committee to give account for the matter the subject of the application.
- (7) If the High Court determines that subsection (3) applies to the matter concerned, the committee shall withdraw the requirement referred to in subsection (1) or (2), but if the High Court determines that subsection (3) does not apply, the Commissioner shall attend before the committee and give account for the matter.
- (8) In this section 'committee' means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the committee referred to in section 27 or the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann) or a subcommittee of such a committee.

### Strategy statement and work programme

29. (1) As soon as practicable after the establishment day, and thereafter not earlier than 6 months before and not later than 3 months before each third anniversary of the establishment day, the Commission shall prepare

and submit to the Minister a strategy statement for the 3 year period immediately following the year in which the statement is submitted.

- (2) A strategy statement shall—
- (a) specify the Commission’s objectives and intended outputs for the 3 year period referred to in subsection (1), and its strategies for achieving them, including its strategies for the economic and efficient use of resources, 5
  - (b) specify the manner in which the Commission proposes to assess its performance in respect of the objectives referred to in paragraph (a), taking account of its proposed financial and non-financial performance indicators,
  - (c) except for the first strategy statement, include an assessment of the 10 outcomes and effectiveness of the preceding strategy statement, based on the manner of assessment and the proposed performance indicators specified in the preceding strategy statement, and
  - (d) include any other matter that the Minister may direct.
- (3) A strategy statement shall be prepared in the form and manner that the 15 Minister directs.
- (4) When preparing a strategy statement, the Commission may consult such persons as it considers appropriate.
- (5) Prior to the adoption of a strategy statement and its submission to the Minister, the Commission shall undertake, for such reasonable period 20 as the Commission may determine, a public consultation process on a draft of the strategy statement.
- (6) As soon as practicable after a strategy statement has been submitted to the Minister under subsection (1), the Minister shall cause a copy of 25 the strategy statement to be laid before each House of the Oireachtas and the Commission shall publish the strategy statement on a website maintained by the Commission.
- (7) The Commission shall prepare and submit to the Minister, at least 2 months before the commencement of each financial year, a work programme relating to the discharge of its functions, including— 30
- (a) having regard to the strategy statement, the objectives and intended outputs of the Commission for that year and its strategy for achieving those objectives and outputs,
  - (b) the Commission’s priorities for its work to achieve those objectives 35
- and outputs, and
- (c) any other matter that the Minister may direct.
- (8) The Commission shall, in preparing each strategy statement and each work programme, have regard to the need to ensure the most economical and efficient use of its resources.

### Observations on legislative

30. (1) The Minister may direct the Commission to—

(a) provide observations in relation to proposals for legislative measures, or

(b) undertake a review of the operation or intended operation of an enactment.

where the functions of the Commission relate to or impact on the proposals or enactment. 5

(2) The Commission may, on receipt of a direction under subsection (1) or of its own volition, make a proposal to the Minister or any other Minister of the Government it considers appropriate, for a legislative measure on a matter to which the functions of the Commission relate 10 or upon which the functions of the Commission impact.

(3) Without prejudice to the generality of subsection (2), a proposal under that subsection may include a proposal to make, amend or repeal any enactment.

(4) The Commission shall, in complying with a direction under subsection 15 (1) or in making a proposal under subsection (2), consult any person who it appears to the Commission it is appropriate to consult, or whom the Minister concerned directs is to be consulted.

(5) In this section—

'Act' means— 20

(a) an Act of the Oireachtas, and

(b) a statute which was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and which continued in force by virtue of Article 50 of the Constitution;

'enactment' means an Act or a statutory instrument, including this Act 25 or any statutory instrument made under it, or any provision of an Act or statutory instrument;

'make' in subsection (3), in respect of an Act, includes enact or commence;

'proposal for a legislative measure' means a proposal for an Act or 30 statutory instrument;

'repeal' includes revoke, rescind, abrogate or cancel;

'statutory instrument' means an order, regulation, rule, bye-law, warrant, licence, certificate, notice, direction, code, scheme, guideline or other like document made, issued, granted or otherwise created by 35 or under an Act.

### Reporting by Commission

**31.** (1) The Commission shall not later than the 30th day of June in each year prepare and submit to the Minister a report on its activities in the immediately preceding year (in this section referred to as the 'annual 40 report'), and the Minister shall, as soon as may be after receiving the

annual report, cause copies of the annual report to be laid before each House of the Oireachtas.

- (2) An annual report shall include information in such form and regarding such matters as the Minister may direct but nothing in this subsection shall be construed as requiring the Commission to include information 5 the inclusion of which would, in the opinion of the Commission, be likely to prejudice the performance of its functions.
- (3) An annual report shall include details of any scheme approved under Part 10 or 10A of this Act.
- (4) An annual report shall include a report to the Minister on progress 10 made towards increasing the accessibility of audiovisual media services to people with disabilities, and in particular, on progress made to achieve the intended outcomes relating to such accessibility set out in any media service rules.
- (5) The Commission may furnish to the Minister such information or 15 reports, in addition to the annual report, about the performance of its functions as it considers appropriate.
- (6) In addition to information provided by the Commission in its annual report and in any reports made under subsection (5) the Commission shall supply to the Minister such information as the Minister may 20 require regarding the performance of its functions.
- (7) The Commission shall arrange for an annual report that has been laid before each House of the Oireachtas in accordance with subsection (1) to be published, on a website maintained by the Commission, as soon as practicable after copies of the report are so laid. 25

### Co-operation with other bodies

32. (1) The Commission may, in the interests of the effective discharge of its functions, co-operate and enter into co-operation agreements with a body established in the State.
- (2) The Commission may, in the interests of the effective discharge of its 30 functions, co-operate, and enter into agreements to co-operate, with a body not established in the State, if that body performs similar functions to the Commission.
- (3) Without prejudice to the generality of subsection (2), a body which is a member of the European Regulators Group for Audiovisual Media 35 Services established by Article 30b(1) of the Directive shall be considered to be a body which performs similar functions to the Commission.
- (4) If the Commission enters into an agreement to co-operate with a body in accordance with this section, it shall provide the Minister with a 40 copy of the agreement.

## Disclosure of personal data

33. (1) The Commission may, in the circumstances referred to in subsection (2), disclose personal data to any of the following:
- (a) the Data Protection Commission;
  - (b) a national regulatory authority or body designated by another Member State under Article 30 of the Directive;
  - (c) the Garda Síochána;
  - (d) a broadcaster or a provider of an audiovisual on-demand media service;
  - (e) a body prescribed in regulations made by the Minister. 10
- (2) The circumstances referred to in subsection (1) are:
- (a) in the case of subsection (1)(a), where the Commission considers that a complaint, or part of a complaint, made under section 48 is not relevant to the performance by the Commission of its functions, but may be relevant to the performance by the Data Protection Commission of its functions, and the Commission considers that the disclosure is necessary and proportionate for the purposes of transferring the complaint or part to the Data Protection Commission; 15
  - (b) in the case of subsection (1)(b), where the Commission considers that a complaint, or part of a complaint, made under section 48 is made in relation to a broadcaster, or a provider of an audiovisual on-demand media service, which is under the jurisdiction of another Member State, and the Commission considers that the disclosure is necessary and proportionate for the purposes of transferring the complaint or part to the national regulatory authority or body designated by that Member State; 20
  - (c) in the case of subsection (1)(c), where the Commission considers that the disclosure may be necessary and proportionate for the prevention or investigation of a criminal offence; 30
  - (d) in the case of subsection (1)(d), where the Commission considers that a complaint, or part of a complaint, made under section 48 is made in relation to the broadcaster or provider of an audiovisual on-demand media service, and the Commission considers that the disclosure is necessary and proportionate for the purposes of transferring the complaint or part to the broadcaster or provider under section 48(3); 35
  - (e) in the case of any paragraph of subsection (1), where the Commission considers that the disclosure is necessary and proportionate in such other circumstances as may be prescribed in regulations made by the Minister. 40
- (3) The matters that section 19(1) of the Data Sharing and Governance Act 2019 requires to be specified or included in a data-sharing

agreement shall be specified or included in any agreement entered into by the Commission for the disclosure to another body of personal data in accordance with subsection (1), subject to the following modifications to the description of those matters in section 19(1) of that Act: 5

(a) references to the data-sharing shall be construed as references to any disclosure under the agreement;

(b) the reference in paragraph (d) to the public body concerned shall be construed as a reference to the body with whom the agreement is entered into; 10

(c) the reference in paragraph (f) to a public body shall be construed as a reference to a party to the agreement;

(d) the following paragraph shall be substituted for paragraph (r):  
'(r) include in a schedule to the agreement a statement summarising the grounds on which the Commission 15 considers the disclosure of the information to be necessary and proportionate as described in any paragraph of section 33(2) of the Broadcasting Act 2009.'

(4) The Minister shall make regulations under subsection (1)(e) only where he or she is satisfied that disclosure by the Commission of 20 personal data to a body prescribed under the regulations, in the circumstances referred to in subsection (2), is necessary for the performance by the Commission or the body prescribed of functions in the public interest.

(5) The Minister shall make regulations under subsection (2)(e) only 25 where he or she is satisfied that disclosure by the Commission of personal data to a body referred to in subsection (1), in the circumstances prescribed under the regulations, is necessary for the performance by the Commission or such a body of functions in the public interest. 30

(6) Regulations made under this section shall be laid by the Minister before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the regulations is passed by either such House within the next 21 days on which the House sits after the regulations are laid before it, the regulations shall be annulled 35 accordingly, but without prejudice to the validity of anything previously done under them.

(7) The Commission shall give a copy of any agreement referred to in subsection (3) to the Minister.

### Co-operation with self-regulatory systems 40

34. (1) The Commission may co-operate with, or give assistance to, a person or group of persons, whether established in the State or elsewhere—

(a) in the preparation by that person or group of standards, or



(b) in the establishment and administration by that person or group of a self-regulatory system,

relating to the regulation of programme material, user generated video or other content.

(2) In this section, 'self-regulatory system' means a system whereby the members of a group of persons with a shared interest voluntarily adhere to rules or codes of conduct established by that group, and may include a system which provides for the resolution of disputes.

### Policy communications

35. (1) The Commission may consider any communication issued to it by the Minister in accordance with this section (a 'policy communication'), if the Commission is satisfied that doing so is consistent with its independence in the performance of its functions.

(2) The Minister may issue a policy communication if—

(a) the Minister thinks the Commission should consider the matters referred to in the communication in formulating policy relating to the performance of its functions, and

(b) the Minister is satisfied that issuing the communication is consistent with the Commission's independence in the performance

of its functions.

(3) Before issuing a policy communication, the Minister—

(a) shall give the Commission a draft of the proposed communication and the reasons for it, and

(b) shall publish the draft and the reasons with a notice specifying the period within which representations relating to the communication may be made by any person.

(4) The period specified must not be less than 21 days from the date of publication of the notice.

(5) After considering any representations made under subsection (3), the Minister may issue the policy communication with or without amendment.

(6) Before issuing a policy communication that relates to the functions of another Minister of the Government, the Minister shall consult that other Minister.

(7) The Minister shall not issue a policy communication that relates to the Commission's performance of its functions in relation to a particular person.

(8) The Minister shall not issue a policy communication that relates to the Commission's performance of its functions under Part 5, 6, 8 or 8B of this Act.

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(9) A policy communication shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is issued.

(10) The Commission shall publish a policy communication on a website maintained by it.

## Confidential information 5

36. (1) A person shall not disclose confidential information obtained by him or her in the course of performing, or as a result of having performed, functions as a relevant person under this Act unless he or she is required or permitted by law, or duly authorised by the Commission, to do so. 10

(2) Subsection (1) does not apply where—

(a) the disclosure is made to the Commission,

(b) the disclosure is made to a Minister of the Government,

(c) the disclosure is made to a public body, whether in the State or otherwise, for the purposes of facilitating co-operation between the Commission and such body in the performance of their respective functions, or 15

(d) the disclosure is made to a member of the Garda Síochána and, in the opinion of the person making the disclosure, the information may relate to the commission of an offence (whether an offence under this Act or not). 20

(3) A person who contravenes subsection (1) shall be guilty of a category 3 offence.

(4) In this section—

‘confidential information’ means— 25

(a) information that is expressed by the Commission to be confidential, either as regards particular information or as regards information of a particular class or description, or

(b) information of a commercially sensitive nature submitted to the Commission for the purposes of the performance of its functions; 30

‘relevant person’ means—

(a) a Commissioner,

(b) a member of the staff of the Commission,

(c) an authorised officer,

(d) any other person engaged under a contract for services by the Commission, or a member of the staff of such a person, including a consultant or adviser engaged under section 20, or

(e) a person who has previously acted in a capacity referred to in any of paragraphs (a) to (d).

## Disclosure of interests

37. (1) Where a relevant person or a connected relative of a relevant person is likely to derive a benefit from any matter to be considered by the Commission, or where a relevant person has a relevant interest in any business or organisation representative of any business, which is likely to derive a benefit from such a matter, the relevant person— 5
- (a) shall, in advance of any consideration of the matter, disclose that fact to the Commission,
  - (b) shall take no part in the deliberation by the Commissioners or members of the staff of the Commission in relation to the matter, 10
  - (c) shall withdraw from a meeting at which the matter is being considered for so long as it is being so considered, and shall not be counted towards a quorum during any such consideration,
  - (d) shall not influence or seek to influence a decision to be made in relation to the matter, and 15
  - (e) shall not make any recommendation to the Commission in relation to the matter.
- (2) Subsection (1) does not apply to a person as regards—
- (a) a contract or proposed contract of employment of that person as a member of the staff of the Commission, or 20
  - (b) a contract or proposed contract for services in respect of that person, provided that person is not a Commissioner or a member of staff.
- (3) Where a Commissioner fails to comply with this section, and that failure has not resulted in the Government issuing a notice under section 12(6), the Minister shall decide the appropriate action to be taken. 25
- (4) Where a person other than a Commissioner fails to comply with this section, the Commission shall decide the appropriate action to be taken, which may include termination of the person's contract of employment or contract for services. 30
- (5) For the purposes of this section—
- 'connected relative' shall be construed in accordance with section 12(15);
  - 'relevant interest' shall be construed in accordance with section 12(13) and (14), subject to the modifications that— 35
- (a) references to a 'provider of communications media' or 'the provider' in those subsections shall be construed as references to the 'business' or 'organisation representative of any business' referred to in subsection (1), and 40

(b) references to a person shall be construed as references to the relevant person referred to in subsection (1);

'relevant person' means a Commissioner, a member of the staff of the Commission, or a consultant or adviser engaged under section 20.

## Judicial review

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38. (1) Leave shall not be granted for judicial review of a decision under section 139ZK.

(2) Leave shall not be granted for judicial review of any other decision made or act done by the Commission under this Act unless—

(a) the application for leave is made to the High Court within the period of 28 days beginning on the date of the decision or the date of the doing of the act, or 10

(b) the High Court is satisfied that it may extend the period provided for in paragraph (a) because—

(i) there is good and sufficient reason for doing so, and 15

(ii) the circumstances that resulted in the failure to make the application for leave within the period in paragraph (a) were outside the control of the applicant for the extension.

(3) The Commission may, at any time after the bringing of an application for leave to apply for judicial review which relates to a matter for the time being before the Commission, apply to the High Court to stay the judicial review proceedings pending the making of a decision by the Commission in relation to the matter. 20

(4) On the making of an application referred to in subsection (3), the High Court may, where it considers that the matter is within the jurisdiction of the Commission, stay the proceedings on such terms as it thinks fit. 25

(5) Subject to subsection (6), no appeal shall lie to the Court of Appeal from a decision of the High Court on:

(a) an application for leave for judicial review made in accordance with subsection (1) or (2); 30

(b) an application to extend the period for the making of such an application in accordance with subsection (2);

(c) an application for judicial review following leave granted under subsection (2);

(d) any other application made in proceedings referred to in paragraph (a), (b) or (c). 35

(6) The High Court may grant leave to appeal from a decision referred to in subsection (5), where it certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Court of Appeal. 40

(7) On an appeal referred to in subsection (6), the Court of Appeal shall have jurisdiction to determine only the point of law certified by the High Court under subsection (6), and to make only such order as necessarily follows from that determination.”.

## PART 3

### BROADCASTERS — DUTIES, CODES AND RULES

Duties of  
broadcasters.

39-36. — (1) Every broadcaster shall ensure that—

- (a) all news broadcast by the broadcaster is reported and presented in an objective and impartial manner and without any expression of the broadcaster’s own views,
- (b) the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of his or her own views, except that should it prove impracticable in relation to a single broadcast to apply this paragraph, two or more related broadcasts may be considered as a whole, if the broadcasts are transmitted within a reasonable period of each other,
- (c) in the case of sound broadcasters a minimum of—
  - (i) not less than 20 per cent of the broadcasting time, and
  - (ii) if the broadcasting service is provided for more than 12 hours in any one day, two hours of broadcasting time between 07.00 hours and 19.00 hours,is devoted to the broadcasting of news and current affairs programmes, unless a derogation from this requirement is authorised by the Authority under *subsection (3)*,
- (d) anything which may reasonably be regarded as causing harm or offence, or as being likely to promote, or incite to, crime or as tending to undermine the authority of the State, is not broadcast by the broadcaster, and
- (e) in programmes broadcast by the broadcaster, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon.

(2) Nothing in *subsection (1) (a) or (b)* prevents a broadcaster from transmitting party political broadcasts provided that a broadcaster does not, in the allocation of time for such broadcasts, give an unfair preference to any political party.

(3) Notwithstanding *subsection (1)(c)*, the Authority may authorise a derogation from the requirement in question in whole or in part in the case of a sound broadcasting service but only if it is satisfied that the authorisation of such a derogation would be beneficial to the listeners of the sound broadcasting service.

(4) The sound broadcasting services established and maintained by RTÉ are deemed to be one sound broadcasting service for the purposes of *subsection (1)(c)*.

(5) A broadcaster shall ensure that the broadcast treatment of any proposal, being a proposal concerning policy as regards broadcasting, which is of public controversy or the subject of current public debate, which is being considered by the Government or the Minister, shall be reported and presented in an objective and impartial manner.

(6) *Paragraphs (a) and (b) of subsection (1)*, in so far as they require the broadcaster not to express his or her own views, do not apply to any broadcast made under *subsection (5)*.

Recording of broadcasts.

**40-37.** — (1) A broadcaster, by means of its own facilities and in a manner approved for the purposes of this section by the Compliance Committee, shall record every broadcast made by the broadcaster or every item of programme material supplied by him or her under a broadcasting contract or a content provision contract.

(2) Recordings made in compliance with *subsection (1)*, shall be retained by the broadcaster for such period as stands determined by the Compliance Committee for the purposes of this section.

(3) When a complaint is being investigated by the Compliance Committee under *section 48*, the recording of a broadcast to which the complaint relates, together with the recording, made and being retained under this section, of any other broadcast which in the opinion of the Compliance Committee is relevant to that broadcast, shall be supplied by the broadcaster to the Compliance Committee on a request made by the Compliance Committee at any time during such period.

(4) The making or retaining of a recording in compliance with *subsection (1)* is not a contravention of the Copyright and Related Rights Act 2000.

Advertising.

**41.** — (1) A programme broadcast in a broadcasting service may include advertisements inserted in it.

(2) The total daily times for broadcasting advertisements in a sound broadcasting service must not exceed a maximum of 15 per cent of the total daily broadcasting time and the maximum time to be given to advertisements in any hour shall not exceed a maximum of 10 minutes.

(3) A broadcaster shall not broadcast an advertisement which is directed towards a political end or which has any relation to an industrial dispute.

(4) A broadcaster shall not broadcast an advertisement which addresses the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation.

(5) Nothing in *subsection (3)* is to be read as preventing the broadcasting of a party political broadcast provided that a broadcaster does not, in the allocation of time for such broadcasts, give an unfair preference to any political party.

(6) *Subsection (3)* does not apply to advertisements broadcast at the request of the Referendum Commission in relation to a matter referred to in section 3 of the Act of 1998 concerning a referendum.

(7) In this section, references to advertisements shall be read as including references to advertising matter contained in sponsored programmes, that is to say, in programmes supplied for advertising purposes by or on behalf of an advertiser.

Broadcasting codes.

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

- (2) Broadcasting codes shall provide—
- (a) that all news broadcast by a broadcaster is reported and presented in an objective and impartial manner and without any expression of the broadcaster's own views,
  - (b) that the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of the broadcaster's own views,
  - (c) that anything being likely to promote, or incite to, crime, or as tending to undermine the authority of the State, is not broadcast by a broadcaster,
  - (d) that in programmes broadcast by a broadcaster, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon,
  - (e) that a broadcaster does not, in the allocation of time for transmitting party political broadcasts, give an unfair preference to any political party,
  - (f) that in respect of programme material broadcast by a broadcaster that audiences are protected from harmful or offensive material, in particular, that programme material in respect of the portrayal of violence and sexual conduct, shall be presented by a broadcaster—
    - (i) with due sensitivity to the convictions or feelings of the audience, and
    - (ii) with due regard to the impact of such programming on the physical, mental or moral development of children,
  - (g) that advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, in particular advertising and other such activities which relate to matters likely to be of direct or indirect interest to children, protect the interests of children having particular regard to the general public health interests of children,
  - (h) that advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, other than advertising and other activities as aforesaid falling within *paragraph (g)*, protect the interests of the audience,
  - (i) that the provision of a broadcasting service which has, as one of its principal objectives, the promotion of the interests of any organisation, protects the interests of the audience, and
  - (j) for the matters required to be provided for by Chapters IIA, IV and V of the Council Directive.
- (3) In preparing or revising a broadcasting code, the Authority shall have regard to each of the following matters—
- (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description,
  - (b) the likely size and composition of the potential audience for programmes included in television and sound broadcasting services generally, or in television and sound broadcasting services of a particular description,
  - (c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience,

- (d) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content,
- (e) the desirability of securing that the content of a broadcasting service identifies when there is a change affecting the nature of the service that is being watched or listened to and, in particular, a change that is relevant to the application of the codes set under this section, and
- (f) the desirability of maintaining the independence of editorial control over programme content.

(4) A broadcasting code prepared by the Authority under *subsection (2)(g)* may prohibit the advertising in a broadcasting service of a particular class or classes of foods and beverages considered by the Authority to be the subject of public concern in respect of the general public health interests of children, in particular those which contain fat, trans-fatty acids, salts or sugars.

(5) In preparing a broadcasting code under *subsection (2) (g)* the Authority may consult with the relevant public health authorities.

(6) Whenever the Authority prepares or revises a broadcasting code relating to the matter in question every broadcaster shall comply with such broadcasting code and any revision of it.

(7) A copy of any broadcasting code shall be presented to the Minister as soon as may be after it is made.

(8) In this section and *section 43* "teleshopping material" means material which, when transmitted, will constitute a direct offer to the public for the sale or supply to them of goods or other property (whether real or personal) or services.

(9) The following codes prepared under section 19 of the Act of 2001, namely—

- (a) the Code of Programme Standards (10 April 2007),
- (b) the Children's Advertising Code (1 January 2005), and
- (c) the Advertising Code (10 April 2007),

if in force on the passing of this Act, continue in force as if made under the corresponding provision of this section and have effect accordingly.

Broadcasting  
rules.

**43.** — (1) The Authority shall, subject to the requirements of *section 41(2)* and, in accordance with *subsection (4)*, prepare, and from time to time as occasion requires, revise rules ("broadcasting rules") with respect to—

- (a) the total daily times that shall be allowed for the transmission of advertisements and teleshopping material on a broadcasting service, in respect of a contract under *Part 6*,
- (b) the maximum period that shall be allowed in any given hour for the transmission of advertisements and teleshopping material (within the meaning of *section 42 (8)*) on such a broadcasting service, and the Authority may make different such rules with respect to different classes of broadcasting service,
- (c) the specific steps each broadcaster is required to take to promote the understanding and enjoyment by—
  - (i) persons who are deaf or have a hearing impairment,
  - (ii) persons who are blind or partially sighted, and
  - (iii) persons who have a hearing impairment and are partially sighted,



of programmes transmitted on any broadcasting service provided by the broadcaster.

(2) Without prejudice to the generality of *subsection (1)(c)*, broadcasting rules with respect to that paragraph shall require each broadcaster of audio-visual material to take specified steps to provide access to that material by persons who are deaf or have a hearing impairment, persons who are blind or partially sighted, and persons who have a hearing impairment and are partially sighted by means of specified services such as—

- (a) sign language,
- (b) teletext services,
- (c) subtitling, and audio description, and
- (d) have regard to whether the foregoing material is being provided—
  - (i) daily or at other regular intervals,
  - (ii) at popular viewing times as well as at other times, and
  - (iii) for news and news-related matters as well as for other matters.

(3) Rules under *subsection (1)(c)* may, in respect of any period specified in them beginning on or after the passing of this Act, require a broadcaster to ensure that a specified percentage of programmes transmitted on a broadcasting service provided by him or her in that period employs specified means by which the understanding and enjoyment by persons referred to in *subparagraphs (i), (ii) and (iii)* of that paragraph of that percentage of programmes may be promoted.

(4) Broadcasting rules shall provide for the matters required to be provided for by Chapters IIA, IV and V of the Council Directive.

(5) Whenever the Authority prepares or revises a broadcasting rule relating to the matter in question every broadcaster shall comply as required with such rule and any revision of it.

(6) The Authority shall every two years, or such lesser period as it may decide, review a broadcasting rule made under *subsection (1)(c)*.

(7) In carrying out a review under *subsection (6)* the Authority shall consider the quality of services provided by broadcasters in endeavouring to comply with a broadcasting rule made under *subsection (1)(c)*.

(8) The following rules namely—

- (a) Access Rules (1 January 2005) prepared under section 19 of the Act of 2001, and
- (b) rules with respect to the maximum daily and hourly limits on advertising and teleshopping continued under section 19 of the Act of 2001,

if in force on the passing of this Act, continue in force as if made under the corresponding provision of this section and have effect accordingly.

Inspection of  
draft  
broadcasting  
codes and rules.

**44.** — (1) Before preparing a broadcasting code or making a broadcasting rule, the Authority shall make available for inspection on request by any person a draft of the broadcasting code it proposes to prepare or the broadcasting rule it proposes to make and shall have regard to any submissions made to it, within such period as it specifies for the purpose, by that person in relation to the draft before it prepares the broadcasting code or makes the broadcasting rule concerned.

(2) The Authority shall cause to be published on a website maintained by the Authority, and may cause to be published in a newspaper circulating in the State, notice of the fact that, under *subsection (1)*, a draft referred to in that subsection is available for inspection, of the place at which or the means by which the draft can be inspected and of the period specified by it under that subsection within which submissions may be made to it in relation to the draft.

Presentation of  
broadcasting  
codes and rules  
to Minister.

**45.** — (1) A copy of any broadcasting code or rule shall be presented to the Minister as soon as may be after it is made.

(2) (a) The Minister shall, as soon as may be after the receipt by him or her of a copy of any broadcasting code or rule made, cause copies of it to be laid before both Houses of the Oireachtas.

(b) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which a broadcasting code or rule was laid before it in accordance with *paragraph (a)*, annul the code or rule.

(c) The annulment of a broadcasting code or rule under *paragraph (b)* takes effect immediately on the passing of the resolution concerned but does not affect anything that was done under the code or rule before the passing of the resolution.

(3) Subject to the requirements of *section 43(6)* the Authority shall, once in each period of 4 years, beginning with the period of 4 years commencing on the date of the preparation of the broadcasting code or rule, review the effect of the broadcasting code or rule, and shall prepare a report in relation to that review and furnish the report to the Minister.

(4) The Minister shall, as soon as may be after the receipt by him or her of the report, cause copies of it to be laid before both Houses of the Oireachtas.

Co-operation with other parties — standards and self-regulation.

46. — (1) In this section “self-regulatory system” means a system whereby the members of a group of persons with a shared interest voluntarily adhere to rules or code of conduct established by that group.

(2) The Authority may co-operate with or give assistance to one or more persons (whether residing or having their principal place of business in the State or elsewhere)in—

(a) the preparation by that person or those persons of standards, or

(b) the establishment and administration by that person or those persons of a self-regulatory system, in respect of broadcasting content or related electronic media.

“PART 3A

REGISTER OF PROVIDERS OF AUDIOVISUAL ON-DEMAND MEDIA SERVICES

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Register of providers of  
audiovisual on-demand  
media services

46A. (1) The Commission shall establish and maintain a register of mediaservice providers subject to registration.

(2) For the purposes of this Part a media service provider is subject to registration if— 15

(a) it is under the jurisdiction of the State, and

(b) it provides an audiovisual on-demand media service.

(3) The register shall include at least the following information for each media service provider:

(a) the name of the media service provider; 20

(b) the name of each audiovisual on-demand media service provided by the media service provider;

(c) the criteria under section 2A on the basis of which the mediaservice provider is under the jurisdiction of the State.

(4) The register shall be in such form as the Commission considers appropriate. 25

(5) The Commission shall provide a copy of the register to the Minister annually, or otherwise on the request of the Minister.

(6) The Commission shall publish the register on a website maintained by it, but may omit such information, other than the information mentioned in subsection (3)(a) and (b), as the Commission considers appropriate. 30

(7) In this Part ‘the register’ means the register established and maintained by the Commission under this section.

Duty of media service  
providers to notify  
Commission

- 46B. (1) A media service provider that is subject to registration at the date of coming into operation of this Part shall give the Commission a notification under this section not later than the end of the transitional period. 5
- (2) A media service provider that becomes subject to registration during the transitional period shall give the Commission a notification under this section not later than—
- (a) the end of the transitional period, or
- (b) if later, the end of 10 working days from the date on which the 10 provider becomes subject to registration.
- (3) A media service provider that becomes subject to registration after the transitional period shall give the Commission a notification under this section not later than 10 working days from the date on which the provider becomes subject to registration. 15
- (4) The transitional period is the period of 3 months from the date of coming into operation of this Part.
- (5) A notification under this section shall contain—
- (a) the name of the media service provider,
- (b) contact details of the media service provider, 20
- (c) the name of each audiovisual on-demand media service provided by the provider,
- (d) in each case, a description of the nature of the service and the nature of the content provided by the service,
- (e) a statement of the basis on which the media service provider 25 considers that it is under the jurisdiction of the State, and
- (f) such other matters as the Commission may prescribe by rules under section 46H.
- (6) A notification shall be given in compliance with any rules made under section 46H. 30

Duty of registered media  
service providers to notify  
changes

- 46C. (1) A media service provider registered on the register shall give the Commission a notification under this section of any change in the matters referred to in section 46B(5) (including any matters prescribed by rules under section 46H) relating to the provider or the services 35 provided by the provider.

(2) A notification under this section shall be given not later than 10 working days from the date on which the change occurs.

(3) A notification shall be given in compliance with any rules made under section 46H. 40

Procedure where Commission notified under section 46B or 46C

- 46D. (1) This section applies if the Commission receives a notification under section 46B or 46C.
- (2) The Commission may request further information from the media service provider for the purposes of deciding what action to take under subsection (3) or (4). 5
- (3) In the case of a notification under section 46B, the Commission shall as soon as practicable—
- (a) decide whether the media service provider is subject to registration, and 10
- (b) if it decides that the media service provider is subject to registration, make the appropriate entry in the register.
- (4) In the case of a notification under section 46C, the Commission shall as soon as practicable make any appropriate amendment to the register.
- (5) The Commission shall give the media service provider— 15
- (a) a statement in writing of any decision under subsection (3)(a),
- (b) if that decision is that the provider is not subject to registration, a statement in writing of the reasons for the decision,
- (c) a copy of any entry under subsection (3)(b), and
- (d) a statement in writing of any amendment under subsection (4). 20

Review and correction of register

- 46E. (1) The Commission shall, from time to time as it considers appropriate, review each entry in the register.
- (2) The Commission shall amend the register if it is satisfied, following a review under subsection (1) or otherwise, that— 25
- (a) the provider to which an entry relates is not subject to registration, or
- (b) information included in the register is incorrect.
- (3) Before making an amendment under subsection (2) the Commission shall consult the provider concerned if it is practicable to do so. 30
- (4) The Commission may request further information from the provider for the purposes of deciding whether to make an amendment under subsection (2).

(5) The Commission shall give the provider concerned a statement in writing of any amendment it makes under subsection (2). 35

Failure to notify or to provide  
further information

**46F.** (1) Where it appears to the Commission that a media service provider has failed to comply with section 46B, or 46C, or a request under section 46D(2) or section 46E(4), the Commission may by notice in writing



direct the provider to take any action stated in the notice to comply with that section or that request.

- (2) The Commission shall not give a direction under subsection (1) unless it has given the provider an opportunity to make representations about the apparent failure. 5

(3) A direction shall state—

(a) the reasons for it, and

(b) the period within which the provider must comply with it.

- (4) Where a direction states that the provider has failed to comply with section 46B or 46C, the provider may appeal the direction to the 10 Circuit Court within 28 days of receipt of the direction.

- (5) On hearing an appeal under subsection (4), the Circuit Court may either—

(a) affirm the direction, or

(b) where it is satisfied that the Commission in giving the direction 15 was irrational or erroneous in its reasoning, or committed a failure to comply with fair procedures, or any other clear error of law, order that the direction be withdrawn.

- (6) A person who fails without reasonable excuse to comply with a direction under subsection (1) shall be guilty of a category 2 offence. 20

### Removal of provider or service from register

**46G.** (1) If under section 46D(4) or 46E(2) the Commission—

(a) removes from the register the entry relating to a media service provider, or

(b) removes from the entry relating to a media service provider 25 reference to an audiovisual on-demand media service, the Commission shall enter in the register a statement to that effect and a statement of the reasons for that removal.

- (2) The Commission shall give the provider concerned a copy of any statement included in the register under subsection (1). 30

### Rules and guidelines

**46H.** (1) The Commission may, having regard to the efficiency of the registration process and the need to maintain an up-to-date register, make rules prescribing:

(a) subject to section 46A(3), the information to be included in the 35 register;

(b) the form and manner of a notification under section 46B or 46C, including the information which must be provided under section 46B(5)(f);

(c) the procedures which the Commission shall follow in making requests for further information under sections 46D(2) and 46E(4).

(2) The Commission may issue guidelines in relation to the operation of this Part or of any rules made under subsection (1) and such guidelines shall be published on a website maintained by the Commission.”. 5

PART 3B 10

DUTIES, CODES, AND RULES APPLYING TO MEDIA SERVICE PROVIDERS AND SOUND BROADCASTERS

CHAPTER 1

Interpretation

Interpretation: ‘relevant media service provider’

461. (1) In this Part, ‘relevant media service provider’ means a provider of an audiovisual on-demand media service who is— 15

(a) a corporation, or a subsidiary of a corporation,

(b) a broadcasting contractor, or

(c) a person who meets one or more of the conditions in subsection (2)

and whose annual sales derived from activities referred to in that subsection are greater than €2 million. 20

(2) The conditions referred to in subsection (1)(c) are—

(a) that the person or a related person publishes a newspaper or periodical consisting substantially of news and comment on current affairs, 25

(b) that the person or a related person is a broadcaster,

(c) that the person or a related person provides programme material consisting substantially of news and comment on current affairs to a broadcaster, or

(d) that the person or a related person otherwise makes available on an electronic communications network any written, audio, audiovisual or photographic material, consisting substantially of news and comment on current affairs, that is under his or her editorial control. 30

(3) For the purposes of subsection (2), a person is a ‘related person’ if the person is part of the same group of companies (within the meaning given to that term by section 8 of the Companies Act 2014) as the person referred to in subsection (1)(c).

(4) In this Part, references to a ‘relevant service’ in relation to a relevant media service provider are to any audiovisual on-demand media service provided by that provider.

## CHAPTER 2

### Duties

#### Harm, offence, incitement, and authority of State

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46J. (1) A broadcaster shall not broadcast, and a provider of an audiovisual on-demand media service shall not make available in a catalogue of the service—

(a) anything which may reasonably be regarded as causing harm or offence, 15

(b) anything which may reasonably be regarded as likely to promote, or incite to, crime,

(c) anything which may reasonably be regarded as conduct falling within Article 5 of Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017<sup>6</sup> on combating 20

terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA,

(d) anything which may reasonably be regarded as likely to incite to violence or hatred directed against a group of persons, or a member of a group, based on any of the grounds referred to in Article 21 of the Charter, or 25

(e) anything which may reasonably be regarded as tending to undermine the authority of the State.

(2) A failure to comply with subsection (1) shall be a contravention for the purposes of Part 8B. 30

### Privacy

46K. (1) A broadcaster shall ensure that, in programmes broadcast by the broadcaster, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon.

(2) A provider of an audiovisual on-demand media service shall ensure that in programmes included in a catalogue of the service, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon. 35

(3) A failure to comply with subsection (1) or (2) shall be a contravention



## News and current affairs

46L. (1) A broadcaster, in programmes which he or she broadcasts, and a relevant media service provider, in programmes which he or she makes available in a catalogue of the relevant service, shall ensure—

(a) that news is reported and presented in an objective and impartial manner and without any expression of the broadcaster's or provider's own views, and

(b) that the treatment of current affairs, including matters which are either of public controversy or the subject of current public debate,

is fair to all interests concerned, and that the matter broadcast or made available is presented in an objective and impartial manner and without any expression of the broadcaster's or provider's own views. 10

(2) Should it prove impracticable to apply subsection (1)(b) in relation to a single programme, two or more related programmes may be considered as a whole, if—

(a) where the programmes are broadcast, they are broadcast within a reasonable period of each other, or

(b) where the programmes are made available on a relevant service, they are made available in the same way on the relevant service within a reasonable period of each other. 20

(3) Nothing in subsection (1) prevents a broadcaster from broadcasting, or a relevant media service provider from making available, party political programmes, provided that they do not give an unfair preference to any political party— 25

(a) by a broadcaster, in the allocation of time for such programmes, or

(b) by a relevant media service provider, in the positioning of such programmes in a catalogue of the relevant service.

(4) Subsection (1), in so far as it requires a broadcaster or a relevant media service provider not to express his or her own views, does not apply to news or current affairs relating to a proposal which— 30

(a) concerns policy as regards broadcasting which is of public controversy or the subject of current public debate, and

(b) is being considered by the Government or the Minister.

(5) Subject to subsection (6), a provider of a sound broadcasting service shall ensure that the time devoted to the broadcasting of news and current affairs programmes on the service— 35

(a) is not less than 20 per cent of the broadcasting time of the service, and

(b) if the service is provided for more than 12 hours in any one day, is 40

| not less than two hours of the broadcasting time of the service between 07.00 hours and 19.00 hours.

(6) The Commission may authorise a derogation in whole or in part from the requirement in subsection (5) in the case of a sound broadcasting service, if the Commission is satisfied that the derogation would be beneficial to the listeners of the service.

(7) The sound broadcasting services established and maintained by RTÉ are deemed to be one sound broadcasting service for the purposes of subsection (5).

(8) A failure to comply with this section shall be a contravention for the purposes of Part 8B.

## Advertising

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46M. (1) A programme broadcast, or made available in a catalogue of an audiovisual on-demand media service, may include advertisements inserted in it.

(2) A broadcaster shall not broadcast, and a relevant media service provider shall not make available in a catalogue of the relevant service, an advertisement which—

(a) is directed towards a political end or has any relation to an industrial dispute, or

(b) addresses the issue of the merits or otherwise of adhering to any religious faith or belief, or of becoming a member of any religion

or religious organisation.

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(3) A provider of a sound broadcasting service shall ensure that in the service the total daily time devoted to the broadcasting of advertisements does not exceed 15 per cent of the total daily broadcasting time.

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(4) Nothing in subsection (2)(a) prevents a broadcaster from broadcasting, or a relevant media service provider from making available, party political programmes, provided that an unfair preference is not given to any political party—

(a) by a broadcaster, in the allocation of time for such programmes, or

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(b) by a relevant media service provider, in the positioning of such programmes in a catalogue of the relevant service.

(5) Subsection (2)(a) does not apply to advertisements broadcast by a broadcaster, or advertisements made available in the catalogue of a relevant service by a relevant media service provider, at the request of the Referendum Commission, in relation to a matter referred to subsection 3 of the Act of 1998 concerning a referendum.

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(6) A failure to comply with subsection (2) or (3) shall be a contravention for the purposes of Part 8B.

Media service codes and media service rulesMedia service codes

- 46N. (1) The Commission may make codes ('media service codes') governing the standards and practices of broadcasters and providers of audiovisual on-demand media services. 5
- (2) Media service codes may provide for standards and practices to ensure—
- (a) that broadcasters and providers of audiovisual on-demand media services comply with sections 46J and 46K, 10
- (b) that broadcasters and relevant media service providers comply with section 46L(1) to (3),
- (c) that in programme material audiences are protected from anything harmful or offensive, and in particular that programme material relating to gratuitous violence or sexual conduct is presented— 15
- (i) with due sensitivity to the convictions or feelings of the audience, and
- (ii) in such a way that children will not normally hear or see anything which may impair their physical, mental or moral development, 20
- (d) that commercial communications—
- (i) protect the interests of the audience, and
- (ii) in particular, where they relate to matters likely to be of direct or indirect interest to children, protect the interests of children having particular regard to the general public health interests of children, and 25
- (e) that the provision of a broadcasting service or audiovisual on-demand media service which has as one of its principal objectives the promotion of the interests of any organisation protects the interests of the audience. 30
- (3) The Commission shall make media service codes providing for the matters required to be provided for by Articles 5, 6(1), 6a(1) to (3), 7b, 8, 9, 10, 11, 15, Chapter VI, and Chapter VII (other than Article 26) of the Directive (except in so far as provision is made by media service rules). 35
- (4) The Commission shall have regard to each of the following matters in making or amending a media service code—
- (a) the degree of harm or offence likely to be caused by the inclusion



| of a particular matter in programme material,

- (b) the likely size and composition of the potential audience for programme material,
- (c) the likely expectation of the audience as to the nature of programme material, and the extent to which the nature of the programme material can be brought to the attention of potential 5 members of the audience,
- (d) the likelihood of persons who are unaware of the nature of programme material being unintentionally exposed to it by their own actions,
- (e) the desirability of securing that the provider of a broadcasting 10 service or an audiovisual on-demand media service informs the Commission of any change affecting the nature of the service and, in particular, of any change relevant to the application of mediaservice codes, and
- (f) the desirability of maintaining the independence of editorial control 15 over programmes.

(5) Provision made for the purpose referred to in subsection (2)(d)(ii) may prohibit the inclusion in programmes of commercial communications relating to foods or beverages considered by the Commission to be the subject of public concern in respect of the general public health 20 interests of children, in particular those foods or beverages which contain fat, trans-fatty acids, salts or sugars.

(6) In preparing a media service code the Commission may consult the relevant public health authorities about any provision made for the purpose referred to in subsection (2)(d)(ii). 25

(7) The Commission may amend or revoke a media service code.

(8) A failure to comply with a media service code shall be a contravention for the purposes of Part 8B.

(9) Subject to subsection (10), the following broadcasting codes prepared under section 42 of this Act before the date of coming into operation 30 of this section shall, if in force immediately before that date, continue in force as if made under this section:

(a) the General Commercial Communications Code (1 June 2017);

(b) the Code of Fairness, Objectivity and Impartiality (1 July 2013);

(c) the Code of Programme Standards (1 March 2015); 35

(d) the Children's Commercial Communications Code (2 September 2013).

(10) After the coming into operation of this section, the broadcasting codes referred to in subsection (9) shall continue to apply to 40 broadcasters only, unless otherwise amended or revoked by the Commission.

## Media service rules

- 46O. (1) The Commission may make rules ('media service rules') for the purposes of this section.
- (2) Subject to subsections (3) and (4), the Commission may make media service rules in relation to the total daily times that shall be allowed for broadcasting commercial communications on a broadcasting service provided by a broadcasting contractor. 5
- (3) In the case of audiovisual broadcasting—
- (a) media service rules under subsection (2) shall specify the time allowed for broadcasting audiovisual commercial communications in the period between 6.00 and 18.00 hours and in the period between 18.00 and 24.00 hours each day, but 10
- (b) the time specified shall not exceed 20 per cent of the time in each period.
- (4) Media service rules under subsection (2) relating to sound broadcasting shall be in accordance with section 46M(3). 15
- (5) The Commission shall make media service rules requiring a broadcaster, as respects programmes broadcast by the broadcaster, and a provider of an audiovisual on-demand media service, as respects programmes made available in a catalogue of the service, to take steps to promote the understanding and enjoyment of those programmes by— 20
- (a) persons who are deaf or have a hearing impairment,
- (b) persons who are blind or partially sighted, and
- (c) persons who have a hearing impairment and are partially sighted. 25
- (6) Without prejudice to the generality of subsection (5), media service rules under that subsection shall require a media service provider to take steps to provide access to audiovisual programmes by persons within any paragraph of that subsection by means such as the provision of— 30
- (a) a sign language service,
- (b) subtitling, or
- (c) audio description.
- (7) Media service rules under subsection (5) shall require media service providers to have regard to whether facilities such as those referred to in subsection (6) are provided— 35
- (a) in the case of an audiovisual broadcasting service—
- (i) daily, or at other regular intervals,

| (ii) at popular viewing times, as well as at other times, and

- (iii) for news and news related matters, as well as for other matters, or
- (b) in the case of an audiovisual on-demand media service, in an easily identifiable and easily accessible manner.
- (8) Media service rules under subsection (5) may require a broadcaster to ensure that a specified percentage of programmes broadcast on a broadcasting service in a specified period employs specified means by which the understanding and enjoyment by persons referred to in that subsection of that percentage of programmes may be promoted. 5
- (9) Media service rules shall provide for the matters required to be provided for by Articles 6(1), 6a(1), 7, 7b, 8, 9, 10, 11, Chapter VI and Articles 23(2), 24 and 25 of the Directive (except in so far as provision is made by media service codes). 10
- (10) The Commission may amend or revoke a media service rule.
- (11) A failure to comply with a media service rule shall be a contravention for the purposes of Part 8B. 15
- (12) The Commission shall prepare a report for the Minister on the operation of media service rules made under subsection (5), in such form and manner as the Minister may specify, not later than three years after the coming into operation of this subsection, and every three years thereafter. 20
- (13) Subject to subsection (14), the following broadcasting rules prepared under section 43 of this Act before the date of coming into operation of this section shall, if in force immediately before that date, continue in force as if made under this section: 25
- (a) Access rules (28 January 2019);
- (b) Rules on Adverts and Teleshopping (28 July 2010).
- (14) After the coming into operation of this section, the broadcasting rules referred to in subsection (13) shall continue to apply to broadcasters only, unless otherwise amended or revoked by the Commission. 30

#### CHAPTER 4

##### Retention of copies of programme material

### Retention of copies of programme material

46P. (1) A broadcaster shall retain a copy of all programme material—

- (a) broadcast by the broadcaster, or 35
- (b) supplied by the broadcaster under a broadcasting contract or a content provision contract.

(2) A provider of an audiovisual on-demand media service shall retain a copy of all programme material made available in a catalogue of an audiovisual on-demand media service by the provider. 40

- (3) The Commission may determine the duration for which copies of programme material shall be retained in each of the cases referred to in subsections (1) and (2) and shall publish the duration on a website maintained by it.
- (4) The Commission may require the broadcaster or provider referred to in subsection (1) or (2) to provide a copy of any programme material to which that subsection applies within a specified period.
- (5) A failure to comply with subsection (1) or (2) shall be a contravention for the purposes of Part 8B.
- (6) A person who fails without reasonable excuse to comply with a requirement under subsection (4) shall be guilty of a category 2 offence.
- (7) The making or retention of a copy of programme material for the purposes of compliance with subsection (1) or (2) is not a contravention of the Copyright and Related Rights Act 2000. 15

## CHAPTER 5

### Procedures in relation to media service codes and media service rules

#### Consultation

- 46Q.** (1) Before making a media service code or media service rule, the Commission shall make a draft of it available for inspection by any person. 20
- (2) A person may make submissions to the Commission in relation to the draft referred to in subsection (1), within such period as the Commission specifies for that purpose.
- (3) The Commission shall publish on a website maintained by it, and may publish in a newspaper circulating in the State, notice— 25
- (a) that a draft referred to in subsection (1) is available for inspection,
- (b) of the place at which, or the means by which, it may be inspected,  
and
- (c) of the period specified under subsection (2) for the making of 30
- submissions.
- (4) The Commission shall, in finalising a draft media service code or media service rule, have regard to any submissions made during the period specified under subsection (2).

#### Laying of codes and rules 35

- 46R.** (1) A copy of any media service code or media service rule made or amended, and notice in writing of the revocation of any code or rule, shall be given to the Minister as soon as practicable after the code or rule is made, amended or revoked.

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vice rule shall be laid by the Commission before each House of the Oireachtas as soon as may be after it is made or amended and, if a resolution annulling the code or rule is passed by either such House within the next 21 days on which that House sits after the code or rule is laid before it, the code or rule

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shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

(3) Subject to section 46O(12), the Commission shall, from time to time as it sees fit, or at the direction of the Minister, review the effect of a media service code or media service rule and shall prepare a report in

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relation to that review and give it to the Minister.

(4) The Minister shall cause a copy of the report referred to in subsection (3) to be laid before each House of the Oireachtas as soon as practicable after receiving it.”.

## PART 4

### REDRESS

Code of practice  
— complaints  
handling.

~~47. — (1) A broadcaster shall give due and adequate consideration to a complaint on one or more of the grounds specified in section 48(1), made in writing by a person in respect of the broadcasting service provided by the broadcaster which, in the opinion of the broadcaster, has been made in good faith and is not of a frivolous or vexatious nature.~~

A broadcaster or provider of an audiovisual on-demand media service shall give due and adequate consideration to a complaint made in writing to it that it has failed to comply with one or more of the matters referred to in section 48(1) where, in the opinion of the broadcaster or provider, the complaint is made in good faith and is not frivolous or vexatious.

(2) A complaint under subsection (1) shall be made to the broadcaster or provider of an audiovisual on-demand media service not more than 30 days after—



- (a) in case the complaint relates to one broadcast, the date of the broadcast,
- (b) in the case of 2 or more unrelated broadcasts, the date of the earlier or earliest, as the case may be, of those broadcasts, ~~or~~
- (c) in case the complaint relates to 2 or more related broadcasts of which at least 2 are made on different dates, the later or latest of those dates or,-
- (d) in the case the complaint relates to programme material made available on an audiovisual on-demand media service, the date the programme material ceased to be available on that service.

(3) A ~~broadcaster~~ broadcaster or provider of an audiovisual on-demand media service shall prepare and implement a code of practice for the handling in accordance with subsection (1) of complaints made in accordance with subsection (2) or referred under section 35 48(3) of complaints made under subsection (1). The code of practice shall make provision for the following matters—

- (a) an initial point of contact for complainants, including an electronic-mail address,
- (b) a time period within which the ~~broadcaster~~ broadcaster or provider of an audiovisual on-demand media service shall respond to complaints, and
- (c) the procedures to be followed by the ~~broadcaster~~ broadcaster or provider of an audiovisual on-demand media service in the resolution of complaints.

(4) A ~~broadcaster~~ broadcaster or provider of an audiovisual on-demand media service shall publish on a website maintained by the ~~broadcaster~~ broadcaster or provider of an audiovisual on-demand media service, and generally make available, a copy of the code of practice prepared under *subsection (3)*.

(5) The Compliance Committee may prepare and publish guidance for ~~broadcasters~~ broadcasters or providers of an audiovisual on-demand media service for the purposes of ensuring compliance with *subsection (3)*.

(6) A ~~broadcaster~~ broadcaster or provider of an audiovisual on-demand media service shall supply ~~the information required under subsection (3) the matters referred to in subsection (3)(a) and (b), and the address of the website referred to in subsection (4),~~ to the Compliance Committee who shall cause such information to be published on a website maintained by the Authority.

(7) A ~~broadcaster~~ broadcaster or provider of an audiovisual on-demand media service shall keep a record of complaints made under *subsection (1) or referred under section 48(3)* and of any reply made thereto for a period of 2 years from the date of receipt of the complaint.

(8) A ~~broadcaster~~ broadcaster or provider of an audiovisual on-demand media service shall, if directed by the Compliance Committee, make available for inspection by the Compliance Committee all records kept by the ~~broadcaster~~ broadcaster or provider of an audiovisual on-demand media service under *subsection (7)*.

#### Complaints process-

~~48.—(1) Subject to this section, the Compliance Committee may investigate and decide upon any of the following complaints—~~

~~49-~~

~~50. a complaint that in broadcasting news given by it and specified in the complaint, a broadcaster did not comply with one or more of the requirements of section 39(1)(a) and (b),~~

~~51-~~

~~52. a complaint that in broadcasting a programme specified in the complaint, a broadcaster either did not comply with one or more of these requirements or was in breach of~~

the prohibition contained in ~~section 39(1)(d)~~;

~~53.~~

~~54.a~~ complaint that on an occasion specified in the complaint, there was an encroachment by a broadcaster contrary to ~~section 39 (1) (e)~~;

~~55.~~

~~56.a~~ complaint that on an occasion specified in the complaint, a broadcaster failed to comply with a provision of a broadcasting code providing for the matters referred to in ~~section 42(2)(a) to (d) and section 42(2)(f), (g) and (h)~~;

~~57.~~

~~58.A~~ complaint under ~~subsection (1)~~ shall be in writing and be

~~made to the Compliance Committee not more than 30 days after—~~

~~59. in case the complaint relates to one broadcast, the date of the broadcast,~~

~~60. in the case of 2 or more unrelated broadcasts, the date of the earlier or earliest, as the case may be, of those broadcasts, or~~

~~65.~~~~66.~~~~67. in case the complaint relates to 2 or more related broadcasts of which at least 2 are made on different dates, the later or latest of those dates.~~~~68.~~~~69. The Compliance Committee may, at their discretion, refer the complaint in the first instance to the broadcaster, for consideration in accordance with a code of practice prepared under section 47 (3).~~~~70.~~~~71. Where the Compliance Committee proposes to investigate a complaint made under this section the Committee shall afford to the broadcaster to whom the complaint relates (hereafter in this section referred to as the "broadcaster concerned") 7 days or such further period as the Committee allows to comment on the complaint.~~~~72. Where a complaint is made to the Compliance Committee under subsection (1)~~~~73. and—~~~~74. a person employed by the broadcaster concerned in the making of any programme the subject of the complaint, or~~~~75.~~~~76. if the making of any programme the subject of the complaint was commissioned by the broadcaster concerned, the person commissioned to make that programme,~~~~77.~~~~78. requests, for reasons specified by him or her, the Compliance Committee to afford to him or her an opportunity to comment on the complaint, the Compliance Committee shall, having considered the reasons so specified, afford to the person 7 days or such further period as the Committee allows to comment on the complaint if, but only if, they are satisfied that, as appropriate—~~~~79.~~~~80. an interest of the person referred to in paragraph (a), being an interest which the Compliance Committee consider relevant to the person's employment by the broadcaster concerned, or~~~~81.~~~~82. the prospects of the person referred to in paragraph (b) obtaining further commissions in respect of programmes from the broadcaster concerned,~~~~83. may, because of the complaint, be adversely affected.~~~~84. When the Compliance Committee proposes to consider a complaint that a broadcaster failed to comply with the provision of a broadcasting code providing for the matters referred to in section 42 (2) (g) or (h) the Compliance Committee shall afford the relevant advertiser 7 days or such further period as the Committee allows to comment on the relevant advertisement.~~~~85.~~~~86. As soon as may be after they decide on a complaint made under this section, the Compliance Committee shall send to—~~~~87. the person who made the complaint, and~~~~88. the broadcaster concerned,~~~~89. a statement in writing of their decision, including the reasons for their decision.~~~~90. In case the Compliance Committee decide on a complaint that a broadcaster failed to comply with the provision of a broadcasting code providing for the matters referred to in section 42(2)(g) or (h), as soon as may be after their decision, the Compliance Committee shall (in addition to complying with the requirements of subsection (7)) send to the person with whom the broadcaster concerned agreed to broadcast the relevant advertisement (if he or she is not the person who made the complaint) a statement in writing of their decision.~~~~91.~~~~92. The consideration by the Compliance Committee of a complaint made to them under this section may be carried out by the Compliance Committee in private.~~~~93.~~~~94. Unless they consider it inappropriate to do so, the Compliance Committee shall, as soon as may be~~

| ~~after the making of the decision, publish particulars of their decision~~

~~95. P. 4 S. 48.~~

~~96. [No-  
18.]~~

~~97. Broadcasting Act 2009~~

~~98. [2009.]~~

~~99.~~

~~100.~~

~~101.~~ on a complaint in such manner as they consider suitable and, without prejudice to *subsection (11)*, where they consider that the publication should be by the broadcaster concerned, or should include publication by the broadcaster concerned, the particulars shall be published by the broadcaster concerned in such manner as shall be agreed between the Compliance Committee and the broadcaster concerned.

~~102.~~

~~103.~~ Without prejudice to *subsection (10)*, the broadcaster concerned shall, unless the Compliance Committee consider it inappropriate for the broadcaster to do so, broadcast the Compliance Committee's decision on every complaint considered by the Compliance Committee in which the Compliance Committee found in favour, in whole or in part, of the person who made the complaint, within 21 days of such decision and at a time and in a manner corresponding to that in which the broadcast to which the complaint relates took place.

~~104.~~

~~105.~~ As regards proceedings under this section, the Compliance Committee does not have any power to award to any party costs or expenses.

~~106.~~

~~107.~~ *Subsection (1)* does not apply to a complaint which, in the opinion of the Compliance Committee, is not made in good faith or is frivolous or vexatious, nor, unless the Compliance Committee consider that there are special reasons for investigating the complaint (which reasons shall be stated by the Compliance Committee when giving their decision), does that subsection apply to a complaint which is withdrawn.

~~108.~~ Where a matter has been the subject of multiple complaints made under

~~109.~~ this section, or

~~110.~~ in respect of a broadcast transmitted from another jurisdiction targeted at audiences in the State,

~~111.~~

~~112.~~ the Compliance Committee may review the matter concerned and, as it considers appropriate, report to the Minister and to the relevant public body in such form and manner as the Committee thinks fit the findings arising out of such review.

~~113.~~

~~114.~~ The Compliance Committee shall endeavour to decide upon a complaint as soon as practicable after such a complaint is received.

~~115.~~

~~116.~~ The Compliance Committee may, where it deems it appropriate, hold an oral hearing in respect of proceedings under this section.

~~117.~~

~~118.~~ The Compliance Committee may deem a complaint made to a broadcaster within the time periods specified in *section 47(2)* as having been made within the time periods specified in *subsection (2)*.

## Complaints

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48. (1) A person may make a complaint to the Commission that there has been a failure to comply with section 46J, 46K, 46L, 46M(2) or (3), a media service code, a media service rule, section 46P(1) or (2), section 106(3) or section 127(6).

(2) A complaint shall be made in writing to the Commission not more than 15 30 days after—

(a) where the complaint relates to one broadcast, the date of the broadcast,

(b) where the complaint relates to 2 or more unrelated broadcasts, the

date of the earlier or earliest, as the case may be, of those broadcasts, 20

(c) where the complaint relates to 2 or more related broadcasts, of which at least two are made on different dates, the later or latest of those dates, or

(d) where the complaint relates to programme material made available on an audiovisual on-demand media service, the date the programme material ceased to be available on that service. 25

(3) The Commission may, in the first instance, refer the complaint to the broadcaster or provider of an audiovisual on-demand media service concerned, for his or her consideration in accordance with a code of practice prepared under section 47(3). 30

(4) If the Commission does not refer a complaint under subsection (3), it may, following consideration of the complaint, dismiss the complaint, if it is satisfied that—

(a) the complaint is frivolous or vexatious or was not made in good faith, 35

(b) the subject matter of the complaint is trivial, or

(c) the complaint was not made in accordance with subsection (2).

- (5) If the Commission does not refer a complaint under subsection (3) or dismiss it under subsection (4), it shall refer the complaint to a person authorised under section 139ZA(2) for his or her consideration.
- (6) Where the Commission refers a complaint under subsection (3) or (5) or dismisses a complaint under subsection (4), it shall notify the \_\_\_\_\_ 5 person who made the complaint of that reference or dismissal as soon as practicable after doing so.
- (7) Where a complaint is dismissed under subsection (4), the notification referred to in subsection (6) shall include a statement of the reasons for the dismissal. \_\_\_\_\_ 10
- (8) The Commission shall either refer a complaint under subsection (3) or (5) or dismiss a complaint under subsection (4) within 60 working days from the date on which the complaint is received and shall publish notice of the fact of the reference or dismissal on a website maintained by it. \_\_\_\_\_ 15
- (9) A complaint made under subsection (1) of section 47 in accordance with subsection (2) of that section may, whether resolved under a code of practice prepared under subsection (3) of that section or not, be treated by the Commission as a complaint made to the Commission in

48. accordance with subsection (2) of this section.

Right of reply.

**49.—** (1) In this section—

“requester” means a person who makes a request under *subsection (6)*;

“right of reply” means the broadcast by a broadcaster of a statement prepared in accordance with a scheme;

“scheme” means a scheme under *subsection (3)*.

(2) Subject to this section, any person whose honour or reputation has been impugned by an assertion of incorrect facts or information in a broadcast shall have a right of reply.

(3) The Authority shall prepare, ~~within 6 months of the establishment day,~~ following a period of public consultation, a scheme for the exercise of the right of reply.

(4) A scheme shall set out the procedures to be followed in the exercise of the right of reply.



- (5) In preparing a scheme the Authority shall ensure that—
- (a) a right of reply shall be broadcast—
    - (i) within a reasonable time period subsequent to the request for a right of reply being made, and
    - (ii) at a time and in a manner appropriate to the broadcast to which the request refers, and
  - (b) a right of reply shall—
    - (i) state to what extent the information contained in the broadcast under *subsection (2)* is incorrect or misleading, and
    - (ii) be limited to factual assertions necessary to rectify an incomplete or otherwise distorting assertion.
- (6) A person who wishes to exercise a right of reply in accordance with a scheme shall make a request in writing addressed to the broadcaster concerned—
- (a) stating that the request is made under this section,
  - (b) containing sufficient particulars to enable the identification by the taking of reasonable steps of the part of the broadcast which asserted incorrect facts impugning the honour or reputation of the requester, and
  - (c) if the requester requires the right of reply to be given in a particular form or manner (being a form or manner which is in accordance with the terms of any scheme) specifying the form or manner of the right of reply.
- (7) A request for a right of reply shall be made not later than 21 days after the making of the broadcast referred to in the request, unless otherwise agreed between the requester and the broadcaster concerned.
- (8) The broadcaster shall, as soon as may be but not later than 10 days after the receipt of a request under *subsection (6)*—
- (a) decide whether to grant or refuse the request, and
  - (b) cause notice in writing of the decision to be given to the requester.
- (9) Where notice of a decision under *subsection (8)* is not given to the requester by the expiration of the period specified for that purpose a decision refusing to grant the request under *subsection (6)* shall be deemed to have been made upon such expiration by the broadcaster concerned.
- (10) A broadcaster shall give due and adequate consideration to any request under *subsection (6)*, which in the opinion of the broadcaster has been made in good faith and is not of a frivolous or vexatious nature, by a member of the public in respect of the broadcasting service provided by the broadcaster and shall keep due and proper records for a period of 2 years of all such requests and of any reply made to them or of any action taken on foot of them.
- (11) A broadcaster shall, if directed by the Compliance Committee, make available for inspection by the Compliance Committee all records kept by him or her under *subsection (10)*.
- (12) No charge shall be made for the processing of a request under *subsection (6)* by a broadcaster.
- (13) In a defamation action the granting of a request for a right of reply under this section by a defendant in respect of a statement to which the action relates—

- (a) does not constitute an express or implied admission of liability by that defendant, and
- (b) is not relevant to the determination of liability in the action.

(14) In a defamation action the defendant may give evidence in mitigation of damage, that he or she granted or offered to grant a right of reply under this section to the plaintiff in respect of the statement to which the action relates, either—

- (a) before the bringing of the action, or
- (b) as soon as practicable thereafter, in circumstances where the action was commenced before there was an opportunity to grant or offer to grant a right of reply.

(15) In a defamation action, a defendant who intends to give evidence to which *subsection (14)* applies shall, at the time of the filing or delivery of the defence to the action, notify the plaintiff in writing of his or her intention to give such evidence.

(16) Evidence of the granting of a right of reply under this section by a broadcaster in respect of a statement to which the action relates is not admissible in any civil proceedings as evidence of liability of the defendant.

(17) Subject to this section, the Compliance Committee, on application to it—~~on application to them~~ in that behalf, in writing, by a requester, shall endeavor to within 21 days after the receipt of such an application, review a decision to refuse by a broadcaster under *subsection (8) or (9)* and as they consider appropriate~~as it considers appropriate~~—

- (a) affirm the decision, or
- (b) annul the decision and require the broadcaster concerned to broadcast the Compliance Committee's decision including any correction of inaccurate facts or information relating to the individual concerned within 7 days of such decision being communicated to the broadcaster and at a time and in a manner corresponding to that in which the broadcast to which the request relates took place,

in accordance with this section.

(18) An application under *subsection (17)* shall be made to the Compliance Committee not more than 21 days after receipt of a decision to refuse under *subsection (8) or (9)*.

(19) Where ~~the Compliance Committee propose~~ the Commission proposes to investigate an application made under *subsection (17)*, the Compliance Committee shall afford to the broadcaster to whom the application relates (hereafter in this section referred to as the "broadcaster concerned") an opportunity to comment on the application.

(20) As soon as may be after ~~they decide~~ it decides on an application made under *subsection (17)*, the Compliance Committee shall send to—

- (a) the person who made the application, and
- (b) the broadcaster concerned,

a statement in writing of their decision, including the reasons for ~~their decision~~ its decision.

(21) The Compliance Committee may reject any request for a right of reply where it is of the opinion *inter alia* that—

- (a) the request is of a frivolous or vexatious nature or was not made in good faith,
- (b) a right of reply is manifestly unnecessary owing to the minor significance of the error in the broadcast complained of,

- (c) the proposed right of reply cites untrue information or assertions,
- (d) the proposed right of reply is a personal opinion,
- (e) the proposed right of reply is an assessment or warning against the future conduct of a person,
- (f) satisfaction of the proposed right of reply would involve a punishable act,
- (g) satisfaction of the proposed right of reply would be harmful or offensive,
- (h) satisfaction of the proposed right of reply would render the broadcaster liable to civil law proceedings,
- (i) satisfaction of the proposed right of reply would breach a broadcaster's statutory obligation,
- (j) satisfaction of the proposed right of reply would breach the terms of a broadcaster's contract under *Part 6* with the Authority,
- (k) the person who was injured by the contested information has no legally justifiable actual interest in the publication of a right of reply,
- (l) the original broadcast also contained a statement from the person affected and such contents are equivalent to a right of reply,
- (m) an equivalent editorial correction has been made and the person affected informed,
- (n) the content of the proposed right of reply would violate the rights of a third party,
- (o) the matter concerned relates to reports on public sessions of the Houses of the Oireachtas or the Courts,
- (p) the matter concerned relates to a party political broadcast,
- (q) the matter concerned relates to a broadcast under section 3 of the Act of 1998,
- (r) the broadcast of a right of reply is not in the public interest, or
- (s) the application was not made within the period specified in *subsection (18)*.

(22) Where the Compliance Committee finds that the broadcaster has failed to comply with a decision under *subsection (17)* the Compliance Committee shall notify the broadcaster of those findings and give the broadcaster an opportunity to make representations in relation to the notification or remedy any non-compliance, not later than—

- (a) 10 days after ~~issue of the notification~~ the giving of the notification, or
- (b) the end of such longer period as is agreed by the Compliance Committee with the broadcaster concerned.

(23) Where, at the end of the period referred to in *subsection (22)*, the Compliance Committee is of the opinion that the broadcaster concerned has not remedied its non-compliance, ~~the Compliance Committee may recommend to the Authority, and the Authority shall follow such recommendation, that the Authority~~ the Commission may, on notice to the broadcaster apply to the High Court for such order as may be appropriate in order to ensure compliance with a decision under *subsection (17)*.

(24) The High Court may, as it thinks fit, on the hearing of the application make an order—

- (a) compelling compliance with a decision under *subsection (17)*,

(b) varying a requirement under *subsection (17)*, or

(c) refusing the application.

(25) A scheme shall be—

(a) published by the Authority on a website maintained by the Authority, and

(b) carried out in accordance with its terms by the Compliance Committee.

(25A) The Commission may amend a scheme prepared under subsection (3) and an amended scheme shall be considered to be a scheme prepared under subsection (3).

(26) (a) A scheme shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is prepared.

(b) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which a scheme was laid before it in accordance with *paragraph (a)*, annul the scheme.

(c) The annulment under *paragraph (b)* of a scheme takes effect immediately on the passing of the resolution concerned but does not affect anything that was done under the scheme before the passing of the resolution.

(27) The Authority shall review and report to the Minister on the operation, effectiveness and impact of a scheme not later than 3 years from the date on which it comes into operation and every 5 years thereafter or at such time as may be requested by the Minister.

(28) A copy of a report under subsection (27) shall be laid by the Minister before each House of the Oireachtas as soon as may be after it has been made to him or her.

(28)(29) A scheme prepared under subsection (3) before the date of coming into operation of section 12 of the Online Safety and Media Regulation Act 2022 shall, if in force immediately before that date, continue in force as if made under this section as amended by that section.

## PART 5

### ENFORCEMENT

#### CHAPTER 1

##### *Compliance with terms of contract*

Investigation into affairs of contractor.

50. — (1) In this section— ‘contractor’ means a holder of a contract under Part 6 or 8; ‘investigator’ means a person appointed as an investigator under subsection (2).”,

The Compliance Committee may for any of the reasons specified in subsection (2) conduct an investigation into the operational, programming, financial, technical or other affairs of a holder of a contract under Part 6 or 8 (“contractor”).

(2) The Compliance Committee may conduct, by appointing as an investigator a member of the staff of the Authority or another person the Committee considers to be suitably qualified to conduct, an investigation under this section if it has reasonable grounds for believing that a contractor is not providing a service in accordance with the terms of the contractor’s contract.

If a person authorised by the Commission under subsection (2A) has reason to suspect that a contractor is not providing a service in accordance with the terms of the contractor’s contract, the

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h other person as he or she considers appropriate, as an investigator to carry out an investigation under this section into the operational, programming, financial, technical or other affairs of the contractor.”,

(2A) The Commission may authorise any Commissioner or member of its staff to make an appointment referred to in subsection (2).”,

(3) The ~~Compliance Committee~~ investigator shall notify the contractor concerned of the matter under investigation and afford the contractor an opportunity to respond, within 7 days of the date of the notification, or such further period as the investigator Committee allows, to the matter under investigation. It is the duty of the contractor to co-operate in the investigation.

(4) An investigator may for the purposes of an investigation under this section require the contractor concerned to—

- (a) produce to the investigator such information or records in the contractor’s possession or control relevant to the investigation,

(b) allow the investigator to enter the premises of the contractor to conduct such inspections and make such examinations of broadcasting equipment found there, and

(c) where appropriate, attend before the investigator for the purposes of the investigation.

(5) Where an investigator, having conducted an investigation under *subsection (2)*, forms a view that a contractor is not providing the service referred to in that subsection in accordance with the terms of the contractor's contract, then he or she shall notify the finding to the contractor and afford that contractor an opportunity to make submissions in accordance with any rules made under *subsection (8)* at a hearing before the Compliance Committee in respect of the matter under investigation.

(6) The contractor concerned shall supply the Compliance Committee with such information and records the ~~Committee~~ Commission considers necessary for the purposes of a hearing.

(7) After consideration of submissions (if any) made by the contractor concerned under *subsection (5)*, the Compliance Committee may—

(a) make a finding that the contractor is not providing the service referred to in *subsection (2)* in accordance with the terms of the contractor's contract, or

(b) make such other finding as it considers appropriate in the circumstances.

(8) The Compliance Committee shall make rules providing for the operation of an investigation under this section, and the conduct of a hearing under *subsection (5)*. The rules shall provide for the period in which submissions under *subsection (5)* are to be made. The rules may include provision for an oral or other form of hearing, as appropriate.

~~In this section "investigator" means a person appointed as such under *subsection (2)*.~~

~~*(8A) The functions of the Commission under subsections (5), (6) and (7) shall be exercised by a division of the Commission consisting of such uneven number of Commissioners, not being less than 3, as the Commission may determine.*~~

~~*(8B) If the person appointing an investigator to carry out an investigation under *subsection (2)* is a Commissioner, the division exercising the functions referred to in *subsection (8A)* in relation to the investigation shall not include that Commissioner.*~~

Termination or suspension of contract under Part 6 or 8.

~~**51.** — (1) Without prejudice to any provision of this Act, or of a contract made under it, the Commission may terminate, or suspend for such period as it considers reasonable, a contract entered into under Part 6 or Part 8—~~

~~(a) if any false or misleading information of a material nature was given to the Commission by or on behalf of the holder of the contract before it was entered into, or~~

~~(b) if, following an investigation under section 50, the Commission has made a finding under *subsection (7)* of that section that the holder of the contract has failed on one or more occasions to comply with a term or condition of the contract, and the nature of that failure is of such seriousness as in the Commission's opinion warrants the termination or suspension of the contract.~~

~~**50.** Without prejudice to any specific provision of this Act, or of a contract made under it, the Compliance Committee may recommend to the Authority that the Authority terminate or suspend, for such period of suspension as the Compliance Committee considers reasonable and specifies in the recommendation, a contract entered into by the Authority under Part 6 or 8—~~

~~(a) if any false or misleading information of a material nature was given to the Contract~~

Award  
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by or on  
behalf  
of the  
holder  
of the  
contract  
before  
it was  
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or

- ~~investigation concerned under that section, failed on one or more occasions to comply with a term or condition of the contract and the nature of that failure is of such seriousness as, in the opinion of the Compliance Committee, warrants the termination or suspension of the contract,~~
- ~~(c) and the Authority shall—~~
- ~~(d) where the Compliance Committee recommends that the contract be suspended, suspend the contract concerned for such period as the Compliance Committee recommends or, having regard to all the circumstances, for such lesser period as the Authority considers appropriate, or~~
- ~~(e)–~~
- ~~(f) where the Compliance Committee recommends that the contract be terminated, terminate the contract concerned or, having regard to all the circumstances, suspend the contract for such period as the Authority considers appropriate.~~

(b) if the  
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(1A) The functions of the Commission under subsections (1) and (2), shall be exercised by a division of the Commission consisting of such uneven number of Commissioners, not being less than 3, as the Commission may determine.

(1B) In the case of functions under subsection (1)(b), and subsection (2) as it applies to a decision under subsection (1)(b), if the person who appointed the investigator to carry out the investigation referred to in subsection (1)(b) was a Commissioner, the division referred to in subsection (1A) shall not include that Commissioner.

~~(2) Where the Compliance Committee proposes to make a recommendation under subsection (1) the Committee shall by notification afford the holder of the contract concerned an opportunity to make submissions, in accordance with any rules made under subsection (3), at a hearing before the Committee in respect of the matter under consideration. Where the Commission proposes to make a decision under subsection (1) the Commission shall by notice in writing afford the holder of the contract concerned an opportunity to make submissions, in accordance with any rules made under subsection (3), at a hearing before the Commission in respect of the matter under consideration.~~

(3) The Compliance Committee shall make rules providing for the operation of this section, including the conduct of a hearing under subsection (2). The rules shall provide for the period in which submissions under subsection (2) are to be made. The rules may include provision for an oral or other form of hearing, as appropriate.

(3A) The Commission may make guidelines in relation to the operation of section 50 and this section and shall publish any guidelines on a website maintained by it.

(2)(4) A decision to terminate or suspend a contract by the Authority under this section, any other provision of this Act or a provision of the contract, may be appealed by the holder of the contract to the High Court.

~~(3)(5) The members of the Authority making a decision under subsection (1) (i) or (ii) in relation to the suspension or termination of a contract shall not include a member of the Compliance Committee who made the recommendation to the Authority. The Authority may allow the holder of the contract concerned to make further submissions to it, if it considers it appropriate, in accordance with any rules it makes (which may include the possibility of a hearing).~~

(4)(6) A contract terminated or suspended under this section, under any other provision of this Act or under a provision of the contract, shall—

- (a) in case it is terminated, cease to have effect, and
- (b) in case it is suspended, cease to have effect for the period for which it is suspended.

## CHAPTER 2

### Financial Sanctions

Definitions  
(Chapter 2).

51-52. — In this Chapter—

“Court” means High Court;

“breach” means a serious or repeated failure by a broadcaster to comply with a requirement referred to in *section 53 (1)*;

“financial sanction” means a specified amount to be paid by a broadcaster for a breach by the broadcaster as directed by the Court under *section 55(1)* or the Authority under *section 55(3)*;



“investigation” means an investigation by an investigating officer into any of the matters referred to in *section 53 (1)*;  
“investigating officer” means a person appointed as such under *section 53 (1)*.

Investigation into affairs of broadcaster. ~~52-53.~~ 53. — (1) The Compliance Committee shall, subject to *subsection (2)*, appoint a member of the staff of the Authority, or such other person as the Committee considers to be suitably qualified to be an investigating officer for the purposes of this Chapter where it is of the opinion that there are circumstances suggesting that it is appropriate to investigate and report on any apparent breach by a broadcaster of a requirement of *section 39(1), 40(1), (2) or (3), 41(2), (3) or (4), 106(3) or 127(6)* or a broadcasting code or rule.

(2) The terms of appointment of an investigating officer under this section shall relate to the particular apparent breach being investigated and may define the scope of his or her investigation, whether as respects the matters or the period to which it

is to extend or otherwise, and in particular may limit the investigation to matters connected with particular circumstances.

(3) Where the Compliance Committee appoints an investigating officer to investigate and report on an apparent breach by a broadcaster, the investigating officer shall—

- (a) notify the broadcaster (“broadcaster concerned”) of the matter under investigation,
- (b) supply the broadcaster with copies of any documents relevant to the investigation, and
- (c) afford to the broadcaster an opportunity to respond, within 7 days of the date of the notification, or such further period not exceeding 21 days as the Committee allows, to the matter under investigation.

(4) It is the duty of the broadcaster concerned to co-operate in any such investigation and provide the investigating officer with such information as he or she considers necessary for the purposes of the investigation.

(5) Where the Compliance Committee appoints an investigating officer to investigate and report on an apparent breach and either—

- (a) a person employed by the broadcaster concerned, or
- (b) if the making of any programme, the subject of such an investigation, was commissioned by the broadcaster concerned, the person commissioned to make that programme,

requests, for reasons specified by the person, that the Compliance Committee afford to him or her an opportunity to comment within 7 days, or such further period not exceeding 21 days as the Committee allows, on the matter under investigation, then the Compliance Committee shall, having considered the reasons so specified, require the investigating officer to afford to the person such an opportunity, if the Committee is satisfied that—

- (i) in the case of a person referred to in *paragraph (a)*, an interest of the person, which the Compliance Committee considers relevant to the person’s employment by the broadcaster concerned, is involved,
- (ii) in the case of a person referred to in *paragraph (b)*, the prospects of the person obtaining further commissions in respect of programmes from the broadcaster concerned, may, because of the matter under investigation, be adversely affected, or
- (iii) in the case of a person referred to in *paragraph (a) or (b)*, it is in the interests of fairness to do so, having regard to any potential consequences for the good name of the person.

(6) Where the Compliance Committee proposes to investigate non-compliance by a broadcaster with a broadcasting code which provides for any of the matters referred to in *section 42(2)(g) or (h)*, the investigating officer shall afford to the person employing such matter in a broadcasting service an opportunity to comment within 7 days of notification, or such further period not exceeding 21 days as the Committee allows, in relation to the matter under investigation.

(7) An investigating officer may for the purposes of this section require the broadcaster concerned to—

- (a) provide to the investigating officer such information or records in the broadcaster’s possession or control relevant to the investigation, and
- (b) where appropriate, attend before the investigating officer for the purposes of the investigation.

Report, findings, recommendations and procedures relating to outcome of investigation.

~~53-54.~~ — (1) (a) Where an investigating officer forms the view that there has been a breach in respect of any matter which he or she is investigating or the broadcaster concerned has failed to co-operate with the investigation, the officer shall report this to the Compliance Committee.

(b) The report of an investigating officer in relation to an investigation to the Compliance Committee shall include—

(i) the investigating officer's findings in relation to the matter,

(ii) any response received under *section 53 (3)* or comment received under *section 53 (5)* or *(6)*,

(iii) details of any failure by the broadcaster concerned to comply with *section 53 (7)*, and

(iv) the recommendation of the investigating officer.

(2) Where an investigating officer forms a view that there has been a breach by the broadcaster concerned or that the broadcaster has not co-operated with the investigation, the broadcaster shall be afforded the opportunity of making a submission to the Compliance Committee within 10 days of being notified of the investigating officer's views and recommendation.

(3) Where the Compliance Committee, having considered a report under *subsection (1)* and any submissions made under *subsection (2)*, finds that—

(a) there has been a breach by the broadcaster concerned, or

(b) the broadcaster concerned has failed to co-operate in an investigation,

the Committee may recommend to the Authority that the Authority notify the broadcaster concerned in accordance with *subsection (4)*. The Authority shall comply with the recommendation.

(4) A notification under *subsection (3)* shall—

(a) set out the reasons for the notification,

(b) state that the Authority intends to apply to the Court for a determination that there has been a breach or a failure to co-operate with an investigation, unless the broadcaster concerned requests, in writing within 14 days of the date of the notification or such further period as the Authority allows, that the Authority deal with the matter under *section 55 (2)*, and

(c) indicate the amount of the financial sanction (not exceeding €250,000) that it proposes, if the matter is dealt with by the Authority under *section 55 (2)*,

and the Authority may indicate in the notification the amount of the financial sanction (not exceeding €250,000) that it intends to recommend to the Court if the matter is dealt with by the Court under *section 55 (1)*.

(5) Where the broadcaster concerned fails to make a request under *subsection (4)(b)* within the period referred to in that paragraph or informs the Authority that no such request will be made, the Authority shall apply to the Court for a determination that there has been a breach or a failure to co-operate with an investigation by the broadcaster concerned.

(6) Where a broadcaster makes a request under *subsection (4)(b)*, the Authority shall afford the broadcaster an opportunity to make submissions at a hearing before the Authority in respect of the matter.

(7) Where a broadcaster takes the opportunity to make submissions at a hearing under *subsection (6)*, the members of the Authority conducting the hearing shall not include any person who was a member of the Compliance Committee which appointed

an investigating officer under *section 53 (1)* to investigate the alleged breach and made a recommendation under *subsection (3)*.

(8) The Authority shall make rules providing for the conduct of a hearing under *subsection (6)*. The rules may include provision for an oral or other form of hearing, as appropriate, and for the taking of evidence whether orally or otherwise, as appropriate, and the applicable rules of evidence.

(9) The Authority may not award costs or expenses to any party in relation to a hearing under *subsection (6)*.

Financial  
sanctions.

**54-55.** — (1) The Court, in any application made to it under *section 54 (5)*—

(a) may—

- (i) make a determination that there has been a breach or a failure to co-operate with an investigation by the broadcaster concerned,
- (ii) if it thinks fit direct, having regard to any amount the Authority recommends and taking into consideration the matters referred to in *section 56*, that the broadcaster concerned shall pay to the Authority a financial sanction not exceeding €250,000, in respect of the breach or failure to co-operate with the investigation in question, and
- (iii) make such order it considers appropriate,

or

(b) may dismiss the application,

and the Court may make such order as to costs as it thinks fit in respect of the application.

(2) Where a request in writing has been made to it by a broadcaster under *section 54 (4)*, the Authority may make a determination that there has or has not been a breach or a failure to co-operate with an investigation by the broadcaster concerned and issue a statement of findings to the broadcaster.

(3) Where the Authority determines under *subsection (2)* that there has been a breach or a failure to co-operate with an investigation by the broadcaster concerned, the Authority may direct, taking into consideration and having regard to the matters referred to in *section 56*, that the broadcaster shall pay the Authority a financial sanction not exceeding the amount as proposed in a notification given to the broadcaster in accordance with *section 54 (4) (c)*, in respect of the breach or the failure to co-operate with an investigation.

(4) The Authority may publish on a website maintained by the Authority such details as it considers proper concerning a decision of the Court under *subsection (1)* or such a statement of findings made by it under *subsection (2)*.

(5) A broadcaster may appeal to the Court against either or both a statement of findings issued in respect of the broadcaster under *subsection (2)* and a financial sanction imposed against the broadcaster under *subsection (3)*.

(6) A sum due under this section may be recovered in any court of competent jurisdiction as a simple contract debt.

(7) All payments made to the Authority under this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

Matters to be considered in determining the amount of financial sanction.

~~55-56.~~ — In considering the amount (if any) of any financial sanction to be imposed on a broadcaster under *section 55* the Authority or the Court shall take into account the circumstances of the breach or the failure to co-operate with an investigation in question, as the case may be, and shall, where appropriate in the circumstances, have regard to—

- (a) the need to ensure that any financial sanction imposed—
  - (i) is appropriate and proportionate to the breach or the failure to co-operate with the investigation, and
  - (ii) will act as a sufficient incentive to ensure future compliance in respect of the requirement breached,
- (b) the seriousness of the breach,
- (c) the turnover of the broadcaster in the financial year ending in the year previous to the breach and the ability of the broadcaster to pay the amount,
- (d) the extent of any failure to co-operate with the investigation,
- (e) any excuse or explanation by the broadcaster for the breach or failure to co-operate with the investigation,
- (f) any gain (financial or otherwise) made by the broadcaster or by any person in which the broadcaster has a financial interest as a consequence of the breach,
- (g) the appropriateness of the time when the programme material concerned was broadcast,
- (h) the degree of harm caused or increased cost incurred by audiences, consumers or other sectoral or market participants as a consequence of the breach,
- (i) audience expectations as to the nature of the programme material,
- (j) the duration of the breach,
- (k) repeated breaches by the broadcaster,
- (l) continuation by the broadcaster of—
  - (i) the breach, or
  - (ii) the broadcasting of the matter to which an investigation relates after being notified of the investigation under *section 53 (3) (a)*,
- (m) the extent to which—
  - (i) the management of the broadcaster knew, or ought to have known, that the breach was occurring or would occur, and
  - (ii) any breach was caused by a third party, or any relevant circumstances beyond the control of the broadcaster,
- (n) the absence, ineffectiveness or repeated failure of internal mechanisms or procedures of the broadcaster intended to prevent breach by the broadcaster,
- (o) the extent to which the broadcaster had taken steps in advance to identify and mitigate external factors that might result in a breach,
- (p) the extent and timeliness of any steps taken to end the breach in question, and any steps taken for remedying the consequences of the breach,
- (q) submissions by the broadcaster on the appropriate amount of a financial sanction,

- (r) whether a financial sanction in respect of similar conduct has already been imposed on the broadcaster by the Court or Authority, and
- (s) any precedents set by the Court or Authority in respect of previous breaches or failures to co-operate with an investigation.

### CHAPTER 3

#### Notifications

Notifications. **57.—** (1) ~~Where a notification is required under this Part to be given to a broadcaster or contractor, it shall be addressed to the broadcaster or contractor and shall be given to the broadcaster or contractor in one of the following ways—~~  
~~by delivering it to the broadcaster or contractor,~~  
~~by leaving it at the address at which the broadcaster or contractor carries on business,~~  
~~by sending it by post in a pre-paid registered letter addressed to the broadcaster or contractor at the address at which the broadcaster or contractor carries on business,~~  
~~if an address for the service of a notification has been furnished by the broadcaster or contractor, by leaving it at, or sending it by pre-paid registered post addressed to the broadcaster or contractor to, that address, or~~  
~~by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the broadcaster or contractor carries on business or, if an address for the service of a notification has been furnished by the broadcaster or contractor, that address, but only if—~~  
~~the sender's—~~  
~~\_\_\_\_\_ facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or~~  
~~facsimile machine generates a message confirming successful transmission of the total number of pages of the notification,~~  
~~and~~  
~~the notification is also given in one of the other ways mentioned in any of the preceding paragraphs.~~

~~(2) For the purposes of subsection (1), a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.~~

~~(3)~~  
~~(4)~~ A copy of a notification, which has endorsed on it a certificate purporting to be signed by an investigator under *Chapter 1* or investigating officer under *Chapter 2*, as the case may be, stating that the copy is a true copy of the notification may, without proof of signature of that person, be produced in every court or before the Authority and in all legal proceedings and is evidence, unless the contrary is shown, of the notification.

~~(5)~~  
~~(4)~~ In this section “notification” means a notification under this Part.

### PART 6

BROADCASTING CONTRACTS AND CONTENT PROVISION CONTRACTS — COMMERCIAL AND  
COMMUNITY BROADCASTERS

Interpretation  
(Part 6).

58. — (1) In this Part—

“broadcasting licence” means a licence granted under *section 59*;

“sound broadcasting contract” means a contract entered into under *section 63*;

~~“television programme service contract” means a contract entered into under *section 70*.~~

(2) Any contract in respect of broadcasting entered into under an enactment repealed by *section 3* by the BCI with another person which is in force immediately before the passing of this Act continues in force as if made under the corresponding provision of this Part and has effect accordingly.

Broadcasting  
licence.

59. — (1) The Authority shall not authorise a broadcasting contractor to operate a broadcasting transmitter and provide a broadcasting service under a broadcasting contract unless and until the Communications Regulator has granted under this subsection to the Authority a licence (“broadcasting licence”) under *section 5* of the Act of 1926 in respect of the sound or television broadcasting transmitter to which the contract relates.

(2) A broadcasting licence shall be valid only for such period of time as a broadcasting contract between the Authority and a broadcasting contractor is in force.

(3) Every broadcasting contract shall contain a condition requiring the broadcasting contractor concerned to establish, maintain and operate the broadcasting transmitter concerned in accordance with such terms and conditions as the Communications Regulator attaches to the broadcasting licence to which the contract relates (including any variations made to it in accordance with *section 60*), and so long as the terms and conditions are complied with, the contract has the effect of conveying the benefits of the licence to the broadcasting contractor and any such transmitter so established, maintained and operated shall be deemed to be licensed for the purposes of the Act of 1926.

(4) Every broadcasting licence shall be open to inspection by members of the public at the Authority’s ~~registered~~ office, at such times as the Authority considers reasonable during office opening hours.

Variation of  
broadcasting  
licence.

60. — (1) The Communications Regulator may vary any term or condition of a broadcasting licence—

- (a) if it appears to it to be necessary so to do in the interest of good radio frequency management,
- (b) for the purpose of giving effect to any international agreement to which the State is a party and which has been ratified by the State and which relates to broadcasting,
- (c) if it appears to it to be in the public interest so to do,
- (d) if it appears to it to be necessary for the safety or security of persons or property so to do,
- (e) on request from the Authority after consultation with any affected broadcasting contractor, or
- (f) on request from the Authority on behalf of a broadcasting contractor.

(2) (a) If the Communications Regulator, for any reason specified in *paragraph (a), (b) or (c) of subsection (1)* proposes to vary, under this section, any term or condition of a broadcasting licence, the Regulator shall, by notice in writing, inform the Authority of the Regulator's intentions and of the reasons for it. The Authority shall, within 7 days of receiving the notice, give notice in writing to the broadcasting contractor concerned of the intention.

(b) The broadcasting contractor shall have the right to make representations in writing to the Authority in respect of the Communications Regulator's intentions, within 21 days after the service of the notice by the Authority.

(c) The Authority shall transmit any such representations to the Communications Regulator within a further 7 days and the Communications Regulator, having considered the representations, may make such decision thereon as seem to it to be appropriate.

(3) (a) If, having considered the representations (if any) which have been notified to it by the Authority by or on behalf of a broadcasting contractor, the Communications Regulator decides to vary any term or condition of a licence, it shall, by notice in writing, inform the Authority of its decision.

(b) The Authority shall, within 7 days of receipt of the Communications Regulator's decision by notice in writing inform the broadcasting contractor of that decision.

(c) On and from the day following service on the contractor of notice of the Communications Regulator's decision the licence shall have effect subject to the variation of it by that decision.

~~(4) Where a notice is required under this section to be given to the Authority or a broadcasting contractor, it shall be addressed to the Authority or the broadcasting contractor and shall be given to the Authority or the broadcasting contractor in one of the following ways—~~

~~(5) by delivering it to the Authority or the broadcasting contractor,~~

~~(6) by leaving it at the address at which the Authority or the broadcasting contractor carries on business,~~

~~(7) —~~

~~(8) by sending it by post in a pre-paid registered letter addressed to the Authority or the broadcasting contractor at the address at which the Authority or the broadcasting contractor carries on business,~~

~~(9) —~~

~~(10) — if an address for the service of a notice has been furnished by the Authority or the broadcasting contractor, by leaving it at, or sending it by pre-paid registered post addressed to the Authority or the broadcasting contractor to, that address, or~~

~~(11) —~~

~~(12) — by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the Authority or the broadcasting contractor carries on business or, if an address for the service of a notification has been furnished by the Authority or the broadcasting contractor, that address, but only if—~~

~~(13) — the sender's—~~

~~(14) — facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or~~

~~(15) —~~

~~(16) — facsimile machine generates a message confirming successful transmission of the total number of pages of the notice,~~

~~(17) —~~

~~(18) — and~~



(19) — P	(20) — [	(21) — <i>Bro</i>	(22) — [
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60.	e	<i>2009</i>	0
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	:		}
	}		

~~(23) —~~  
~~(24) —~~  
~~(25) — the notice is also given in one of the other ways mentioned in any of the preceding paragraphs.~~  
~~(26) —~~  
~~(27) — For the purposes of subsection (4), a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.~~

Emergencies.

**61.—** (1) In this section “network provider” means a person providing or operating an electronic communications network which is used for the distribution, transmission or retransmission of broadcasting services to the public.

(2) During the continuance of any national emergency, the Minister may suspend any broadcasting licence or multiplex licence as defined in *section 129* and, while any such suspension continues, the Minister may operate any service which was provided under the suspended licence or require such service to be operated as he or she directs.

(3) The Authority shall have the power to require broadcasting contractors and network providers to co-operate with the relevant public bodies in the dissemination of relevant information to the public in the event of a major emergency.

(4) If and whenever the Minister shall exercise the powers conferred on him or her by *subsection (2)* the broadcasting contractor or multiplex contractor shall be entitled to receive from the Minister, with the consent of the Minister for Finance—

- (a) such sums as are required to defray any expenses which, regard being had to the nature of the emergency, have been properly and necessarily incurred by the broadcasting contractor or multiplex contractor and for meeting which revenue is by reason of the exercise of such powers not otherwise available to the broadcasting contractor or multiplex contractor, and
- (b) compensation for any damage done to any property of the broadcasting contractor or multiplex contractor, being damage directly attributable to the exercise of such powers.

(5) At the request of the Minister, the Authority shall direct a broadcasting contractor to allocate broadcasting time for announcements for and on behalf of any Minister of the Government, in the event of a major emergency, in connection with the functions of that Minister of the Government. The broadcasting contractor shall comply with the direction.

(6) At the request of the Minister, the Authority shall direct a network provider, in a manner to be specified by the Authority, to carry broadcast announcements for and on behalf of any Minister of the Government, in the event of a major emergency, in connection with the functions of that Minister of the Government. The network provider shall comply with the direction.

(7) In complying with a direction under *subsection (5)* or *(6)* a broadcasting contractor or network provider may broadcast an announcement that it has received such a direction from the Authority.

Restriction on award of sound broadcasting

contract.

62. — The Commission shall not grant the Contract Awards Committee shall not recommend to the Authority the grant of a sound broadcasting contract to a person who has been convicted of an offence under section 3(3) (inserted by section 181 (2)) of the Act of 1926 or under section 3, 4 or 5 of the Act of 1988 if the conviction occurred less than 12 months before the first day on which the person proposes to engage in sound broadcasting activities to which the application for the sound broadcasting contract relates.

Sound  
broadcasting  
contracts.

63. — ~~The Authority, on the recommendation of the Contract Awards Committee, The Commission~~ shall enter into contracts (“sound broadcasting contracts” ) with persons (“sound broadcasting contractors”) under which the sound broadcasting contractors have, subject to this Part, the right and duty to establish, maintain and operate sound broadcasting transmitters serving the areas specified in the sound broadcasting contract and to provide, as the sound broadcasting contract may specify, a sound broadcasting service.

Community sound  
broadcasting  
contracts.

64. — ~~The Authority, on the recommendation of the Contract Awards Committee, The Commission~~ may enter into a class of sound broadcasting contract (“community sound broadcasting contract”) with 2 or more members of a local community or of a community of interest if it is satisfied that—

- (a) those members are representative of, and accountable to, the community concerned, and
- (b) the supply of programme material in pursuance of the contract will be effected with the sole objective of—
  - (i) specifically addressing the interests of, and seeking to provide a social benefit to, the community concerned, and
  - (ii) achieving a monetary reward of no greater amount than is reasonably necessary to defray the expenses that will be incurred in effecting that supply.

Applications for  
sound  
broadcasting  
contracts.

65. — (1) In order to secure the orderly development of broadcasting services and to allow for the establishment of a diversity of services in an area catering for a wider range of tastes including those of minority interests, the Authority shall liaise and consult with the Communications Regulator in the preparation by that body of an allocation plan for the frequency range dedicated to sound broadcasting.

(2) The Authority, having regard to an allocation plan under *subsection (1)* and after consultation with the Communications Regulator, in respect of the availability of radio frequencies for sound broadcasting services shall—

- (a) specify the area (which area may consist of the whole or any part of the State) in relation to which applications for a sound broadcasting contract are to be invited, ~~and~~

~~direct the Contract Awards Committee to invite applications for sound broadcasting contracts for the area specified and the Committee shall comply with such direction.~~

(3) Where the Authority proposes to specify an area under *subsection (2)*, the Authority may conduct, or arrange for there to be conducted, either or both—

- (a) a study in that area or amongst a community of interest for the purposes of ascertaining the interests and wishes of that area or community in respect of sound broadcasting services, or
- (b) a study as to the sectoral impact of an additional sound broadcasting contract in that area.

(4) The Authority shall publish the results of any study conducted under *subsection (3)* on a website maintained by the Authority.

~~(5) The Authority may direct the Contract Awards Committee to consider the results of a study conducted under subsection (3) in complying with a direction under subsection (2), and the Contract Awards Committee shall comply with such an additional direction.~~

~~(6) On receipt of a direction from the Authority under subsection (2) the Contract Awards Committee may, in accordance with the terms of any such direction, by public notice~~ The Commission may, by public notice, in such form and manner as it considers appropriate invite expressions of interest in the securing of contracts for sound broadcasting services under this Act. Any expressions of interest must be made within 60 days of the date of such notice and must indicate in general terms the type of service that would be provided and shall not be regarded as an application for a sound broadcasting contract.

(7) A public notice under *subsection (6)* may invite all interested parties to express their views on the type of sound broadcasting service proposed.

~~(8) The Contract Awards Committee shall, subject to this Part, invite applications for a sound broadcasting contract for the provision of a sound broadcasting service in each area specified by the Authority under subsection (2) and, subject to this Part, may recommend that the Authority enter into such contract, and the Authority shall follow any such recommendation. Subject to this Part, the Commission shall invite applications for a sound broadcasting contract for the provision of a sound broadcasting service in each area specified by the Commission under subsection (2), and may enter into such a contract~~

(8A) For the purposes of subsection (8) the Commission may consider the results of any study conducted under subsection (3).

~~(8)(9)~~ (9) Where the Contract Awards Committee invites applications for a sound broadcasting contract for the provision of a sound broadcasting service it shall by public notice specify the area in relation to which the sound broadcasting service is to be provided pursuant to such contract and by such notice shall invite persons interested in providing such a service to apply for such contract.

~~(9)(10)~~ (10) In considering applications for the award of a sound broadcasting contract the Contract Awards Committee shall determine applications in accordance with *section 66* and assign a ~~score to each, or a combination of, the criteria specified in section 66(2)~~ score to each of the criteria specified in section 66(2), either individually or in combination—and the Contract Awards Committee shall inform each person who has indicated his or her intention of being an applicant for a contract of such assignment.

~~(10)(11)~~ (11) The Contract Awards Committee shall in reaching its decision as to the award of a sound broadcasting contract assign an agreed score to each of the applications received in accordance with *subsection (10)*.

~~(11)(12) The Contract Awards Committee's view on an assignment of a score under subsection (11) shall be determined by a majority of the votes of the members of the Contract Awards Committee.~~

~~(12)(13)~~ (13) Every notice under *subsection (9)* shall—

- (a) be published on a website maintained by the Authority, and where appropriate, in a newspaper circulating in the area to be served,
- (b) specify the procedure to be followed in order to make an application, and
- (c) specify any other matters which appear to the Contract Awards Committee to be necessary or relevant.

Determination of applications for award of sound broadcasting contracts and television programme service contract.

**66.** — (1) The Contract Awards Committee shall, in accordance with this Part, consider every application received by it—

- (a) for a sound broadcasting contract made under *section 65 (8)*, or
- (b) for a television programme service contract,

for the purpose of determining the most suitable applicant, if any, to be awarded a broadcasting contract.

(2) In the consideration of applications referred to in *subsection (1)* received by it and in determining the most suitable applicant to be awarded a broadcasting contract, the Contract Awards Committee shall have regard to—

- (a) the character, expertise and experience of the applicant or, if the applicant is a body corporate, the character, expertise and experience of the body and

- its directors, manager, secretary or other similar officer and its members and the persons entitled to the beneficial ownership of its shares,
- (b) the adequacy of the financial resources that will be available to each applicant and the extent to which the application accords with good business and economic principles,
  - (c) the quality, range and type of the programmes proposed to be provided by each applicant or, if there is only one applicant, by that applicant,
  - (d) the quantity, quality, range and type of programmes in the Irish language and the extent of programmes relating to Irish culture proposed to be provided,
  - (e) the extent to which the applicant will create within the proposed broadcasting service new opportunities for talent in music, drama and entertainment and in particular in respect of Irish culture,
  - (f) the desirability of having a diversity of services in the area specified in the notice catering for a wide range of tastes including those of minority interests,
  - (g) the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services in respect of which a sound broadcasting contract has been awarded under this Part,
  - (h) the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue number of sound broadcasting services in the area specified in the notice,
  - (i) the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of the communications media in the area specified in the notice,
  - (j) the extent to which the service proposed—
    - (i) serves recognisably local communities and is supported by the various interests in the community, or
    - (ii) serves communities of interest,
  - (k) any other matters which the Contract Awards Committee considers to be necessary to secure the orderly development of broadcasting services, and
  - (l) ~~where directed by the Authority~~, any of—
    - (i) the amount of a single cash sum payment, as specified by the applicant during the course of his or her application, which the applicant is willing to pay to the Authority in respect of the award of the broadcasting contract,
    - (ii) the amount of a periodic cash sum payment, as specified by the applicant during the course of his or her application, which the applicant is willing to pay to the Authority in respect of the award of the broadcasting contract, and
    - (iii) the amount of a periodic cash sum payment determined by reference to a variable, as specified by the applicant during the course of his or her application, which the applicant is willing to pay to the Authority in respect of the award of the broadcasting contract.

(3) In considering the suitability of any applicant for the award of a sound broadcasting contract to provide a sound broadcasting service in respect of an area which includes a Gaeltacht area, the Contract Awards Committee shall have particular regard to the continuance and advancement as a spoken language of the Irish language.

(4) In considering the suitability of an applicant for the award of a broadcasting contract, the Contract Awards Committee shall have regard to—

- (a) the overall quality of the performance of the applicant with respect to the provision by him or her of a broadcasting service under any broadcasting contract held by him or her at, or before, the date of the making of the application, ~~and~~

~~reports of the Compliance Committee.~~

(5) ~~Where the Contract Awards Committee decides to refuse to recommend the award of a broadcasting contract to an applicant, the Contract Awards Committee shall the Commission decides to refuse to award a broadcasting contract to an applicant, it shall~~ notify the applicant of—

- (a) the reasons for the decision,  
 (b) the score of the applicant, and  
 (c) the score of any successful applicant.

(6) In this section “notice” means a notice under *section 65 (9)*.

67. — (1) In this section—

~~“Committee” means Contract Awards Committee;~~

“fast-track procedure” means a procedure provided for under *subsection (2)*;

“incumbent” means the holder of a sound broadcasting contract which is the subject of a notice under *section 65 (6)*.

(2) Where, in the opinion of the ~~Committee~~ Commission, the only response made in good faith pursuant to a public notice under *section 65(6)*, is received from the incumbent, then the ~~Committee~~ Commission may at its discretion propose to invoke a fast-track procedure under *subsection (6)*.

(3) Where the Committee proposes to invoke a fast-track procedure, it shall by notice published on a website maintained by the Authority, and where appropriate in a newspaper circulating in the area to be served, state its intention to invoke such a procedure.

(4) If a person, other than the incumbent, within 28 days of a notice published under *subsection (3)*—

- (a) submits in writing that he or she wishes to apply for the award of a sound broadcasting contract for the area concerned, and  
 (b) deposits such a sum with the Authority as is specified by the Committee in any notice under *subsection (3)*, not exceeding €25,000,

then the Committee shall proceed to—

- (i) invite applications for the award of a sound broadcasting contract for the area concerned under *section 65 (8)*; ~~or~~

~~refer the matter to the Authority for direction.~~

(5) Where, in the opinion of the ~~Committee~~ Commission, an application under *section 65* has been received consequent to a submission under *subsection (4)* then any sum deposited under *subsection (4)* shall be refunded in full.

(6) In the event that no written submission and associated deposit are received under *subsection (4)* the ~~Committee~~ Commission may—

Fast-track application process for award of sound broadcasting contracts.

- (a) ~~request the Compliance Committee to prepare a report on the incumbent's compliance with the terms of its sound broadcasting contract and Part 3, assess the incumbent's compliance with the terms of its sound broadcasting contract and Part 3B,~~
- (b) invite the incumbent to make a proposal to amend the terms of his or her sound broadcasting contract, and
- (c) suggest to the incumbent possible amendments to the terms of his or her contract.
- (7) A proposal received under *subsection (6)* must address—
- (a) the matters outlined in *section 66*, and
- (b) such other matters as the ~~Committee~~Commission may consider relevant.
- (8) On consideration of a proposal received under *subsection (6)* the ~~Committee~~Commission may—
- (a) reject the contractual changes proposed by the incumbent and proceed to invite applications under *section 65 (8)* from other persons for the area concerned, or
- (b) ~~refer the matter to the Authority for direction, or~~
- (c) ~~recommend to the Authority, and the Authority shall follow any such recommendation, that the Authority agree the amended contract terms recommended by the Committee with the incumbent.~~ agree amended contract terms with the incumbent.
- (9) The term of any contract extension agreed under *subsection (8)* shall not exceed 10 years.
- (10) All payments made to the Authority under *subsection (4) (b)* and subsequently forfeited by the applicant shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

Sound  
broadcasting  
contracts for  
temporary or  
institutional  
sound  
broadcasting  
services.

- 68.** — (1) ~~The Authority, on the recommendation of the Contract Awards Committee,~~ The Commission may, in any period of 12 months, enter into a sound broadcasting contract with an applicant for the provision in such area as may be specified in the contract of a sound broadcasting service for a period of—
- (a) not more than 30 days (whether consecutive days or otherwise) in that period of 12 months, or
- (b) if the application is for a community sound broadcasting contract, not more than 100 days (whether consecutive days or otherwise) in that period of 12 months.
- (2) ~~The Authority, on the recommendation of the Contract Awards Committee,~~ The Commission may enter into a sound broadcasting contract with an applicant for the provision of a low- power sound broadcasting service which is intended to serve only such single educational institution, hospital, or other similar establishment as may be specified in the contract.
- (3) ~~Section 39 (1) (c)~~ Section 46L(5) does not apply to a contract awarded for the provision of a sound broadcasting service under this section.
- (4) *Sections 65* and *66* do not apply in the case of a contract applied for, or awarded, for the provision of a sound broadcasting service under this section.



Terms and conditions of broadcasting contract.

69. — (1) Every broadcasting contract may contain such terms and conditions as the Authority thinks appropriate and specifies in the contract.

(2) Without prejudice to the generality of *subsection (1)*, the Authority may specify in a broadcasting contract all or any of the following terms or conditions:

- (a) the period during which the contract shall continue in force;
- (b) whether the contract may be renewed and, if so, the manner in which, the terms on which, and the period for which, the contract may be so renewed;
- (c) a condition prohibiting the assignment of the contract or of any interest in it;
- (d) if the broadcasting contractor is a company, a condition prohibiting any alteration in the Memorandum or Articles of Association of the company or in so much of that Memorandum or of those Articles as may be specified or prohibiting any material change in the ownership of the company;
- (e) a condition requiring the broadcasting contractor to provide the quality, range and type of programmes which he or she proposed to offer in his or her application for the award of the contract;
- (f) a condition requiring the sound broadcasting contractor to pay to the Authority the amount which the contractor specified in his or her application.

(3) If a broadcasting contract does not contain a condition of the type specified in *paragraph (c)* or *(d)* of *subsection (2)*, the following provisions shall have effect:

- (a) a broadcasting contract, or any interest in a broadcasting contract, shall not be assignable, nor shall any alteration be made in the Memorandum or Articles of Association of any company which is a broadcasting contractor, nor shall there be any material change in the ownership of such a company, without the previous consent in writing of the Authority, and the Authority may, if it considers it reasonable so to do, refuse such consent;
- (b) in considering whether to grant its consent to an assignment of a broadcasting contract, a change in the Memorandum or Articles of Association of a company which is a broadcasting contractor, or a material change in the ownership of such a company, the Authority shall have regard to the criteria specified in *section 66 (2)* and, where applicable, *section 66 (4)*.

(4) Every broadcasting contract shall provide that the broadcasting contractor shall provide such information (including copies of his or her accounts) which ~~the Authority or the Compliance Committee~~ the Commission considers it requires in order to enable it carry out its functions under this Act.

(5) Every broadcasting contract shall be open to inspection by members of the public at the Authority's ~~registered~~ office and the Authority shall, on request made by any person and on payment of such sum (if any) as the Authority may reasonably require, give to that person a copy of that contract.

(6) In order to avoid the loss of sound programme material inimical to the preservation of a historical record of Irish culture, heritage and experience and as an initial step towards the development of an integrated approach to the archiving of programme material produced in the State, every sound broadcasting contract shall contain a term or condition requiring the sound broadcasting contractor to make a recording and to store categories of programme material, which may be inspected by the Authority, for the term of the sound broadcasting contract and for a period of 6 years thereafter.

(7) The Authority shall, within one year of the passing of this Act, prescribe a format and categories to be followed by sound broadcasting contractors for the purposes of the storing and recording of programme material as required under *subsection (6)*.

(8) The Authority may vary the categories and amounts of programme material required to be recorded and stored by a sound broadcasting contractor having regard to the nature and amount of programme material broadcast by the sound broadcasting contractor and any financial burden associated with such recording and storage.

(9) In carrying out its duties under *subsections (7) and (8)* the Authority shall have due regard to programme content which:

- (a) is in the Irish language,
- (b) relates to Irish culture and life,
- (c) concerns Irish music, drama and entertainment,
- (d) is news, current affairs or documentary,
- (e) is in any other category identified by the Authority and which the Authority deems is worthy of maintenance and preservation.

(10) The Authority may store on behalf of a sound broadcasting contractor or a person who held a sound broadcasting contract any programme material recorded under *subsection (6)*.

(11) The making of a recording and storage of programme material in compliance with *subsection (6) or (10)* is not a contravention of the Copyright and Related Rights Act 2000.

(12) The Authority shall report to the Minister on an annual basis in relation to the performance of its duties under *subsections (7), (8), (9) and (10)*.

(13) Any amount paid to the Authority by a contractor, being an amount which the contractor specified in his or her application, shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

Television  
programme  
service contract.

**70.** — (1) ~~The Authority, on the recommendation of the Contract Awards Committee,~~ The Commission shall enter into a contract (“television programme service contract”) with a person or persons (“television programme service contractor”) who shall have the right and duty to establish and maintain a television programme service and who, subject to *section 139*, shall have the right and duty, subject to the terms of the contract, to establish, maintain and operate television broadcasting transmitters for the purpose of transmitting the television programme service as a free-to-air service.

(2) The Authority shall ensure that a television programme service provided by a television programme service contractor under this section shall in its programming—

- (a) be responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Irish language,
- (b) uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression,
- (c) have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of other Member States, and
- (d) include a reasonable proportion of news and current affairs programmes.

(3) A television programme service contractor shall in its programming comply with the requirements set out in *paragraphs (a) to (d) of subsection (2)*.

(4) For the purpose of ensuring compliance with *subsection (2)* the Authority shall ensure that a reasonable proportion of the television programme service—

- (a) is produced in the State or in another Member State, and
- (b) is devoted to original programme material produced therein by persons other than the contractor, its subsidiary, its parent or existing broadcasting organisations.

(5) The television programme service contract entered into between TV3 Television Network Limited trading as TV3 and the BCI under section 17 of the Radio and Television Act 1988 and section 6 of the Broadcasting Act 1990, if in force immediately before the passing of this Act, continues as if entered into under this section.

(6) The Authority shall ensure that any contract entered into by it under this section and any such contract renewed by it under this Act, contains a term providing that the expression “independent television programme”, where used in the contract, has the same meaning as it has in *section 116*.

Content provision contracts.

**71.** — (1) Subject to *subsection (3)*, a person shall not supply a compilation of programme material for either of the purposes set out in *subsection (2)* otherwise than under and in accordance with a content provision contract.

(2) The purposes for which *subsection (1)* applies are—

- (a) inclusion as part of a multiplex,
- (b) the purpose of its being transmitted as a broadcasting service in the State, part of the State or elsewhere by means of an electronic communications network including a satellite network, ~~a MMD system~~, a fixed or mobile terrestrial network, a cable television network, an internet protocol television network or any other form of electronic communications network.

(3) *Subsection (1)* does not apply to such a supply made by—

- (a) an excepted person for the purpose of any such arrangements, ~~or~~
- ~~(b) RTÉ, TG4, Houses of the Oireachtas Channel, Irish Film Channel or the holder of a broadcasting contract for the purposes of a free-to-air service.~~ RTÉ, TG4, Houses of the Oireachtas Channel, or the Irish Film Channel, or”, and

~~(b)(c)~~ the holder of a television programme service contract for the purposes of a free-to-air service where that contract was entered into before the coming into operation of section 28 of the Online Safety and Media Regulation Act 2022.”,

(4) ~~The Authority, on the recommendation of the Contract Awards Committee,~~ The Commission may enter into a contract (“content provision contract”) with a person whereby that person may supply a compilation of programme material for the purposes referred to in *subsection (2)*.

(5) A content provision contract shall include—

- (a) a condition requiring the holder of the contract to comply with any ~~broadcasting codes or rules~~ media service codes or media service rules with respect to the programme material supplied in pursuance of the contract, and
- (b) a condition authorising the Compliance Committee to request the holder of the contract to pay to the Authority, in respect of a failure by the holder to comply with a particular term or condition of the contract, a sum of money (not exceeding an amount that shall be specified in the condition as being the maximum amount that may be so requested to be so paid) and requiring the holder to comply with such a request.

(6) A content provision contract shall include a condition providing that, where any of

the programme  
material supplied  
in pursuance of  
the contract—

(a) contains  
anything  
referred  
to in  
section  
46J(1)(c)  
or (d),  
and

~~(a) contraven~~  
~~es Article~~  
~~22 or 3b~~  
~~of the~~  
~~Council~~  
~~Directive~~  
~~of the~~  
~~Prohibiti~~  
~~on of~~  
~~Inciteme~~  
~~nt to~~  
~~Hatred~~  
~~Act 1989,~~  
~~or~~



(aa) contains anything which may impair the physical, mental or moral development of children which is not presented in such a way that children will not normally hear or see it, or”,

(b) constitutes an incitement to commit an offence,

the Authority may, or, if such a supply of programme material has occurred within 6 months of a previous such supply by the same person having occurred, shall, terminate the contract.

(7) The Authority may divide the contracts it may enter into under this section into different classes by reference to the different conditions which, in pursuance of its powers under this Act, it may attach to the contracts and may style each such class of contract by the addition of such distinguishing words as it considers appropriate.

(8) The Authority may, before it enters into a content provision contract with a person, require that person to pay a fee to the Authority of such amount as it considers appropriate. If that person fails to pay that fee to the Authority, the Authority shall not enter into the contract with him or her.

“(8A) Where under a levy order under section 21 a levy becomes payable in respect of a levy period by a person who, in that period, paid a fee to the Commission under subsection (8), the Commission shall—

- (a) deduct the amount of the fee from the amount payable by that person under the levy order, and
- (b) if the fee paid is more than the amount payable under the levy order, refund to that person so much of the fee as exceeds that amount.

(8B) Payment of a refund under subsection (8A)(b) shall be deferred for any period for which payment of the amount under the levy order referred to in that paragraph is deferred.”,

~~(8)~~(9) The Authority may specify different fees for particular classes of content provision contractors.

(10) The amount of any fee paid to the Authority under *subsection (8)* may be used by it for the purpose of defraying the expenses incurred by it in performing its functions generally.

(11) In this section, ‘excepted person’ means a person who is under the jurisdiction of another Member State, and for the purposes of this subsection section 2A applies to a person providing a sound broadcasting service—

(a) as if references to a media service provider were references to a provider of a sound broadcasting service,

(b) as if references to audiovisual media service activity were references to activity relating to the sound broadcasting service concerned, and

~~(a)~~(c) as if references to relevant editorial decisions were references to editorial decisions about the sound broadcasting service concerned.

Community content provision contracts.

**72.** — (1) Subject to this section, 2 or more members of a local community or community of interest may supply a compilation of programme material for the purposes of its being transmitted as a broadcasting service ~~under and in accordance with a MMD system transmission licence or~~ by an appropriate network provider referred to in *section 77 (1)*.

(2) Subject to *subsections (3) and (4)*, the Authority may enter into a class of content provision contract (“community content provision contract”) with 2 or more members of a local community or a community of interest whereby those members may supply a compilation of programme material for the purposes referred to in *subsection (1)* if it is satisfied that—

- (a) those members are representative of, and accountable to, the community concerned, and
- (b) the supply of programme material in pursuance of the contract will be effected with the sole objective of—
  - (i) specifically addressing the interests of, and seeking to provide a social benefit to, the community concerned, and
  - (ii) achieving a monetary reward of no greater amount than is reasonably necessary to defray the expenses that will be incurred in effecting that supply.

(3) The Authority shall not enter into a community content contract save after consultation with the person who it appears to the Authority will transmit or, as the case may be, will be the subject of a requirement under ~~section 76(4) or~~ *section 77(8)* to transmit, the programme material supplied pursuant to the contract as a broadcasting service.

(4) The Authority shall establish procedures whereby members of local communities are enabled, at regular intervals, to make submissions to the Authority as to what particular contracts ought, in their opinion, to be entered into under this section and what particular terms and conditions ought, in their opinion, to be included in such contracts and requiring the Authority to furnish, on request, to any such members particulars of any proposals formulated, for the time being, by the Authority itself with regard to each of those

matters.



(5) Before entering into a community content provision contract, the Authority shall have regard to any submissions made to it under and in accordance with procedures established under *subsection (4)* and which appear to it to be of relevance to that contract.

(6) The Authority shall conduct, or arrange with members of the local community or community of interest concerned for there to be conducted, a survey, which shall be as comprehensive as is practicable, amongst members of that community for the purpose of ascertaining—

- (a) the extent to which that community is facilitated in the active participation by it in the compilation and transmission of the programme material supplied pursuant to a community content provision contract,
- (b) the extent to which those members view any broadcasting service on which there is transmitted that programme material, and
- (c) the opinion of those members with regard to—
  - (i) the quality of that programme material, and
  - (ii) whether that material specifically addresses the interests of their community,

and shall have regard to the results of such a survey in deciding, in relation to any community content provision contract it proposes to enter into with members of that community next after the conduct of that survey, with whom it shall enter into such a contract and the nature of the terms and conditions it may include in that contract.

(7) If ~~the holder of a MMD system transmission licence is required under section 76 (4), or~~ an appropriate network provider referred to in *section 77 (1)* is required under *subsection (8)* of that section, to transmit as a broadcasting service the programme material supplied pursuant to a community content provision contract, ~~the holder of~~ an appropriate network service provider shall not be—

- (a) under any duty to ensure that the material complies with the terms and conditions of that contract or the requirements of *Part 3B*,
- (b) regarded, for the purposes of the law of defamation, malicious falsehood or any other form of civil liability as having, by virtue of such transmission, published the material, or
- (c) liable in damages, by virtue of such transmission, for any infringement of copyright, other intellectual property rights or other legal rights of any person.

Assessment of community needs in respect of broadcasting.

**73.** — The Authority may, of its own initiative or at the request of a local community or community of interest, carry out an assessment of the needs of a community in respect of broadcasting and such an assessment shall include an ascertainment of the extent to which production facilities, training and resources are available to the community to enable the community to best serve its interests in respect of those needs.

Electronic programme guides.

**74.** — (1) In this section “electronic programme guide” means any electronic means of providing information to members of the public in relation to the schedule of programme material the subject of any broadcasting service and which electronic means is an integral part of the distribution and reception system by which the broadcasting service is provided.

(2) A person shall not prepare or make available for use an electronic programme guide otherwise than under and in accordance with an electronic programme guide contract.

(3) The Authority may enter into a contract (“electronic programme guide contract”) with a person whereby that person may prepare and make available for use one or more electronic programme guides.

(4) An electronic programme guide contract shall include a condition requiring the holder of the contract to comply with rules under *section 75* in respect of the electronic programme guide or guides prepared by him or her under that contract.

(5) An electronic programme guide contract shall include a condition requiring the holder of the contract to ensure that the electronic programme guide or guides prepared under the contract prioritise within the guide or guides the positioning of each broadcasting service provided in the State by RTÉ, TG4 and the service provided under a television programme service contract by the television service programme contractor, where such broadcasting services are made available on the distribution and reception system, and a further condition that the electronic programme guide or guides may easily be used by a member of the public to access information in relation to the schedules of programme material the subject of each of the aforementioned broadcasting services.

(6) A holder of an electronic programme guide contract shall not design an electronic programme guide in such a way as to result in a user of the guide experiencing difficulty in accessing the programme material supplied by a broadcasting contractor, a content provision contractor or a broadcaster under *Part 7*.

(7) If the Authority considers it appropriate to do so in order that members of the public may keep themselves informed of the choice of programme material available for viewing on broadcasting services included as part of a multiplex (within the meaning of *section 129*) it may invite expressions of interest in the securing of an electronic programme guide contract.

(8) The Authority may, having examined each of the expressions of interest received on foot of such an invitation, enter into a programme guide contract with the person whose proposals for such electronic programme guide or guides would, in its opinion, best serve the needs of the public.

(9) The Authority may give a direction to RTÉ or a multiplex contractor requiring that RTÉ or the contractor include as part of a television multiplex an electronic programme guide prepared under an electronic programme guide contract referred to in *subsection (8)*, and RTÉ or the contractor shall comply with the direction.

(10) For the purposes of this section a teletext service shall not be regarded as an electronic programme guide.

Rules with respect to programme guide contracts.

**75.** — The Authority, after consultation with the Communications Regulator, may prepare rules with respect to the format in which the information in relation to schedules of programme material provided by electronic programme guides may be presented and the making of the arrangements that are necessary to meet the requirements of *section 74 (5)*.

Transmission of broadcasting services by MMD system.

**76.** — (1) The holder of a licence granted by the Communications Regulator being a licence that authorises the distribution of programme material by the means of a MMD system, shall distribute, by those means—

- (a) in case the MMD system used by that holder is, in whole or in part, an analogue system, the service provided under *section 70* by the television service programme contractor and which that contractor requests the holder to so distribute,
- (b) in case the MMD system used by that holder is, in whole or in part, a digital system, each free-to-air service provided by RTÉ and by TG4 and the free-to-air service provided under *section 70* by the television service programme

contractor and which that body or contractor requests the holder to so distribute.

(2) If a dispute arises between the holder of a licence referred to in *subsection (1)* and a body or contractor referred to in *subsection (1)* in relation to the placement by the holder, relative to the placement by him or her of another broadcasting service, on the system concerned of a free-to-air service provided by that body or contractor, being a placement made on a MMD system for the purposes of the holder's complying with a request by that body or contractor under *subsection (1)*, as the case may be, the dispute shall be referred to the Authority for its determination and the determination of the Authority in the matter shall be final.

(3) The holder of a licence referred to in *subsection (1)* shall not impose a charge in relation to the making available to a person of any service referred to in *subsection (1)* if he or she imposes a charge on that person in relation to the making available of any other service to that person by means of the MMD system concerned.

(4) Subject to *subsection (5)*, the Authority may require the holder of a licence referred to in *subsection (1)* to distribute as a broadcasting service, by means of the MMD system concerned, the whole or part of the programme material supplied under one or more specified community content provision contracts the holders of which are members of the local community or community of interest that is served by the said system and who request the first-mentioned holder to so distribute the whole or, as the case may be, a part of that programme material.

(5) *Subsection (4)* shall not apply if the system used by the holder of the licence concerned is an analogue MMD system.

(6) A person of whom a requirement is made by the Authority under *subsection (4)* shall comply with that requirement.

(7) The holder of a licence referred to in *subsection (1)* shall not impose a charge in relation to the making available to a person of any service referred to in *subsection (4)*, pursuant to a requirement made of him or her under that subsection, if he or she imposes a charge on that person in relation to the making available of any other service to that person by means of the MMD system concerned.

(8) The Authority shall report to the Minister on an annual basis in relation to the operation of this section.

Must-carry and  
must-offer  
obligations.

**77.** — (1) (a) In this Part “appropriate network” means an electronic communications network provided by a person (“appropriate network provider”) which is used for the distribution or transmission of broadcasting services to the public.

(b) For the purposes of this section a multiplex contractor in relation to multiplexes referred to in *section 132(1), (2), (3) and (4)* or in *section 133* is not an appropriate network provider by virtue of being a multiplex contractor or associated activities.

(c) For the purposes of this section a holder of a licence referred to in *section 76(1)*, the terms of which authorise the transmission by means of a MMD system of programme material, is not an appropriate network provider by virtue of being a licensee or associated activities.

(d) For the purposes of this section a holder of a licence issued under *section 59* or *121*, the terms of which authorise the transmission of programme material, is not an appropriate network provider by virtue of being a licensee under that section or associated activities.

(2) Where the Authority is of the view, after carrying out a review and after consultation with the Communications Regulator, that a type or class of network system, rather than an individual network system, is not used by a significant number

of end-users as their principal means of receiving transmissions of programme material, it may propose to the Minister the full or partial removal of the obligations set out in *subsections (3), (4), (5), (6), (7), (8), (9) and (10)* on that type or class of network system. The Minister may make an order to that effect.

(3) In the case where the appropriate network is a digital system, the appropriate network provider shall ensure the re-transmission, by or through his or her appropriate network, of the Houses of the Oireachtas Channel and the Irish Film Channel.

(4) An appropriate network provider shall ensure the re-transmission, by or through his or her appropriate network, of each free-to-air television service provided for the time being by RTÉ, TG4 and the free-to-air service provided under *section 70* by the television service programme contractor which that body or contractor requests the appropriate network provider to so re-transmit.

(5) If a dispute arises between the appropriate network provider and RTÉ, TG4 or the television programme service contractor in relation to the placement by the appropriate network provider, relative to the placement by him or her of another broadcasting service, on the system concerned of a free-to-air service provided by that body or contractor, being a placement made on an appropriate network for the purposes of the appropriate network provider complying with a request by that body or contractor under *subsection (4)*, the dispute shall be referred to the Authority for its determination and the determination of the Authority in the matter shall be final.

(6) An appropriate network provider shall re-transmit each national sound broadcasting service provided for the time being by RTÉ and each sound broadcasting contractor and which RTÉ or the contractor concerned requests the holder to so re-transmit.

(7) The appropriate network provider shall not impose a charge or allow a charge to be imposed in relation to the making available to a person of any service referred to in *subsection (3), (4), (5) or (6)* if he or she imposes a charge or allows a charge to be imposed on that person in relation to the making available of any other service to that person by means of the appropriate network concerned.

(8) The Authority may require an appropriate network provider to transmit as a broadcasting service, by means of specified appropriate networks (whether analogue or digital) maintained by the appropriate network provider, the whole or part of the programme material supplied under one or more specified community content provision contracts the holders of which are members of the local community or community of interest that is served by the said appropriate network and who request the first-mentioned appropriate network provider to so transmit the whole or, as the case may be, part of that programme material.

(9) A person of whom a requirement is made by the Authority under *subsection (8)* shall comply with that requirement.

(10) An appropriate network provider shall not impose a charge or allow a charge to be imposed in relation to the making available to a person of any service referred to in *subsection (8)*, pursuant to a requirement made of him or her under that subsection, if he or she imposes a charge or allows a charge to be imposed on that person in relation to the making available of any other service to that person by means of the appropriate network concerned.

(11) Without prejudice to the requirements imposed under *subsection (4)*, RTÉ, TG4 and the television service programme contractor shall ensure that their must-offer services are at all times offered for re-transmission (subject to agreement as to fair, reasonable and non-discriminatory terms of use) by means of any appropriate network that is available for reception in an intelligible form by members of the public in the whole of or in part of the State.

(12) RTÉ, TG4 and the television service programme contractor shall ensure that their must-offer services are at all times offered for broadcast or re-transmission

(subject to agreement as to fair, reasonable and non-discriminatory terms of use) by means of every satellite television service.

(13) Arrangements entered into under *subsection (12)* shall not result in an additional charge on any subscriber to a satellite television service by reason of the making available to that subscriber of any must-offer service by way of the satellite television service.

(14) Subject to the requirements of any contract made under *section 74* any arrangement entered into under *subsection (12)* shall ensure that the electronic programme guide by which members of the public access the satellite television service shall prioritise the positioning of the must-offer service for the purposes of that satellite television service and for the purposes of any other satellite television service which also utilises the same electronic programme guide for the purposes of making a satellite television service available for reception in an intelligible form by members of the public in the whole of or in part of the State.

(15) The Authority shall report to the Minister on an annual basis in relation to the operation of this section.

(16) (a) An order under *subsection (2)* shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is made.

(b) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which an order was laid before it in accordance with *paragraph (a)*, pass a resolution annulling the order.

(c) The annulment under *paragraph (b)* of an order takes effect immediately on the passing of the resolution concerned but does not affect anything that was done under the order before the passing of the resolution.

(17) In this section—

“must-offer service” means a free-to-air television service provided for the time being by RTE, TG4 and the free-to-air service provided under *section 70* by the television service programme contractor;

“re-transmission” means near-simultaneous, unaltered and unabridged transmission;

“satellite television service” means a service which consists in or involves the distribution or transmission of television broadcasting services from a satellite, such services then offered to the public with the intention that such services be used by a significant number of the persons in the whole or part of the State by whom the broadcasts are received in an intelligible form as their principal means of receiving television programmes.

Offences ( *Part 6* ).

**78.**— (1) A person who contravenes *section 71(1)* ~~or 74(2)~~ commits an offence.

(2) A person guilty of an offence under *subsection (1)* is liable—

(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

## PART 7

### PUBLIC SERVICE BROADCASTING

#### CHAPTER 1

#### *Public Service Broadcasting Corporations — Common Provisions*

- Bodies corporate. **79.**— Each corporation continues as a body corporate with perpetual succession and power to sue and be sued and to acquire, hold and dispose of land.
- Seals of corporations. **80.**— (1) A corporation shall as soon as may be after the passing of this Act provide itself with a new seal.
- (2) The seal of a corporation shall be authenticated by the signature of the chairperson of the corporation, or some other member of it authorised by the corporation to act in that behalf, and the signature of an officer of the corporation authorised by the corporation to act in that behalf.
- (3) Judicial notice shall be taken of the seal of a corporation, and every document purporting to be an instrument made by the corporation and to be sealed with the seal (purporting to be authenticated in accordance with this section) of the corporation shall be received in evidence and be deemed to be such instrument without further proof unless the contrary is shown.
- Appointment of board. **81.**— (1) The number of members of the board of a corporation shall be 12 in number, of which—
- (a) 6 of them shall be appointed by the Government on the nomination of the Minister,
  - (b) subject to *subsection (2)*, 4 of them shall be appointed by the Government on the nomination of the Minister,
  - (c) one shall be appointed by the Government following an election in accordance with *section 83*, and
  - (d) one shall be the director general of the corporation.
- (2) Where an appointment is to be made by the Government under *subsection (1)(b)* or under that paragraph arising from a vacancy referred to in *section 84(12)*—
- (a) the Minister shall inform the Joint Oireachtas Committee of the proposed appointment,
  - (b) The Minister in respect of an appointment under *subsection (1)(a)* shall provide a statement to the Joint Oireachtas Committee indicating the relevant experience and expertise of the persons or person nominated by the Minister for appointment or appointed by the Government on the nomination of the Minister, and such other matters as the Minister considers relevant,
  - (c) the Joint Oireachtas Committee shall within the period of 90 days of being so informed, advise the Minister of the names of the persons or name of the person it proposes that the Minister should nominate under *subsection (1)(b)* giving reasons, such as relevant experience and expertise, in relation to the proposed named persons or person,
  - (d) the Minister shall have regard to the advice and may accept the proposed named persons or some of them or the named person or decide to nominate as he or she sees fit other persons or another person, and
  - (e) inform the Joint Oireachtas Committee of his or her decision.
- (3) Not less than 5 of the members of the board of a corporation shall be men and not less than 5 of them shall be women.
- (4) The Joint Oireachtas Committee for the purposes of providing advice to the Minister under *subsection (2)* may establish a panel, for such duration, and consisting of such number of persons as the Joint Oireachtas Committee shall think proper.
- (5) Persons placed on a panel established under *subsection (4)* shall—

- (a) have experience of or have shown capacity in one or more of the matters stated in *section 82 (1)*,
- (b) in respect of TG4 comply with the requirements of *section 82 (2)*, and
- (c) be chosen with a view to representing the public interest in respect of public service broadcasting matters.

(6) The Joint Oireachtas Committee shall, insofar as is practicable, endeavour to ensure that among the persons placed on a panel under *subsection (4)* there is an equitable balance between men and women.

(7) The Joint Oireachtas Committee shall have sole responsibility for the selection and placing of candidates on a panel established under *subsection (4)*.

Criteria for board membership.

**82.** — (1) A person shall not be appointed to be a member of the board of a corporation unless he or she has experience of or shown capacity in one or more of the following matters—

- (a) media affairs,
- (b) public service broadcasting,
- (c) broadcast content production,
- (d) digital media technologies,
- (e) trade union affairs,
- (f) business or commercial affairs,
- (g) matters pertaining to the development of the Irish language,
- (h) matters pertaining to disability,
- (i) arts, music, sport or culture,
- (j) science, technology or environmental matters,
- (k) legal or regulatory affairs, and
- (l) social, educational or community activities or Gaeltacht affairs, relevant

to the oversight of a public service broadcaster.

(2) A person shall not be appointed to be a member of the board of TG4 unless he or she is able to communicate proficiently in the Irish language.

(3) Each member of the board of a corporation shall be appointed for a period not exceeding 5 years.

(4) The Government in setting a term of appointment under *subsection (3)* shall consider the need for continuity of membership of the board of a corporation.

(5) A member of the board of a corporation whose term of office expires by the effluxion of time shall be eligible for re-appointment.

(6) A member of the board of a corporation shall not serve more than 2 consecutive terms of office.

(7) A member of the board of a corporation may at any time resign his or her office by letter addressed to the Government and the resignation shall take effect on the date specified therein or upon receipt of the letter by the Government, whichever is the later.

(8) *Subsections (3) to (7)* do not apply to the membership of the director general of the board of a corporation.

Appointment of staff member.

**83.** — (1) The Government shall appoint to be a member of the board of each corporation one member of staff of the corporation elected to be a staff member of the board in accordance with this section.

(2) A member of the board of a corporation appointed under this section shall, subject to this section, be eligible for nomination as a candidate and for election at an election.

(3) An election shall be held as soon as practicable after the passing of this Act or such longer period as may be agreed between the corporation and recognised trade unions and staff associations.

(4) *Subsections (5) to (16)* apply for the purposes of an election.

(5) (a) The secretary of a corporation (or a person selected by him or her after consultation with representatives of recognised trade unions or staff associations) shall be the returning officer for each election of a staff member of the board of the corporation.

(b) The returning officer shall not be entitled to be nominated as, or to nominate, act as agent for or promote the interests of, a candidate at the election.

(c) The returning officer may authorise any person to exercise designated functions on his or her behalf and *paragraph (b)* applies to any such person.

(6) (a) A poll shall be conducted where there is more than one candidate.

(b) Voting shall be by secret ballot and on the basis of proportional representation by means of a single transferable vote.

(c) Presiding officers at the poll and polling clerks shall be appointed by the returning officer.

(d) An election shall be held in accordance with arrangements made by the returning officer.

(e) The returning officer shall be required to give due notice of these arrangements to the electorate and to designate premises as an election office.

(7) (a) The returning officer shall fix the nomination day and give notice of the election not later than 4 weeks before that day.

(b) The nomination day shall be not earlier than 4 weeks after the day on which eligibility of voters and candidates is determined in accordance with *subsections (13) and (14)*, respectively.

(8) The returning officer may declare a candidate elected if the number of candidates standing duly nominated does not exceed one.

(9) If the nomination of candidates or any poll is interrupted or cannot be proceeded with the returning officer may adjourn the nomination or poll for such period as he or she considers appropriate to enable him or her, on its expiration, to proceed with or complete the nomination or poll.

(10) On receipt of a notification from the returning officer of the name of the candidate elected or declared to be elected under *subsection (8)*, the Government shall, in accordance with this section, appoint the candidate as a member of the board of the corporation.

(11) The returning officer shall place the remaining candidates in order of votes credited to each at the last count in which he or she was involved.



(12) A corporation shall bear the cost of holding an election except costs incurred by candidates on their own behalf.

(13) Every employee of a corporation who, on the day specified by the returning officer and on the day on which the poll is taken—

(a) is not less than 18 years of age, and

(b) has been an employee of the corporation for a continuous period of not less than one year,

shall be entitled to vote at an election.

(14) (a) Every employee of a corporation who, on the day specified by the returning officer under *subsection (13)*, is not less than 18 years of age and has been an employee of the corporation for a continuous period of not less than 18 months, shall be eligible to be nominated as a candidate at the election.

(b) A candidate may be nominated by—

(i) a recognised trade union or staff association or jointly by 2 or more such bodies, or

(ii) a minimum of 20 eligible voters.

(c) Nominations shall be made in the manner specified by the returning officer.

(d) The returning officer shall rule on the validity of nominations and his or her decision shall be final.

(15) The returning officer shall prepare and maintain a list of eligible voters and candidates.

(16) The returning officer shall prepare and maintain a list of recognised trade unions and staff associations for the purposes of this section.

(17) In this section “election” means an election held under this section for the appointment of a staff member to be a staff member of the board of a corporation.

Terms and  
removal.

**84.** — (1) There shall be paid to members of the board of a corporation, out of monies at the disposal of the corporation, such remuneration (if any) as the Minister, with the consent of the Minister for Finance, from time to time determines.

(2) There shall be paid to members of the board of a corporation, out of monies at the disposal of the corporation, such allowances for expenses incurred by them in the performance of their functions as the Minister, with the consent of the Minister for Finance, from time to time determines.

(3) Subject to this Act, a member of the board of a corporation shall hold office on such terms (other than the payment of remuneration and allowances for expenses) as the Minister, with the consent of the Minister for Finance, from time to time determines.

(4) The Minister shall cause a statement in writing specifying the expertise or experience, terms of office and remuneration of the members of a corporation to be laid before both Houses of the Oireachtas and published in the *Iris Oifigiúil*.

(5) A member of the board of a corporation may at any time be removed from membership of the board of the corporation by the Government if, in the Government’s opinion, the member has become incapable through ill-health of performing his other functions, or has committed stated misbehaviour, or his or her removal appears to the Government to be necessary for the effective performance by the corporation of its functions, and only if, resolutions are passed by each House of the Oireachtas calling for his or her removal.

(6) A member of the board of a corporation shall cease to be and shall be disqualified from being a member of the corporation where such member—

- (a) is adjudicated a bankrupt,
- (b) makes a composition or arrangement with creditors,
- (c) on conviction on indictment by a court of competent jurisdiction is sentenced to a term of imprisonment,
- (d) is convicted of an offence involving fraud or dishonesty, or
- (e) is disqualified or restricted from being a director of any company.

(7) A member of staff of a corporation, who is appointed to serve on the board of the corporation or the director general of the corporation, shall cease to be a member of the board of the corporation on the cessation of his or her contract of service with the corporation.

(8) Where a member of the board of a corporation fails—

- (a) for a consecutive period of 6 months, to attend a meeting of the corporation, unless the member demonstrates to the Minister's satisfaction that the failure to attend was due to illness, or
- (b) to comply with the requirements of *section 93*, or
- (c) to make a declaration in accordance with the requirements of *section 17* of the Ethics in Public Office Act 1995,

the Minister may with the consent of the Government by order remove the member from office.

- (9) (a) An order made under *subsection (8)* shall be laid before each House of the Oireachtas as soon as practicable after it is made.
- (b) Either House of the Oireachtas may, within 21 sitting days after the day on which an order was laid before it in accordance with *paragraph (a)*, pass a resolution annulling the order.
- (c) The annulment under *paragraph (b)* of an order takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under the order before the passing of the resolution.

(10) If a member of the board of a corporation appointed by the Government, on the nomination of the Minister under *section 81(1)(a)* or following an election under *section 83*, dies, resigns, becomes disqualified or is removed from office or for any other reason ceases to be a member of the board of the corporation, the Government on the nomination of the Minister, may appoint a person to be a member of the board of the corporation to fill the casual vacancy so occasioned and the person so appointed shall be appointed for the unexpired period of the term of membership of, and in the same manner as, the member of the board of the corporation appointed by the Government, on the nomination of the Minister or following an election under *section 83*, who occasioned the casual vacancy.

(11) In choosing a person to fill a casual vacancy occasioned by the cessation of membership of a member appointed by Government following an election under *section 83*, the Government shall select the next eligible candidate, if any, under *section 83(11)*. Where 2 or more candidates are credited with an equal number of votes, the Government shall select one of them by lot.

(12) If a member of the board of a corporation appointed by the Government on the nomination of the Minister under *paragraph (b)* of *section 81(1)* dies, resigns, becomes disqualified or is removed from office or for any other reason ceases to be a member of the board of the corporation, the Government on the nomination of the

Minister, the Minister having regard to the advice of the Joint Oireachtas Committee, may appoint a person to be a member of the board of the corporation to fill the casual vacancy so occasioned and the person so appointed shall be appointed for the unexpired period of the term of membership of, and in the same manner as, the member of the board of the corporation appointed by the Government on the nomination of the Minister under *paragraph (b) of section 81(1)*, who occasioned the casual vacancy.

Chairperson.

**85.—** (1) The Government shall from time to time as occasion requires appoint, on the nomination of the Minister, a member of the board of a corporation to be chairperson of it.

(2) A chairperson of a corporation shall, unless he or she sooner dies, resigns the office of chairperson or ceases to be chairperson under *subsection (4)*, hold office until the expiration of his or her period of office as a member of the board of the corporation.

(3) A chairperson of a corporation may at any time resign his or her office as chairperson by letter sent to the Government and the resignation shall, unless it is previously withdrawn in writing, take effect at the commencement of the meeting of the corporation held next after the corporation has been informed by the Government of the resignation.

(4) Where a chairperson of a corporation ceases during his or her term of office as chairperson to be a member of the corporation he or she shall also cease to be chairperson of the corporation.

(5) A member of staff of a corporation appointed by the Government to membership of the board of the corporation or a director general of a corporation shall not be appointed as chairperson of the corporation.

Exclusions from board membership.

**86.—** (1) Where a member of the board of a corporation is—

- (a) nominated as a candidate for election to the European Parliament, either House of the Oireachtas, or as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or the European Parliament, or
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament to fill a vacancy,

he or she thereupon ceases to be a member of the corporation.

(2) Where the person who is the director general or a member of the staff of a corporation is—

- (a) nominated as a candidate for election to the European Parliament, either House of the Oireachtas, or as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or the European Parliament, or
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament to fill a vacancy,

he or she shall thereupon stand seconded from employment by the corporation and shall not be paid by, or be entitled to receive from, the corporation any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected as the case may be, and

ending when such person ceases to be a member of either such House or that Parliament.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament, shall, while so entitled or such a member, be disqualified from becoming a member of the board of a corporation or the director general or a member of the staff of a corporation.

(4) A person who is appointed a ~~Commissioner member of the Authority, the Contract Awards Committee or the Compliance Committee~~ shall be disqualified from becoming or ceases to be a member of the board of a corporation or a director general or a member of staff of a corporation.

(5) A person who holds employment, save for educational or performing creative work, or has an interest in an undertaking holding a contract under this Act, shall be disqualified from becoming or ceases to be a member of the board of a corporation.

(6) A person who holds employment in RTÉ shall be disqualified from becoming or ceases to be a member of the board of TG4.

(7) A person who holds employment in TG4 shall be disqualified from becoming or ceases to be a member of the board of RTÉ.

(8) A person who holds membership of the board of RTÉ shall be disqualified from becoming or ceases to be a member of the board of TG4.

(9) A person who holds membership of the board of TG4 shall be disqualified from becoming or ceases to be a member of the board of RTÉ.

(10) Without prejudice to the generality of *subsection (2)*, that subsection shall be read as prohibiting, *inter alia*, the reckoning of a period mentioned in that subsection as service with the corporation for the purposes of any superannuation benefits.

Duties of board members.

**87.**— Subject to the requirements of this Act every member of the board of a corporation shall perform his or her functions in such a manner as to—

- (a) represent the interests of viewers and listeners,
- (b) ensure that the activities of the corporation in pursuance of its objectives set out in *section 114(1)* or *118(1)* are performed efficiently and effectively,
- (c) ensure that the gathering and presentation by the corporation of news and current affairs is accurate and impartial, and
- (d) safeguard the independence of the corporation, as regards, the conception, content and production of programmes, the editing and presentation of news and current affairs programmes and the definition of programme schedules from State, political and commercial influences.

Meetings.

**88.**— (1) The board of a corporation shall hold such and so many meetings as may be necessary for the due performance of its functions.

(2) At a meeting of the board of a corporation—

- (a) the chairperson of the board of a corporation shall, if present, be chairperson of the meeting, and
- (b) if and so long as the chairperson of the board of a corporation is not present or if the office of chairperson is vacant, the members of the board of a corporation who are present shall choose one of their number to be chairperson of the meeting.

(3) Every question at a meeting of the board of a corporation shall be determined by a majority of the votes of the members of the board present and voting on the question, and in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

(4) The board of a corporation may act notwithstanding one or more vacancies among its members.

(5) Subject to this Part, the board of a corporation shall regulate its procedure and practice by rules made under this section.

(6) The quorum for a meeting of the board of a corporation shall be 7.

(7) Subject to any rule made under *subsection (5)* meetings of the board of a corporation shall be capable of being held by telephone or other suitable electronic means whereby all the members of the board can hear and be heard.

(8) The board of a corporation may delegate any of its functions to a subcommittee of the board of the corporation subject to such conditions as the board of the corporation considers appropriate.

Director general. **89.**— (1) A corporation shall from time to time appoint a person to be the chief executive officer of the corporation and who shall be known, and is in this Part referred to, as, in the Irish language, ardstiúrthóir or, in the English language, director general.

(2) A director general shall—

- (a) carry on and manage, and control generally, the administration of the corporation,
- (b) act as editor-in-chief in respect of content published by the corporation in pursuance of its objects under this Act, and
- (c) perform such other functions (if any) as may be determined by the board of the corporation.

(3) The consent of the Government is necessary before a corporation appoints or removes the director general of the corporation, or alters his or her remuneration or his or her terms and conditions of holding office.

(4) The person who, immediately before the passing of this Act, was the director general of Radio Telefís Éireann, continues as director general of RTÉ.

(5) The person who, immediately before the passing of this Act, was the chief executive officer of TG4, continues as director general of TG4.

(6) A director general shall not hold any other office or employment or carry on any business without the consent of the board of the corporation.

(7) A director general shall furnish the board of the corporation with such information (including financial information) in relation to the performance of his other functions as the board of the corporation may from time to time require.

(8) The functions of a director general may be performed in his or her absence or when the position of director general is vacant by such member of the staff of the corporation as may, from time to time, be designated for that purpose by the board of the corporation.

(9) A director general shall, for the duration of his or her appointment, serve as an *ex officio* member of the board of his or her corporation.

Staff.

**90.**— (1) A corporation shall, as well as appointing a director general, appoint such and so many persons to be members of the staff of the corporation as it may, from

time to time, determine but, subject to *subsection (2)*, a person shall not be appointed under this section to be a member of staff of the corporation unless he or she has been selected by means of a public competition.

(2) The requirement under *subsection (1)* of being selected by means of a public competition does not apply in relation to:

- (a) an appointment consisting of the promotion of a person who is already a member of staff of the corporation,
- (b) an office for which, in the opinion of the corporation, specialised qualifications not commonly held are required, or
- (c) an office to which appointments are made for limited periods only, being periods not exceeding 2 years.

(3) A member of staff of a corporation shall hold his or her employment on such terms and conditions as the corporation from time to time determines.

(4) A corporation may perform any of its functions through or by any of its members of staff duly authorised by the corporation in that behalf.

Superannuation. 91.— (1) A corporation, with the approval of the Minister and the consent of the Minister for Finance, shall make a scheme or schemes for the granting of superannuation benefits to or in respect of the members of staff, including the director general, of the corporation.

(2) A superannuation scheme shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons.

(3) A corporation may, with the approval of the Minister and the consent of the Minister for Finance, make a scheme amending or revoking a superannuation scheme including a scheme under this section.

(4) A superannuation scheme submitted by the corporation under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the corporation in accordance with its terms.

(5) Each superannuation scheme shall include a provision for appeals from a decision relating to a superannuation benefit under the scheme.

(6) No superannuation benefits shall be granted by the corporation to or in respect of a person on ceasing to be director general or a member of the staff of the corporation otherwise than—

- (a) in accordance with a superannuation scheme, or
- (b) with the consent of the Minister and the Minister for Finance.

(7) Disbursement of superannuation benefits which may be granted to or in respect of persons who, immediately before the establishment of Radio Éireann, were officers and servants of the Minister, shall not be on less favourable conditions than would apply if the benefits referred to had continued to be paid out of monies provided by the Oireachtas.

(8) The Minister for Finance shall make such contribution as may, with his or her consent, be specified in a scheme or schemes under this section towards the superannuation benefits related to reckonable service given before the establishment day of Radio Éireann which may be granted to or in respect of persons who, immediately before that day, were officers and servants of the Minister, and such scheme or schemes shall, with the like consent, fix the manner and times of the payment of such contribution.

(9) Monies required to be paid by the Minister for Finance under this section shall be advanced out of the Central Fund or the growing produce of it.

(10) (a) A superannuation scheme (including an amendment of it) shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is made.

(b) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which a scheme was laid before it in accordance with *paragraph (a)*, annul the scheme.

(c) The annulment of a scheme under *paragraph (b)* takes effect immediately on the passing of the resolution concerned but does not affect anything that was done under the scheme before the passing of the resolution.

(11) In this section “superannuation scheme” means a scheme under this section.

Accountability of director general and chairperson to Oireachtas Committees.

**92.** — (1) In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a Committee.

(2) Subject to *subsection (4)*, a director general shall, at the request in writing of a Committee, attend before it to give account for the general administration of his or her corporation.

(3) Subject to *subsection (4)*, the chairperson of a corporation shall, at the request in writing of a Committee, attend before it to represent the views of the board of his or her corporation.

(4) A director general or chairperson shall not be required to give account for, or represent the views of the board of his or her corporation in respect of, any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.

(5) Where a director general or chairperson is of the opinion that a matter in respect of which he or she is requested to give an account for, or represent the views of the board of the corporation, is a matter to which *subsection (4)* applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the director general or chairperson is before it, the information shall be so conveyed in writing.

(6) Where the director general or chairperson has informed a Committee of his or her opinion in accordance with *subsection (5)* and the Committee does not withdraw the request referred to in *subsection (2)* or *subsection (3)* in so far as it relates to a matter the subject of that opinion—

(a) the director general or chairperson may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (4)* applies, or

(b) the chairperson of the Committee may, on behalf of the Committee, make such an application,

and the High Court may determine the matter.

(7) Pending the determination of an application under *subsection (6)*, the director general or chairperson shall not attend before the Committee to give account for, or represent the views of the board of the corporation in respect of, the matter the subject of the application.

(8) If the High Court determines that the matter concerned is one to which *subsection (4)* applies, the Committee shall withdraw the request referred to in *subsection (2)* or *subsection (3)*, but if the High Court determines that *subsection (4)* does not apply, the director general or chairperson shall attend before the Committee to give account for, or represent the views of the board of the corporation in respect of, the matter.

Disclosure by  
members of  
corporation of  
certain interests.

**93.** — (1) A member of the board of a corporation who has—

(a) any interest in any body or concerns with which the corporation has made a contract or proposes to make a contract, or

(b) any interest in any contract which the corporation has made or proposes to make,

shall disclose to the board of the corporation the fact of such interest and the nature of it and shall not be present at any deliberation or decision of the board of the corporation relating to the contract.

(2) Where at a meeting of a board of a corporation any of the following matters arise, namely—

(a) an arrangement to which the corporation is a party or a proposed such arrangement, or

(b) a contract or other agreement with the corporation or a proposed such contract or other agreement,

then, any member of the board of the corporation present at the meeting who otherwise than in his or her capacity as such a member has an interest in the matter shall—

(i) at the meeting disclose to the board of the corporation the fact of such interest and the nature of it,

(ii) neither influence nor seek to influence a decision to be made in relation to the matter,

(iii) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed,

(iv) take no part in any deliberation of the board of the corporation relating to the matter, and

(v) not vote on a decision relating to the matter.

(3) Where an interest is disclosed under this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being considered or discussed by the meeting, the member of the board by whom the disclosure is made shall not be counted in the quorum for the meeting.

(4) Where at a meeting of a board of a corporation a question arises as to whether or not a course of conduct, if pursued by a member of the board of the corporation, would constitute a failure by him or her to comply with the requirements of *subsection (2)*, the question may be determined by the board of the corporation, whose decisions shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(5) For the purposes of this section and *section 94* a person shall not be regarded as having an interest in any matter by reason only of an interest of that person, or of any company in which he or she has an interest, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question relating to the matter, or in performing any function in relation to that matter.



Disclosure by staff and contractors for services of certain interests.

**94.** — (1) Where a member of the staff of a corporation or a member of the staff or a director of a subsidiary or a contractor for services, in a category specified before engagement by the corporation, has an interest, otherwise than in his or her capacity as such, in any contract, agreement or arrangement, or any proposed contract, agreement or arrangement, to which the corporation is or is proposed to be a party, that person—

- (a) shall disclose to the board of the corporation his or her interest and the nature of it,
- (b) shall take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by members of the board of the corporation or members of the staff of the corporation or contractors for services in a category specified before engagement by the corporation in relation to it,
- (c) shall not influence or seek to influence a decision to be made in the matter, and
- (d) shall not make any recommendation in relation to the contract, agreement or arrangement.

(2) *Subsection (1)* does not apply to a person as regards a contract or proposed contract of employment of that person as a member of the staff of the corporation or as regards a contract or proposed contract for services of that person as a contractor for services to the corporation.

(3) Where a person to whom *subsection (1)* applies fails to comply with a requirement of this section, the corporation concerned shall decide the appropriate action (including removal from office or termination of contract) to be taken.

(4) In this section “member of staff” includes the director general.

(5) In this section and *sections 95, 104 and 116*, “subsidiary” means a subsidiary of a corporation.

Code of conduct.

**95.**— (1) A corporation shall, as soon as may be, draw up and adopt a code of conduct in respect of controls on interests and ethical behaviour to apply to each member of the board, member of staff, adviser, member of an advisory committee and member of an audience council of the corporation or a subsidiary of the corporation.

(2) A corporation shall, as soon as may be, draw up a code of conduct in respect of controls on interests and ethical behaviour to apply to such categories of contractors for services as the corporation may specify before engagement.

(3) A corporation shall publish on a website maintained by the corporation any code of conduct drawn up under *subsections (1) and (2)*.

Audience council. **96.**— (1) A corporation shall establish for the purposes of this section, a committee, which committee shall be known, and is in this section referred to, as an audience council.

(2) An audience council shall consist of 15 members appointed by its corporation.

(3) The members of the board of a corporation shall appoint one of their number to serve as a member of its audience council.

(4) In appointing the members of its audience council, a corporation shall endeavour to ensure that the audience council is representative of the viewing and listening public and, in particular, of Gaeltacht communities and persons with a sight or hearing disability.

(5) In appointing the members of its audience council TG4 shall endeavour to ensure that the members of the audience council are able to communicate proficiently in the Irish language.

(6) A corporation shall from time to time appoint, as occasion requires, a member of its audience council to be chairperson of it.

(7) The membership of an audience council shall be appointed for such periods, not exceeding 5 years, as the corporation may think fit and a member of the audience council appointed for a period of less than 5 years shall be eligible for re-appointment for the remainder of the period of 5 years from the beginning of his or her appointment, or for any shorter period.

(8) A member of an audience council may at any time, by notice in writing to the corporation, resign his or her membership. The membership of any member of the audience council may at any time be terminated by notice in writing given to him or her by the corporation.

(9) A corporation shall give to its audience council the use of such resources and information as the council requires for the proper performance of its functions.

(10) The principal function of an audience council shall be to represent to the board of its corporation the views and interests of the general public with regard to public service broadcasting by the corporation.

(11) An audience council may require its corporation to conduct, or arrange to be conducted, as far as is reasonably practicable, a survey of children and young persons, for the purpose of ascertaining the views and interests of children and young persons in respect of public service broadcasting by the corporation.

(12) An audience council may require its corporation to conduct, or arrange to be conducted, as far as is reasonably practicable, a survey of elderly persons, for the purpose of ascertaining the views and interests of elderly persons in respect of public service broadcasting by the corporation.

(13) In order to exercise its function under *subsection (10)*, an audience council may—

- (a) hold public meetings, and
- (b) require that its corporation provide the equivalent of up to one hour of television programme material and in respect of RTÉ one hour of sound broadcasting programme material in each year, and that the corporation shall broadcast same, at such times as are agreed between the corporation and the audience council.

(14) The quorum for a meeting of an audience council shall be 8.

(15) Subject to this section an audience council shall have the power to regulate its own procedure and practice by rules made under this section.

(16) An audience council shall, not later than 30 June in each year, make an annual report to the Minister, the board of its corporation and the Authority, of its proceedings during the preceding financial year. An audience council may, and if requested to do so by the Minister shall, make special reports to the Minister during any year.

(17) At least once in each year the director general of the corporation concerned shall meet with the audience council of the corporation.

(18) At least once in each year an audience council shall meet with the board of its corporation.

(19) A corporation may pay to each member of its audience council such out-of-pocket expenses as such member may reasonably incur in the performance of his or her functions.

Advisory committees.

**97.—** (1) A corporation may establish advisory committees to advise and assist it in the performance of its functions.

(2) Where advisory committees include members other than members of the board of the corporation or staff of the corporation, such members may be paid such remuneration (if any) and allowances for expenses as the corporation considers reasonable, subject to the consent of the Minister and the Minister for Finance.

(3) A corporation may regulate the procedure of its advisory committees, but subject to such regulation, an advisory committee may regulate its own procedure.

(4) A corporation and its director general shall have regard to, but shall not be bound by, the advice of any advisory committee under this section.

Independence.

**98.—** Subject to the requirements of this Act, a corporation shall be independent in the pursuance of its objects.

Statement of strategy.

**99. —** (1) As soon as may be, but not later than 6 months after the passing of this Act, and every 5 years thereafter, a corporation shall prepare and present to the Minister, in such format as shall be approved by the Minister, a statement of strategy.

(2) A statement of strategy prepared under *subsection (1)* shall set out the strategy of the board of the corporation for achieving its objects under this Act during the period to which the statement relates, having regard to resources available to the corporation.

(3) The Minister shall, as soon as may be, after a statement of strategy or any revision to it under this section has been presented to him or her, cause a copy or a summary of it to be laid before each House of the Oireachtas.

Sectoral impact assessments by Authority.

**100. —** (1) The Authority shall, within 3 months of receiving a written request for advice from the Minister in respect of the sectoral impact of a proposal under this Part, prepare and submit such advice to the Minister.

(2) The Authority, in advising the Minister on the sectoral impact of a proposal under this Part, shall consider the following matters—

(a) the extent to which the proposal impacts on—

(i) the availability, choice, quality and accessibility of services for audiences, and

(ii) existing sectoral services,

(b) the impact of the proposal on sectoral development, innovation and investment,

(c) the impact of the proposal on related markets, and

(d) such matters as the Authority may decide.

(3) In reviewing the sectoral impact of a proposal under this Part, the Authority shall consider such impacts as may arise within a 5 year period of the receipt of a written request for advice from the Minister under *subsection (1)*.

Public service statement.

**101.** — (1) A corporation, following a public consultation, shall prepare, not later than 12 months after the passing of this Act, and every 5 years thereafter, or as required by the Minister, a public service statement setting out the principles to be observed, and activities to be undertaken by the corporation in order to fulfil its public service objects.

(2) A corporation shall submit a public service statement prepared under *subsection (1)* to the Minister.

(3) The Minister, having consulted with the Authority, and having reviewed a public service statement received from the corporation under *subsection (2)* against its public service objects, may grant his or her consent to the public service statement.

(4) The Minister shall on the grant of his or her consent to a public service statement, or any revision to it, cause a copy of the public service statement to be laid before each House of the Oireachtas.

Annual statement of performance commitments.

**102.** — (1) A corporation shall, by 31 January in each year, prepare an annual statement of performance commitments, in accordance with —

(a) its objects,

(b) any extant statement of strategy prepared under *section 99*, and

(c) any extant public service statement prepared under *section 101*,

and including the activities to which the corporation intends to commit in that financial year and associated performance indicators.

(2) An annual statement of performance commitments prepared by a corporation under *subsection (1)*, shall address, *inter alia*—

(a) original children's programming, commissioned or produced by the corporation, relevant to the social and cultural needs and interests of children in Ireland and including animation and children's programming in the Irish language, to be broadcast by the corporation,

(b) Irish language programming to be broadcast by the corporation,

(c) science and technology programming to be broadcast by the corporation,

(d) magazines and books to be prepared, published and distributed in pursuance of the corporation's public service objects, and

(e) the recorded audio material to be compiled, published and distributed in pursuance of the corporation's public service objects.

(3) As soon as may be after 31 January in each year a corporation shall submit to the Minister and the Authority an annual statement of performance commitments prepared under *subsection (1)* and, having consulted with the Minister and the Authority, shall publish the statement, or a summary of it, as soon as practicable, thereafter.

(4) A corporation shall by 31 March in each year submit to the Minister and the Authority a report on the fulfilment or otherwise of any commitments made in a statement prepared under *subsection (1)* for the previous financial year and an explanation of any difference arising.

(5) A corporation shall include within a report required under *section 110* a report on the fulfilment or otherwise of any commitments published under *subsection (3)* for the period concerned and an explanation of any difference arising.

Ministerial consent for new services and variations in channels.

**103.** — (1) A corporation may, with the consent of the Minister, pursue the objects in *paragraphs (g) and (h) of section 114(1) or paragraphs (g) and (h) of section 118(1)*, as the case may be.

(2) A corporation may, with the consent of the Minister, vary the number of television or sound broadcasting channels it operates.

(3) A corporation may, with the consent of the Minister, undertake ancillary services.

(4) Where the Minister proposes to give his or her consent under this section, the Minister shall—

- (a) consult with the corporation concerned and such other persons as he or she considers appropriate,
- (b) consult with the Authority as to the sectoral impact of a proposal under this section,
- (c) consider the public value of such proposal, and
- (d) publish in such manner as he or she considers appropriate a statement outlining the consultations that have been carried out under *paragraphs (a) and (b)* and indicate a place at which any document given to the Minister by a person referred to in *paragraph (a) or (b)* in the course of consultations under those paragraphs may be inspected.

(5) A person referred to in *paragraphs (a) or (b) of subsection (4)* may, on giving a document to the Minister for the purposes of *subsection (4)*, request the Minister to omit from documents made available for public inspection under *paragraph (d) of subsection (4)* a document or part of a document which the person regards as commercially sensitive.

(6) The Minister may, if satisfied that the information contained in a document or part of a document is commercially sensitive and that its disclosure is not necessary for the purposes of public understanding of a decision made under *subsection (4)*, omit the document or part of a document from the documents made available for public inspection under *paragraph (d) of subsection (4)*.

(7) For the purposes of this section, information is commercially sensitive if its disclosure could reasonably be expected to—

- (a) materially prejudice the commercial interests of the person who provided that information to the Minister, or of a group or class of persons to which that person belongs, or
- (b) prejudice the competitive position of a person in the conduct of the person's business.

(8) The Minister, in deciding on the public value of a proposal under this section shall consider the following matters—

- (a) the importance of the proposal in respect of the pursuance of the public service objects of the corporation,
- (b) the compatibility of the proposal with the Council Directive and recommendations of the Council of Europe in respect of public service broadcasting,
- (c) the costs and revenues associated with the proposal and any impact on existing public service provision,
- (d) the extent to which the proposal contributes to meeting the democratic, cultural, linguistic, educational, and social needs of Irish society, of individual groups within Irish society, and of Irish communities outside of the island of Ireland,

- (e) the extent to which the proposed service will be accessible by the public,
- (f) the extent to which the proposed service will reach under-served audiences,
- (g) the contribution of the proposed service or activity to raising the level of familiarity of the general public, or of individual groups within Irish society, with new forms of services and technologies,
- (h) the contribution of the proposal to media plurality, and
- (i) such matters as the Minister may decide.

(9) The Minister may attach to any consent granted under this section such particular terms or conditions as he or she considers appropriate in the circumstances.

(10) The requirements of *subsection (2)* shall not apply to the establishment by a corporation of a television or sound broadcasting channel for a period of not more than 30 days (whether consecutive days or otherwise) in any period of 12 months.

(11) In this section “ancillary services” means the provision by a corporation of services, which—

- (a) are ancillary to the public service objects of the corporation,
- (b) the corporation has not engaged in a significant manner in the previous 5 years,
- (c) require expenditure by the corporation in excess of €5 million in each year, and
- (d) for which the corporation proposes to use funding received by the corporation under *section 123*,

but does not include the provision by a corporation of a service in pursuance of *paragraphs (d), (f) and (i) of section 114 (1) and paragraphs (d) and (f) of section 118 (1)*.

Establishment of subsidiaries and joint ventures.

**104.** — (1) A corporation may, in pursuance of its objects under this Act, with the consent of the Minister and the Minister for Finance, the Minister having consulted with the Authority, acquire, form, establish and dispose of one or more subsidiaries.

(2) A corporation or a subsidiary of it may, either by itself or with another person, with the consent of the Minister and the Minister for Finance, the Minister having consulted with the Authority, promote or take part in the formation or establishment of a company, and enter into joint ventures or partnerships in pursuance of its objects under this Act.

(3) A corporation may, with the consent of the Minister and the Minister for Finance, the Minister having consulted with the Authority, acquire, hold and dispose of shares or other interests in a company and become a member of a company.

(4) The memorandum and articles of association of a subsidiary shall be in such form as may be determined by the corporation with the consent of the Minister and the Minister for Finance.

(5) The Minister may attach to any consent granted under this section particular terms or conditions as he or she considers appropriate in the circumstances.

Duty of corporation with respect to its revenue.

**105.** — It is the duty of a corporation so to conduct its affairs as to secure that its revenue is at the earliest possible date, and thereafter continues to be, at least sufficient—

- (a) to meet all sums properly chargeable to current account, and
- (b) to make suitable provision with respect to capital expenditure.

Advertisements. **106.**— (1) A corporation may broadcast advertisements, broadcast acknowledgements of sponsorship, may fix charges and conditions for such broadcasts and, in fixing the charges, may provide for different circumstances and for additional special charges to be made in special cases.

(2) A corporation may reject any advertisement presented for broadcast in whole or in part.

(3) ~~Subject to the requirements of section 41(2)~~ Subject to subsections (3A) and (3B), a corporation in providing a broadcasting service under this Part shall, subject to the approval of the Minister following consultation with the Authority, fix—

- (a) the total daily time for broadcasting advertisements, ~~and~~
- ~~(b)~~ the maximum period given to advertisements in any hour, and
- ~~(b)~~ (c) for audiovisual broadcasting services, the time allowed for broadcasting advertisements in the period between 6.00 and 18.00 and in the period between 18.00 and 24.00 each day.

(3A) For sound broadcasting services—

- (a) the time fixed under subsection (3)(a), shall not exceed 15 per cent the total daily broadcasting time, and
- (b) the period fixed under subsection (3)(b), shall not exceed 10 minutes in any hour.

(3B) The time fixed under subsection (3)(c) shall not exceed 20 per cent of the time in each period.

(3C) A failure to comply with subsection (3) shall be a contravention for the purposes of Part 8B.

(4) The Minister, if so requested by the Referendum Commission following consultation by the Referendum Commission with a corporation and consideration of any proposals of the corporation for broadcasts in connection with the referendum that it communicates to the Referendum Commission, shall direct the corporation in writing to allocate broadcasting time to facilitate the Referendum Commission in performing its functions, and the corporation shall comply with a direction under this subsection.

(5) Charges and conditions referred to in *subsection (1)* may be fixed subject to variations benefiting advertisers who use the Irish language in their advertisements.

(6) A power under this section to fix charges and conditions shall be read as including a power to cancel or vary any charges or conditions fixed under such power and, where charges or conditions are cancelled, to fix other charges or conditions in lieu of those cancelled.

~~(7) In this section references to advertisements shall be read as including references to teleshopping material and to advertising matter in sponsored programmes, that is to say, programmes supplied for advertising purposes by or on behalf of an advertiser.~~

Borrowings.

**107.**— (1) RTÉ may, for the purpose of providing for current or capital expenditure, from time to time, borrow money (whether on the security of the assets of the corporation or otherwise), not exceeding in the aggregate €100,000,000 without requiring the consent of the Minister and the Minister for Finance.

(2) TG4 may, for the purpose of providing for current or capital expenditure, from time to time, borrow money (whether on the security of the assets of the corporation or otherwise), not exceeding in the aggregate €10,000,000 without requiring the consent of the Minister and the Minister for Finance.

(3) A corporation may, with the consent of the Minister and the Minister for Finance, the Minister having consulted with the Authority, borrow money exceeding the amount specified in *subsections (1) or (2)* for the purposes of providing for current or capital expenditure by means of—

- (a) temporary borrowings from financial institutions, or
- (b) the creation of stock or other forms of security to be issued, transferred, dealt with and redeemed in such manner and on such terms and conditions as the corporation, with the consents aforesaid, may determine.



(4) The Minister may attach to any consent granted under *subsection (3)* such particular terms or conditions as he or she considers appropriate in the circumstances.

(5) The terms upon which monies are borrowed under this section may include provisions charging the monies and interest thereon upon all property of whatsoever kind for the time being vested in the corporation or upon any particular property of the corporation and provisions establishing the priority of such charges amongst themselves.

Transactions  
between public  
service and  
commercial  
opportunities.

**108.** — (1) The commercial activities undertaken by a corporation in pursuance of its exploitation of commercial opportunities object shall—

- (a) be operated in an efficient manner so as to maximise revenues, and
- (b) be used to subsidise its public service objects.

(2) All transactions or arrangements entered into by a corporation as between the activities arising from—

- (a) its public service objects, and
- (b) its exploitation of commercial opportunities object,

shall be made at arm's length and on commercial terms.

(3) On the direction of the Minister, the Compliance Committee shall prepare and submit to the Minister a report on compliance by the corporation with the requirements of *subsection (2)*.

Accounts and  
audit.

**109.** — (1) A corporation shall submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times, as may be required by the Minister and shall furnish to the Minister any information which the Minister may require in relation to such estimates, including proposals and future plans relating to the performance by the corporation of its functions over a period of years, as required.

(2) A director general, under the direction of the board of his or her corporation, shall cause to be kept, on a continuous basis, all proper and usual books or other records of account in respect of—

- (a) all income and expenditure of the corporation,
- (b) the sources of such income and the subject matter of such expenditure, and
- (c) the property, assets and liabilities of the corporation.

(3) The accounts of a corporation for each financial year shall be prepared in accordance with accounting standards by the director general and approved by the board of the corporation as soon as practicable but not later than three months after the end of the financial year to which they relate for submission to—

- (a) in respect of RTÉ, such duly qualified auditors as the board of RTÉ shall appoint, and
- (b) in respect of TG4, the Comptroller and Auditor General, for

audit.

(4) A copy of the accounts referred to in *subsection (3)* and the report of the auditors appointed by the board of RTÉ under *paragraph (a)* of *subsection (3)* or the Comptroller and Auditor General, as the case may be, thereon shall, as soon as may be but not

later than 6 months after the end of the financial year to which they relate, be presented to the board of the relevant corporation and to the Minister.

(5) The financial year of a corporation shall be the period of 12 months ending on 31 December in any year.

(6) A corporation shall, if so required by the Minister, furnish to him or her, such information as he or she may require in respect of any balance sheet, account or report of the corporation or in relation to the policy and operations of the corporation other than day-to-day operations.

(7) (a) A corporation, its director general and any relevant member of staff of the corporation shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the books or other records of account of the corporation in respect of any financial year or other period and shall facilitate any such examination.

(b) In this subsection "relevant member of staff" means a member of the staff of the corporation in respect of whom there have been duly assigned duties which relate to the books or other records of account referred to in *paragraph (a)*.

(8) A director general, under the direction of the board of his or her corporation, shall cause to be kept all such special accounts as the Minister may from time to time direct.

(9) Without prejudice to *subsection (3)* and *section 110*, a corporation shall as soon as may be after the end of each financial year, send to the Minister—

(a) a statement of the use it has made, of the monies paid to it under *section 123* in that financial year, in pursuance of its public service objects, and

(b) a statement in respect of the total revenue and costs derived by the corporation in that financial year distinguishing between monies received or expended on—

(i) activities in pursuance of its public service objects, and

(ii) activities in pursuance of its exploitation of commercial opportunities object.

(10) A corporation shall include in the statement required under *subsection (9)* a statement of the cost accounting principles and methods by which costs and revenues have been assigned to such activities.

(11) The Authority, at the direction of the Minister, and having consulted with a corporation, shall prepare and publish guidance for the corporation as regards the cost accounting principles and methods to be considered by the corporation in preparing a statement under *subsection (9)*.

(12) Any guidance issued by the Authority under *subsection (11)* shall be general in nature and shall not specify the particular items to be included in preparing a statement under *subsection (9)* to which the guidance relates.

(13) The Compliance Committee, at the direction of the Minister, shall review and report to the Minister on the extent to which a statement prepared under *subsection (9)* complies with the guidance issued by the Authority under *subsection (11)*.

(14) The Minister may give directions to a corporation as to the format of a statement prepared under *subsection (9)*.

(15) The Minister shall cause the documents furnished to him or her under this section to be laid before each House of the Oireachtas.

(16) In this section “accounting standards” has the same meaning as in section 205A(1) of the Companies Act 1990.

Reports and  
information.

**110.** — (1) A corporation shall, not later than 30 June in each year make a report to the Minister (in this section referred to as the “annual report”) in such form as the Minister may approve, on the performance of its functions and activities during the preceding year, and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

(2) Whenever the Minister so directs, the annual report shall also include such additional information on the performance of the corporation’s functions and activities during the preceding year as the Minister may specify.

(3) A corporation shall co-operate with the Minister and the Authority in the performance of their respective functions under this Act including providing them with all necessary information.

(4) RTÉ shall on the third and fifth anniversaries of 18 April 2007 carry out a review of the provision of the television broadcasting service and sound broadcasting service referred to in *paragraph (f) of section 114 (1)*.

(5) RTÉ shall make a report to the Minister of each review carried out by it under *subsection (4)*.

(6) The Minister shall cause copies of each report made to him or her under *subsection (5)* to be laid before each House of the Oireachtas.

Access to  
archives.

**111.** — (1) A corporation shall make reasonable arrangements, itself or with such person or persons as it chooses, for public access to an archive or library established or maintained in pursuance of *section 114(1)(e)* or *section 118(1)(e)* with or without charge, such charge not to exceed the estimated cost of the search for and retrieval of items contained in the archive or library.

(2) Arrangements made under *subsection (1)* shall not encompass the copying or reuse of material contained in an archive or library.

(3) A corporation may enter into an arrangement with a public service broadcaster for the reuse with or without charge by the public service broadcaster, in pursuance of its public service objects and functions under this Part, of items contained in any archive or library maintained by the corporation, such charge not to exceed the estimated cost of the search and retrieval of such items.

(4) A corporation shall prepare and submit to the Minister for his or her approval, following consultation with the Authority, a scheme for the licensing of the use and exploitation by third parties of sound and television recordings over which the corporation holds copyright and related rights.

(5) A scheme shall provide separate terms and conditions of licencing for—

- (a) non-commercial *bona fide* educational and research purposes,
- (b) commercial purposes, and
- (c) other purposes.

(6) Without prejudice to the generality of *subsection (4)* a corporation may—

- (a) specify more favourable charges, terms and conditions in respect of programme material used for the purpose of Irish language broadcasts, and
- (b) attach to a scheme such particular terms or conditions as it considers appropriate.

(7) Any amendment or revocation of a scheme shall be submitted by the corporation to the Minister for his or her approval.

(8) A scheme shall, if approved of by the Minister, be—

(a) published (including publication on a website maintained by the corporation), and

(b) carried out in accordance with its terms, by

the corporation.

(9) The Minister shall cause a scheme approved under *subsection (4)* to be laid before each House of the Oireachtas as soon as practicable after it is made.

(10) The corporation shall ensure that provision is made for resolving disputes arising in respect of the operation of a scheme (by independent arbitration or otherwise) in a manner that appears to the Minister to be appropriate.

(11) The Compliance Committee shall, at the direction of the Minister, report to the Minister on compliance by the corporation with this section.

(12) In this section “scheme” means a scheme prepared and submitted to the Minister under *subsection (4)*.

Code of fair  
trading practice.

**112.** — (1) It is the duty of a corporation to prepare and publish, within 15 months of the passing of this Act, and every fourth year thereafter, a code of fair trading practice (in this section referred to as a “code”) setting out the principles that it shall apply when agreeing terms for the commissioning of programming material from independent producers.

(2) The Authority, having consulted with the Minister, a corporation, and independent producers (or such persons appearing to the Authority to represent them), shall within 12 months of the passing of this Act and every fourth year thereafter, prepare and issue guidance to the corporation on the format of a code required under *subsection (1)*.

(3) The guidance issued by the Authority under *subsection (2)* shall be general in nature and shall not specify the particular items to be included in a code to which the guidance relates.

(4) A corporation, having considered the guidance received under *subsection (2)*, shall prepare and submit for approval to the Minister a code.

(5) A code shall include reference to a corporation’s approach to—

(a) multi-annual commissioning,

(b) acquisition of rights, and

(c) timetable for contractual negotiations.

(6) In meeting the requirements of *subsection (5) (b)* the corporation shall address the arrangements it proposes to adopt in respect of the duration and exclusivity of the various categories of rights it intends to acquire.

(7) The Minister shall, in considering a code, consult with the Authority.

(8) On approval by the Minister the code shall be deemed to have come into force and the corporation shall comply with such a code.

(9) A corporation shall ensure that provision is made for resolving disputes arising in respect of the provisions of a code (by independent arbitration or otherwise) in a manner that appears to the Minister to be appropriate.

(10) The Compliance Committee shall, at the direction of the Minister, report to the Minister on compliance by a corporation with a code prepared under this section.

(11) A corporation may with the approval of the Minister, the Minister having consulted with the Authority, revise and publish amendments to a code.

(12) RTÉ shall co-operate with independent producers in the marketing outside the State of sound broadcasting and television programmes commissioned by RTÉ from independent producers.

## CHAPTER 2

### *Provisions specific to RTÉ*

Raidió Teilifís Éireann.

**113.** — (1) The name of Radio Telefís Éireann (changed by section 3 of the Broadcasting Authority (Amendment) Act 1966) is changed and following the passing of this Act is to be known as Raidió Teilifís Éireann.

(2) Raidió Teilifís Éireann continues in being.

Principal objects and associated powers of RTÉ.

**114.** — (1) The objects of RTÉ are—

- (a) to establish, maintain and operate a national television and sound broadcasting service which shall have the character of a public service, be a free-to-air service and be made available, in so far as it is reasonably practicable, to the whole community on the island of Ireland,
- (b) to establish and maintain a website and teletext services in connection with the services of RTÉ under *paragraphs (a), (c), (d), (e), (f), (g), (h) and (i)*,
- (c) to establish and maintain orchestras, choirs and other cultural performing groups in connection with the services of RTÉ under *paragraphs (a), (f), (g) and (h)*,
- (d) to assist and co-operate with the relevant public bodies in preparation for, and execution of, the dissemination of relevant information to the public in the event of a major emergency,
- (e) to establish and maintain archives and libraries containing materials relevant to the objects of RTÉ under this subsection,
- (f) to establish, maintain and operate a television broadcasting service and a sound broadcasting service which shall have the character of a public service, which services shall be made available, in so far as RTÉ considers reasonably practicable, to Irish communities outside the island of Ireland,
- (g) subject to the consent of the Minister, the Minister having consulted with the Authority, to establish, maintain and operate, in so far as it is reasonably practicable, community, local, or regional broadcasting services, which shall have the character of a public service, and be available free-to-air,
- (h) subject to the consent of the Minister, the Minister having consulted with the Authority, to establish and maintain ~~non-broadcast non-linear audio-visual media services~~ audiovisual on-demand media services, in so far as it is reasonably practicable, which shall have the character of a public broadcasting service (such consent not being required in respect of such services which are ancillary to a broadcasting service provided under *paragraphs (a), (d), (f) and (g)*),
- (i) to establish, maintain, and operate one or more national multiplexes,

- (j) so far as it is reasonably practicable, to exploit such commercial opportunities as may arise in pursuit of the objects outlined in *paragraphs (a) to (i)*.
- (2) In pursuit of the objects outlined in *subsection (1)*, RTÉ shall—
- (a) be responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Irish language,
  - (b) uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, and
  - (c) have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of other Member States.
- (3) Without prejudice to the generality of *subsection (1)*, RTÉ shall ensure that the programme schedules of the broadcasting services referred to in that subsection—
- (a) provide a comprehensive range of programmes in the Irish and English languages that reflect the cultural diversity of the whole island of Ireland and include programmes that entertain, inform and educate, provide coverage of sporting, religious and cultural activities and cater for the expectations of the community generally as well as members of the community with special or minority interests and which, in every case, respect human dignity,
  - (b) provide programmes of news and current affairs in the Irish and English languages, including programmes that provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament, and
  - (c) facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting.
- (4) The principal express powers of RTÉ in pursuance of the objects outlined in *subsection (1)* are—
- (a) to establish, maintain and operate broadcasting stations and to acquire, install and operate apparatus for wireless telegraphy,
  - (b) subject to any regulations under the Act of 1926, which are for the time being in force, to provide for the distribution by means of wired broadcast relay stations of programmes broadcast by RTÉ and such other programmes as RTÉ may decide,
  - (c) to originate programmes and procure programmes from any source,
  - (d) to make contracts, agreements and arrangements incidental or conducive to the objects of RTÉ,
  - (e) to acquire and make use of copyrights, patents, licences, privileges and concessions,
  - (f) to collect news and information and to subscribe to news services and such other services as may be conducive to the objects of RTÉ,
  - (g) to subscribe to such international associations, and to such educational, musical and dramatic bodies and such other bodies promoting entertainment or culture, as may be conducive to the objects of RTÉ,
  - (h) to organise, provide and subsidise concerts, entertainments, education and other activities in connection with a broadcasting service or for any purpose incidental to it and, in relation to any such concert or entertainment, to

provide or procure accommodation and, if desired, to make charges for admission,

- (i) to prepare, publish and distribute, with or without charge, such magazines, books, papers and other printed matter as may seem to RTÉ to be conducive or incidental to its objects,
- (j) to arrange with other broadcasting organisations or authorities for the distribution, receipt, exchange and relay of programmes (whether live or recorded),
- (k) to compile, publish and distribute, with or without charge, recorded aural and visual material,
- (l) to provide programmes of news and current affairs in the Irish and English languages, including programmes that provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament,
- (m) to facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting,
- (n) to invest in, originate or procure films,
- (o) to establish and maintain websites,
- (p) to establish and maintain an electronic communications network subject to any enactment or rule of law,
- (q) to establish and maintain an “electronic communications service” meaning a service which consists wholly or mainly of the conveyance of signals on electronic communications networks, subject to the provisions of any enactment or rule of law,
- (r) to make available the broadcasting services of RTÉ in so far as reasonably practicable by any and all means of transmission, relaying or distribution, whether by way of broadcast (which includes terrestrial sound and television broadcasting networks, cable networks or satellite networks), or by any form of electronic means (which includes fixed terrestrial networks, mobile terrestrial networks, including the Internet and other electronic communications networks) and whether now known or hereinafter invented on a linear or non-linear basis, and
- (s) to invest any of its funds in any manner in which a trustee is empowered by law to invest trust funds.

(5) Nothing in this section shall be read as preventing RTÉ from including in the programme schedules programmes made outside the State.

(6) Nothing in this section shall be read as preventing RTÉ from providing broadcasting services which are of a special interest to only certain members of the community and which are made available on a subscription or pay-per-view basis under its exploitation of commercial opportunities object.

(7) RTÉ shall have all such powers as are necessary or incidental to the attainment of the objects specified in *subsection (1)*, and which are not inconsistent with this Act.

(8) RTÉ shall endeavour to ensure that the programme schedules of the television broadcasting service and the sound broadcasting service established and maintained pursuant to *subsection (1) (f)* are, in so far as it is reasonably practicable, representative of the programme schedules of the national television and sound broadcasting services referred to in *subsection (1) (a)* and *section 118 (1) (a)*.

Broadcasting  
infrastructure.

**115.** — (1) The Minister may, at the request of the Authority and after consultation with RTÉ, require RTÉ to co-operate with a holder of a sound broadcasting contract in the use of any mast, tower, site or other installation or facility needed in connection with the provision of transmission facilities for sound broadcasting services under the sound broadcasting contract.

(2) A sound broadcaster shall make to RTÉ such periodical or other payments in respect of any facilities provided under *subsection (1)* as the Minister, after consultation with RTÉ and the Authority, directs.

Independent  
programme  
account.

**116.** — (1) RTÉ shall keep an account which shall be known as the independent programmes account (in this section referred to as the “account”).

(2) (a) Monies standing to the credit of the account shall be used by RTÉ for the purpose of—

(i) commissioning the making of independent television or sound broadcasting programmes,

(ii) procuring the formulation by persons of proposals for the commissioning by RTÉ of the making of the above programmes, and

(iii) assisting the completion of independent television or sound broadcasting programmes the making of which has not been commissioned by RTÉ,

and for no other purpose.

(b) The amount of monies that RTÉ is required by *subsection (3)* to pay into the account in a financial year shall be expended, unless it is impracticable to do so, within 2 years of that financial year.

(c) RTÉ shall not in a financial year use for the purposes specified in *subparagraphs (ii) and (iii) of paragraph (a)* more than 10 per cent of the amount of monies that it is required by *subsection (3)* to pay into the account in that financial year.

(3) RTÉ shall in each financial year mentioned in *column (1)* of *Part 1* of the Table to this section pay into the account, in accordance with *subsection (4)*, an amount of monies that is not less than the amount of monies mentioned in *column (2)* opposite the mention of the financial year concerned.

(4) The amount of monies required to be paid by *subsection (3)* into the account in a financial year shall be so paid in such number of instalments as RTÉ deems appropriate having regard to its duty under *subsection (2) (b)*.

(5) If any of the monies paid under *subsection (3)* into the account in a financial year remains unexpended at the end of a two year period from the end of that financial year the Minister may, having consulted with the Authority and RTÉ, authorise RTÉ to withdraw those monies or a specified portion of them from the account. Monies so withdrawn shall thereupon become and be available to RTÉ for the purposes generally of pursuing its public service objects.

(6) References in this section to the expenditure of monies in the account include references to the incurring of a legal obligation to expend such monies.

(7) (a) The Minister may, having had regard to each of the following matters, namely—

(i) the current and prospective financial liabilities of RTÉ,

(ii) the effect (if any) for the time being of the operation of this section on—

(I) the employment or recruitment of staff by RTÉ,



(II) the performance by RTÉ of its public service objects, and

(III) the employment of persons in the making of independent television or sound broadcasting programmes,

from time to time by order vary the sum referred to in the definition of the “appropriate amount” in *subsection (8) (a)* and for so long as the order is in force *Part 1* of the Table and the definition are to be read as having effect in accordance with the order.

(b) Where it is proposed to make an order under this subsection, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

(8) (a) In *Part 1* of the Table to this section “appropriate amount” means the sum of €40,000,000 as increased by an amount equal to the appropriate percentage of that sum.

(b) In this subsection the “appropriate percentage” means the difference between the consumer price index number at mid-August, 2008, and the said number at the mid-August immediately preceding the financial year concerned expressed as a percentage of the first-mentioned number.

(c) If at the second-mentioned date in *paragraph (b)* the consumer price index number stands at a figure that is less than that at which it stood at the first-mentioned date in that paragraph, the definition of “the appropriate amount” in this subsection has effect as respects the financial year immediately following the second-mentioned date as if “reduced” were substituted for “increased” in that definition.

(9) As soon as may be, but not later than 3 months, after the end of each financial year, RTÉ shall make a report to the Minister of—

(a) its activities during that financial year as respects commissioning the making of independent television or sound broadcasting programmes,

(b) the name or corporate identity of persons commissioned to make independent television or sound broadcasting programmes,

(c) the operation by it of the account during that financial year, and

(d) such other matters relating to the matters referred to in *paragraphs (a), (b)* and *(c)* as the Minister may direct.

(10) The Minister shall cause copies of the report to be laid before each House of the Oireachtas.

(11) For the purposes of this Part, the making of an independent programme shall not be regarded as having been commissioned by RTÉ unless, before work on the making of the programme commences, RTÉ has incurred a legal obligation to pay at least 25 per cent of the cost of its making.

(12) In this section “independent programme” means a television or sound broadcasting programme made by a person who complies with the following conditions, namely—

(a) each of the following matters as respects the said programme is determined by him or her or by one or more persons on his or her behalf and over whose activities in respect of the determination of such matters he or she exercises control, namely—

(i) the persons who are to participate in the said programme,

(ii) the persons who are to be involved in the making of the said programme,  
and

(iii) the equipment and facilities to be used in the making of the said programme,

(b) he or she is not a subsidiary of a broadcaster, and

(c) he or she is not a holding company of a broadcaster.

(13) For the purposes of the definition in *subsection (12)*, where—

(a) two or more broadcasters hold shares in a body corporate or a holding company of a body corporate, or

(b) each of two or more broadcasters (being shareholders in a body corporate or a holding company of a body corporate) by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove a holder of a directorship of the body corporate or, as the case may be, the holding company,

then, notwithstanding that the body corporate is not a subsidiary of any of these broadcasters, the body corporate is deemed not to comply with the condition specified in *paragraph (b)* of that definition if—

(i) the total number of shares held by the said broadcasters in the body corporate or, as the case may be, the holding company, or

(ii) the total number of directorships of the body corporate or, as the case may be, the holding company that the aforesaid powers of the said broadcasters may be exercised in respect of,

is such that, were the said broadcasters to be regarded as one company, the body corporate would be a subsidiary of it, and

(I) RTÉ is one of the said broadcasters, or

(II) there exists a business relationship between the said broadcasters that, in the opinion of RTÉ, is of such a kind as is likely to result in the said broadcasters acting in concert with one another in exercising their rights under those shares or in exercising the said powers.

(14) For the purposes of *subsection (13) (b)* a broadcaster shall be deemed to have power to appoint to a directorship in relation to which the condition specified in *paragraph (a)* or *(b)* of section 155(2) of the Companies Act 1963 is satisfied, and for this purpose references in those paragraphs to the other company shall be construed as references to the broadcaster.

(15) RTÉ shall in each financial year mentioned in *column (1)* of *Part 2* of the Table to this section use a per cent of the monies paid into the account that is not less than the per cent mentioned in *column (2)* opposite the mention of the financial year concerned for the purposes of—

(a) commissioning the making of independent sound broadcasting programmes,

(b) procuring the formulation by persons of proposals for the commissioning by RTÉ of the making of the above programmes, and

(c) assisting the completion of independent sound broadcasting programmes the making of which has not been commissioned by RTÉ,

and for no other purpose.

(16) A minimum of 95 per cent of the monies paid into the account shall be used by RTÉ for the purpose of—

- (a) commissioning the making of independent television programmes,
- (b) procuring the formulation by persons of proposals for the commissioning by RTÉ of the making of the above programmes, and
- (c) assisting the completion of independent television broadcasting programmes the making of which has not been commissioned by RTÉ,
- and for no other purpose.

## TABLE

*Part 1*

## Independent programmes account

Financial year (1)	Amount of monies to be paid by RTÉ into the account (2)
2009	€40,000,000
Each subsequent financial year	The appropriate amount

*Part 2*

## Independent sound broadcasting programmes

Financial year (1)	Minimum percentage of monies paid into account to be expended by RTÉ on independent sound broadcasting programmes (2)
2009	1.25 per cent
2010	1.50 per cent
2011	2.00 per cent
2012	2.50 per cent
Each subsequent financial year	3.00 per cent

## CHAPTER 3

*Provisions specific to TG4*

Continuance of  
Teilifís na  
Gaeilge.

**117.** — Teilifís na Gaeilge continues in being.

Principal objects  
and associated  
powers of TG4.

**118.** — (1) The objects of TG4 are—

- (a) to establish, maintain and operate a national television broadcasting service, which shall have the character of a public service, be a free-to-air service and be made available, in so far as it is reasonably practicable, to the whole community on the island of Ireland,
- (b) to establish and maintain a website and teletext services in connection with the services of TG4 under *paragraphs (a), (c), (d), (e), (f), (g) and (h)*,

- (c) to establish and maintain choirs and other cultural performing groups in connection with the services of TG4 under *paragraphs (a), (f), (g) and (h)*,
  - (d) to assist and co-operate with the relevant public bodies in preparation for, and execution of, the dissemination of relevant information to the public in the event of a major emergency,
  - (e) to establish and maintain archives and libraries containing materials relevant to the objects of TG4 under this subsection,
  - (f) to establish, maintain and operate, in so far as it is reasonably practicable, a television broadcasting service, which shall have the character of a public service, to be made available to Irish communities outside of the island of Ireland,
  - (g) subject to the consent of the Minister, the Minister having consulted with the Authority, to establish, maintain and operate in so far as it is reasonably practicable, community, local, or regional broadcasting services, which shall have the character of a public service, and be available free-to-air,
  - (h) subject to the consent of the Minister, the Minister having consulted with the Authority, to establish and maintain ~~non-broadcast non-linear audio-visual media services~~ audiovisual on-demand media services, in so far as it is reasonably practicable, which shall have the character of a public broadcasting service (such consent not being required in respect of such services which are ancillary to a broadcasting service provided under *paragraphs (a), (d), (f) and (g)*),
  - (i) so far as it is reasonably practicable, to exploit such commercial opportunities as may arise in pursuit of the objects outlined in *paragraphs (a) to (h)*.
- (2) In pursuit of the objects outlined in *subsection (1)*, TG4 shall—
- (a) be responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Gaeltachtaí,
  - (b) uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, and
  - (c) have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of other Member States.
- (3) Without prejudice to the generality of *subsection (1)*, TG4 shall ensure that the programme schedules of the broadcasting services referred to in that subsection—
- (a) provide a comprehensive range of programmes, primarily in the Irish language, that reflect the cultural diversity of the whole island of Ireland and include programmes that entertain, inform and educate, provide coverage of sporting, religious and cultural activities and cater for the expectations of those of all age groups in the community whose preferred spoken language is Irish or who otherwise have an interest in Irish,
  - (b) provide programmes, primarily in the Irish language, of news and current affairs,
  - (c) provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament, and
  - (d) facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting.

(4) The principal express powers of TG4 in pursuance of the objects outlined in *subsection (1)* are—

- (a) to establish, maintain and operate broadcasting stations and to acquire, install and operate apparatus for wireless telegraphy,
- (b) subject to any regulations under the Act of 1926, which are for the time being in force, to provide for the distribution by means of wired broadcast relay stations of programmes broadcast by TG4 and such other programmes as TG4 may decide,
- (c) to originate programmes and procure programmes from any source,
- (d) to make contracts, agreements and arrangements incidental or conducive to the objects of TG4,
- (e) to acquire and make use of copyrights, patents, licences, privileges and concessions,
- (f) to collect news and information and to subscribe to news services and such other services as may be conducive to the objects of TG4,
- (g) to subscribe to such international associations, and to such educational, musical and dramatic bodies and such other bodies promoting entertainment or culture, as may be conducive to the objects of TG4,
- (h) to organise, provide and subsidise concerts, entertainments, education and other activities in connection with a broadcasting service or for any purpose incidental to it and, in relation to any such concert or entertainment, to provide or procure accommodation and, if desired, to make charges for admission,
- (i) to prepare, publish and distribute, with or without charge, such magazines, books, papers and other printed matter as may seem to TG4 to be conducive or incidental to its objects,
- (j) to arrange with other broadcasting organisations or authorities for the distribution, receipt, exchange and relay of programmes (whether live or recorded),
- (k) to compile, publish and distribute, with or without charge, recorded aural and visual material,
- (l) to provide programmes of news and current affairs in the Irish and English languages, including programmes that provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament,
- (m) to facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting,
- (n) to invest in, originate or procure films,
- (o) to establish and maintain websites,
- (p) to establish and maintain an electronic communications network subject to any enactment or rule of law,
- (q) to establish and maintain an “electronic communications service” meaning a service which consists wholly or mainly in the conveyance of signals on electronic communications networks, subject to the provisions of any enactment or rule of law,
- (r) to make available the broadcasting services of TG4 in so far as reasonably practicable by any and all means of transmission, relaying or distribution, whether by way of broadcast (which includes terrestrial sound and television

broadcasting networks, cable networks or satellite networks), or by any form of electronic means (which includes fixed terrestrial networks, mobile terrestrial networks, including the Internet and other electronic communications networks) and whether now known or hereinafter invented on a linear or non-linear basis, and

(s) to invest any of its funds in any manner in which a trustee is empowered by law to invest trust funds.

(5) TG4 may, for the purpose of complementing the programme material it broadcasts in the Irish language, acquire programme material in other languages; in acquiring such material, TG4 shall have regard to the need to maintain the distinctive character of the broadcasting service referred to in *paragraph (a) of subsection (1)* and to cater for the expectations of audiences who are not generally catered for by other broadcasting services.

(6) Nothing in this section is to be read as preventing TG4 from including in the programme schedules programmes made outside the State.

(7) Nothing in this section is to be read as preventing TG4 from providing broadcasting services which are of a special interest to only certain members of the community and which are made available on a subscription or pay-per-view basis under its exploitation of commercial opportunities object.

(8) TG4 shall have all such powers as are necessary or incidental to the attainment of the objects under *subsection (1)* and which are not inconsistent with this Act.

F1[(9) Each amount paid to TG4 under section 123(4) shall be used by TG4 solely for the purposes of—

(a) pursuing its public service objects, and

(b) paying amounts levied on TG4 under section 33. ]

Accountability of director general of TG4 to Committee of Public Accounts.

**119.** — The director general of TG4 shall, whenever he or she is required to do so by a Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and the reports of the Comptroller and Auditor General, give evidence to that Committee on all matters pertaining to the expenditure of TG4.

## CHAPTER 4

### *Exchange of Programme Material and Spectrum Licencing*

Duty to supply programme material.

**120.** — (1) RTÉ shall provide to TG4 programme material in the Irish language of such amounts and at such times as may be agreed between them, being of such amounts and at such times as, in their opinion, will result in the equivalent of one hour of such programme material being provided daily by RTÉ to TG4.

(2) For the purposes of *section 114 (8)* TG4 shall provide to RTÉ, in such amounts and at such times as may be agreed between them, programme material representative of the programme schedules of the national television broadcasting service referred to in *section 118 (1) (a)*.

Public service broadcasting licence.

**121.** — (1) The powers conferred on RTÉ by virtue of *section 114 (4) (a) and (b)* shall not be exercised save under a licence (“public service broadcasting licence”) issued to RTÉ or its agent by the Communications Regulator and in accordance with any conditions attached by the Communications Regulator to the licence.

(2) The powers conferred on TG4 by virtue of *section 118 (4) (a) and (b)* shall not be exercised save under a public service broadcasting licence issued to TG4 or its agent by the Communications Regulator and in accordance with any conditions attached by the Communications Regulator to such licence.

(3) A copy of every public service broadcasting licence shall be laid before each House of the Oireachtas as soon as may be after the issue of the licence.

Emergencies.

**122.**— (1) During the continuance of any national emergency the Minister may suspend any public service broadcasting licence and any licence under *section 132 (1) or (2) or section 133 (1) or (2)*, and, while any such suspension continues, the Minister may operate any service which was provided under the suspended licence or require such service to be operated as he or she directs.

(2) Without prejudice to *section 114 (1) (d) and section 118 (1) (d)* it shall be a duty of a corporation, at the direction of the Minister, to assist and to co-operate with the relevant public bodies in the preparation for, and execution of, the dissemination of relevant information to the public in the event of a major emergency.

(3) If and whenever the Minister shall exercise the powers conferred on him or her by *subsection (1)* a corporation shall be entitled to receive from the Minister, with the consent of the Minister for Finance—

(a) such sums as are required to defray any expenses which, regard being had to the nature of the emergency, have been properly and necessarily incurred by the corporation and for meeting which revenue is by reason of the exercise of such powers not otherwise available to the corporation, and

(b) compensation for any damage done to any property of the corporation, being damage directly attributable to the exercise of such powers.

(4) The Minister may direct a corporation to allocate broadcasting time for announcements for and on behalf of any Minister of the Government, in the event of a major emergency, in connection with the functions of that Minister of the Government, and the corporation shall comply with the direction.

(5) In complying with a direction under *subsection (4)* a corporation may broadcast an announcement that it has received such a direction from the Minister.

## CHAPTER 5

### *Allocation of Public Funding to RTÉ and TG4*

Allocation of public funding.

**123.** — The Minister, with the approval of the Minister for Public Expenditure and Reform, may pay to RTÉ, TG4 and the Commission out of monies provided by the Oireachtas, in respect of each financial year, an amount equal to the total of the receipts in that year in respect of television licence fees apportioned to RTÉ, TG4 and the Commission as the Minister determines in accordance with subsection (1A) less—

(a) any expenses certified by the Minister as having been incurred by him or her in that year in relation to the collection of those fees and

(b) any amount paid under section 156(2).

~~123.~~ ~~F2~~ [(1) The Minister, with the approval of the Minister for Public Expenditure and Reform, may pay to RTÉ and TG4 out of monies provided by the Oireachtas, in respect of each financial year beginning with the financial year commencing on 1 January 2011, an amount equal to the total of the receipts in that year in respect of television licence fees apportioned to RTÉ and TG4 as the Minister determines in accordance with subsection (1A) less—

~~124.~~

~~any expenses certified by the Minister as having been incurred by him or her in that year in relation to the collection of those fees, and~~

~~d to in subsection (1) to be paid to RTE and TG4 respectively.~~

~~(a)(c) any amount paid under section 156 (2).  
†~~

F3[(1A) ~~(a)~~ The Minister shall, after consultation with the Minister for Public Expenditure and Reform, determine the portion of the amount referred



~~(b) When making a determination for the purposes of paragraph (a), the Minister shall have regard to the ability of RTÉ and TG4 to fulfil their public service objects.~~

~~The amount paid to RTÉ in each financial year under subsection (1) of this section, shall be used by RTÉ solely for the purposes of—~~

~~pursuing its public service objects, and~~

~~paying amounts levied on RTÉ under section 33.~~

(1A) (a) The Minister shall, after consultation with the Minister for Public Expenditure and Reform, determine the portion of the amount referred to in subsection (1) to be paid to RTÉ, TG4 and the Commission respectively.

(b) When making a determination for the purposes of paragraph (a), the Minister shall—

(i) have regard to the ability of RTÉ and TG4 to fulfil their public service objects, and

(ii) ensure that the amount, if any, to be paid to the Commission under subsection (1) shall not exceed 50 per cent of the estimate of the expenses of the Commission for the financial year concerned as set out in its estimates of income and expenditure submitted to the Minister under section 26(1) in the financial year immediately preceding the year in which an amount under subsection (1) is to be paid.<sup>3</sup>

F4[(2A) The amount paid to TG4 in each financial year under subsection (1), shall be used by TG4 solely for the purposes of—

(a) pursuing its public service objects, and

(b) paying amounts levied on TG4 under section 33. ]

(2) The Minister, with the consent of the Minister for Finance, may from time to time, pay to RTÉ such an amount as he or she determines to be reasonable for the purposes of defraying the expenses incurred by RTÉ in the pursuance of its public service objects.

(3) The Minister, with the consent of the Minister for Finance, may from time to time, pay to TG4 such an amount as he or she determines to be reasonable for the purposes of defraying the expenses incurred by TG4 in—

(a) pursuing its public service objects, and

(b) paying amounts levied on TG4 under section 33.

(4) The Minister in making a determination under subsection (4) shall consider the multi-annual funding needs of TG4.

Recommendations as to changes to public funding. 125, 124. — (1) In this section—

“CPI” means the consumer price index as compiled by the Central Statistics Office;

“financial year” means a period of 12 months ending on 31 December;

“(Δ CPI)” means the annual percentage change in the CPI;

<sup>3</sup> Section 36(2) of the 2022 Bill: The amendment of section 123 of the Principal Act by subsection (1) shall have effect only in relation to financial years beginning on or after the date on which the Commission first makes a levy order under section 21 of that Act as inserted by section 7.

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on” =  $(\Delta \text{ CPI}) + 1\% - X$ ; “X” means the adjustment recommended  
by the Authority.

(2) The Authority, shall in each year, carry out a review of the extent to which a corporation has during the previous financial year fulfilled the commitments in respect of its public service objects stated in an annual statement of performance commitments for that financial year and the adequacy or otherwise of public funding to enable the corporation to meet its public service objects.

(3) A corporation shall co-operate with the Authority in the exercise of a review under *subsection (2)*.

(4) The Authority shall prepare and by 30 June in each year submit to the Minister a report of the outcome of any review under *subsection (2)*.

(5) The Authority shall on the basis of the review under *subsection (2)* recommend in a report to the Minister an annual television licence fee modification F5 [and the amounts of any payments to be made to TG4 under section 123].

(6) The Minister shall publish a response to a recommendation of the Authority under *subsection (5)*.

(7) The Minister shall cause copies of—

- (a) the report of the Authority under *subsection (4)*,
- (b) the recommendations made by the Authority under *subsection (5)*, and
- (c) his or her response to the recommendations of the Authority under *subsection (6)*,

to be laid before each House of the Oireachtas.

(8) The Authority shall within a period of not more than 3 years after the passing of this Act, and every 5 years thereafter, or as directed by the Minister, carry out a review of the adequacy or otherwise, of public funding to enable a corporation to meet its public service objects.

(9) In carrying out a review under *subsection (8)* the Authority shall take account of the following—

- (a) the existing financial resources available to a corporation,
- (b) the current level of public funding available to a corporation,
- (c) the multi-annual nature of public funding requirements,
- (d) the level of commercial funding available to a corporation in pursuance of its exploitation of commercial opportunities object,
- (e) the outcome of any review under *subsection (2)*,
- (f) the public service statement for a corporation in force during the period under review,
- (g) developments in public service broadcasting internationally,
- (h) ~~reports of the Compliance Committee,~~
- (i) such other matters as the Authority may consider relevant, and
- (j) such other matters which the Minister may consider relevant and has communicated to the Authority.

(10) A corporation shall co-operate with the Authority in the exercise of a review under *subsection (8)*.

(11) The Authority shall prepare and as soon as practicable submit to the Minister a report of the outcome of any review under *subsection (8)*.

(12) The Authority shall on the basis of the review under *subsection (8)* make in a report to the Minister under *subsection (11)* a recommendation as to the requisite level of public funding required to permit the corporation to fulfil its public service objects.

(13) The Minister shall submit to the Government—

- (a) the report of the Authority under *subsection (11)*, and
- (b) the recommendation made by the Authority under *subsection (12)*.

(14) The Government shall publish a response to the recommendation of the Authority under *subsection (12)*.

(15) The Minister shall cause copies of:

- (a) the report of the Authority under *subsection (11)*,

- (b) the recommendation made by the Authority under *subsection (12)*, and
- (c) the Government's response to the recommendation of the Authority under *subsection (14)*,

to be laid before each House of the Oireachtas.

(16) The Authority may appoint an agent to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Authority.

## CHAPTER 6

### *Bealach Thithe an Oireachtais and Bealach Scannán na hÉireann*

Bealach Thithe an Oireachtais (Houses of the Oireachtas Channel).

~~126-125.~~ — (1) In this Chapter “Joint Administration Committee” means a joint committee of the Houses of the Oireachtas to which those Houses have assigned the role of oversight of the broadcasting of the proceedings of the Houses of the Oireachtas.

(2) The Commission of the Houses of the Oireachtas may establish, fund and provide a television broadcasting service to be known as, in the Irish language, *Bealach Thithe an Oireachtais* or, in the English language, the Houses of the Oireachtas Channel, which shall have the character of a public service, be a free-to-air service and be made available, in so far as it is reasonably practicable, to the whole community on the island of Ireland.

(3) The Houses of the Oireachtas Channel shall, as its principal function, provide coverage of proceedings in the Houses of the Oireachtas.

(4) Subject to the consent of the Joint Administration Committee, the Houses of the Oireachtas Channel may provide coverage of matters and events ancillary to proceedings of the Houses of the Oireachtas.

(5) The Houses of the Oireachtas Channel may provide coverage of the proceedings of—

- (a) a local authority (within the meaning of the Local Government Act 2001),
- (b) the implementation bodies (within the meaning of the British-Irish Agreement Act 1999),
- (c) the legislatures of other jurisdictions outside the State,
- (d) the institutions of the United Nations, the European Communities and the Council of Europe, and
- (e) such other bodies and institutions as the Commission of the Houses of the Oireachtas considers appropriate.

(6) The Commission of the Houses of the Oireachtas may enter into such contracts as are necessary to establish and maintain the Houses of the Oireachtas Channel.

(7) The Houses of the Oireachtas Channel shall not broadcast advertisements ~~and material which, if transmitted, would constitute a direct offer to the public for the sale or supply to them of goods or other property (whether real or personal) or services.~~

Amendment of Schedule to Houses of the Oireachtas Commission Act 2003.

127-126. — Schedule 1 to the Houses of the Oireachtas Commission Act 2003 is amended by inserting after paragraph 2(c) the following:

“(cc) costs for the purposes of defraying the expenses incurred by the Commission in respect of Bealach Thithe an Oireachtais under *section 125* of the *Broadcasting Act 2009*”.

Bealach Scannán na hÉireann (Irish Film Channel).

128-127. — (1) The Irish Film Board may establish, fund and provide a television broadcasting service to be known as, in the Irish language, Bealach Scannán na hÉireann or, in the English language, the Irish Film Channel, which shall have the character of a public service, be a free-to-air service and be made available, in so far as it is reasonably practicable, to the whole community on the island of Ireland.

(2) The Irish Film Channel shall, as its principal purpose, provide programme material consisting of Irish, European, and world films and cinema works including, as far as practicable, film and cinema works in the Irish language.

(3) The Irish Film Board may enter into such contracts as are necessary to establish and maintain the Irish Film Channel.

(4) The Irish Film Channel may broadcast advertisements, broadcast acknowledgements of sponsorship, may fix charges and conditions for such broadcasts and, in fixing the charges, may provide for different circumstances and for additional special charges to be made in special cases.

(5) The Irish Film Channel may reject any advertisement presented for broadcast in whole or in part.

(6) The Irish Film Channel in providing a broadcasting service under this section shall, subject to the consent of the Minister and F6[...] following consultation with the Authority, fix—

(a) the total daily time for broadcasting advertisements, ~~and~~

(b) the maximum period given to advertisements in any 3 hour period, and

(c) subject to subsection (6A), the time allowed for broadcasting advertisements in the period between 6.00 and 18.00 hours and in the period between 18.00 and 24.00 hours each day.

(6A) The time fixed under subsection (6)(c) shall not exceed 20 per cent of the time in each period.

(6B) A failure to comply with subsection (6) shall be a contravention for the purposes of Part 8B.

(7) Film and cinema works broadcast by the Irish Film Channel shall be broadcast uninterrupted by advertisements or acknowledgements of sponsorship.

(8) The Minister, if so requested by the Referendum Commission following consultation by the Referendum Commission with the Irish Film Channel and consideration of any proposals of the Irish Film Channel for broadcasts in connection with the referendum that it communicates to the Referendum Commission, shall direct the Irish Film Channel in writing to allocate broadcasting time to facilitate the Referendum Commission in performing its functions, and the Irish Film Channel shall comply with a direction under this subsection.

(9) Charges and conditions referred to in *subsection (4)* may be fixed subject to variations benefiting advertisers who use the Irish language in their advertisements.

(10) A power under this section to fix charges and conditions shall be read as including a power to cancel or vary any charges or conditions fixed under such power and, where charges or conditions are cancelled, to fix other charges or conditions in lieu of those cancelled.

~~(11) In this section references to advertisements shall be read as including references to teleshopping material and to advertising matter in sponsored programmes, that is to say, programmes supplied for advertising purposes by or on behalf of an advertiser.~~

(12) Nothing in this section shall preclude the Irish Film Channel from promoting the services of the Irish Film Board or promoting its future broadcasting of featured films and works.



Oversight of  
public funding of Houses of the  
Oireachtas  
Channel and IrishFilm Channel.



~~129-128.~~ — (1) The Irish Film Board shall prepare prior to the provision of a broadcasting service in respect of the Irish Film Channel and every 5 years thereafter, or as directed by the Minister for Arts, Sport and Tourism, a public service statement, not in conflict with this Act, setting out the principles to be observed, and activities to be undertaken by the Irish Film Channel.

(2) The Commission of the Houses of the Oireachtas shall prepare prior to the provision of a broadcasting service in respect of the Houses of the Oireachtas Channel and every 5 years thereafter, a public service statement, not in conflict with this Act, setting out the principles to be observed, and activities to be undertaken by the Houses of the Oireachtas Channel.

(3) The Authority shall within a period of not more than 5 years after the passing of this Act and every 5 years thereafter carry out a review of the adequacy or otherwise of public funding to enable the fulfilment of the functions of—

(a) the Houses of the Oireachtas Channel under *section 125*, and

(b) the Irish Film Channel under *section 127*.

(4) The Authority shall prepare and as soon as practicable submit to the Joint Administration Committee a report of the outcome of any review under *subsection*

(3) in respect of the Houses of the Oireachtas Channel.

(5) The Authority shall prepare and as soon as practicable submit to the Minister for Arts, Sport and Tourism a report of the outcome of any review under *subsection*

(3) in respect of the Irish Film Channel.

*Availability and prominence of public service programmes and services*

Interpretation

128A. (1) In this Chapter—

‘appropriate network’ has the same meaning as it has in section 77; ‘interactive

guide’ means an interface, transmitted by means of an 30

electronic communications network and accessed by the use of a terminal, by which a person can select a service or programme to view on a platform, appropriate network or satellite television service;

‘platform’ means a service, transmitted by means of an electronic communications network and accessed by the use of an interactive 35

guide, which re-transmits or makes available more than one audiovisual media service, including at least one audiovisual on-demand media service;

'platform provider' means a person who provides a platform, whether or not the person is also the provider of an interactive guide to the platform; 5

'public service audiovisual broadcasting service' means an audiovisual broadcasting service which—

(a) is provided by a corporation or a subsidiary of a corporation,

(b) is provided by the holder of a television programme service contract, under that contract, or 10

(c) is designated under section 128D;

'public service audiovisual on-demand media service' means an audiovisual on-demand media service which—

(a) is provided by a corporation or a subsidiary of a corporation, 15

(b) is provided by the holder of a television programme service contract, or

(c) is designated under section 128D;

'public service programme' means an audiovisual programme broadcast on a public service audiovisual broadcasting service or made available in the catalogue of a public service audiovisual on-demand media service; 20

'public service provider' means the provider of a public service audiovisual broadcasting service or a public service audiovisual on-demand media service; 25

'satellite television service' has the same meaning as it has in section 77;

'terminal' means, subject to subsection (2), equipment with interactive computing capability other than a computer, tablet device or smartphone, the use of which is necessary to permit a person to access an interactive guide, and which is provided by the person who provides the guide. 30

(2) For the purposes of the definition of 'terminal' in subsection (1), equipment with interactive computing capability which permits a person to access an interactive guide only when used in combination with a computer, tablet device or smartphone is not a terminal. 35

### **Must-carry and must-offer obligations for platforms 128B.**

(1) A platform provider shall comply with a request—

(a) by a public service provider that a particular public service audiovisual broadcasting service provided by the public service provider be re-transmitted on the platform provider's platform, and 40

- (b) by a public service provider that a particular public service audiovisual on-demand media service provided by the public service provider be made available on the platform provider's platform.
- (2) A public service provider shall ensure that any public service audiovisual broadcasting service or public service audiovisual on-demand media service it provides is at all times offered to platform providers in such a way that it may be re-transmitted or made available on their platforms. 5
- (3) The obligations in subsections (1) and (2) shall not preclude the conclusion of an agreement between the public service provider and the platform provider in relation to— 10
- (a) the remuneration of the public service provider by the platform provider, or
- (b) fair, reasonable and non-discriminatory terms of use of the public service audiovisual broadcasting service or public service audiovisual on-demand media service. 15
- (4) If a dispute arises between a platform provider and a public service provider in relation to the remuneration of the public service provider— 20
- (a) the dispute shall be notified to the Commission by the public service provider or the platform provider,
- (b) the Commission shall take whatever steps it considers appropriate to encourage the use of mediation to resolve the dispute, and
- (c) if the dispute is not resolved within a reasonable period of time the Commission shall, at the request of either the platform provider or the public service provider and following a reasonable opportunity for each of them to make submissions, make a determination in relation to the dispute. 25
- (5) The Commission may make rules prescribing: 30
- (a) the ways in which a platform provider may re-transmit or make available on its platform the services referred to in subsection (1) for the purposes of complying with a request;
- (b) the ways in which a public service audiovisual broadcasting service may be transmitted or a public service audiovisual on-demand media service may be made available by a public service provider in order to ensure compliance with subsection (2). 35
- (6) Where a platform is also an appropriate network or a satellite television service—
- (a) in respect of the retransmission of broadcasting services, section 77 shall apply to the platform notwithstanding this section and any rules made under it, and 40

(b) in respect of the making available of audiovisual on-demand media services, this section and any rules made under it, in so far as they relate to such services, shall apply to the platform.

(7) A failure to comply with subsection (1) or (2) shall be a contravention for the purposes of Part 8B. 5

(8) In this section, 're-transmission' means the provision of near-simultaneous, unaltered and unabridged transmission.

### Prominence on interactive guides

128C. (1) The Commission may, subject to subsection (3), make rules requiring providers of interactive guides to take steps to ensure the prominence on such guides of any of the following: 10

(a) public service programmes, or categories of them;

(b) public service audiovisual broadcasting services, or the schedules of such services;

(c) public service audiovisual on-demand media services, or the catalogues of such services. 15

(2) In preparing rules under subsection (1), the Commission shall have regard to the following matters:

(a) the need to promote access by the widest possible audience to the programmes and services referred to in subsection (1); 20

(b) the nature of providers of interactive guides, including the technical ability of providers and the number of users of guides;

(c) the nature of public service providers, including the amount of public service programmes broadcast or made available by providers; 25

(d) the rights of providers of interactive guides;

(e) the rights of users of interactive guides, and their likely expectations as to the availability and prominence on such guides of the programmes and services referred to in subsection (1), with particular regard to their rights and likely expectations regarding Irish language programmes and services; 30

(f) contractual arrangements which may exist between public service providers and providers of interactive guides;

(g) technological developments;

(h) the proportionality of any requirement under the rules, in light of the matters referred to in paragraphs (b), (c), (d), and (e). 35

(3) The Commission may make rules under subsection (1)(a) only if it appears to the Commission that the programmes concerned—

(a) relate to Irish culture, history, heritage, society, sport, language, or other matters of interest to the people of the island of Ireland, 40



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r section 128D(1), the Commission may consult with such persons as it sees fit.

(2) Any rule made under section 128B(5) or 128C(1) shall be laid by the Commission, and any order made under section 128D(1) shall be laid by the Minister, before each House of the Oireachtas as soon as may 35 be after it is made and, if a resolution annulling the rule or order is passed by either such House within the next 21 days on which that House sits after the rule or order is laid before it, the rule or order shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.”.

## PART 8

### DIGITAL BROADCASTING AND ANALOGUE SWITCH-OFF

Definitions (Part 8).

~~130, 129.~~ — In this Part—

“Acts of 1926 to 2009” means *Wireless Telegraphy Acts 1926 to 2009*;

‘listed simulcast service’ means a sound broadcasting service designated as a listed simulcast service under section 134(7)(b);

“multiplex” means an electronic system which combines programme material and related and other data in a digital form and the transmission of that material and data so combined by means of wireless telegraphy directly or indirectly for reception by the general public;

“multiplex licence” means a licence under *section 132(1) or (2), section 133(1) or (2), or a television or sound broadcasting multiplex licence*;

“sound broadcasting multiplex” means a multiplex in which the programme material is predominantly sound;

“sound broadcasting multiplex licence” means a licence issued for the purposes of *subsection (3), (4) or (5) of section 133*;

“television multiplex” means a multiplex in which the programme material is predominantly television;

“television multiplex licence” means a licence issued for the purposes of *subsection (3) or (4) of section 132*;

~~“television programme service contract” means a contract entered into under section 70.~~

Additional  
functions of RTÉ.

~~131-130.~~ — (1) (a) A national television multiplex established, maintained and operated by RTÉ under *section 114 (1) (i)* shall provide for the broadcasting by digital means of—

- (i) the national television broadcasting service commonly known as RTÉ One and RTÉ Two,
  - (ii) TG4,
  - (iii) where required by the Minister—
    - (I) The Houses of the Oireachtas Channel, and
    - (II) The Irish Film Channel,
  - (iv) such other television services, having the character of a public service, as may be designated by the Minister by order, and
  - (v) where required by RTÉ or where required by the Minister, after consultation with the Authority, transmissions of data necessary to ensure the proper maintenance and functioning and updating of receiving equipment required for reception and viewing of services referred to in this paragraph and the multiplexes referred to in *section 132 (3) and (4)*.
- (b) RTÉ shall—
- (i) ensure that the national television multiplex referred to in *paragraph (a)* is established as a matter of priority, and—
    - (I) on such date as may be specified by the Minister by order, is operational and available free-to-air to approximately 90 per cent of the population, and
    - (II) by 31 December 2011, or such later date as may be specified by the Minister by order, is operational, available free-to-air and capable of providing coverage to the same extent as is, on the passing of this Act, available by free-to-air analogue means,
- and
- (ii) at the request of the Minister, report to the Minister on its progress in relation to the activities set out in *subparagraph (i)*.
- (c) RTÉ shall take steps to promote the availability of equipment capable of receiving, identifying, decoding and displaying a national television multiplex operated by RTÉ under *section 114 (1) (i)*.
- (d) Nothing in this subsection precludes RTÉ from making provision in a multiplex established, maintained and operated by RTÉ under *section 114 (1) (i)* for the broadcasting by digital means of programme material and related and other data other than that broadcast as part of a service specified in *paragraph (a)*.
- (e) Without prejudice to the requirements of this section, RTÉ may, with the consent of the Minister, the Minister having consulted with the Authority, in respect of the use of spare capacity on a multiplex established, maintained and operated by RTÉ under *section 114 (1) (i)*, broadcast programme material in pursuance of its exploitation of commercial opportunities object.

(2) TG4 shall make to RTÉ such periodic or other payments in respect of any service provided by RTÉ for the purposes set out in *subsection (1) (a)* of broadcasting by digital means TG4 as the Minister, after consultation with the Communications Regulator, RTÉ and TG4, may direct.



(3) In the event that TG4 does not consider the digital capacity employed by RTÉ for the purposes set out in *subsection (1) (a)* of broadcasting by digital means TG4 to be adequate, the Minister may, at the request of TG4, direct RTÉ to employ a specific amount of digital capacity.

(4) The Commission of the Houses of the Oireachtas shall make to RTÉ such periodic or other payments in respect of any service provided by RTÉ for the purposes set out in *subsection (1) (a)* of broadcasting by digital means the Houses of the Oireachtas Channel as the Minister, after consultation with the Communications Regulator, RTÉ and the Commission of the Houses of the Oireachtas, may direct.

(5) In the event that the Commission of the Houses of the Oireachtas does not consider the digital capacity employed by RTÉ for the purposes set out in *subsection (1) (a)* of broadcasting by digital means the Houses of the Oireachtas Channel to be adequate, the Minister may, at the request of the Commission of the Houses of the Oireachtas, direct RTÉ to employ a specific amount of digital capacity.

(6) The Irish Film Board shall make to RTÉ such periodic or other payments in respect of any service provided by RTÉ for the purposes set out in *subsection (1) (a)* of broadcasting by digital means the Irish Film Channel as the Minister, after consultation with the Communications Regulator, RTÉ and the Irish Film Board, may direct.

(7) In the event that the Irish Film Board does not consider the digital capacity employed by RTÉ for the purposes set out in *subsection (1) (a)* of broadcasting by digital means the Irish Film Channel to be adequate, the Minister may, at the request of the Irish Film Board, direct RTÉ to employ a specific amount of digital capacity.

(8) A provider of a television service designated by the Minister under *subsection (1) (a) (iv)* shall make to RTÉ such periodic or other payments in respect of any service provided by RTÉ for the purposes of *subsection (1) (a) (iv)* as the Minister, after consultation with the Communications Regulator, RTÉ and the provider of the television service, may direct.

(9) In the event that a provider of a television service under *subsection (1) (a) (iv)* does not consider the digital capacity employed by RTÉ for the purposes set out in *subsection (1) (a) (iv)* to be adequate, the Minister may, at the request of the provider, direct RTÉ to employ a specific amount of digital capacity.

(10) The Minister shall, at the request of the Authority and after consultation with RTÉ require RTÉ to make provision in a multiplex established, maintained and operated by RTÉ under *section 114 (1) (i)* for the broadcasting by digital means of the television programme service provided under the television programme service contract by the television programme service contractor.

(11) If the Minister makes a requirement of RTÉ under *subsection (10)*, the television programme service contractor shall make to RTÉ such periodic or other payments in respect of any service provided by RTÉ in meeting that requirement as the Minister, after consultation with the Communications Regulator, RTÉ and the television programme service contractor, may direct.

(12) If the Minister makes a requirement of RTÉ under *subsection (10)* and in the event that the television programme service contractor does not consider the digital capacity employed by RTÉ for the purposes of broadcasting by digital means the television programme service to be adequate, the Minister may, at the request of the television programme service contractor and after consultation with the Authority, direct RTÉ to employ a specific amount of digital capacity.

(13) A national sound multiplex established, maintained and operated by RTÉ under *section 114 (1) (i)* shall provide for the broadcasting by digital means of such other sound broadcasting services, having the character of a public service, as may be designated by the Minister by order.

(14) A provider of a sound broadcasting service designated by the Minister under *subsection (13)* shall make to RTÉ such periodic or other payments in respect of any

service provided by RTÉ for the purposes of *subsection (13)* as the Minister, after consultation with the Communications Regulator, RTÉ and the provider of the sound broadcasting service, may direct.

- (15) (a) An order made under this section shall be laid before each House of the Oireachtas as soon as practicable after it is made.
- (b) Either House of the Oireachtas may, within 21 sitting days after the day on which an order was laid before it in accordance with *paragraph (a)*, pass a resolution annulling the order.
- (c) The annulment under *paragraph (b)* of an order takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under the order before the passing of the resolution.

Additional functions of Authority.

~~132~~131. — (1) It is the function of the Authority to arrange, in accordance with this Part, for the establishment, maintenance and operation of multiplexes, including national multiplexes, in addition to any multiplexes established, maintained and operated by RTÉ under *section 114 (1) (i)*.

(2) For the purpose of *subsection (1)* the Authority shall, with persons (“multiplex contractors”) enter into contracts (“multiplex contracts”) under which the multiplex contractors have, subject to this Part, the right and duty to establish, maintain and operate a multiplex in the area specified in the multiplex contract and in accordance with the terms of the contract.

(3) It is a duty of the Compliance Committee to ensure that every multiplex contractor complies with this Part.

(4) It is a duty of the Authority to endeavour to arrange, as a matter of priority, for the establishment, maintenance and operation of 3 national television multiplexes, which multiplexes, in so far as it is reasonably practicable, shall be capable of being transmitted by digital terrestrial means to the whole community in the State.

(5) The Authority has all such powers as are necessary for or incidental to the performance of its functions under this Part including, in particular, the power to consult with the Communications Regulator as it sees fit.

Duty of Communications Regulator in respect of digital terrestrial television multiplexes.

~~133~~132. — (1) The Communications Regulator, at the request of RTÉ, shall issue to RTÉ a licence in respect of the establishment, maintenance and operation of a single television multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State.

(2) The Communications Regulator, at the request of RTÉ and after consultation with the Minister and with the Authority regarding the digital capacity requirements of TG4, the television programme service contractor, the Houses of the Oireachtas Channel, the Irish Film Channel, and any television service designated under *section 130(1)(a)(iv)*, shall issue to RTÉ a licence in respect of the establishment, maintenance and operation of one further television multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State.

(3) The Communications Regulator, at the request of the Authority, shall issue to the Authority under the *Acts of 1926 to 2009*, subject to this Part, television multiplex licences in respect of the establishment, maintenance and operation of 4 television multiplexes, which multiplexes shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State, in accordance with contracts to be entered into by the Authority under *section 136(2)*.

(4) The Communications Regulator shall consult with the Authority regarding the desirability of it issuing to the Authority under the *Acts of 1926 to 2009*, subject to this Part, further television multiplex licences in respect of the establishment, maintenance and operation of additional television multiplexes, which multiplexes shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State, in accordance with additional contracts entered into by the Authority under *section 136 (2)*.

(5) Nothing in this section shall be read as preventing the Communications Regulator, following consultation with the Minister and with the Authority, from issuing under the *Acts of 1926 to 2009*, other licences authorising the combination, by means of a multiplex other than a multiplex to which *subsections (1), (2) or (3)* relate, of programme material and related and other data in a digital form, subject to such conditions as the Authority may consider necessary to impose in a contract entered into under *section 71*.

Duty of  
Communications  
Regulator in  
respect of digital  
terrestrial sound  
broadcasting  
multiplexes.

~~134-133.~~ — (1) The Communications Regulator, at the request of RTÉ, shall issue to RTÉ a licence in respect of the establishment, maintenance and operation of a single sound broadcasting multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State.

(2) The Communications Regulator, at the request of RTÉ and after consultation with the Minister and the Authority, shall issue to RTÉ a licence in respect of the establishment, maintenance and operation of one further sound broadcasting multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State.

(3) The Communications Regulator, at the request of the Authority, shall issue to the Authority under the *Acts of 1926 to 2009*, subject to this Part, a sound broadcasting multiplex licence in respect of the establishment, maintenance and operation of one sound broadcasting multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State, in accordance with contracts to be entered into by the Authority under *section 136 (2)*.

(4) The Communications Regulator, at the request of the Authority, shall issue to the Authority under the *Acts of 1926 to 2009*, subject to this Part, sound broadcasting multiplex licences in respect of the establishment, maintenance and operation of one or more sound broadcasting multiplexes, which multiplexes shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in an area of the State specified by the Authority, which area may consist of the whole or any part of the State, in accordance with contracts to be entered into by the Authority under *section 136 (2)*.

(5) The Communications Regulator shall consult with the Authority regarding the desirability of it issuing to the Authority under the *Acts of 1926 to 2009*, subject to the provisions of this Part, further licences in respect of the establishment, maintenance and operation of additional sound broadcasting multiplexes, which multiplexes shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in an area of the State specified by the Authority, which area may consist of the whole or any part of the State, in accordance with additional contracts to be entered into by the Authority under *section 136 (2)*.

(6) Nothing in this section shall be read as preventing the Communications Regulator, following consultation with the Minister and with the Authority, from issuing under the *Acts of 1926 to 2009*, other licences authorising the combination, by means of a multiplex other than a multiplex to which *subsections (1), (2), (3) or (4)* relate, of programme material and related and other data in a digital form, subject to such conditions as the Authority may consider necessary to impose in a contract entered into under *section 71*.

Amendment of sound broadcasting contracts for listed simulcast services.

~~135-134.~~ — (1) ~~In this section—~~

~~“Committee” means Contract Awards Committee;~~

~~“listed simulcast service” means a sound broadcasting service designated for the purpose of a contract amendment as set out in subsection (7) (b);~~

~~“relevant incumbent” means the holder of a sound broadcasting contract under subsection (3).~~

~~(2) Where the Authority directs the Committee to invite applications for sound broadcasting multiplex contracts under section 136, the Authority may also direct the Committee to offer to existing sound broadcasting contractors who are relevant incumbents a simulcasting contract extension.~~

~~(3) Where the Committee, in inviting applications for sound broadcasting multiplex contracts under section 136, specifies the coverage area under section 136 (3), it may identify, according to its own procedures, sound broadcasting contractors who, under sound broadcasting contracts have the right and duty to establish, maintain and operate sound broadcasting transmitters in part or all of the coverage area specified under section 136 (3), and such sound broadcasting contractors will be known as relevant incumbents.~~

~~(4) In identifying relevant incumbents under subsection (3), the Committee may use whatever procedures it considers necessary, including consultation with the Communications Regulator, and any identification by the Committee of a relevant incumbent shall be final.~~

~~(5) Where the Committee has identified a relevant incumbent, it shall propose to the Authority that the relevant incumbent is offered a designation as a listed simulcast service for the purpose of ensuring simulcasts of sound broadcasting contract services on sound broadcasting multiplexes.~~

~~Where the Committee has proposed to the Authority that a relevant incumbent be offered a designation as a listed simulcast service, the Authority shall offer to the relevant incumbent an amendment to its relevant sound broadcasting contract (“simulcasting amendment”) and the relevant incumbent shall have 60 days in which to accept in full or reject in full the amendment.~~

“(1) Where the Commission invites applications for a sound broadcasting

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multiplex contract under section 136, it may—

(d) identify as ‘relevant incumbents’ sound broadcasting contractors who, under sound broadcasting contracts have the right and duty to establish, maintain and operate sound broadcasting transmitters in

part or all of the coverage area (specified under section 136(3)) to 20 which the contract relates, and

(e) offer to any relevant incumbents it considers appropriate an amendment to its relevant sound broadcasting contract (‘a simulcasting amendment’) for the purpose of ensuring simulcasts

of sound broadcasting contract services on sound broadcasting

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multiplexes.

(2) I e whatever procedures it considers necessary, including  
n consultation with the Communications Regulator.

(3) A relevant incumbent shall have 60 days in which to accept in  
d full or 30  
e reject in full the offer of a simulcasting amendment.”.

(6)(2) A simulcasting amendment may contain such terms and conditions as the Authority thinks appropriate and shall contain the following terms and conditions:

- f (a) an increase in the period during which the existing sound broadcasting contract shall  
v continue in force,
- i (b) a designation of the sound broadcasting contractor’s sound broadcasting service  
n as a “listed simulcast service” for the purpose of this Part,
- g (c) a requirement on the sound broadcasting contractor to provide its sound  
r broadcasting service so that it may be provided as part of a digital sound  
e broadcasting multiplex under this Part, and
- l (d) a requirement to enter into any such subsequent agreements with sound  
e broadcasting multiplex contractors which the Authority may specify, including  
v agreements in relation to the payment of appropriate fees in relation to the costs  
a of establishing, maintaining and operating a multiplex to the sound broadcasting  
n multiplex contractor or contractors.

(7)(3) The increase in the period during which an existing sound broadcasting contract continues in force under *subsection (7)(a)* shall be not more than 6 years.

(8)(4) Where a relevant incumbent fails to meet its obligations under *subsection*  
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(c) or (d), the simulcasting amendment to its sound broadcasting contract will be considered to be null and void.

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Regulations  
prescribing fees.

~~136-135.~~ — (1) Every multiplex licence shall be issued on payment of such fees (if any) as may be prescribed in regulations by the Communications Regulator, with the consent of the Minister.

(2) Regulations made under this section may prescribe in relation to all such licences or any particular class or classes of such licences—

(a) the fees to be paid on the grant or renewal of such licences, and

(b) the time and manner at and in which such fees are to be paid.

(3) (a) Every regulation made under this section shall be laid before each House of the Oireachtas by the Communications Regulator as soon as may be after it is made.

(b) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which a regulation was laid before it in accordance with *paragraph (a)*, annul the regulation.

(c) The annulment under *paragraph (b)* of a regulation takes effect immediately on the passing of the resolution concerned but does not affect anything that was done under the regulation before the passing of the resolution.

Applications for  
multiplex  
contracts.

~~137-136.~~ — (1) In order to secure the orderly establishment, maintenance and operation of multiplexes the Authority shall from time to time having regard to the availability of radio frequencies for multiplexes, specify the coverage area (which area may consist of ~~a the~~ whole or any part of the State) in which programme material and related and other data shall be broadcast pursuant to a multiplex contract and ~~shall direct the Contract Awards Committee to invite~~ shall invite applications for a multiplex contract ~~and the Contract Awards Committee shall comply with the direction.~~

~~(2) Subject to this Part, the Contract Awards Committee may recommend that the Authority enter into such multiplex contracts, and the Authority shall follow any such recommendation.~~ Subject to this Part, the Commission may enter into a multiplex contract with a person who makes an application for such a contract in accordance with this section.

(3) Where the Contract Awards Committee invites applications for a multiplex contract it shall by public notice specify the coverage area (specified by the Authority under *subsection (1)*) in which the programme material and related and other data shall be broadcast pursuant to such contract (in this section referred to as “maximum coverage area”) and by such notice shall invite persons interested in establishing and maintaining a multiplex to apply for such contract.

(4) Every notice under *subsection (3)* shall—

(a) be published on a website maintained by the Authority, and where appropriate, in a newspaper circulating in the area to be served,

(b) specify the procedure to be followed in order to make an application, and

(c) specify any other matters which appear to the Contract Awards Committee to be necessary or relevant.

(5) The Contract Awards Committee may, in a notice under *subsection (3)*, specify the minimum coverage area in which the programme material and related and other data shall be broadcast under the contract, which coverage area may be less than that of the maximum coverage area specified in the notice.

(6) Notwithstanding *subsection (3)*, where a minimum coverage area is specified in a notice under that subsection the coverage area in which the programme material and related and other data shall be broadcast pursuant to any contract entered into on foot of such notice shall be the minimum coverage area so specified, subject to the requirement that every effort is made by the person to whom the contract is

awarded to ensure that the programme material and related and other data is broadcast in as much of the maximum coverage area as is practicable.

(7) Where the ~~Authority directs the Contract Awards Committee to invite~~ Commission invites applications for sound broadcasting multiplex contracts under *subsection (1)*, the Contract Awards Committee shall, as part of the notice, indicate whether any listed simulcast services shall be contained on the multiplex.

Determination of applications for award of multiplex contracts.

~~138.~~ 137. — (1) The Contract Awards Committee shall, in accordance with this Part, consider every application for a multiplex contract received by it pursuant to a notice under *section 136* for the purpose of determining the most suitable applicant, if any, to be awarded a multiplex contract.

(2) In the consideration of applications received by it and in determining the most suitable applicant to be awarded a multiplex contract, the Contract Awards Committee shall have regard to—

- (a) the character, expertise and experience of the applicant or, if the applicant is a body corporate, the character, expertise and experience of the body and its directors, manager, secretary or other similar officer and its members and the persons entitled to the beneficial ownership of its shares,
- (b) the adequacy of the financial resources that will be available to each applicant and the extent to which the application accords with good business and economic principles,
- (c) the range and type of programme material or compilations of programme material proposed to be included in the multiplex by the applicant and how the applicant proposes to secure continued inclusion of such material,
- (d) in the case of a television multiplex, the proposals by the applicant for promoting the acquisition by persons in the proposed coverage area of equipment capable of—
  - (i) receiving, identifying and, subject to the viewer gaining any necessary entitlements for non free-to-air services, decoding and displaying all of the television multiplexes available or expected to be available in that area, including the national television multiplex referred to in *section 130 (1) (a)*, and
  - (ii) enabling such persons to keep themselves informed of the choice of programme material included in those multiplexes,
- (e) the extent of the coverage area proposed to be achieved by the applicant,
- (f) the technical proposal, including a timetable for implementation, regarding the establishment, maintenance and operation of the proposed multiplex,
- (g) in the case of a sound broadcasting multiplex, the proposals by the applicant for facilitating the inclusion of any listed simulcast services and promoting such services,
- (h) any other matters which the Contract Awards Committee considers to be necessary to secure the orderly establishment, maintenance and operation of multiplexes, and
- (i) the desirability of allowing any person, or groups of persons, to have control of, or a substantial interest in, an undue amount of communications media in the area specified in the notice under *section 136 (3)*.

Terms and conditions of multiplex contracts.

~~139-138.~~ — (1) Every multiplex contract may contain such terms and conditions as the Authority considers appropriate and specifies in the contract.

(2) Without prejudice to the generality of *subsection (1)*, the Authority—

- (a) may specify in a multiplex contract all or any of the following terms or conditions:
  - (i) in the case of a sound broadcasting multiplex contractor, a condition requiring the multiplex contractor to implement any proposals made in his or her application for facilitating the inclusion of any listed simulcast services and promoting such services;
  - (ii) the period during which the contract shall continue in force;
  - (iii) whether the contract may be renewed and, if so, the manner in which, the terms on which, and the period for which, the contract may be so renewed;
  - (iv) a condition prohibiting the assignment of the contract or of any interest therein without the prior consent of the Authority; and
  - (v) if the multiplex contractor is a company, a condition prohibiting any alteration in the Memorandum or Articles of Association of the company or in so much of that Memorandum or of those Articles as may be specified or prohibiting any material change in the ownership of the company without the prior approval of the Authority;

and

- (b) may specify in such a contract the following conditions:
  - (i) a condition requiring the multiplex contractor to provide the range and type of programmes which he or she proposed to offer in his or her application for the award of the contract;
  - (ii) a condition requiring the multiplex contractor to implement any proposals made in his or her application for the coverage area of the multiplex or multiplexes;
  - (iii) a condition requiring the multiplex contractor to implement the proposals made in his or her application for the award of the contract for promoting the acquisition, by persons in the proposed coverage area of the multiplex, of equipment capable of receiving, identifying and, subject to the viewer gaining any necessary entitlements for non free-to-air services, decoding and displaying all of the multiplexes available in that area; and
  - (iv) following consultation with the Communications Regulator, any condition requiring the multiplex contractor to comply with any technical conditions as the Communications Regulator may require in the exercise of its functions.

(3) If a multiplex contract does not contain a condition of the type specified in *subparagraph (iv) or (v) of subsection (2) (a)*, the following provisions shall have effect:

- (a) the multiplex contract, or any interest in it, shall not be assignable, nor shall any alteration be made in the Memorandum or Articles of Association of a company which is a multiplex contractor, nor shall there be any material change in the ownership of such a company, without the previous consent in writing of the Authority, and the Authority may, if it considers it reasonable so to do, refuse such consent stating the grounds for such refusal; and



- (b) in considering whether to grant its consent to an assignment of a multiplex contract, a change in the Memorandum or Articles of Association of the company which is the multiplex contractor, or a material change in the ownership of such a company, the Authority shall have regard to the criteria specified in *section 137 (2)*.

(4) Every multiplex contract shall—

- (a) provide that a multiplex contractor shall pay to the Authority the fees (if any) specified in it, including any fees payable by the Authority to the Communications Regulator under *section 135*, and
- (b) provide that the multiplex contractor shall provide such information (including copies of his or her accounts) as ~~the Commission the Authority or the Compliance Committee~~ may consider it requires in order to enable it carry out its functions under this Part.

(5) Every multiplex contract shall be open to inspection by members of the public at the Authority's ~~registered~~ office and the Authority shall, on request made by any person and on payment of such sum (if any) as the Authority may reasonably require, give to that person a copy of that contract.

(6) The Authority shall, if it considers it appropriate in the context of the interests of the viewer of multiplex services and in the context of satisfactory and orderly operation of multiplexes by multiplex contractors, through further multiplex contract conditions, ensure that each television multiplex contractor operates multiplexes, and any associated services, for which they have entered into multiplex contracts in relation to multiplexes referred to in *section 132 (3)* and *(4)*—

- (a) in a manner which does not prevent the availing by persons in any area of a single set of receiving equipment that receives all television multiplexes in the area on that one set of receiving equipment, and
- (b) in a manner whereby one set of equipment is capable of supporting encryption systems for all multiplexes that may be encrypted but available in the area.

(7) The Authority may specify in each multiplex contract conditions related to *subsection (6)*.

Analogue switch-off.

~~140-139.~~ — (1) For the purpose of considering for how long it would be appropriate for television broadcasting services to continue to be provided by analogue means, the Minister—

- (a) shall keep under review *inter alia* the extent of—
- (i) the availability of multiplexes in the State,
- (ii) the availability in the State by digital means of the services specified in *subsection (2)*,
- (iii) the ownership or possession in the State of equipment capable of receiving the services specified in *subsection (2)* when transmitted by digital means, and
- (iv) the likely future extent of such availability and such ownership or possession,
- and
- (b) shall, at such time or times as he or she considers fit and, in any case, every 6 months from the passing of this Act until 31 December 2012, require the Authority and RTÉ to report to him or her on the matters referred to in *paragraph (a)*.

(2) The services specified for the purposes of *subparagraphs (ii) and (iii) of subsection (1) (a)* are—

- (a) the national television broadcasting service commonly known as RTÉ One and RTÉ Two established and maintained by RTÉ,
- (b) the national television broadcasting service established and maintained by TG4 under *section 118 (1) (a)*, and
- (c) the television programme service provided under the television programme service contract by the television programme service contractor.

(3) For the purpose mentioned in *subsection (1)*, the Minister shall, on requiring reports under *subsection (1) (b)*, consult with—

- (a) such persons as appear to the Minister to represent viewers as the Minister considers fit, and
- (b) such other persons as the Minister considers fit,

regarding the matters referred to in *subsection (1) (a)* and also, if the Minister considers fit, regarding the likely effects on viewers of any of the services referred to in *subsection (2) (c)* ceasing to be broadcast by analogue means.

(4) The Minister may, at any stage or following consideration of a report under *subsection (1) (b)*, issue a policy direction under section 13 of the Communications Regulation Act 2002 regarding the date or dates with effect from which the Communications Regulator shall revoke licences granted under *section 121* or *section 59* in respect of the provision of any of the services referred to in *subsection (2) (c)* by analogue means.

(5) The Communications Regulator shall, on the passing of this Act, and as necessary under *section 60 (1)* vary a term or condition of a licence issued under *section 59* to ensure that any contract for the provision by analogue means of a service referred to in *subsection (2) (c)* that is at any stage entered into by the Authority shall contain a condition that, after a date or dates regarding which the Minister may issue a policy direction as set out in *subsection (4)*, the service may no longer be provided by analogue means.

(6) RTÉ shall take steps to ensure that all viewers of services referred to in *paragraphs (a) and (b) of subsection (2)* provided by analogue means are made aware, of the analogue switch-off date or dates, the reasons for it or them, the consequences, and practical information on how such viewers can receive such services by digital means after that date or those dates.

(7) The Authority shall from 1 July 2009 until the analogue switch-off date or dates provide information to the public in respect of the reception of television services by means of a multiplex and the reception equipment necessary to receive such television services.

(8) In fulfilling its obligations under *subsection (7)* the Authority may consult with multiplex contractors, public service broadcasters, the television programme service contractor and the manufacturers and retailers of such reception equipment.

(9) The Minister, for the purpose of ensuring a smooth and efficient interchange between the provision of analogue and digital television services in the context of analogue switch-off, shall have the power by himself or herself, or in conjunction with any other person, to—

- (a) promote cooperation and coordination between broadcasters, multiplex contractors and other interested parties in relation to analogue switch-off,
- (b) commission research on matters relating to analogue switch-off,



(c) promote public awareness and the dissemination of coordinated information to the public in relation to analogue switch-off, and

(d) operate, manage or sponsor, whether in whole or in part, measures aimed at alleviating the effects of analogue switch-off on classes of communities or persons adversely affected.

(10) The Minister has all such incidental, supplemental, ancillary and consequential powers as are necessary or expedient for the purpose of the exercise by him or herof of the above powers.

(11) The Minister may, after consultation with the Authority, the Communications Regulator, RTÉ and such other persons (if any) as he or she considers appropriate, by order—

(a) confer on the Authority, the Communications Regulator or RTÉ such additional functions connected with preparation for analogue switch-off, as the Minister considers appropriate, subject to the conditions (if any) that may be specified in the order, and

(b) make such provision as he or she considers necessary or expedient in relation to matters ancillary to or arising out of the conferral of those additional functions.

(12) (a) An order made under *subsection (11)* shall be laid before each House of the Oireachtas as soon as practicable after it is made.

(b) Either House of the Oireachtas may, within 21 sitting days after the day on which an order was laid before it in accordance with *paragraph (a)*, pass a resolution annulling the order.

(c) The annulment under *paragraph (b)* of an order takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under the order before the passing of the resolution.

(13) In *subsection (6)* “analogue switch-off date or dates” means the date or dates with effect from which the Communications Regulator shall revoke any licences specified in *subsection (4)*.

## “PART 8A

### ONLINE SAFETY

#### CHAPTER 1

20

#### *Interpretation: harmful online content and age-inappropriate online content*

### Harmful online content

139A.(1) For the purposes of this Act, online content is ‘harmful online content’ if it is one of the following two kinds:

(f) content that falls within one of the offence-specific categories of 25 online content defined in subsection (2);

(g) content that—

(i) falls within one of the other categories of online content defined in subsection (3), and

(ii) meets the risk test defined in subsection (4). 30

(2) The offence-specific categories of online content are—

(a) the categories listed in Schedule 3, and

(b) any category specified for the purposes of this paragraph by order under section 139B.

(3) The other categories of online content are:

(a) online content by which a person bullies or humiliates another person; 5

(b) online content by which a person promotes or encourages behaviour that characterises a feeding or eating disorder;

(c) online content by which a person promotes or encourages self-harm or suicide;

(d) online content by which a person makes available knowledge of methods of self-harm or suicide; 10

(e) any category specified for the purposes of this paragraph by order under section 139B.

(4) Online content meets the risk test for the purposes of subsection (1)(b) (ii) if it gives rise to— 15

(a) any risk to a person's life, or

(b) a risk of significant harm to a person's physical or mental health, where the harm is reasonably foreseeable.

(5) For the purposes of this Act any question whether particular online content falls within a category under this section shall be determined on the balance of probabilities. 20

### Power to specify other harmful online content

139B.(1) If the Commission makes a proposal to the Minister that a category of online content should be specified for the purposes of section 139A(2) (b) or (3)(e), the Minister may make an order giving effect to the proposal. 25

(2) Section 139C sets out the procedure for proposals and orders under subsection (1).

(3) A proposal under subsection (1) that a category of online content should be specified for the purposes of section 139A(2)(b), and an order giving effect to such a proposal, may be made only if— 30

(a) it is a category of content by which a person does a thing contrary to an enactment specified in the proposal, and

(b) the thing done is an offence under that enactment.

(4) The Commission may make a proposal under subsection (1) only if satisfied— 35

(a) that giving effect to the proposal will enable the Commission to

take action against significant risks posed by the content within the proposed category,

(b) that those risks are not sufficiently addressed by available means (including means available to other regulators, providers of relevant online services, or others), and

(c) that, having regard to the protection of children, to the protection of the public generally, and to all other relevant considerations, it is in the public interest to give effect to the proposal. 5

(5) In deciding whether to make a proposal under subsection (1), the Commission shall have regard in particular to—

(a) levels of availability of any online content on relevant online services, 10

(b) levels of risk of exposure to any online content when using relevant online services,

(c) levels of risk of harm, and in particular harm to children, from the availability of content or exposure to it,

(d) changes in the nature of online content and in levels of availability and risk referred to in paragraphs (a) to (c), 15

(e) the impact of automated decision-making in relation to content delivery and content moderation by relevant online services, and

(f) the rights of providers of designated online services and of users of those services. 20

### Procedure for proposals and orders under section 139B

139C.(1) The Commission may make a proposal under section 139B(1) only if—

(a) the Commission has published a draft of the proposal in a way that it thinks appropriate to bring it to the attention of members of the public, 25

(b) it has published with the draft a notice stating how members of the public may submit comments to it, and within what time,

(c) it has consulted about the draft any advisory committee it has established for that purpose under section 19, 30

(d) it has carried out any other consultation that it considers appropriate on the draft, and

(e) it has considered any comments submitted to it in accordance with a notice under paragraph (b) or in consultation under this subsection. 35

(2) On receiving a proposal the Minister shall—

(a) consult the Joint Oireachtas Committee,



(b) consider the proposal in the light of that consultation and any other consultation the Minister considers appropriate, and

(c) respond to the Commission within a reasonable time.

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- (3) The Minister’s response must be either—
- (a) to accept the proposal for consideration by the Government, or
  - (b) to request the Commission to reconsider the proposal.
- (4) The Minister may make an order under section 139B(1) giving effect to a proposal only if— 5
- (a) the Minister has accepted the proposal for consideration by the Government, and
  - (b) the Government has approved the proposal.
- (5) The Minister may accept a proposal for consideration, and the Government may approve a proposal, only if satisfied of the matters listed in section 139B(4). 10
- (6) In deciding whether to accept or approve a proposal, the Minister and the Government shall have regard in particular to the matters listed in section 139B(5).
- (7) Where an order is proposed to be made under section 139B(1), a draft of the order shall be laid by the Minister before each House of the Oireachtas and the order shall not be made unless a resolution approving the draft has been passed by each such House. 15

### Age-inappropriate online content

**139D.** In this Part, ‘age-inappropriate online content’ means online content that is likely to be unsuitable for children (either generally or below a particular age), having regard to their capabilities, their development, and their rights and interests, including in particular content consisting of— 20

- (a) pornography, or
- (b) realistic representations of, or of the effects of, gross or gratuitous violence or acts of cruelty. 25

## CHAPTER 2

### Designated online services

#### Designation of online services

- 139E.** (1) The Commission may designate a relevant online service as a service to which online safety codes may be applied under Chapter 3. 30
- (2) A designation under this section may be made in relation to a named service, or in relation to all services falling within a category of services described in the designation (and a service may be designated both as a named service and as falling within a category). 35
- (3) Subject to section 139G the Commission, in deciding whether to designate a named service or a category of services, shall have regard

|

in particular to—

- online services,
- (a) the nature and the scale of the service or of services within the category,
  - (b) provision made or that may be made by online safety codes that may be applied to the service or to services within the category,
  - (c) other provisions of or made under this Act that apply to designated 5
  - (d) levels of availability of harmful online content on the service, or on services within the category,
  - (e) levels of risk of exposure to harmful online content when using the service, or services within the category, 10
  - (f) levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it on the service, or on services within the category,
  - (g) the rights of the provider of the service, or providers of services within the category, and 15
  - (h) the rights of users of the service, or users of services within the category.

### Power to require information relevant to designation

- 139F.(1) The Commission may by notice in writing require the provider of a relevant online service to provide the Commission with any 20
- information relating to the service that appears to the Commission to be—
- (a) relevant to a decision under section 139E as to whether to designate the service as a named service,
  - (b) relevant to a decision under section 139E as to whether to designate 25
- a category of services including the service, or
- (c) required for inclusion in the register under section 139J.
- (2) A provider who fails, without reasonable excuse, to comply with a notice under subsection (1) shall be guilty of a category 1 offence.

### Requirement to designate video-sharing platform services

- 139G.(1) The Commission shall designate as a category of services under section 139E the video-sharing platform services under the jurisdiction of the State.
- (2) The Commission shall designate as a named service under section 139E any relevant online service that appears to the Commission to be 35
  - a video-sharing platform service under the jurisdiction of the State.
  - (3) Where the Commission has reason to believe that a relevant online

service may be a video-sharing platform service under the jurisdiction of the State, the Commission shall issue a notice under section 139F requiring the provision of any information that appears to the 40

Commission to be relevant for the purpose of complying with subsection (2).

- (4) For the purposes of subsections (2) and (3) the Commission shall have regard to any guidelines issued by the European Commission in respect of the practical application of the essential functionality 5 criterion in the definition of a video-sharing platform service in Article 1(1)(aa) of the Directive.

### Procedure for designation of online services

139H.(1) Before designating a service under this Chapter, the Commission shall consult— 10

(a) where the designation is of a named service, the provider of the service,

(b) where the designation is of a category of services—

(i) an organisation representative of providers of services falling within the category, if there is such an organisation, and 15

(ii) the providers of those services, so far as the Commission is able to consult them,

(c) any advisory committee the Commission has established for that purpose under section 19, and

(d) any other person the Commission considers appropriate. 20

(2) Subsection (1)(a) and (1)(b)(i) do not apply in the case of a provider or organisation if, after taking reasonable steps to consult it, the Commission is unable to do so.

(3) A designation under this Chapter takes effect—

(a) in the case of a named service, on the Commission giving the 25 provider of the service notice in writing of the designation, and

(b) in the case of a category of services, at the end of the period of 28 days after the date on which notice of the designation is published by the Commission on a website maintained by it.

### Revocation of designation 30

139I.(1) The Commission may, subject to section 139G(1) and (2), at any time revoke a designation under section 139E.

(2) Sections 139E(3), 139F and 139H apply in relation to revocation of a designation of a named service or a category of services as they apply

in relation to a designation. 35

### Register of designated online services

139J.(1) The Commission shall maintain and make available to the public a register of—

(a) the services for the time being designated under this Chapter as  
named services, and 40

(b) the categories of services for the time being designated under this Chapter.

(2) The register shall state—

(a) for each named service—

(i) the provider of the service, 5

(ii) the address of the provider and any other information the Commission considers appropriate about how the provider may be contacted by members of the public, and

(iii) any designated category of services that the named service appears to the Commission to fall within, 10

and

(b) for each named service and each category of services, any online safety code under Chapter 3 that applies to that service or to the services within that category.

CHAPTER 3 15

### Online safety codes

## Online safety codes

139K.(1) The Commission may make codes ('online safety codes'), to be applied to designated online services in accordance with section 139L.

(2) An online safety code may make provision with a view to ensuring— 20

(a) that service providers take appropriate measures to minimise the availability of harmful online content and risks arising from the availability of and exposure to such content,

(b) that service providers take any other measures that are appropriate to protect users of their services from harmful online content, 25

(c) that service providers take any other measures that are appropriate to provide the protections set out in Article 28b(1)(a), (b) and (c) of the Directive, and

(d) that service providers take any measures in relation to commercial communications on their services that are appropriate to protect the 30 interests of users of their services, and in particular the interests of children.

(3) In the case of video-sharing platform services, the Commission shall exercise its powers under this section with a view to ensuring (without prejudice to any other exercise of those powers in relation to video-sharing platform services) that service providers— 35

(a) take appropriate measures to provide the protections referred to in subsection (2)(c), including appropriate measures referred to in



| Article 28b(3) of the Directive,

(b) comply with the requirements set out in Article 9(1) of the Directive with respect to audiovisual commercial communications that are marketed, sold or arranged by them, and

(c) take appropriate measures to comply with the requirements set out in Article 9(1) of the Directive with respect to audiovisual commercial communications that are not marketed, sold or arranged by them, taking into account the limited control they exercise over those communications. 5

(4) Without prejudice to subsection (2) an online safety code may provide for: 10

(a) standards that services must meet, practices that service providers must follow, or measures that service providers must take;

(b) in particular, standards, practices or measures relating to the moderation of content or to how content is delivered on services;

(c) the assessment by service providers of the availability of harmful online content on services, of the risk of it being available, and of the risk posed to users by harmful online content; 15

(d) the making of reports by service providers to the Commission;

(e) the handling by service providers of communications from users raising complaints or other matters. 20

(5) Without prejudice to subsection (4), the Commission shall make an online safety code, to be applied in accordance with section 139L to such designated online services as the Commission considers appropriate, requiring the service provider to report to the Commission at intervals, specified in the code, of not more than three months on the provider's handling of communications from users raising complaints or other matters. 25

(6) In this section 'service provider' means the provider of a designated online service.

## Application of online safety codes 30

139L.(1) An online safety code applies to a designated online service if—

(a) the Commission has determined that the code is to apply to the service, or to a designated category of services that includes the service,

(b) the Commission has given notice of the determination, and the notice has taken effect, in accordance with subsection (2), and 35

(c) the determination has not been revoked.

(2) Notice under subsection (1)(b)—

(a) in the case of a service designated as a named service, must be given to the provider of the service in writing, and takes effect 40 when the notice is given to the provider, and

- (b) in the case of a designated category of services, must be given by publication of notice of the determination on a website maintained by the Commission, and takes effect at the end of the period of 28 days after the date on which the notice is published on the website.
- (3) Before making or revoking a determination under subsection (1) in relation to a named service or a category of services, the Commission shall have regard in particular to— 5
- (a) the nature and the scale of the service, or of services within the category,
- (b) levels of availability of harmful online content on the service, or on services within the category, 10
- (c) levels of risk of exposure to harmful online content when using the service, or services within the category,
- (d) levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it on the service, or on services within the category, 15
- (e) the rights of the provider of the service, or providers of services within the category, and
- (f) the rights of users of the service, or users of services within the category. 20
- (4) Before making or revoking a determination under subsection (1), the Commission shall consult—
- (a) where the designation is of a named service, the provider of the service,
- (b) where the designation is of a category of services— 25
- (i) an organisation representative of providers of services falling within the category, if there is such an organisation, and
- (ii) the providers of those services, so far as the Commission is able to consult them,
- (c) any advisory committee the Commission has established for that purpose under section 19, and 30
- (d) any other person the Commission considers appropriate.
- (5) An online safety code applying to an interpersonal communications service or a private online storage service applies to that service only
- in so far as it relates to content that falls within one of the offence-specific categories of online content defined in section 139A(2). 35
- (6) In this section—
- ‘interpersonal communications service’ means a service normally provided for



persons by means of electronic communications networks, where the persons initiating or participating in the communication determine its recipients, but it does not include services which enable interpersonal and interactive communication only as a minor ancillary feature that is intrinsically linked to another service; 5

'private online storage service' means any service providing online storage, other than—

(a) local or temporary storage, or

(b) storage provided for the purpose of enabling the provision of another service, or as a minor ancillary feature intrinsically linked 10

to another service;

'temporary storage' means the automatic, intermediate and temporary storage of information for the sole purpose of making more efficient onward transmission of that information.

### Online safety codes: matters to be considered

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139M. When preparing an online safety code the Commission shall have regard in particular to—

(a) the desirability of services having transparent decision-making processes in relation to content delivery and content moderation,

(b) the impact of automated decision-making on those processes, 20

(c) the need for any provision to be proportionate having regard to the nature and the scale of the services to which a code applies,

(d) levels of availability of harmful online content on designated online services,

(e) levels of risk of exposure to harmful online content when using 25

designated online services,

(f) levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it,

(g) the rights of providers of designated online services and of users of those services, and 30

(h) the e-Commerce compliance strategy prepared under section 139X.

### Online safety codes: procedure

139N.(1) Before making an online safety code, the Commission shall consult—

(a) any advisory committee it has established for that purpose under section 19, and 35

(b) any other person the Commission thinks appropriate.

(2) As soon as practicable after making an online safety code, the

| Commission shall give a copy of the code to the Minister.

- (3) As soon as practicable after receiving a copy of an online safety code under subsection (2), the Minister shall lay copies of the code before each House of the Oireachtas.
- (4) The Commission may at any time amend or revoke an online safety code, or any provision of an online safety code, and subsections (1) to (3) apply to an amendment or revocation of an online safety code as they apply to an online safety code. 5
- (5) The Commission shall from time to time review the operation of any online safety code it makes.
- (6) If the Minister makes a request in writing to the Commission to review the operation of an online safety code, the Commission shall carry out the review and give the Minister a report on the review in writing within a reasonable time. 10

### Compliance with online safety codes: information notices

- 1390.**(1) The Commission may by notice in writing require the provider of a designated online service to provide the Commission with information relating to the provider's compliance with an online safety code over any period, and may require such information to be provided periodically for a succession of periods. 15
- (2) A notice must— 20
- (a) identify the information to be provided and the period or periods it must relate to, and
- (b) state when the information is to be provided.
- (3) A notice may not require information to be provided before the end of the period of 7 days beginning on the date on which the notice is received by the provider. 25
- (4) The Commission may at any time by notice in writing extend the time within which information is to be provided.
- (5) If within the period referred to in subsection (3) the provider requests the Commission to make an extension under subsection (4), the period beginning with the date on which the Commission receives the request and ending on the date notice of the Commission's decision on the request is received by the provider does not count towards the time within which the information is to be provided. 30
- (6) The provider of a designated online service is guilty of a category 1 offence if— 35
- (a) the provider fails without reasonable excuse to comply with a notice under subsection (1), or
- (b) in purported compliance with a notice under subsection (1), the provider provides false information, knowing that it is false or 40



| being reckless as to whether it is false.

(7) If the Commission is notified by a nominated body of a matter that appears to the Commission to be relevant to a provider's compliance with an online safety code, the Commission shall consider that matter for the purpose of deciding whether to exercise its functions under this section. 5

## Audit of complaints and complaint handling

139P.(1) The Commission may appoint a person to carry out an audit under this section, and may by notice in writing require the provider of a designated online service to co-operate with any person appointed.

(2) A notice under subsection (1) may relate to audits to be undertaken periodically, at intervals specified in the notice. 10

(3) The purpose of an audit under this section is—

(a) to enable the Commission to assess compliance by the provider with provisions of an online safety code that relate to the handling

of communications by which users raise complaints or other matters relating to designated online services with the providers of those services, and 15

(b) to provide the Commission with information to identify any trends in complaints or other matters raised by such communications that

may be relevant to the Commission's functions under this Part. 20

(4) A person appointed to carry out an audit under this section—

(a) must be independent of the provider, and

(b) must not be a Commissioner, or a member of the staff of the Commission.

(5) A notice under this section must— 25

(a) identify the person appointed to carry out the audit,

(b) identify the provisions of the online safety code that the audit is to assess compliance with,

(c) state when the audit is to commence, and

(d) specify the co-operation that the provider is required to provide. 30

(6) The co-operation that may be specified under subsection (5)(d) may include the taking, on reasonable notice from the person carrying out the audit, of steps specified by that person that are reasonably required to assist the carrying out of an audit under this section.

(7) A person who carries out an audit under this section shall provide the Commission with a report on the audit, setting out any information relevant to an assessment in accordance with subsection (3)(a), and any information relevant for the purposes of subsection (3)(b). 35

(8) The Commission shall provide a copy of the report—

(a) to the provider concerned, and

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(b) to the Minister,  
and shall publish the report on a website maintained by it, with any redactions  
the Commission considers necessary on grounds of the personal, confidential  
or commercially sensitive nature of any part of  
the report. 5

(9) If the Commission is notified by a nominated body of a matter that  
appears to the Commission to be relevant to compliance by a provider  
with a provision of the kind mentioned in subsection (3)(a), the  
Commission shall consider that matter for the purpose of deciding  
whether to exercise its functions under this section. 10

(10) A provider who fails without reasonable excuse to comply with a  
notice under subsection (1) shall be guilty of a category 1 offence.

### Enforcement of online safety codes

139Q. A failure by a provider of a designated online service to comply with an online safety  
code that applies to the service shall be a contravention for 15  
the purposes of Part 8B.

#### CHAPTER 4

#### Online safety guidance materials and advisory notices

### Guidance materials and advisory notices

139R.(1) The Commission may issue guidance materials for providers of 20  
relevant online services—

(a) on any matter for which provision may be made by an online  
safety code, and

(b) otherwise for the protection of minors and the general public from  
harmful online content and age-inappropriate online content. 25

(2) Before issuing guidance materials under subsection (1),  
the Commission shall consult—

(a) any advisory committee it has established for that purpose  
under section 19, and

(b) any other person the Commission thinks appropriate. 30

(3) Where the Commission considers there is an urgent need to bring  
to the attention of a provider or providers of relevant online services  
any matter on which guidance materials may be issued under this  
section, the Commission may issue an online safety advisory notice  
to the  
provider or providers on the matter. 35

(4) Before issuing an advisory notice under subsection (3), or as

soonafter as is practicable, the Commission shall consult—

(a) any advisory committee it has established for that purpose  
undersection 19, and

(b) any other person the Commission thinks appropriate. 40

## Guidance materials and advisory notices: matters to be considered

139S. In preparing guidance materials or advisory notices under section 139R, the Commission shall have regard in particular to—

- (a) Article 28b of the Directive,
- (b) the desirability of services having transparent decision-making processes in relation to content delivery and content moderation, 5
- (c) the impact of automated decision-making on those processes,
- (d) the need for any provision to be proportionate having regard to the nature and the scale of the services concerned,
- (e) levels of availability of any online content, and of age-inappropriate online content, on relevant online services, 10
- (f) levels of risk of exposure to harmful online content, or of exposure of children to age-inappropriate online content, when using relevant online services,
- (g) levels of risk of harm, and in particular harm to children, from the availability of such content or exposure to it, 15
- (h) the rights of providers of relevant online services and of users of those services, and
- (i) the e-Commerce compliance strategy prepared under section 139X.

## Guidance materials and advisory notices: procedure 20

139T.(1) This section applies to any guidance materials or advisory notices issued by the Commission under section 139R.

- (2) The Commission shall—
  - (a) publish any guidance materials or advisory notices in whatever way it thinks appropriate, and 25
  - (b) take any other steps it considers appropriate to bring guidance materials or advisory notices to the attention of providers of services to which they are relevant.
- (3) As soon as practicable after issuing guidance materials or an advisory notice, the Commission shall give a copy to the Minister. 30
- (4) If the Minister makes a request in writing to the Commission to review guidance materials or an advisory notice, the Commission shall carry out the review and give the Minister a report on the review in writing within a reasonable time.
- (5) The Commission may at any time withdraw guidance materials or an 35

|

[advisory notice.](#)

*Ancillary matters*

Scheme for notifications by  
nominated bodies

- 139U.(1) The Commission shall make a scheme under which bodies are nominated by it for the purpose of notifying the Commission of matters relevant to its functions under this Part. 5
- (2) Where a nominated body notifies the Commission in accordance with a scheme, the Commission shall inform the nominated body of any action taken by the Commission as a result of the notification.
- (3) The matters that may be notified to the Commission under a scheme shall include, but need not be limited to, the following: 10
- (a) concerns arising from the manner in which a designated online service purports to comply with the online safety codes that apply to it;
  - (b) concerns relating to the availability of harmful online content on a designated online service or a relevant online service; 15
  - (c) concerns relating to the availability of age-inappropriate online content on a designated online service or a relevant online service;
  - (d) measures taken by the provider of a designated online service, in purported compliance with an online safety code, which the nominated body considers excessive having regard to users' freedom of expression or other rights, or for any other reason. 20
- (4) A scheme shall in particular provide for the following:
- (a) the procedure for applying for nomination, and the nomination process; 25
  - (b) the criteria for nomination;
  - (c) revocation of a nomination;
  - (d) matters of which nominated bodies may notify the Commission;
  - (e) the form and content of a notification;
  - (f) the process by which notification is to be given by a nominated body and acknowledged by the Commission; 30
  - (g) the process by which the Commission is to inform a nominated body of any action taken by the Commission as a result of a notification.
- (5) As soon as practicable after making a scheme under this section, the Commission shall give a copy to the Minister. 35



(6) If the Minister makes a request in writing to the Commission to review a scheme under this section, the Commission shall carry out the review

and give the Minister a report on the review in writing within a reasonable time.

(7) The Commission may at any time amend or replace a scheme under this section.

(8) Subsection (5) applies to the amendment or replacement of a scheme as it applies to the making of a scheme.

(9) A scheme and any amendment of a scheme under this section shall be laid by the Commission before each House of the Oireachtas as soon as may be after it is made.

(10) In this section 'scheme' means a scheme made under this section. 10

(11) In this section and sections 139O and 139P 'nominated body' means a body nominated by the Commission under a scheme.

### Duty of Commission to encourage use of mediation

139V. The Commission shall take whatever steps it considers appropriate to encourage the use by users and providers of mediation by an independent mediator to resolve any dispute arising from users' complaints about a provider taking or not taking any action— 15

(a) in response to an online safety code, or

(b) in response to guidance materials or an advisory notice issued under section 139R. 20

### Voluntary arrangements with providers in third countries

139W.(1) This section applies if the Commission enters into a voluntary arrangement, within the meaning assigned to it by subsection (2), with the provider of a service, where—

(a) the provider is not under the jurisdiction of the State or another 25

Member State, but

(b) the service would be a relevant online service if the provider were under the jurisdiction of the State.

(2) In this section a 'voluntary arrangement' means an arrangement under which the provider agrees, for the period during which the arrangement is in force— 30

(a) that the provider will comply with any online safety code, and any guidance materials issued under section 139R, that may be specified in the arrangement, to the extent specified in the arrangement, 35

(b) that the provider will comply with any request made by the Commission under subsection (5), and

(c) that the Commission may publish the information it is required to publish in accordance with subsections (4) and (6).

(3) The Commission shall notify the Minister of any voluntary arrangement it enters into. 40

(4) The Commission shall publish, on a website maintained by it, the following details of any voluntary arrangement it enters into with a provider:

(a) the name of the provider and any other information necessary to identify the provider; 5

(b) the matters specified in accordance with subsection (2)(a).

(5) The Commission—

(a) may request information from the provider regarding its compliance with any online safety code or guidance materials, to

the extent that it has agreed to comply with them, and 10

(b) may request the provider to provide such information on a periodic basis.

(6) If it appears to the Commission that there has been a failure by a provider to comply with an online safety code, guidance materials, or a request under subsection (5), the Commission may publish, on a website maintained by it, a notice of the failure, and information about the nature of the failure. 15

(7) The Commission shall keep any voluntary arrangement under review.

(8) The Commission or the provider may at any time end a voluntary arrangement by notice in writing to the other. 20

### e-commerce compliance strategy

139X.(1) The Commission shall prepare, and may revise, an e-Commerce compliance strategy setting out its approach to ensuring that—

(a) no requirements that are inconsistent with the limitations placed on the liability of intermediary service providers by regulations 16 to 18 of the European Communities (Directive 2000/31/EC) Regulations 2003 (S. I. No. 68 of 2003), and 25

(b) no general obligation on providers, when providing the services covered by regulations 16 to 18 of those Regulations, to monitor the information which they transmit or store, and no general obligation actively to seek facts or circumstances indicating illegal activity, contrary to Article 15 of Directive 2000/31/EC, 30

are imposed, by virtue of online safety codes or online safety guidance materials or advisory notices.

(2) Before preparing an e-Commerce compliance strategy the Commission shall consult— 35

(a) any advisory committee it has established for that purpose under section 19, and

(b) any other person the Commission thinks appropriate.

(3) The Commission shall publish an e-Commerce compliance strategy 40  
prepared or revised under this section on a website maintained by it.”.

## Harmful online content: offence-specific categories

24. The Principal Act is amended by the insertion of the following Schedule after Schedule 2:

<u>Section 139A</u>	<u>“SCHEDULE 3</u>	<u>5</u>
<u>HARMFUL ONLINE CONTENT: OFFENCE SPECIFIC CATEGORIES</u>		
<u>Offences against the State Act 1939</u>		
1. <u>Online content by which a person publishes or broadcasts information about an application under section 30(4) of the Offences against the State Act 1939 contrary to subsection (4BA)(d) of that section (application for further detention of a person arrested for certain offences).</u>		<u>10</u>
<u>Criminal Law (Rape) Act 1981</u>		
2. <u>Online content by which a person publishes or broadcasts matter likely to lead members of the public to identify a person as the complainant in relation to a charge of a sexual assault offence, contrary to section 7(1) of the Criminal Law (Rape) Act 1981.</u>		<u>15</u>
3. <u>Online content by which a person publishes or broadcasts matter likely to lead members of the public to identify a person as the person charged with a rape offence, contrary to section 8(1) of the Criminal Law (Rape) Act 1981.</u>		<u>20</u>
<u>Prohibition of Incitement to Hatred Act 1989</u>		
4. <u>Online content by which a person publishes or distributes written material, or a recording of visual images or sounds, contrary to section 2(1) of the Prohibition of Incitement to Hatred Act 1989 (material, images or sounds which are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred).</u>		<u>25</u>
5. <u>Online content by which a person broadcasts visual images or sounds, contrary to section 3(1) of the Prohibition of Incitement to Hatred Act 1989 (threatening, abusive or insulting images or sounds whose broadcast is intended or, having regard to all the circumstances, is likely to stir up hatred).</u>		<u>30</u>
<u>Criminal Justice Act 1993</u>		
6. <u>Online content by which a person publishes or broadcasts information relating to, or to part of, evidence given under section 5(3) of the Criminal Justice Act 1993, contrary to an order under subsection (5)(a) of that section (sentencing: evidence of a person in respect of whom an offence is committed).</u>		<u>35</u>
<u>Criminal Law (Suicide) Act 1993</u>		<u>40</u>

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contrary to section 2(2) of the Criminal Law (Suicide) Act 1993.  
Criminal Justice (Drug Trafficking) Act 1996

8. Online content by which a person publishes or broadcasts information about an application under section 2(2) of the Criminal Justice (Drug Trafficking) Act 1996 contrary to subsection (3A)(d) of that section 5  
(application for detention of a person arrested for a drug trafficking offence).

Bail Act 1997

9. Online content by which a person publishes or broadcasts information relating to the criminal record of a person applying for bail, contrary to 10  
section 4(3) of the Bail Act 1997.

10. Online content by which a person publishes or broadcasts information relating to, or to part of, evidence given under section 9A(1) of the Bail Act 1997 contrary to an order under subsection (3) of that section  
(evidence, at application for bail, from a person in respect of whom an 15  
offence is alleged to have been committed).

Non-Fatal Offences against the Person Act 1997

11. Online content by which a person applies force to the body of another, or causes another to believe on reasonable grounds that he or she is  
likely immediately to be subjected to such force, contrary to section 2 20  
of the Non-Fatal Offences against the Person Act 1997.

12. Online content by which a person makes a threat, contrary to section 5(1) of the Non-Fatal Offences against the Person Act 1997 (threat to kill or cause serious harm to a person).

13. Online content by which a person harasses another, contrary to section 25  
10(1) of the Non-Fatal Offences against the Person Act 1997 (harassment by persistently following, watching, pestering, besetting or communicating with or about another person).

Child Trafficking and Pornography Act 1998

14. Online content by which a person distributes, transmits, disseminates 30  
or publishes child pornography, contrary to section 5(1)(b) of the Child Trafficking and Pornography Act 1998.

15. Online content by which a person publishes, distributes, transmits or disseminates an advertisement, contrary to section 5(1)(e) of the Child Trafficking and Pornography Act 1998 (advertisement of sale etc. of 35  
child pornography).

Children Act 2001

16. Online content by which a person publishes or includes in a broadcast a report to which section 51(1) of the Children Act 2001 applies  
(report in relation to admission of a child to the Programme etc. or 40



| revealing information likely to lead to identification of the child).

<u>17. Online content by which a person publishes or includes in a broadcast any such report or picture as is referred to in section 93(1) of the Children Act 2001, except so far as the requirements of that section have been dispensed with under subsection (2) of that section</u>	5
<u>(proceedings before a court concerning a child: particulars likely to lead to identification etc.).</u>	
<u>18. Online content by which a person encourages unlawful activity involving a child, contrary to section 249 of the Children Act 2001 (person with custody, charge or care of a child encouraging sexual offences on the child etc.).</u>	10
<u>19. Online content by which a person publishes or includes in a broadcast a report or picture to which section 252(1) of the Children Act 2001 applies, except so far as the requirements of subsection (1) of that section have been dispensed with under subsection (2) of that section</u>	15
<u>(proceedings for an offence against a child or where a child is a witness: report or picture likely to lead to identification of the child etc.).</u>	
<u>Criminal Justice (Terrorist Offences) Act 2005</u>	
<u>20. Online content by which a person engages in public provocation to commit a terrorist offence, contrary to section 6(1)(a)(i) of the Criminal Justice (Terrorist Offences) Act 2005 (where a 'terrorist-linked activity' includes public provocation to commit a terrorist offence, as defined by section 4A of that Act).</u>	20
<u>21. Online content by which a person makes a threat to engage in a terrorist activity, contrary to section 6(1)(a)(iii) of the Criminal Justice (Terrorist Offences) Act 2005.</u>	25
<u>Criminal Law (Insanity) Act 2006</u>	
<u>22. Online content by which a person publishes, contrary to section 4(9) of the Criminal Law (Insanity) Act 2006, a report of evidence adduced under subsection (8) of that section as to whether an accused person did the act alleged, or of the decision of the court under that subsection not to order the accused to be discharged.</u>	30
<u>Criminal Justice Act 2006</u>	
<u>23. Online content by which a person publishes any matter relating to criminal proceedings which would identify a person as having a particular medical condition, contrary to an order under section 181 of the Criminal Justice Act 2006.</u>	35
<u>Criminal Justice Act 2007</u>	
<u>24. Online content by which a person publishes or broadcasts information about an application under section 50 of the Criminal Justice Act 2007 contrary to subsection (4A)(d) of that section (application for further detention for investigation of certain serious offences).</u>	40



<u>25. Online content by which a person publishes or broadcasts, contrary to section 11(1) of the Criminal Law (Human Trafficking) Act 2008—</u>	
<u>(a) a photograph of, or that includes a depiction of, the alleged victim of an offence with which a person is charged under section 2 or 4,</u>	
<u>or section 3 (other than subsections (2A) and (2B)) of the Child Trafficking and Pornography Act 1998,</u>	5
<u>(b) any other representation of the physical likeness, or any representation that includes a depiction of the physical likeness, of the alleged victim of such an offence, or</u>	
<u>(c) any other information in relation to such an offence,</u>	10
<u>that is likely to enable the identification of the alleged victim of the offence.</u>	
<u>Criminal Procedure Act 2010</u>	
<u>26. Online content by which a person publishes or broadcasts, contrary to an order under section 12(3) of the Criminal Procedure Act 2010—</u>	15
<u>(a) evidence given or referred to at a hearing of an application for a re-trial order, or</u>	
<u>(b) matter identifying or having the effect of identifying a person who is the subject of an application for a re-trial order, or any other</u>	
<u>person connected with the re-trial for which an order is sought under section 8 or 9 of that Act.</u>	20
<u>27. Online content by which a person publishes or broadcasts, contrary to an order under section 25(3) of the Criminal Procedure Act 2010—</u>	
<u>(a) evidence given or referred to during a proceeding under section 23 of that Act, or</u>	25
<u>(b) matter identifying or having the effect of identifying a person who is the subject of an appeal under section 23 of that Act, or any other person connected with a re-trial for which an order is sought under that section.</u>	
<u>Criminal Justice (Female Genital Mutilation) Act 2012</u>	30
<u>28. Online content by which a person publishes matter contrary to section 9(1) of the Criminal Justice (Female Genital Mutilation) Act 2012 (matter likely to lead to identification of a woman or girl as a person in relation to whom an offence is alleged to have been committed).</u>	
<u>29. Online content by which a person publishes matter contrary to section 10(1) of the Criminal Justice (Female Genital Mutilation) Act 2012 (matter likely to lead to identification of a person charged with an offence).</u>	35
<u>Animal Health and Welfare Act 2013</u>	



<p><u>(a) publicises or promotes a proposed animal fight or performance,</u></p> <p><u>(b) provides information about an animal fight or performance, or</u></p> <p><u>(c) supplies, displays, shows or publishes anything by which an animal fight or performance is recorded,</u></p> <p>contrary to section 15 of the Animal Health and Welfare Act 2013.</p>	5
<u>International Protection Act 2015</u>	
<p><u>31. Online content by which a person publishes or broadcasts information,contrary to section 26(2) of the International Protection Act 2015 (publication or broadcast of information likely to lead to identification of an applicant for protection).</u></p>	10
<u>Criminal Law (Sexual Offences) Act 2017</u>	
<p><u>32. Online content by which a person communicates with another personfor the purpose of facilitating the sexual exploitation of a child, contrary to section 8(1) of the Criminal Law (Sexual Offences) Act 2017.</u></p>	15
<p><u>33. Online content by which a person sends sexually explicit material to achild, contrary to section 8(2) of the Criminal Law (Sexual Offences) Act 2017.</u></p>	
<p><u>34. Online content by which a person publishes matter contrary to section 30(1) of the Criminal Law (Sexual Offences) Act 2017 (matter likely to lead to identification of a person as a person charged with an offence under the Punishment of Incest Act 1908 or as a person in relation to whom an offence is alleged to have been committed).</u></p>	20
<u>Domestic Violence Act 2018</u>	
<p><u>35. Online content by which a person publishes or broadcasts information, or a photograph, depiction, or other representation, contrary to section36(1) of the Domestic Violence Act 2018 (publication or broadcast of material likely to lead to the identification of persons concerned in proceedings).</u></p>	25
<u>Harassment, Harmful Communications and Related Offences Act 2020</u>	
<p><u>36. Online content by which a person distributes or publishes or threatensto distribute or publish an intimate image, contrary to section 2(1) of the Harassment, Harmful Communications and Related Offences Act 2020 (distribution etc. of image without consent and with intent to cause harm etc.).</u></p>	30
<p><u>37. Online content by which a person distributes or publishes an intimateimage, contrary to section 3(1) of the Harassment, Harmful Communications and Related Offences Act 2020 (distribution etc. of image without consent and so as seriously to interfere with peace</u></p>	35

and

privacy or to cause alarm, distress or harm).

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38. Online content by which a person—

(a) distributes or publishes a threatening or grossly offensive communication about another person, or

(b) sends a threatening or grossly offensive communication to another person,

contrary to section 4(1) of the Harassment, Harmful Communications and Related Offences Act 2020 (distribution etc. of communication with intent to cause harm). 5

39. Online content by which a person publishes or broadcasts information, or a photograph or other representation, likely to enable the identification of the alleged victim of an offence under section 2 or 3 of the Harassment, Harmful Communications and Related Offences Act 2020, contrary to section 5(1) of that Act. 10

#### Criminal Procedure Act 2021

40. Online content by which a person publishes or broadcasts information about a preliminary trial hearing, or an appeal under section 7 of the Criminal Procedure Act 2021, contrary to section 10(1) of that Act.”. 15

### PART 12

#### INVESTIGATIONS AND SANCTIONS

### Investigations and sanctions

25. The Principal Act is amended by the insertion of the following Part before Part 9: 20

#### “PART 8B

#### INVESTIGATIONS AND SANCTIONS

#### CHAPTER 1

#### Interpretation

Interpretation 25

#### 139Y. In this Part—

(a) ‘contravention’ means a failure to comply with section 46J, 46K, 46L, 46M(2) or (3), a media service code, a media service rule, section 46P(1) or (2), section 106(3), section 127(6), section 128B(1) or (2), any rules made under section 128C, an online safety code, section 159B(1) (or any rules made under section 159B(6)) or section 159C(1) (or any rules made under section 159C(3) or (6)); 30

(b) ‘investigation’ means an investigation pursuant to a direction under





(c) in relation to an investigation—  
‘the authorised officer’ means the authorised officer carrying out the investigation;  
‘the provider’ means the person whose suspected contravention is  
the subject of the investigation; 5  
‘relevant equipment’ means any electronic, photographic, magnetic, optical or other equipment, including  
a computer, which may be used for processing or holding relevant material;  
‘relevant material’ means any document, information, or content, however communicated, recorded or stored,  
which may be relevant 10  
to the investigation;

(d) ‘place’ includes—  
(i) a dwelling;  
(ii) a building;  
(iii) any other premises; 15  
(iv) a vehicle, vessel, aircraft, or other means of transport.

## CHAPTER 2

### Authorised officers and investigations

#### Appointment of authorised officers

- 139Z.(1) The Commission may appoint a person to be an authorised officer for 20  
the purposes of this Act.
- (2) The Commission shall provide an authorised officer appointed  
undersubsection (1) with a certificate of his or her appointment.
- (3) An authorised officer exercising a power conferred by or under this  
Act shall, if requested by a person affected by the exercise of the 25  
power, produce for that person to inspect—  
(a) the certificate of his or her appointment, or a copy of it, and  
(b) a form of personal identification.
- (4) A person’s appointment under subsection (1) ceases—  
(a) if it is revoked in writing by the Commission, 30  
(b) if it is for a fixed period and the period expires, or  
(c) if the person was when appointed, or has since become, a member  
of the staff of the Commission, and the person ceases to be a  
member of its staff.

#### Commencement and terms of investigation 35

139ZA. (1) If a person authorised by the Commission under subsection (2) believes there

| is reason to suspect that there has been a contravention.

the person may direct an authorised officer to carry out an investigation of the suspected contravention.

(2) The Commission may authorise any Commissioner or member of its staff for the purposes of subsection (1).

(3) The person who directs the authorised officer to carry out an investigation under subsection (1) shall define the terms of the investigation in writing.

### Notice of commencement of investigation

139ZB. (1) An authorised officer directed to carry out an investigation under section 139ZA(1) shall give the provider a notice in writing of the commencement of the investigation. 10

(2) The notice shall include—

(a) a statement of the nature and particulars of the suspected contravention,

(b) a copy of the terms of the investigation defined under section 15

139ZA(3), and

(c) a copy of any material relied upon by the person referred to in section 139ZA(3) in defining those terms or notice of the place at which such material may be inspected and copied by the provider.

(3) A notice under subsection (1) shall state that the provider may respond in writing to the contents of the notice within— 20

(a) the period of 10 working days from the date on which the notice was received, or

(b) any further period, of not more than 10 working days, that the authorised officer considers necessary to give the provider an opportunity to respond. 25

### Powers of authorised officer

139ZC. (1) For the purposes of an investigation, an authorised officer may do any of the following:

(a) subject to subsection (7), at any reasonable time, enter any place where the authorised officer has reasonable grounds for believing— 30

(i) that an activity connected with a broadcasting service, audiovisual on-demand media service or designated online service takes place, or 35

(ii) that relevant material or relevant equipment is kept;

(b) search a place referred to in paragraph (a);

(c) stop any vehicle, or detain any vessel, aircraft or other means

of transport, for the purpose of exercising a power under  
paragraph (a)

or (b) to enter, search or inspect the vehicle, vessel, aircraft or other  
means of transport;

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- (d) require any person to produce to him or her any relevant material which is in that person's power or control or which that person is able to procure, and to produce it, where necessary, in a form in which it can be taken away and in which it is, or can be made, legible and comprehensible; 5
- (e) require a person who is unable to produce relevant material within that person's power, procurement or control to state, to the best of that person's knowledge and belief, where the material is or from whom it may be obtained;
- (f) require any person to give the authorised officer such information as the officer may reasonably require relating to any relevant material which is in that person's power or control or which that person is able to procure; 10
- (g) require any person to give the authorised officer any information that the officer may reasonably require relating to a broadcasting service, an audiovisual on-demand media service, or a designated online service; 15
- (h) require any person to attend before the authorised officer to give any information that the officer may require the person to give under this section; 20
- (i) operate any relevant equipment, or cause it to be operated by a person accompanying the authorised officer, for the purpose of accessing relevant material;
- (j) require any person to give the authorised officer all reasonable assistance in the operation of relevant equipment for the purpose of accessing relevant material, including— 25
- (i) making the material legible and comprehensible or providing any authentication necessary to do so, or
- (ii) enabling the material to be taken away in any form;
- (k) secure for later inspection, for such period as the authorised officer reasonably considers necessary, any place where the authorised officer has reasonable grounds for believing there is relevant material or relevant equipment; 30
- (l) inspect and take extracts from or copies of any relevant material;
- (m) remove from any place, and retain, any relevant material or relevant equipment, for such period as the authorised officer reasonably considers necessary; 35
- (n) require any person who has any relevant material or relevant equipment in his or her power or control to retain the material or maintain the equipment for such period as the authorised officer reasonably considers necessary. 40

- (2) An authorised officer may specify that a requirement under paragraph (d), (e), (f), (g), (h) or (i) be complied with within such reasonable period as he or she may determine.
- (3) An authorised officer may conduct an oral hearing if he or she considers it necessary for the purposes of the investigation. 5
- (4) Schedule 4, and any rules made by the Commission under section 139ZF, shall have effect for the purposes of an oral hearing referred to in subsection (3).
- (5) When performing a function under this Act, an authorised officer may, subject to the terms of any warrant issued under section 139ZD, be 10 accompanied by such and so many other persons, including members of the Garda Síochána, as he or she considers appropriate.
- (6) An authorised officer may require a person to provide his or her name and address if the authorised officer has reasonable grounds for requiring the information in order to apply for a warrant under section 15 139ZD.
- (7) An authorised officer shall not enter a dwelling, other than—
- (a) with the consent of the occupier, or
- (b) in accordance with a warrant under section 139ZD.
- (8) A person shall be guilty of a category 2 offence if he or she— 20
- (a) without reasonable excuse, obstructs an authorised officer in the exercise of his or her powers under this section,
- (b) without reasonable excuse, fails or refuses to comply with a requirement of an authorised officer under this section,
- (c) with the intention of obstructing an authorised officer in the 25 conduct of an investigation, alters, hides, or destroys, any relevant material or relevant equipment which is, or which could reasonably be, the subject of a requirement of an authorised officer under this section,
- (d) in purported compliance with a requirement under this section, 30 gives to an authorised officer information which the person knows to be false or misleading in any material respect, or
- (e) falsely represents himself or herself to be an authorised officer.
- (9) Where an authorised officer has exercised his or her powers under this section in good faith, the Commission shall indemnify the authorised 35 officer against all actions or claims howsoever arising in respect of the exercise of those powers.
- (10) A statement or admission made by a person pursuant to a requirement of an authorised officer under subsection (1) shall not be admissible in evidence in proceedings brought against the person for an offence, 40

other than an offence under subsection (8), and this shall be explained to the person in ordinary language by the authorised officer.

- (11) A person the subject of a requirement under subsection (1) shall be entitled to the same immunities and privileges in respect of compliance with such requirement as if the person were a witness before the High Court. 5

### Search warrant

139ZD. (1) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that relevant material required by an authorised officer for the purpose of performing his or her functions under this Act is held at any place, the judge may issue a warrant authorising an authorised officer, on production, if so required, of the warrant, to enter the place, if necessary by reasonable force, and to exercise all or any of the powers conferred on an authorised officer by section 139ZC. 10 15

- (2) A warrant under subsection (1) may permit an authorised officer to be accompanied by such and so many other persons, including members of the Garda Síochána, as the officer considers necessary.

- (3) A warrant issued under this section shall be valid for 28 days from its date of issue. 20

### Report of authorised officer

139ZE. (1) As soon as is practicable after the completion of an investigation, the authorised officer shall prepare a draft report of the investigation.

- (2) In preparing the draft report referred to in subsection (1), the authorised officer shall consider, in so far as they are relevant to the investigation— 25

(a) the terms of the investigation,

(b) the notice under section 139ZB(2), and any response made by the provider to that notice under section 139ZB(3),

(c) any relevant material or relevant equipment obtained in the course of the investigation in the exercise of powers under section 139ZC, 30

(d) any statement or admission made by any person in the course of the investigation pursuant to a requirement, or during an oral hearing, under section 139ZC, and

(e) any submissions made by any person during an oral hearing under section 139ZC. 35

- (3) The authorised officer shall, as soon as is practicable after preparing the draft report, give the provider—

(a) a copy of the draft report,

(b) a copy of any material relied upon by the authorised officer in 40



| [preparing the draft report.](#)

- (c) a copy of this section, and
- (d) a notice in writing stating that the provider may, not later than 28 days from the date on which it receives the notice, or such further period as the authorised officer considers necessary, make submissions in writing to the authorised officer on the draft report. 5
- (4) The authorised officer shall, as soon as is practicable after the expiration of the period referred to in subsection (3)(d), and having considered any submissions made under that subsection, make any revisions to the draft report which, in the opinion of the authorised officer are warranted, and finalise the report. 10
- (5) An authorised officer shall not make any recommendation, or express any opinion, in a draft report under subsection (1) or in a final report under subsection (4), as to whether an administrative financial sanction should be imposed under section 139ZK in the event that the Commission is satisfied that the provider has committed a 15 contravention, or as to the amount of any such sanction imposed.
- (6) An authorised officer shall, as soon as is practicable after the draft report has been finalised under subsection (4), provide a copy of the final report to the provider.
- (7) An authorised officer shall, as soon as is practicable after the draft report has been finalised under subsection (4), provide a copy of the final report and any submissions made under subsection (3)(d), to the Commission. 20
- (8) An authorised officer may provide a copy of the final report, and any such submissions to such other persons as he or she considers 25 appropriate.
- (9) A person who receives a final report or any submissions under subsection (8) shall not, without the prior authorisation of the Commission, disclose the existence or the content of the report or of the submissions to any other person. 30
- (10) A person who without reasonable excuse contravenes subsection (9) shall be guilty of a category 1 offence.

## Rules

- 139ZF. (1) Subject to the provisions of this Part and Schedule 4, the Commission may make rules providing for the conduct of 35 investigations under this Chapter, and the conduct of its proceedings under Chapters 3 and 4.
- (2) In making rules under subsection (1), the Commission shall have regard to the need for fairness and efficiency in the conduct of such investigations and proceedings, in particular the need to address 40 conflicts of interest which may arise in investigations or proceedings.

## Guidelines

139ZG. (1) The Commission may make guidelines with respect to the operation of this Chapter, Chapters 3 and 4, Schedule 4 and any rules made under section 139ZF.

(2) The Commission shall publish any guidelines made under this section, and any amendment to or revocation of those guidelines, on a website maintained by it. 5

## Conduct of investigations

139ZH. (1) Subject to the provisions of this Part and Schedule 4, any rules made under section 139ZF and any guidelines made under section 139ZG, an authorised officer may follow such procedures for the conduct of an investigation as he or she considers appropriate. 10

(2) An authorised officer shall, in the conduct of an investigation, take reasonable steps to keep the provider informed as to the progress of the investigation. 15

### CHAPTER 3

#### Decision of Commission

#### Division of Commission

139ZI. (1) The functions of the Commission under this Chapter (except this subsection), Chapter 4 (except sections 139ZQ, 139ZR and 139ZS), 20 and Schedule 4 shall, unless otherwise stated, be exercised by a division of the Commission consisting of such uneven number of Commissioners, not being less than 3, as the Commission may determine.

(2) If the person who directed an investigation be carried out under section 139ZA is a Commissioner, the division exercising functions in relation to the investigation shall not include that Commissioner. 25

#### Action by Commission after receiving report

139ZJ. (1) After the authorised officer has complied with section 139ZE(6) and (7) the Commission shall, subject to subsection (2), give the provider— 30

(a) a copy of this section, and

(b) a notice in writing stating that the provider may make submissions in writing to the Commission on the final report within the period

of 28 days from the date the provider receives the notice, or such further period as the Commission may allow. 35

(2) The Commission need not comply with subsection (1) if it holds an oral hearing under subsection (3) at which the provider may make submissions to it on the final report.

|

(3) The Commission shall at any time after the authorised officer has 40  
complied with section 139ZE(6) and (7) conduct an oral hearing if it

considers it necessary to do so in order for the procedures under thisPart to operate fairly.

- (4) The Commission may, at any time after the authorised officer has complied with section 139ZE(6) and (7), do any of the following that it considers necessary to resolve an issue of fact or otherwise enable it to make a decision under section 139ZK: 5
- (a) request the provider to provide the Commission with further information within such period as the Commission specifies;
- (b) request any other person to provide the Commission with further information within such period as the Commission specifies; 10
- (c) for the purposes of a request under paragraph (b), provide a copy of the final report, or of part of the final report, with any redaction the Commission considers necessary, to the person the request is made to;
- (d) conduct an oral hearing. 15
- (5) As soon as practicable after making a request under subsection (4)(b), the Commission shall give the provider a copy of the request.
- (6) As soon as practicable after receiving any information pursuant to a request under subsection (4)(b), the Commission shall give the provider— 20
- (a) a copy of the information, and
- (b) a notice in writing stating that the provider may make submissions in writing to the Commission on the information within the period of 20 working days from the date the provider receives the notice, or such further period as the Commission may allow. 25
- (7) A person who receives a copy of a report, or of part of a report, under subsection (4)(c) shall not, without the prior authorisation of the Commission, disclose the existence or the content of the report to any other person.
- (8) A person who without reasonable excuse— 30
- (a) fails to comply with a request for further information under subsection (4)(a) or (b), or
- (b) contravenes subsection (7), shall be guilty of a category 2 offence.
- (9) A person who, in purported compliance with a request for further information under subsection (4)(a) or (b), gives to the Commission information which the person knows to be false or misleading in any material respect shall be guilty of a category 2 offence. 35
- (10) A statement or admission made by a person pursuant to a request for further information under subsection (4)(a) or (b), shall not be 40

| admissible in evidence in proceedings brought against the person for

an offence, other than an offence under subsection (9), and this shall be explained to the person in ordinary language by the Commission.

### Decision by Commission

- 139ZK. (1) The Commission shall decide, in respect of a provider who is the subject of a report under section 139ZE— 5
- (a) whether or not it is satisfied on the balance of probabilities that the provider has committed the contravention to which the investigation relates, and
  - (b) if so, whether or not to impose an administrative financial sanction.
- (2) A decision under subsection (1) that a contravention has been committed, or that an administrative financial sanction shall be imposed, does not take effect unless it is confirmed on appeal under section 139ZP or on summary application under section 139ZQ. 10
- (3) For the purposes of making a decision under subsection (1), the Commission shall consider— 15
- (a) the final report provided under section 139ZE(7) and any submissions provided with the report,
  - (b) any evidence adduced or submissions made during an oral hearing conducted under section 139ZJ,
  - (c) any information provided as a result of a request under section 139ZJ(4), and
  - (d) any submissions made pursuant to a notice under section 139ZJ(1) or (6).
- (4) In deciding under subsection (1)(b) whether or not to impose an administrative financial sanction on a provider, the Commission shall have regard to the matters referred to in paragraphs (a), (b), (c), (d), (e), (g), (h), (i), (j) and (k) of section 139ZO(3). 25

### Notice and publication of decision of Commission

- 139ZL. (1) The Commission shall, as soon as is practicable after making a decision under section 139ZK, give notice in writing of the decision to the provider the subject of the decision. 30
- (2) The notice under subsection (1) shall set out the decision made and the reasons for it.
- (3) If the Commission decides that a contravention has occurred, the notice shall also— 35
- (a) state that the decision does not take effect unless it is confirmed on appeal under section 139ZP or on summary application under section 139ZQ, and

(b) state that, if the provider does not appeal under section 139ZP, the Commission will, as soon as is practicable after the expiration of 40 the period for the making of an appeal referred to in section



139ZP(1), make an application in a summary manner for confirmation of the decision under section 139ZQ.

(4) If the Commission decides to impose an administrative financial sanction, the notice shall also—

(a) state that the provider may make submissions in relation to the application of section 139ZO to the determination of the amount of the sanction,

(b) state either that—

(i) those submissions may be made at an oral hearing, under section 139ZM(2)(a), on a date specified in the notice, or 10

(ii) that those submissions may be made in writing, under section 139ZM(2)(b), within a period specified in the notice in accordance with that section, and

(c) state that the Commission may request further information under section 139ZM(3). 15

(5) The Commission shall publish the decision made under section 139ZK on a website maintained by it and that publication shall include the following matters:

(a) the name of the provider;

(b) the nature of the suspected contravention to which the investigation 20

related;

(c) the reasons for the decision;

(d) such other particulars, reports or material as the Commission considers appropriate.

(6) The Commission may provide a copy of a notice referred to in subsection (1) to a person other than the provider where it considers it appropriate to do so. 25

(7) A person who receives a copy of a notice under subsection (6) prior to the publication of the decision under subsection (5) shall not, without the prior authorisation of the Commission, disclose the existence or the content of the notice, including any content redacted in accordance with subsection (9) from a notice published under subsection (5), to any other person. 30

(8) A person who without reasonable excuse contravenes subsection (7) shall be guilty of a category 2 offence. 35

(9) The Commission may, for the purposes of publication under subsection (5), redact any particulars which appear to the Commission—

(a) to be commercially sensitive, or

(b) to relate to the commission of an offence. 40

*Administrative financial sanctions*

Submissions and requests for  
information

- 139ZM.** (1) Subsections (2) and (3) apply where the Commission has made a decision under section 139ZK to impose an administrative financial sanction on a provider. 5
- (2) The provider may make submissions to the Commission in relation to the application of section 139ZO to the determination of the amount of the sanction—
- (a) at an oral hearing, where the Commission considers it necessary, or 10
- (b) otherwise, in writing, within the period of 10 working days from the date the provider receives the notice under section 139ZL, or such longer period as the Commission may specify in the notice.
- (3) Where the provider makes submissions to the Commission under subsection (2)(b), the Commission may by notice in writing request the provider to provide, within a specified period, such further information as the Commission considers appropriate for the purposes of determining the amount of the sanction. 15
- (4) A person who without reasonable excuse fails to comply with a request under subsection (3) shall be guilty of a category 2 offence. 20

Determination of amount of  
administrative financial  
sanction

- 139ZN.** (1) Where a decision has been made under section 139ZK to impose an administrative financial sanction, the Commission shall determine the amount of the sanction in accordance with section 139ZO.
- (2) The Commission shall make the determination as soon as practicable after— 25
- (a) where section 139ZM(2)(a) applies, the date of the oral hearing referred to in that paragraph, or
- (b) where section 139ZM(2)(b) applies, the expiry of the period or further period referred to in that paragraph, or if applicable the 30 period specified in any notice under section 139ZM(3), whether or not any submissions have been made or information provided.
- (3) As soon as practicable after making the determination, the Commission shall give the provider a notice in writing of the 35 determination and the reasons for it.
- (4) As soon as practicable after giving the notice under subsection (3),

theCommission shall publish the notice on a website maintained by it.

(5) The Commission may, for the purposes of publication under subsection (4), redact any particulars from the notice which appear to 40 the Commission—

- (a) to be commercially sensitive, or
- (b) to relate to the commission of an offence.

### Limitations on amount of administrative financial sanction

139ZO. (1) The amount of an administrative financial sanction imposed under section 139ZK shall not exceed— 5

- (a) in the case of an individual, €20,000,000, or
- (b) in the case of a provider that is not an individual, €20,000,000 or, if greater, 10 per cent of the relevant turnover of the provider in the financial year preceding the date of the decision under section 139ZK to impose the sanction. 10

(2) In subsection (1)(b) ‘relevant turnover’ means turnover of the provider attributable to the service which gave rise to the contravention.

(3) The Commission shall have regard to the following matters in determining the amount of the administrative financial sanction imposed under section 139ZK: 15

- (a) the nature, gravity and duration of the contravention;
- (b) the degree of harm to particular people or to the public caused as a result of the contravention;
- (c) the extent of any failure by the provider to co-operate with an investigation, provided that acknowledgement of a contravention shall not in itself constitute grounds for reduction of a sanction; 20
- (d) any explanation accepted by the Commission for the contravention or the failure to co-operate with an investigation;
- (e) any gain (financial or otherwise) made, or any loss (financial or otherwise) avoided, by the provider or by any person in which that provider has a pecuniary interest or beneficial interest, as a consequence of the contravention; 25
- (f) whether a previous decision under section 139ZK in respect of the provider has been confirmed or made by the appropriate court (within the meaning of section 139ZP) under section 139ZP or confirmed by the Circuit Court under section 139ZQ; 30
- (g) the nature and timeliness of any steps taken by the provider to bring the contravention to an end, and any steps taken by the provider to remedy the consequences of the contravention;
- (h) the absence or ineffectiveness of internal mechanisms or procedures intended to prevent such a contravention; 35
- (i) the extent to which the contravention was contributed to by the act

or omission of a third party, and the extent to which the provider  
took steps to identify, and mitigate the effect of, the act or

omission;

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- (j) the extent to which the contravention was contributed to by circumstances beyond the control of the provider, and the extent to which the provider took steps to identify, and mitigate the effect of, those circumstances;
- (k) the extent to which the management of the provider knew, or ought to have known, that the contravention was occurring or would occur;
- (l) the turnover of the provider in the financial years during which the contravention occurred and the ability of the provider to pay a sanction; 10
- (m) any submissions made by the provider under section 139ZM(2) in relation to the determination of the amount of the sanction;
- (n) any further information given to the Commission by the provider in response to a request under section 139ZM(3);
- (o) previous determinations under this section which have been confirmed or made by the appropriate court (within the meaning of section 139ZP) under section 139ZP or confirmed by the Circuit Court under section 139ZQ.
- (4) The amount of an administrative financial sanction imposed under section 139ZK shall— 20
- (a) be proportionate to the nature of the contravention, and
- (b) be set with a view to deterring the provider, and other providers of broadcasting services, audiovisual on-demand media services or designated online services, from committing a contravention.
- (5) The amount of an administrative financial sanction imposed under section 139ZK shall not— 25
- (a) in the case of an individual, be such as would be likely to cause the individual to be adjudicated bankrupt, or
- (b) in the case of a provider that is not an individual, be such as would be likely to cause the provider to cease trading. 30

### Appeal against decision

**139ZP.** (1) The provider to whom a decision under section 139ZK relates may, within 28 days from the date on which the notice referred to in section 139ZL is received, or where section 139ZN applies, within 28 days from the date on which the notice referred to in section 139ZN(3) is received, appeal to the appropriate court against the decision. 35

(2) An appeal may only be made on:

- (a) any ground that could, but for section 38(1), be relied upon by the provider in an application seeking judicial review of the Commission's decision, 40

- (b) in so far as it is not within the grounds referred to in paragraph (a), the ground that any sanction imposed is not proportionate, or
- (c) more than one of the grounds referred to at paragraph (a) and (b).
- (3) The appropriate court may, on the application of a provider to whom a decision under section 139ZK relates, extend the period for the making of an appeal under subsection (1), where it is satisfied that—
- (a) there is good and sufficient reason for doing so,
- (b) the circumstances that resulted in the failure to bring an appeal within the period referred to in subsection (1) were outside the control of the provider, and 10
- (c) an application for confirmation has not been determined under section 139ZQ.
- (4) In considering an appeal, the appropriate court—
- (a) shall have regard to the record of the decision the subject of the appeal, and 15
- (b) may, where it considers it necessary for the fair and proper determination of the appeal, consider any evidence adduced or submission made by the provider concerned, whether or not already adduced or made to the authorised officer or the Commission.
- (5) Subject to subsection (7), the appropriate court may, on the hearing of an appeal under subsection (1)— 20
- (a) confirm the decision, or
- (b) subject to subsection (6)—
- (i) set aside the decision,
- (ii) set aside the decision and replace it with such other decision as the court considers it just and appropriate to make, including a decision not to impose an administrative financial sanction, or a decision to impose an administrative financial sanction of a different amount, or 25
- (iii) remit the decision for reconsideration by the Commission, subject to such directions as the court considers appropriate. 30
- (6) A decision of the Commission may not be set aside or remitted by the appropriate court under subsection (5)(b) for error of law or fact unless the appropriate court is satisfied that the Commission committed a serious and significant error in making the decision, or that the Commission committed a series of minor errors which, when taken together, amount to a serious and significant error. 35
- (7) For the purposes of subsection (5), sections 139ZK(4) and 139ZO shall apply to the appropriate court and references to the

Commission

in those sections shall be construed as references to the appropriate court. 40



(8) Where the appropriate court is the Circuit Court it may make such interim or interlocutory orders in any proceedings under subsection (1) or (3) as it considers appropriate.

(9) The appropriate court may direct how the costs of an appeal under this section are to be borne. 5

(10) In this section, 'appropriate court' means—

(a) where no administrative financial sanction is imposed under section 139ZK or where the amount of any administrative financial sanction imposed does not exceed €75,000, or such other sum as stands specified in law as that court's jurisdiction in tort, the 10

Circuit Court, or

(b) in any other case, the High Court.

### Circuit Court confirmation of decision

139ZQ. (1) Where the provider to whom a decision under section 139ZK relates does not appeal against the decision in accordance with section 15 139ZP(1), the Commission shall, as soon as is practicable after the expiration of the period referred to in section 139ZP(1), and on notice to the provider, make an application in a summary manner to the Circuit Court for confirmation of the decision.

(2) On the hearing of an application under subsection (1), the Circuit 20 Court shall confirm the decision unless it is satisfied, on the basis of the evidence that was before the Commission when making the decision—

(a) that the Commission made an error of law which is—

(i) manifest from the record of the decision, and 25

(ii) fundamental so as to deprive the decision of its basis, or

(b) that any administrative financial sanction imposed is manifestly disproportionate.

(3) If under subsection (2) the Circuit Court does not confirm the decision it may— 30

(a) annul the decision, or

(b) remit it for reconsideration by the Commission, subject to such directions as it considers appropriate.

(4) A provider may, as soon as practicable after receiving notice of the application under subsection (1), inform the Commission in writing 35 that it does not intend to appear at, or make submissions at, the hearing of the application.

(5) If an application to extend the period for the making of an appeal against a decision is made under section 139ZP(3) to the High Court, the Circuit Court shall make an order staying any application under 40

subsection (1) for the confirmation of that decision until the High Court has made a decision under section 139ZP(3).

- (6) If the High Court makes an order under section 139ZP(3) extending the period for the making of an appeal under section 139ZP(1) against a decision, the Circuit Court shall make an order staying any application under subsection (1) for the confirmation of that decision until the High Court has made a decision on the appeal under section 139ZP(5). 5
- (7) The Circuit Court may make such interim or interlocutory orders as it considers appropriate in any proceedings under subsection (1). 10
- (8) The Circuit Court may direct how the costs of an application under subsection (1) are to be borne.

#### **Treatment of amounts paid in respect of administrative financial sanctions 139ZR.**

A payment received by the Commission of any amount due to it pursuant to a decision confirmed or made under section 139ZP or confirmed under section 139ZQ shall be paid into, or disposed of for the benefit of, the Exchequer in such manner as the Minister for Finance may direct. 15

### **Reference on point of law to High Court**

- 139ZS.** (1) Where a division of the Commission decides, before the making of a decision under section 139ZK, or where a decision is made under that section to impose an administrative financial sanction, before the making of a determination under section 139ZN(1), to refer any question of law arising under Chapter 3 or 4 to the High Court, the Commission shall refer the question. 20 25
- (2) Subject to subsection (3), no appeal shall lie to the Court of Appeal from a decision of the High Court on a reference under subsection (1).
- (3) The High Court may grant leave to appeal, where it certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Court of Appeal. 30

#### **CHAPTER 5**

### **Notice to end contravention**

### **Notice to end contravention**

- 139ZT.** (1) Where— 35
- (a) the Commission has decided under section 139ZK that it is satisfied that a contravention has occurred, and
- (b) the Commission's decision in so far as it relates to the occurrence of the contravention is confirmed under section 139ZP

or 139ZQ or

is replaced under section 139ZP with a decision to the same effect,

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the Commission may, if it is of the view that the contravention is continuing, give notice in writing to the provider the subject of the decision directing him or her to put an end to the contravention.

(2) A notice under subsection (1) shall state—

(a) the steps which the Commission requires the provider to take to put an end to the contravention, and

(b) the period within which those steps must be taken.

(3) A notice under subsection (1) shall be given as soon as practicable after the date on which the decision is confirmed under section 139ZP

or 139ZQ or is replaced under section 139ZP with a decision to the same effect. 10

(4) A provider who without reasonable excuse fails to comply with a notice under subsection (1) shall be guilty of a category 1 offence.

(5) Where an offence has been committed under subsection (4) by a provider of a designated online service that is a body corporate and the offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a person who was either a director, manager, secretary or other officer of the body corporate, or a person purporting to act in such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the offence committed by the body corporate. 20

(6) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts or defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate. 25

(7) Any proceedings, including summary proceedings, under subsection (5) shall not be instituted except by or with the consent of the Director of Public Prosecutions. 30

## CHAPTER 6

### Access blocking order

#### Access blocking order

139ZU. (1) The Commission may apply to the High Court for an order requiring an internet service provider or a provider of an application store service to block access in the State to a relevant online service or an audiovisual on-demand media service. 35

(2) An application to the High Court under subsection (1) shall be made on notice—

(a) to the internet service provider or the provider of an application 40  
store service concerned, and

- (b) to the provider of the relevant online service or audiovisual on-demand media service concerned.
- (3) The court may make an order requiring the blocking of access to arelevant online service if it is satisfied that the provider of the service  
has actual knowledge that it is making available content that falls 5  
within one of the offence-specific categories of harmful online content defined in  
section 139A(2) and either—
- (a) where the service is a designated online service—
- (i) the content is made available in contravention of an online safety code which applies to the service, and 10
- (ii) the provider has been convicted of an offence under section 139ZT(4) for failure to comply with a notice to end the contravention, or
- (b) where the Commission has designated the service but the designation has not taken effect as notice of the designation has not 15  
been served on the provider in accordance with section 139H(3)(a)—
- (i) making available the content would be a contravention of an online safety code which the Commission intends to apply to the service, and 20
- (ii) the failure to serve notice of the designation on the provider is due to the fault of the provider.
- (4) The court may make an order requiring the blocking of access to anaudiovisual on-demand media service if it is satisfied that—
- (a) the provider of the service has actual knowledge that it is making 25  
anything referred to in paragraph (b), (c) or (d) of section 46J(1)available in a catalogue of the service, and
- (b) the provider has been convicted of an offence under section 139ZT(4), for failure to comply with a notice to end the contravention referred to in paragraph (a). 30
- (5) An order may be made under this section if—
- (a) the application under subsection (1) was made as soon as practicable after the provider concerned was convicted of the offence referred to in subsection (3)(a)(ii), or (4)(b), or as soon as practicable after the failure referred to in subsection (3)(b)(ii) 35  
occurred, as the case may be, and
- (b) the order would not be disproportionate.
- (6) The High Court may provide in an order under this section that a requirement imposed by the order is subject to such conditions as it considers necessary. 40

- (7) The following persons may apply to the High Court to vary or discharge an order under this section in the event that there is any material change in the circumstances which gave rise to the order:
- (a) the internet service provider or provider of an application store service the subject of the order; 5
- (b) the provider of a service access to which is required to be blocked under the order.
- (8) Without prejudice to subsection (7), the High Court may, on an application under that subsection or of its own motion, discharge an order under this section if it is satisfied that— 10
- (a) where the order was made on grounds falling within subsection (3)(a)(ii) or (4)(b), the provider of the service has complied with the notice to end the contravention concerned, or
- (b) where the order was made on grounds falling within subsection (3)(b), the relevant online service, access to which is required to be blocked under the order, has been designated as a designated online service. 15
- (9) In this section references to a provider of an application store service blocking access to a service include references to the provider blocking the downloading of software used to provide the service or to access the service. 20
- (10) For the purposes of this section:
- ‘internet service provider’ means a person who provides access to the internet at endpoints of the internet (including, for example, on a smartphone); 25
- ‘provider of an application store service’ means a person who provides a service the main purpose of which is to facilitate the download of, or access to, application software at endpoints of the internet.

## CHAPTER 7

### Content limitation notice 30

#### Content limitation notice

- 139ZV. (1) Subject to subsection (2), where it appears to the Commission, either in the course of an investigation under this Part or otherwise, that content available on a designated online service is harmful online content, the Commission may give a notice in writing to the provider of the designated online service— 35
- (a) where the content appears to the Commission to fall within the offence-specific category of harmful online content defined in section 139A(2), requiring the provider to remove it or to disable access to it, or 40

- (b) in any other case, requiring the provider to remove the content, to disable access to it, or to limit the availability of it.
- (2) Where subsection (1) applies in the course of the investigation of a suspected contravention that relates to the content concerned, the Commission— 5
- (a) shall not issue a notice under subsection (1) before it has made a decision under section 139ZK, and
- (b) if the decision under that section is that the contravention has occurred, shall not issue a notice under subsection (1) before the decision, in so far as it relates to the occurrence of the 10
- contravention, is confirmed under section 139ZP or 139ZQ or is replaced under section 139ZP with a decision to the same effect.
- (3) In issuing a notice under subsection (1), the Commission shall have regard to the following matters:
- (a) the nature and the scale of the service or services provided by the 15
- provider;
- (b) the technical capacity of the provider;
- (c) levels of risk of harm, and in particular harm to children, from the availability of the content or exposure to it;
- (d) the rights of the provider and users of the designated online service, 20
- and of the uploader of the content;
- (e) the rights of persons to whom the content may pertain;
- (f) the proportionality of any requirement contained in the notice, in light of the matters referred to in paragraphs (a) to (e).
- (4) Where a notice under subsection (1) requires that the availability of an 25
- item of content be limited, the notice may also, without prejudice to the generality of subsection (1), require one or more of the following:
- (a) that the provider restrict access to the content to persons who have attained the age of 18 years, or such other age less than 18 years as
- the Commission may specify; 30
- (b) that a warning or specified information be placed by the provider with the content in a way specified in the notice;
- (c) that the provider limit the ability of users of the designated online service to interact with the content;
- (d) that the provider ensure that prominence is not given to the content, 35
- or the content is not recommended to users of the designated online service, or to users below a specified age, including by automated means.
- (5) A notice under subsection (1) shall not impose an obligation on a provider contrary to Article 15 of Directive 2000/31/EC. 40



**Procedure in relation to content limitation notice 139ZW.**

(1) A notice under section 139ZV shall—

(a) identify the content the subject of the notice,

(b) state the particular category of harmful online content under section 139A into which the Commission considers that the content falls, 5 and the reasons for that consideration,

(c) provide sufficient information to allow the provider to locate the content on the designated online service,

(d) specify the action required by the Commission under section 139ZV(1) and the reasons for that action, 10

(e) where the action required by the Commission under section 139ZV(1) is that the availability of the content be limited, specify the nature of the limitation, and

(f) state that the provider, and the uploader where relevant, may make submissions in relation to the notice within such period as may be 15 specified in the notice, which shall not be less than 28 days after the date on which the notice is issued.

(2) A provider who receives a notice under section 139ZV shall, where the content is user-generated content, take all reasonable steps to provide a copy of that notice and a copy of this section to the uploader of the 20 content within 2 days of receiving it.

(3) The provider shall inform the Commission of all steps taken by the provider in order to comply with subsection (2) and the Commission may direct—

(a) that such further steps as the Commission considers necessary for 25 the purposes of complying with subsection (2) be taken by the provider, within such period as the Commission considers appropriate, or

(b) that no further steps are necessary.

(4) Where a provider receives a notice under section 139ZV, the provider 30 may make submissions to the Commission in relation to the notice within the period specified in the notice, or within such further period as the Commission may allow.

(5) Where an uploader receives a copy of the notice under subsection (2), the uploader may make submissions to the Commission in relation to 35 the notice within the period specified in the notice, or within such further period as the Commission may allow.

(6) Submissions may be made under subsection (4) or (5) in relation to—

(a) whether or not the content the subject of the notice is harmful online content (provided that issue has not been determined by the 40 Commission in a decision under section 139ZK, or by the court under section 139ZP or 139ZQ), and

- (b) the requirements set out in the notice.
- (7) The Commission, after considering any submissions made under subsections (4) and (5) and, having regard to the matters referred to in section 139ZV(3), shall—
  - (a) confirm the notice after making such amendments, if any, as it considers necessary, and specify the period within which the provider must comply with the notice, or 5
  - (b) revoke the notice.
- (8) If the Commission confirms the notice under subsection (7)(a), it shall provide to the provider and (if applicable) the uploader a copy of the notice, or of the notice as amended, and a statement in writing— 10
  - (a) of the confirmation and the reasons for it,
  - (b) of the reasons for any amendment made to the notice,
  - (c) of the period determined under subsection (7)(a) within which the provider must comply with the notice, and 15
  - (d) of the right of the provider or (if applicable) the uploader to appeal the notice in accordance with section 139ZX.
- (9) A provider who without reasonable excuse fails to comply with a notice confirmed under subsection (7)(a) within the period specified under that paragraph, shall be guilty of a category 3 offence. 20

### Appeal

- 139ZX. (1) The provider of a designated online service or the uploader of user-generated content concerned may within 28 days of receipt of a notice confirmed under section 139ZW(7)(a), appeal to the Circuit Court against the notice. 25
- (2) The Circuit Court, where it considers that the Commission was irrational or erroneous in its reasoning, or committed a failure to comply with fair procedures, or any other clear error of law, in the issuing of the notice referred to in subsection (1), may—
  - (a) set aside the notice, 30
  - (b) replace the notice with such other notice as it considers appropriate, or
  - (c) remit the notice for reconsideration by the Commission, with such directions as the court considers appropriate.

### Publication of content limitation notice

- 139ZY. (1) The Commission shall publish the following on a website maintained by it: 35
  - (a) a notice which has been confirmed under section 139ZW(7)(a);

- (b) a notice of a decision by the Circuit Court under section 139ZX(2) to affirm, set aside, replace or remit a notice confirmed under section 139ZW(7)(a).
- (2) The Commission shall publish a list of the notices referred to in subsection (1), in such form as it considers appropriate, on a website maintained by it. 5
- (3) The Commission may redact information from a notice to be published under subsection (1) if it appears to the Commission that—
- (a) the publication of the information may prejudice an ongoing investigation under this Part by the Commission, the Garda Síochána or any other public body, or
- (b) the information is personal data.
- (4) Where the redaction of information under subsection (3) would prevent the remainder of the notice, or a portion of the notice, being understood, the Commission may publish a summary in place of the notice or the portion of the notice. 15

## CHAPTER 8

### Offences

#### Categories of offences

- 139ZZ.** (1) A person guilty of an offence under this Act that is stated to be a category 1 offence shall be liable— 20
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 10 years or both. 25
- (2) A person guilty of an offence under this Act that is stated to be a category 2 offence shall be liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both. 30
- (3) A person guilty of an offence under this Act that is stated to be a category 3 offence shall be liable, on summary conviction, to a class A fine.

#### Summary prosecution and costs

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- 139ZZA.** (1) Summary proceedings for an offence under this Act may be brought and prosecuted by the Commission.

(2) Notwithstanding (in the case of a category 3 offence) section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted— 40

(a) <u>at any time within 2 years from the date on which the offence was alleged to have been committed, or</u>	
(b) <u>if, at the expiry of that period, the person against whom the proceedings are to be brought is outside the State, within 6 months</u>	
<u>of the date on which he or she next enters the State,</u>	5
<u>provided that no such proceedings shall be commenced later than 5 years from the date on which the offence concerned was alleged to have been committed.</u>	
(3) <u>Where a person is convicted of an offence under this Act, the court may, where it is satisfied that there are good reasons for so doing, 10 order the person to pay the costs and expenses, measured by the court, incurred by the Commission in relation to the investigation, detection and prosecution of the offence, including the costs and expenses of and incidental to an examination of any information provided to the Commission or an authorised officer.”.</u>	15

### Oral hearings

26. The Principal Act is amended by the insertion of the following Schedule after Schedule 3:

<u>“SCHEDULE 4</u>	
<u>Sections 139ZC(3), 139ZJ(3) and (4) or 139ZM(2)(a)</u>	20

#### ORAL HEARINGS

1. <u>(1) This Schedule applies to an oral hearing under section 139ZC(3), 139ZJ(3) or (4) and 139ZM(2)(a).</u>	
<u>(2) In this Schedule—</u>	
(a) <u>‘conducting authority’ means—</u>	25
(i) <u>in relation to an oral hearing under section 139ZC(3), the authorised officer conducting the hearing, and</u>	
(ii) <u>in relation to an oral hearing under section 139ZJ(3) or (4) or section 139ZM(2)(a), the Commission,</u>	
(b) <u>‘investigation’ means—</u>	30
(i) <u>in relation to an oral hearing under section 139ZC(3), the investigation for the purposes of which the hearing is conducted, and</u>	
(ii) <u>in relation to an oral hearing under section 139ZJ(3) or (4) or section 139ZM(2)(a), the investigation to which</u>	35
<u>the report mentioned in that provision relates, and</u>	
(c) <u>‘remote hearing’ means a hearing in which—</u>	
(i) <u>the participants, including the conducting authority,</u>	

are not all in the one place, and

(ii) one or more of them participate in the hearing by means 40

of electronic communications technology permitting realtime transmission and real time two way audiovisual, or audio, communications.

2. The conducting authority may by notice in writing require a person to attend or participate in an oral hearing at a time and place specified in the notice— 5
- (a) to give evidence in respect of any matter in issue, or
- (b) to produce any relevant material or relevant equipment which is within the person's possession or control or which the person is able to procure. 10
3. At an oral hearing, the conducting authority may take evidence on oath or affirmation, and may administer an oath for that purpose.
4. (1) The conducting authority may allow a witness at an oral hearing to give evidence by tendering a written statement.
- (2) A statement tendered under subparagraph (1) shall be verified by oath or affirmation. 15
5. A person giving evidence at an oral hearing, including an authorised officer where the conducting authority is the Commission, may be examined and cross-examined at the oral hearing.
6. The conducting authority is bound by the rules of evidence in the conduct of an oral hearing, subject to such exceptions to the rule against hearsay evidence as may be provided for by rules under section 139ZF. 20
7. A person to whom notice is given under paragraph 2 shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in that paragraph as if the person were a witness before the High Court. 25
8. Where a person to whom notice is given under paragraph 2 does not comply with a requirement referred to in that paragraph, the conducting authority may apply in a summary manner to the Circuit Court, on notice to that person, for an order requiring the person to comply with the requirement within a period to be specified by the Court, and the Court may make the order sought or such other order as it thinks fit or refuse to make any order. 30
9. Nothing in this Schedule compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person's possession. 35
10. The conducting authority, where it is satisfied that special circumstances arise which so necessitate, may— 40

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(a) hold an oral hearing otherwise than in public, or  
partly otherwise than in public, or



(b) require that any information is not disclosed in an oral hearing, or not otherwise published or reported where the Commission considers that—

(i) it is commercially sensitive,

(ii) its publication may prejudice an ongoing investigation by the Commission, the Garda Síochána or any other public body, or

(iii) it is personal data.

11. The conducting authority may pay or reimburse out of moneys at its disposal, in whole or in part, the reasonable travelling and subsistence expenses of a person required to attend an oral hearing. 10

12. An oral hearing may be held by remote hearing.

13. A person who without reasonable excuse knowingly gives false or misleading evidence on oath or affirmation, shall be guilty of an offence and may be liable— 15

(a) on summary conviction, to a class B fine or to imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 10 years, or both.

14. A person who does not comply with a requirement under paragraph 2 or paragraph 10(b), shall be guilty of a category 2 offence. 20

15. A statement or admission made by a person in the course of an oral hearing, shall not be admissible in evidence in proceedings brought against the person for an offence, other than an offence under paragraph 13, and this shall be explained to the person in ordinary language by the conducting authority.” 25

## PART 9

### TELEVISION LICENCE

Definitions (Part 9) — order — 141-140. — (1) In this Part—

“specified place”.

“apartment” means a self-contained residential unit in a building that comprises a number of such units;

“issuing agent” has the meaning assigned to it by *section 145 (1)*;

“officer of an issuing agent” means a person appointed as an officer of an issuing agent under *section 146 (1)*;

“premises” means land, a vehicle, a structure of any kind whether attached or affixed to the land or not and includes a part of a building occupied as a separate dwelling whether or not the occupier with any other person shares any portion of it or any accommodation, amenity or facility in connection with it;

“prescribed” means prescribed by regulations made by the Minister;

“reminder  
notification” has  
the meaning  
assigned to it in  
*section 149 (1)*;

“specified place” includes an apartment, holiday apartment or any individual room specified by order under *subsection (2)*;

“television licence” means a licence granted under *section 143*;

“television set” means any electronic apparatus capable of receiving and exhibiting television broadcasting services broadcast for general reception (whether or not its use for that purpose is dependent on the use of anything else in conjunction with it) and any software or assembly comprising such apparatus and other apparatus;

“vehicle” means a vehicle other than a mechanically propelled vehicle (within the meaning of section 3 of the Road Traffic Act 1961) capable of being lived in being a caravan or a mobile home.

(2) The Minister may by order specify that a specified place includes individual rooms or a number of such within a premises used for commercial purposes, apart- hotel, hotel, place normally used for indoor public entertainment, licensed premises (within the meaning of section 2 of the Intoxicating Liquor Act 2003), registered club (within the meaning of section 13 of the Registration of Clubs (Ireland) Act 1904) or place of work.

Laying regulations and orders — *Part 9.*

~~142-141.~~ — (1) Every regulation and order made under this Part shall be laid before each House of the Oireachtas as soon as may be after it is made.

(2) Either House of the Oireachtas may, within 21 sitting days after the day on which a regulation or an order was laid before it in accordance with *subsection (1)*, pass a resolution annulling the regulation or order, as the case may be.

(3) The annulment under *subsection (2)* of a regulation or order takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under it before the passing of the resolution.

Restrictions on possession of television set.

~~143-142.~~ — (1) Subject to the exceptions mentioned in *subsection (3)*, a person shall not keep or have in his or her possession anywhere in the territory of the State a television set save in so far as such keeping or possession is authorised by a television licence for the time being in force.

(2) A person having possession of a television set under a television licence shall not keep such a television set otherwise than in accordance with the terms and conditions subject to which such licence is expressly, or is by virtue of this Part deemed to have been granted.

(3) This section does not apply to a television set, which is of a class or description for the time being declared by an order of the Minister to be a class or description of television set to which this section is not to apply.

Grant of television licences.

~~144-143.~~ — (1) The Minister may, subject to this Part and on payment of the prescribed fee (if any) grant to any person a licence (“television licence”) to keep and have possession of a television set in a premises or specified place in the territory of the State.

(2) Every television licence shall be in such form, continue in force for such period, and be subject to such conditions and restrictions (including conditions as to suspension and revocation) as prescribed in regulations made under *section 144*.

(3) On the passing of this Act section 5 of the Act of 1926 does not apply to television sets.

(4) All licences for the keeping and possession of a television set (within the meaning of section 1 of the Act of 1972) which were granted under section 5 of the Act of 1926 and are in force on the passing of this Act continue in force for the remainder of their

period of validity and are deemed to have been granted under this section and this Part applies to all such licences accordingly.

Regulations in regard to television licences.

~~145,144.~~ 144. — (1) The Minister may make regulations prescribing in relation to all television licences or any particular class or classes of television licences in respect of premises or specified places generally or different classes of such, all or any of the matters following, that is to say:

- (a) the form of a licence,
- (b) the period during which a licence continues in force,
- (c) the manner in which, the terms on which, and the period or periods for which a licence may be renewed,
- (d) the circumstances in which or the terms under which the licence is granted,
- (e) the terms and conditions to be observed by the holder of a licence and subject to which the licence is deemed to be granted,
- (f) the circumstances and manner in which a licence may be amended, suspended or revoked by the Minister,
- (g) the fees to be paid on the grant or renewal of a licence, including any discount of fees, and the time and manner at and in which such fees are to be paid, and
- (h) matters which a licence does not entitle or authorise the licence holder to do.

(2) Where regulations are made under this section prescribing fees to be paid on the grant of a television licence, different fees may be prescribed in respect of licences granted in relation to different classes of premises or specified places and the number of television sets kept in the premises or specified place to which the television licence relates.

(3) No regulation shall be made under this section in relation to fees without the previous consent of the Minister for Finance.

(4) On the passing of this Act section 6 of the Act of 1926 does not apply in relation to television licences and any regulations made under that section before such passing and which are in force on such passing in relation to television licences continue as if made under this section.

Issue of television licences by agent.

~~146,145.~~ 145. — (1) In this section “issuing agent” means An Post or another person designated by the Minister under *subsection (3)*.

(2) Subject to *subsection (12)*, an issuing agent may, on payment of the appropriate licence fee, issue on behalf of the Minister a television licence in accordance with this Part.

(3) The Minister may by order designate a person other than An Post to be an issuing agent for the purposes of this section other than *subsection (12)*.

(4) An issuing agent may—

- (a) collect fees in respect of television licences, and
- (b) identify persons who have television sets not authorised by a licence for the time being in force,

on such terms and conditions as the Minister may decide.

(5) Summary proceedings may be brought and prosecuted by an issuing agent for an offence under *section 147 (3)* or *148* .

(6) An issuing agent shall maintain and furnish such data and information, and in such format (including electronic formats), as the Minister may require in relation to the exercise of powers conferred on the issuing agent under this Part.

(7) An issuing agent shall pay to the Minister such amounts arising in relation to the collection by the issuing agent of fees due in respect of the issue of television licences.

(8) An issuing agent shall pay to the Minister promptly the amounts collected by the issuing agent in respect of the issue of television licences.

(9) The Minister shall pay to an issuing agent an appropriate sum in respect of work done by the issuing agent in the exercise of powers conferred on the issuing agent under this Part.

(10) The appropriate sum payable by the Minister to an issuing agent and the manner in which and the intervals at which it is to be paid shall be decided by the Minister after consultation with the issuing agent.

(11) An issuing agent may, with the consent of the Minister, appoint a sub-agent to perform any acts and exercise any powers (other than *subsection (5)*) authorised by this Part to be performed or exercised by the issuing agent.

(12) The Department of Social and Family Affairs may issue on behalf of the Minister a television licence to a person who, in accordance with the scheme administered by the Minister for Social and Family Affairs known as a Free Television Licence or any scheme amending or replacing that scheme, is entitled to a television licence under that scheme.

(13) The Department of Social and Family Affairs may, with the consent of the Minister, appoint an agent to issue a television licence for the purposes of *subsection (12)*.

(14) Anything commenced before the passing of this Act by or under the authority of the Minister may, in so far as it relates to the functions under this section, be carried on or completed on or after such commencement by an issuing agent.

F7[(15) (a) The Department of Social Protection shall pay to the Minister such an amount as is determined by the Minister, in consultation with the Minister for Public Expenditure and Reform and the Minister for Social Protection, in respect of each licence (if any) issued in accordance with the scheme referred to in *subsection (12)*.

(b) In making a determination for the purposes of paragraph (a), the Minister shall have regard to the ability of RTÉ and TG4 to meet their public service objects.

(16) The Department of Social Protection shall maintain and furnish such data and information, and in such format (including electronic formats), as the Minister, following consultation with the Minister for Social Protection, may require in relation to the exercise of powers conferred on the Department of Social Protection under this Part. ]

Request to show 147-146. — (1) An issuing agent may appoint persons to be officers of the issuing agent for the purposes of this Part.

(2) A person appointed under *subsection (1)* shall, on his or her appointment be furnished by the issuing agent with a certificate of his or her appointment and when

exercising a power conferred by *subsection (3)* shall, if requested by any person thereby affected, produce such certificate to that person for inspection.

(3) An officer of an issuing agent may enter at any reasonable time any premises or specified place for the purposes of ascertaining whether there is a television set there and a television licence is for the time being in force in respect of the premises or specified place authorising the keeping of a television set at the premises or specified place.

(4) An officer of an issuing agent may request any person on the premises or at the place where he or she finds a television set or evidence of such to produce the television licence for the time being in force in respect of the premises or specified place for inspection by the officer.

Statutory  
declaration.

~~148-147.~~ — (1) An officer of an issuing agent may, if and whenever he or she thinks proper so to do, cause a special notice in writing (accompanied by or having annexed to it a form of declaration) to be given personally to, or be served by registered post on, any person requiring that person, within 28 days after the service of the notice on him or her—

- (a) to state on the form of declaration such one or more of the matters mentioned below as specified in the notice,
- (b) to sign and otherwise complete the declaration, and
- (c) to give it or send it by post to a specified officer of the issuing agent.

(2) The matters which a person may be required under this section to state in a declaration are—

- (a) whether he or she does or does not keep or has or has not in his or her possession a television set,
- (b) if he or she keeps or has in his or her possession a television set, the premises or specified place at which he or she keeps or has the same,
- (c) whether he or she has or has not a television licence then in force,
- (d) if he or she has such a licence, the number, date or other identifying information in respect of such licence, and
- (e) any other matter relating to the possession of a television set or any apparatus used in conjunction with it.

(3) Every person on whom a notice is duly served under this section shall within the time mentioned duly and correctly complete in accordance with the notice and this section the form of declaration accompanying or annexed to the notice and give or send the declaration to the officer named in that behalf in the notice. If the person makes in it any statement which is to his or her knowledge false or misleading he or she commits an offence and is liable on summary conviction to a fine not exceeding €1,000.

(4) Where a person fails or neglects, within 28 days of service, to duly complete the form of declaration accompanying or annexed to a notice given or sent to him, it shall be presumed, unless the contrary is shown, that he or she keeps or has possession of a television set at the premises or specified place to which the notice relates and a television licence is not in force in relation to the premises or specified place authorising the keeping or having possession of a television set at the premises or specified place.

(5) On the passing of this Act section 7 of the Act of 1926 does not apply to television sets.

Offences for not having television licence.

~~149-148.~~ — A person who keeps, has in his or her possession or uses a television set in contravention of *section 142* commits an offence and is liable on summary conviction—

- (a) in the case of a first such offence, to a fine not exceeding €1,000, and
- (b) in the case of a second or subsequent such offence, to a fine not exceeding €2,000.

Reminder notification and fixed payment notice.

~~150-149.~~ — (1) An officer of the issuing agent may, if and whenever he or she thinks proper so to do, send by post or deliver personally a notification in writing (“reminder notification”) to any person whom he or she believes to keep or be in possession of a television set at a premises or specified place other than in accordance with a television licence pointing out the requirements of *section 142*.

(2) Where an officer of an issuing agent has reasonable grounds for believing that a person is committing or has committed an offence under *section 148* he or she may, subject to *subsection (4)*, serve the person personally or by post with a notice (“fixed payment notice”) in the prescribed form, stating that—

- (a) the person is alleged to have committed the offence, and
- (b) the person may during the period of 21 days beginning on the date of the notice make to the issuing agent at the address specified in the notice a payment of the appropriate amount specified in the notice, and accompanied by the notice and evidence of having obtained a television licence in respect of a premises or specified place to which the notice relates, and
- (c) a prosecution in respect of the alleged offence shall not be instituted during the period specified in the notice, and—
  - (i) if the payment specified in the notice is made during that period, and
  - (ii) evidence of having obtained a valid television licence in respect of a specified premises or place to which the notice relates is given,

no prosecution in respect of the alleged offence shall be instituted.

(3) Where notice is given under *subsection (2)*—

- (a) the person to whom the notice applies may, during the period specified in the notice, make to the issuing agent at the address specified in the notice the payment specified in the notice accompanied by the notice and evidence of having obtained a television licence in respect of a premises or specified place to which the notice relates,
- (b) the issuing agent specified in the notice may receive the payment, issue a receipt for it and retain the money paid, and any payment received shall not be recoverable by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and—
  - (i) if the payment specified is made during that period, and
  - (ii) evidence of having obtained a valid television licence in respect of a specified premises or place to which the notice relates is given,

no prosecution in respect of the alleged offence shall be instituted.

(4) A fixed payment notice shall not be served on the person unless at least 2 reminder notifications have issued to the person and until—

- (a) a period of 28 days has elapsed since the issue of the first reminder notification, and

(b) subsequent to that period, a period of 28 days has elapsed since the issue of the second reminder notification.

(5) Any payment made to the issuing agent under *paragraph (a) of subsection (3)* shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

(6) In a prosecution for an offence under *section 148* the onus of proving that a payment pursuant to a notice under this section has been made lies on the defendant.

(7) In this section “the appropriate amount” means—

(a) an amount being one third of the amount of the television licence fee rounded down to the nearest whole euro amount, or

(b) where that amount is greater than one third of the maximum amount of the fine to which the person is liable on summary conviction under *section 148*, such amount being not more than one third of the amount of that fine as prescribed and different amounts may be prescribed in respect of different classes of television licences.

Reminder notification — effective date of television licence and recovery of licence fees.

~~151-150.~~ — (1) Where a person has received a first reminder notification and the person—

(a) has held a television licence, within the 12 month period previous to the reminder notification, in respect of keeping or possessing a television set at the premises or place to which the notification relates, any renewal of the licence takes effect from the expiration of the previous licence, unless the person can satisfy the issuing agent that he or she was not in possession of a television set at the premises or place during the material time after the expiration of the previous licence, or

(b) has not held such a licence, any television licence obtained by the person to keep or have possession of a television set at the premises or place takes effect from the date of the notification or such later date as the issuing agent may decide.

(2) Where a person having received a first reminder notification obtains a television licence after the notification, which is not in accordance with *subsection (1)*, to keep and have possession of a television set at the premises or place specified in the notification, the licence is deemed to have effect from the date of expiration of the previous licence or the first notification or such later date as the issuing agent may decide, as the case may be. The issuing agent may alter accordingly any licence so obtained.

(3) An issuing agent may recover, as a simple contract debt in any court of competent jurisdiction, any fee owing by a person in respect of a television licence which has not been obtained by the person to keep or possess a television set at a specified premises or place at any material time.

Prosecution of offences.

~~152-151.~~ — (1) Summary proceedings for an offence under this Part may be brought by the Minister or the issuing agent concerned.

(2) In a prosecution for an offence under *section 148* in which it is shown that a television set was in a particular premises or specified place on a particular day, it shall be presumed, until the contrary is shown by the defendant, that on that day the television set was in the possession of the person who was then the occupier of the premises or specified place.

(3) In a prosecution for an offence under *section 148* in which it appears that a person kept or had in his or her possession a television set at the time to which the prosecution relates, it shall be presumed, until the contrary is shown by the defendant,



that he or she did not at such time hold a television licence then having effect and licensing him or her to keep or have in his or her possession the television set to which the prosecution relates.

(4) In a prosecution for an offence under *section 148* in which it is shown that a notice under *section 147* has been sent by registered post it shall be presumed, until the contrary is shown by the defendant, that the person to whom the notice was so sent has not complied with the requirements of that section.

(5) In this section “occupier” in relation to premises, means a person who as owner, tenant or otherwise is in occupation, whether solely, jointly or severally, of the premises.

(6) Where an offence under this Part which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he or she, as well as the body corporate, commits that offence and is liable to be proceeded against accordingly.

Miscellaneous amendments.

~~153.~~152. — (1) Section 9 of the Act of 1988 is amended in subsection (5) by substituting for the definition of “television set” the following:

“ ‘television set’ has the meaning assigned to it by *section 140* of the *Broadcasting Act 2009*.”.

(2) Section 2(1) of the Communications Regulation Act 2002 is amended by substituting for the definition of “television set” the following:

“ ‘television set’ has the meaning assigned to it by *section 140* of the *Broadcasting Act 2009*.”.

## PART 10

### BROADCASTING FUND

Definitions (*Part 10*).

~~154.~~153. — In this Part—

“appropriate network provider” means a body referred to in *section 77(1)*;

“‘community sound broadcaster’ means a person holding—

(a) a contract under *section 64* or *68(1)(b)*, or

(b) a contract under *section 72* relating to a sound broadcasting service;”

“free television service” means a television broadcasting service for the reception of which no charge is made by the person providing the service, and reception of which is available to at least 90 per cent of the population of the State;

“programme material” means audio-visual or audio material, including advertising and similar material, which was broadcast in whole or in part or was recorded for broadcast, and includes stills and photographs produced from such material or in the context of the recording of such material;

“scheme”

‘scheme’ means—

(a) in *sections 154* and *155*, a scheme prepared under *section 154*,

(b) in *section 155A*, a scheme prepared under that section, and

~~(c) in sections 156 to 159, a scheme prepared under section 154 or 155A means a scheme prepared under section 154.~~

Broadcasting  
funding scheme.

~~155-154.~~ — (1) The Authority shall prepare and submit to the Minister for his or her approval a scheme or a number of schemes for the granting of funds to support all or any of the following—

- (a) new television or sound broadcasting programmes including feature films, animation and drama on Irish culture, heritage and experience, including—
  - (i) history (including history relating to particular areas, groups or aspects of experience, activity or influence),

- (ii) historical buildings,
  - (iii) the natural environment,
  - (iv) folk, rural and vernacular heritage,
  - (v) traditional and contemporary arts,
  - (vi) the Irish language, and
  - (vii) the Irish experience in European and international contexts,
- (b) new television or sound broadcasting programmes to improve adult or media literacy,
- (c) new television or sound broadcasting programmes which raise public awareness and understanding of global issues impacting on the State and countries other than the State,
- (d) programmes under *paragraphs (a), (b) and (c)* in the Irish language,
- F8[(e) the development of archiving of programme material for all or any of the descriptions of programme specified in paragraphs (a), (b), (c), (d) and (f), including technological and system developments for the purposes of enhancing the availability of and access to archived programme material, and ]
- (f) such ancillary measures as are necessary to support schemes prepared under *paragraphs (a), (b), (c) or (d)*.
- (2) A scheme—
- (a) may only fund television programmes under *subsection (1)* which are broadcast—
    - (i) on a free television service which provides near universal coverage in the State, or
    - (ii) on an appropriate network provider ~~or MMD system~~ as part of a community content provision contract under *section 72*,
 and which, other than in the case of programmes for children or educational programmes or programmes in the Irish language broadcast by commercial and community broadcasters, are broadcast during peak viewing times,
  - (b) may only fund sound broadcasting programmes under *subsection (1)* which are carried on sound broadcasting services under a contract made by the Authority or operated by RTÉ and which, other than in the case of programmes for children or educational programmes or programmes in the Irish language broadcast by commercial and community broadcasters, are broadcast during peak listening times,
  - (c) may provide funding for projects relating to matters such as research, needs assessments, analyses, feasibility studies and pilot projects in relation to *subsection (1) (e)*, including such projects undertaken by or on behalf of the Minister, and
  - (d) may not provide funding for programmes which are produced primarily for news or current affairs.
- (3) A scheme may provide—
- (a) for the making of applications by persons for funding under a scheme,
  - (b) general terms and conditions of funding, or

(c) that funding in a particular year will be directed at—

- (i) particular classes of television or sound broadcasting programmes referred to in *subsection (1)* including but not limited to programmes of a specified nature or subject matter, or broadcast by means of a particular medium (including media of a local or regional nature such as local or community television or radio), or
- (ii) particular classes of projects referred to in *subsection (1) (e)*.

(4) The Authority may attach to any particular funding under a scheme such particular terms or conditions as it considers appropriate in the circumstances.

(5) The Authority in preparing a scheme, may have regard to the developmental needs of community broadcasters.

(6) The Authority, in preparing a scheme, shall have regard to the understanding and enjoyment of television programmes under the scheme by persons who are deaf or hard of hearing.

(7) The Minister may direct the Authority—

- (a) to prepare and submit to him or her a scheme relating to any matter in *subsection (1)*, or
- (b) to amend or revoke a scheme.

The Authority shall comply with the direction.

(8) Any amendment or revocation of a scheme shall be submitted by the Authority to the Minister for his or her approval.

(9) A scheme shall, if approved of by the Minister, be—

- (a) published (including publication by electronic means capable of being read in legible form), and
- (b) carried out in accordance with its terms, by

the Authority.

(10) (a) A scheme shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is made.

(b) Either House of the Oireachtas may, within 21 sitting days after the day on which a scheme was laid before it in accordance with *paragraph (a)*, pass a resolution annulling the scheme.

(c) The annulment under *paragraph (b)* of a scheme takes effect immediately on the passing of the resolution concerned but does not affect anything that was done under a scheme before the passing of the resolution.

~~(11) On the passing of this Act any scheme made by the BCI and approved by the Minister under section 2 of the Broadcasting (Funding) Act 2003 which is in force on such passing continues and is deemed to have been made and approved under this section.~~

Objectives of scheme.

~~156.~~ 155. — (1) The objectives of a scheme in relation to programmes referred to in *section 154 (1) (a)* are to—

- (a) develop high quality programmes based on Irish culture, heritage and experience,
- (b) develop these programmes in the Irish language,



- (c) increase the availability of programmes referred to in *paragraphs (a) and (b)* to audiences in the State,
- (d) represent the diversity of Irish culture and heritage,
- (e) record oral Irish heritage and aspects of Irish heritage which are disappearing, under threat, or have not been previously recorded, and
- (f) develop local and community broadcasting.

(2) The objective of a scheme in relation to the development of archiving of programme material produced in the State referred to in *section 154 (1) (e)* is to develop an integrated approach to the archiving of programme material, including the development of suitable storage processes and formats and the accessing of material by interested parties and reflecting the obligations of the Authority as set out in *subsections (6), (7), (8) and (9) of section 69*.

(3) The Authority, in preparing a scheme and in considering applications for funding, shall have regard to the objectives of a scheme.

155A.(1) The Commission shall prepare and submit to the Minister for his or her approval a scheme or a number of schemes for the making of grants to community sound broadcasters for the purposes of supporting and promoting good professional journalistic practices and standards 15 in community sound broadcasting and towards the cost of such ancillary measures as are necessary to support such a scheme or schemes.

(2) A scheme may provide for—

- (a) the number of grants to be awarded in a year, 20
- (b) the procedures for the making of applications for grants by community sound broadcasters,
- (c) the amount which may be awarded in respect of each grant, and
- (d) the terms and conditions subject to which a grant may be awarded.

(3) A scheme may in particular require a community sound broadcaster to 25 whom a grant is awarded—

- (a) to apply the grant to the costs of providing appropriate training or professional development for persons employed by, or providing services to, the broadcaster for the purposes referred to in subsection (1), and 30
- (b) to co-fund the costs of that training or professional development.

(4) The Commission, in preparing a scheme—

- (a) shall have regard to its duty set out in section 7(3)(c), and
- (b) may have regard to the developmental needs of community sound broadcasters. 35

(5) The Minister may direct the Commission—

(a) to provide in any scheme for practices and standards in a description of community sound broadcasting specified by the Minister,

(b) to amend or revoke a scheme,

and the Commission shall comply with any such direction. 5

(6) If a scheme is approved of by the Minister, the Commission shall—

(a) as soon as practicable after the approval, make the scheme, and

(b) carry out the scheme in accordance with its terms.

(7) A scheme shall be laid by the Commission before each House of the Oireachtas as soon as may be after it is made and, if a resolution 10 annulling the scheme is passed by either such House within the next 21 days on which the House sits after that scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

(8) Where a broadcaster— 15

(a) submits, in an application for a grant under a scheme, information that is incomplete or inaccurate in a material respect and on which the Commission relies in awarding a grant to the broadcaster, or

(b) having been awarded a grant, fails to comply with a condition subject to which the grant was awarded, 20

the broadcaster shall repay such amount of the grant as the Commission may demand in writing.

(9) If the broadcaster does not repay an amount demanded under subsection (8) the Commission may recover the amount due and owing from the broadcaster as a simple contract debt in any court of 25

competent jurisdiction.

Amounts to be paid by Minister to scheme.

157-156. — (1) In this section “net receipts” in relation to the receipt of television licence fees, means the total receipts less any expenses in respect of those receipts certified by the Minister as having been incurred by him or her in that year in relation to the collection of the fees.

(2) The Minister, with the approval of the Minister for Finance, may pay to the Authority out of monies provided by the Oireachtas for the purposes of grants under a scheme and any administration of or reasonable expenses relating to a scheme, in respect of each financial year, an amount being equal to 7 per cent of net receipts in that year in respect of television licence fees.

(3) The Minister, with the approval of the Minister for Finance, may from time to time pay to the Authority out of monies provided by the Oireachtas such an amount as he or she determines to be reasonable for the purposes of grants under a scheme and any administration of or reasonable expenses relating to a scheme.

Broadcasting fund.

158-157. — (1) The Authority shall ~~establish and maintain on the establishment day~~ continue to maintain a fund which shall be known as the Broadcasting Fund and is referred to in this Part as the “Fund”.

(2) The Fund shall be managed and controlled by the Authority and shall consist of a current account (“current account”) and an investment account (“investment account”).

(3) There shall be paid into the current account all monies paid to the Authority under

*section 156*  
(2) and (3)  
and there  
shall be  
paid out of  
the current  
account all  
monies in  
respect of  
expenditur  
e by the  
Authority  
for the  
purposes  
of grants  
under, and  
any  
administrat  
ion of or  
reasonable  
expenses  
relating to,  
a scheme  
duly  
approved  
under  
*section 154*  
or 155A.-

(4) Moni  
es standing  
to the  
credit of  
the current  
account  
and not  
required to  
meet  
current  
liabilities  
shall be  
paid into  
the  
investment  
account of  
the Fund.

(5) Whe  
never the  
monies in  
the current  
account of  
the Fund  
are not  
sufficient  
to meet the  
current  
liabilities  
of that  
account,  
there shall  
be paid  
into that  
account  
from the  
investment  
account of

the Fund such monies as are necessary to meet those liabilities.

(6) Monies in the investment account of the Fund that are not required to meet current and prospective liabilities of that account shall be invested and the investments shall be realised or varied from time to time as occasion requires and the proceeds



of any such realisation, and any income received in respect of monies invested under this subsection, shall be paid into the investment account of the Fund or invested under this subsection.

(7) The costs of administration of the Fund incurred by the Authority shall be defrayed from the resources of the Fund.

(8) The Authority shall keep all proper and usual accounts of all monies paid into the Fund and of all disbursements from the Fund including an income and expenditure account, cash-flow statement and balance sheet.

(9) As soon as may be after the end of each financial year of the Authority, the Authority shall submit the accounts of the Fund to the Comptroller and Auditor General for audit and the Minister shall cause a copy of an abstract of the accounts as so audited together with a copy of the report of the Comptroller and Auditor General thereon to be laid before each House of the Oireachtas.

(10) As soon as may be, but not later than 3 months, after the end of each financial year of the Authority, the Authority shall make a report, in such a manner as the Minister may direct, to the Minister with respect to the operation by it of the Fund during that financial year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

Reviews of  
scheme.

~~159-158.~~ — (1) The Authority shall review the operation, effectiveness and impact of a scheme not later than 3 years from the passing of this Act, and every 3 years thereafter, or at such other time as may be requested by the Minister, and make a written report to the Minister on the review.

(2) A copy of a report under *subsection (1)* shall be laid by the Minister before each House of the Oireachtas, as soon as may be, after it has been made to him or her.

(3) The Minister shall publish (including publication by electronic means capable of being read in legible form) a report made to him or her under *subsection (1)*.

Winding-up and dissolution of  
scheme.

160-159. — (1) The Minister may, with the consent of the Minister for Finance, direct the Authority to wind-up, where there is only one scheme, the scheme or, where there is more than one scheme, all schemes, and the Fund established under *section 157* and to pay to the Minister any monies remaining in respect of the Fund. The Minister shall pay to RTÉ any such monies paid to him or her.

(2) Where the Minister directs that the scheme or all schemes, as the case may be, and the Fund be wound up in accordance with *subsection (1)*, he or she shall upon being satisfied that the scheme has or the schemes have and the Fund has been wound up in accordance with that subsection, by order (in this section referred to as a “dissolution order”) dissolve the scheme or schemes and the Fund.

(3) Upon the commencement of a dissolution order no further scheme may be made under *section 154* or *section 155A*.

(4) (a) A dissolution order shall be laid before each of the Houses of the Oireachtas soon as practicable after it is made.

(b) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which a dissolution order was laid before it in accordance with *paragraph (a)*, pass a resolution annulling the order.

(c) The annulment under *paragraph (b)* of a dissolution order takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under the order before the passing of the resolution.

PART 10A 5

EUROPEAN WORKS

Interpretation of European works

159A.(1) For the purposes of this Act, subject to subsections (2) and (3), the following are European works:

(a) works originating in Member States; 10

(b) works originating in third countries that are European states party to the European Convention on Transfrontier Television of the Council of Europe done at Strasbourg on 5 May 1989;

(c) works that do not fall within paragraph (a) or (b), that are co-produced within the framework of agreements related to the 15 audiovisual sector concluded between the European Union and third countries, and that fulfil the conditions defined in those agreements;

(d) works that do not fall within paragraph (a), (b) or (c), and that are co-produced within the framework of bilateral co-production agreements concluded between Member States and third countries, provided that— 20

(i) the co-producers from the Member States supply a majority share of the total cost of production, and

(ii) the production is not controlled by one or more co-producers established in a third country.

(2) Subsection (1)(b) and (c) do not apply in the case of a third country if works originating in Member States are the subject of discriminatory measures in that country.

(3) A work falls within paragraph (a) or (b) of subsection (1) only if it is 30  
mainly made with authors and workers residing in one or more of the states  
referred to in those paragraphs and meets one of the conditions in  
subsections (4) to (6).

(4) The first condition is that the work is made by one or more producers  
established in one or more of those states. 35

(5) The second condition is that the production of the work is supervised  
and controlled by one or more producers established in one or more of  
those states.

(6) The third condition is that there are co-producers, including one or more established outside those states, but—

(a) the contribution of co-producers established in those states to the total co-production costs is preponderant, and

(b) the co-production is not controlled by one or more co-producers established outside those states. 5

(7) In this section ‘third country’ means a state other than a Member State.

### Share of European works

159B.(1) A media service provider under the jurisdiction of the State shall not provide an audiovisual on-demand media service with a catalogue in which the share of European works is less than 30 per cent. 10

(2) Subsection (1) does not apply to—

(a) a media service provider with a low turnover or low audience, or

(b) a service exempted by rules under section 159H.

(3) The Commission shall make rules for determining— 15

(a) for the purposes of subsection (1), whether an audiovisual on-demand media service has a catalogue in which the share of European works is less than 30 per cent, and

(b) for the purposes of subsection (2)(a), whether a media service provider has a low turnover or low audience. 20

(4) In making rules under subsection (3), the Commission shall have regard to—

(a) any guidelines issued by the European Commission in accordance with Article 13(7) of the Directive, and

(b) any relevant reports produced by the European Regulators Group for Audiovisual Media Services established by Article 30b of the Directive. 25

(5) In making rules under subsection (3)(b) the Commission shall have regard to any relevant characteristics of the market in which a media service provider under the jurisdiction of the State provides an audiovisual on-demand media service, including—

(a) the turnover of the provider from the service in the market, as a proportion of the total turnover of providers of audiovisual on-demand media services from those services in the market, and

(b) the number of audience members of the service in the market, as a proportion of the total number of audience members for audiovisual on-demand media services in the market. 35

(6) The Commission may make rules prescribing records a provider must keep and any other action a provider must take to enable compliance



(7) A failure to comply with subsection (1) or any rules made under subsection (6) is a contravention for the purposes of Part 8B.

## Prominence of European works

159C.(1) A media service provider under the jurisdiction of the State which provides an audiovisual on-demand media service shall take any steps required by rules under this section to ensure prominence of European works in any catalogue of that service. 5

(2) Subsection (1) does not apply to—

(a) a media service provider with a low turnover or low audience, or

(b) a service exempted by rules under section 159H. 10

(3) The Commission shall make rules setting out the steps that mediaservice providers must take for the purposes of subsection (1).

(4) Without prejudice to the generality of subsection (3), the steps required by the rules referred to in subsection (3) may relate to:

(a) the visibility and presentation of European works within a catalogue; 15

(b) the inclusion of information in a catalogue in relation to whether or not a work is a European work, and the placement of that information;

(c) the accessibility of European works within a catalogue, including the configuration of search tools; 20

(d) references to European works in advertising for the service;

(e) the promotion of minimum percentages of European works within a catalogue to the audience of the service, and the means to be used for such promotion. 25

(5) In making rules under subsection (3), the Commission shall have regard to—

(a) the objective of cultural diversity,

(b) the desirability of providing European works to the widest possible audience, 30

(c) technological developments,

(d) developments in audiovisual on-demand media service markets, and

(e) any relevant reports produced by the European Regulators Group for Audiovisual Media Services established by Article 30b of the Directive. 35

(6) The Commission may make rules prescribing records a provider must keep and any other action a provider must take to enable compliance with the requirement in subsection (1) to be assessed.



(7) Rules made under section 159B(3)(b) shall apply for the purposes of subsection (2)(a).

(8) A failure to comply with subsection (1) or any rules made under subsection (3) or (6), is a contravention for the purposes of Part 8B.

## Reporting 5

159D.(1) The Commission shall report to the Minister annually on the operation of sections 159B and 159C.

(2) The Minister may specify the form and contents of a report referred to in subsection (1).

## European works levy 10

159E.(1) The Commission may, for the purposes of funding a scheme made under section 159F, make an order imposing a levy on the media service providers referred to in subsection (2), or on any class of those providers.

(2) The providers mentioned in subsection (1) are media service providers and— 15

(a) are under the jurisdiction of the State, or

(b) target audiences in the State and are established in another Member State in accordance with section 2A(2).

(3) A levy order may provide for the collection, payment and administration of a levy, including: 20

(a) the method of calculation of the levy;

(b) the period in respect of which the levy is imposed;

(c) the times at which payment is to be made and the form of payment;

(d) the records which a provider must keep and make available to the 25

Commission;

(e) exemptions from the levy, deferrals of payment of the levy or refunds of the levy;

(f) the consideration of applications by providers for review of decisions under the order. 30

(4) In the case of a media service provider that is under the jurisdiction of the State and targets audiences in another Member State, the method of calculation of a levy shall take into account any financial contribution imposed on the provider by that Member State.

(5) In the case of a media service provider which targets audiences in the State and is established in another Member State in accordance with section 2A(2)— 35

(a) the method of calculation of a levy shall be based on the revenue earned by the provider in the State from any audiovisual media service which it provides there, and 40

section 159H.

- (b) the levy shall be proportionate and non-discriminatory.
- (6) A levy shall not apply to a media service provider—
  - (a) with a low audience or a low turnover, in accordance with any rules made under section 159B(3)(b), or
  - (b) in respect of a service exempted under any rules made under 5
- (7) Where a levy imposed on a media service provider remains unpaid, in whole or in part, the levy or part of the levy may be recovered by the Commission as a simple contract debt in any court of competent jurisdiction. 10
- (8) In this section and section 159F—
  - 'levy order' means an order made under subsection (1);
  - 'levy' means a levy imposed by a levy order.

### European works scheme

- 159F.(1) The Commission may prepare a scheme for funds to be granted, out of the proceeds of any levy, to media service providers which— 15
- (a) are under the jurisdiction of the State, or
  - (b) target audiences in the State and are established in another MemberState in accordance with section 2A(2),
- to provide support for the production of European works included, or to be included, in the schedule of an audiovisual broadcasting service, or in the catalogue of an audiovisual on-demand media service, provided by the provider. 20
- (2) The kinds of support for which funds may be granted under a scheme shall be support of such of the following, or such classes or descriptions of any of the following, as the scheme may specify: 25
- (a) new audiovisual programmes relating to—
    - (i) Irish culture, language, history, heritage, society and sport,
    - (ii) the experiences of the people of the island of Ireland, including the experiences of people of Irish ancestry living abroad, 30
    - (iii) environmental sustainability and climate change,
    - (iv) human rights, including equality, diversity and inclusion,
    - (v) news, current affairs and international affairs,
    - (vi) science, or
    - (vii) education; 35
  - (b) new audiovisual programmes to—
    - (i) improve adult literacy, or

(ii) improve media literacy;

(c) incidental, supplementary or consequential measures that appear to the Commission to be necessary to support programmes referred to in paragraph (a) or (b);

(d) research, assessments of need, feasibility studies or pilot projects in relation to programmes referred to in paragraph (a) or (b), or in relation to measures referred to in paragraph (c).

(3) A scheme may in particular:

(a) specify the kind of support for which funds may be granted by reference to the nature or subject matter of programmes within 10 paragraph (a) or (b) of subsection (2);

(b) limit support for which funds may be granted in a particular period to support of specified kinds.

(4) A scheme shall allocate not less than 25 per cent of its annual funds to programmes in the Irish language that fall within subsection (2)(a) or 15 (b).

(5) If the Minister directs it to do so, the Commission shall prepare a scheme specifying in accordance with subsection (2) any kind of support the Minister directs.

(6) A scheme may provide for: 20

(a) applications for a grant of funding;

(b) the terms and conditions upon which funds are granted;

(c) the records a provider which receives funding must keep and make available to the Commission.

(7) In preparing a scheme, the Commission shall have regard to the need 25 to—

(a) ensure understanding and enjoyment of new audiovisual programmes by people with disabilities,

(b) support the development of new audiovisual programmes of interest to children, and to young people under the age of 25 years, 30

and

(c) encourage the development of community broadcasters, including development as regards audiovisual on-demand media services provided by such broadcasters.

(8) In this section and section 159G, 'scheme' means a scheme prepared 35 under subsection (1).

### Procedure for making schemes under section 159F

159G.(1) The Commission shall submit a scheme to the Minister for approval.

(2) The Minister shall consider a scheme submitted to him or her, and  
may—

40

- (a) approve the scheme,
  - (b) refuse to approve the scheme,
  - (c) direct the Commission to reconsider the scheme, or
  - (d) direct the Commission to resubmit the scheme with such amendments as the Commission thinks fit. 5
- (3) Where a scheme is approved by the Minister under subsection (2)(a), the Commission shall, as soon as is practicable after the approval, make the scheme.
- (4) The Commission shall administer a scheme approved by the Minister under subsection (2)(a) in accordance with its terms. 10
- (5) The Commission may prepare amendments to a scheme approved by the Minister under subsection (2)(a), and subsections (1) to (4) and section 159I apply to amendments to such a scheme as they apply to a scheme.
- (6) The Minister may, in respect of a scheme approved under subsection (2)(a), direct the Commission to— 15
- (a) review the scheme, and prepare and submit to the Minister any amendments to the scheme the Commission thinks fit, or
  - (b) revoke the scheme.
- (7) The Commission shall comply with a direction under paragraph (c) or (d) of subsection (2), or subsection (6). 20

### Exemptions for particular services

- 159H.(1) The Commission may make rules providing that the obligations in section 159B(1) or 159C(1) shall not apply to an audiovisual on-demand media service, or that a levy under section 159E shall not apply to a media service provider in respect of an audiovisual media service, where it would be impracticable or unjustified by reason of the nature of the service, or the general theme of audiovisual programmes provided by the service, to impose those obligations. 25
- (2) In making rules under subsection (1), the Commission shall have regard to whether an audiovisual media service provides audiovisual programmes— 30
- (a) dealing with a narrow subject matter which may not be of general interest to an audience, or
  - (b) which may impair the physical, mental or moral development of children, including gratuitous violence and pornography. 35

### Laying of rules, orders and schemes

159I. Any rule, order or scheme made under this Part shall be laid by the Commission before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the rule, order or scheme is passed by either such House within the next 21 days on which that House 40

sits after the rule,  
order or scheme is  
laid before it, the  
rule, order or  
scheme shall be  
annulled  
accordingly, but  
without prejudice  
to the validity of  
anything previously  
done under it.

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## MAJOR EVENTS TELEVISION COVERAGE

Definitions (*Part 11*).

~~161, 160.~~ — (1) In this Part—

“broadcaster” has the meaning assigned to it in the ~~Council~~ Directive;

“designated” means designated by a designation order;

“designation order” means an order under *section 162*;

“event” means an event of interest to the general public in the European Union, a Member State or in the State or in a significant part of the State that is organised by an event organiser who is legally entitled to sell the broadcasting rights to the event and includes the whole event or where part of it has already taken place the remainder;

“event organiser” means the person who is legally entitled to sell the rights to the event;

“free television service” means a television broadcasting service for the reception of which no charge is made at anytime by the person providing the service, and which is available on a free-to-air basis;

“near universal coverage” means—

- (a) free television service, reception of which is available to at least 95 per cent of the population of the State, or
- (b) if at any time fewer than three broadcasters are able to provide the coverage required under *paragraph (a)*, free television service, reception of which is available to at least 90 per cent of the population of the State;

“qualifying broadcaster” means a broadcaster who is deemed under *subsection (2)* to be a qualifying broadcaster;

“rights” in relation to the broadcast of a designated event, means the exclusive or non-exclusive rights to broadcast the event;

“television broadcasting” has the meaning assigned in the ~~Council~~ Directive.

(2) A broadcaster who provides near universal coverage of a designated event is deemed to be a qualifying broadcaster.

(3) For the purpose of *subsection (2)*, two or more broadcasters who enter into a contract or arrangement to jointly provide near universal coverage of a designated event shall be deemed to be a single broadcaster with respect to that event.

(4) A broadcaster may request the Minister to resolve any dispute as to the extent of a free television service being provided by a broadcaster in the State for the purpose of *subsection (2)* and the definition of “near universal coverage” in *subsection (1)*.

(5) The Minister may consult with any technical experts or other persons or bodies he or she considers appropriate before resolving a dispute under *subsection (4)*.

Application.

**161.**— This Part applies to a designated event which is designated, before or after 22 April 2003, whether or not any agreement or arrangement has been entered into between the event organiser and a broadcaster in respect of the acquisition by the broadcaster of rights to the event, and where such an agreement or arrangement has been entered into before 22 April 2003, in respect of those rights, it was entered into after the publication of the Council Directive concerning an event which takes place after 13 November 1999 (being the date Article 3j of the Council Directive was given effect to by this Part).



Designation of major events.

**162.—** (1) The Minister may by order—

- (a) designate events as events of major importance to society for which the right of a qualifying broadcaster to provide coverage on free television services should be provided in the public interest, and
- (b) determine whether coverage on free television services of an event designated under *paragraph (a)* should be available—
  - (i) on a live, deferred or both live and deferred basis, and
  - (ii) in whole, in part or both in whole and in part.

(2) The Minister shall have regard to all the circumstances and in particular each of the following criteria in making a designation under *subsection (1) (a)*:

- (a) the extent to which the event has a special general resonance for the people of Ireland, and
- (b) the extent to which the event has a generally recognised distinct cultural importance for the people of Ireland.

(3) In order to determine the extent to which the criteria in *subsection (2)* have been met, the following factors may be taken into account by the Minister:

- (a) whether the event involves participation by a national or non-national team or by Irish persons;
- (b) past practice or experience with regard to television coverage of the event or similar events.

(4) The Minister shall consider the following in making the determination under *subsection (1) (b)*:

- (a) the nature of the event,
- (b) the time within the State at which the event takes place, and
- (c) practical broadcasting considerations.

(5) The Minister shall consult with F9[such Minister or Ministers of the Government as he or she considers appropriate] before making, revoking or amending an order under this section.

(6) Where it is proposed to make, revoke or amend an order under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft has been passed by each House.

(7) On the passing of this Act any order made under section 2 of the Broadcasting (Major Events Television Coverage) Act 1999 which is in force on such passing continues and is deemed to have been made under this section.

Consultation.

**163.—** (1) Before making a designation order, the Minister shall—

- (a) make reasonable efforts to consult with the organisers of the event and with broadcasters who are under the jurisdiction of the State ~~for the purpose of the Council Directive,~~
- (b) publish a notice of the event which the Minister intends to designate under that section on a website maintained by him or her and where appropriate in a newspaper circulating in the State, and
- (c) invite comments on the intended designation from members of the public.

(2) The inability to establish who is the organiser of an event or the failure of the organiser or a broadcaster under the jurisdiction of the State to respond to the Minister's efforts to consult shall not preclude the making of a designation order.

Broadcasters' duties with respect to designated events.

**164.** — (1) Where a broadcaster under the jurisdiction of the State who is not a qualifying broadcaster acquires exclusive rights to broadcast a designated event, that broadcaster shall not broadcast the event unless the event has been made available to a qualifying broadcaster, in accordance with the designation order concerned, on request and the payment of reasonable market rates by the qualifying broadcaster.

(2) Where a qualifying broadcaster acquires the right to broadcast a designated event (under this section or directly) the qualifying broadcaster shall broadcast the event on a free television service providing near universal coverage in accordance with the designation order concerned.

(3) In this section, "designated event" means an event that is designated in a designation order.

Broadcasters' duties with respect to Member State events.

**165.** — Where another Member State has designated an event as being of major importance to society in that Member State and the European Commission has communicated the measures taken by that Member State in accordance with [Article 14\(2\) of the Directive](#) ~~Article 3j.2 of the Council Directive~~, no broadcaster under the jurisdiction of the State who acquires exclusive rights to the designated event shall exercise the exclusive rights in such a way that a substantial portion of the public in that Member State is deprived of the possibility of following the events in accordance with the measures taken.

Civil remedies.

**166.** — (1) Where it is alleged by a broadcaster (the "aggrieved broadcaster") that any activity or conduct prohibited by *section 164* or *165* is being, has been or is about to be carried on by one or more other broadcasters (the "other broadcaster"), the aggrieved broadcaster shall be entitled to apply to the High Court for the following remedies against the other broadcaster:

- (a) an order restraining the other broadcaster from carrying on or attempting to carry on the activity or conduct prohibited by *section 164* or *165* ;
- (b) a declaration that the contract under which the other broadcaster received exclusive rights to the designated event is void;
- (c) damages from the other broadcaster;
- (d) a direction that the right to provide television coverage of the event shall be offered to the aggrieved broadcaster at reasonable market rates.

(2) An application to the High Court for an order referred to in *subsection (1)* shall be by motion and the Court, when considering the matter, may make such interim or interlocutory order as it considers appropriate.

Reasonable market rates.

**167.** — (1) For the purpose of *section 164 (1)*, if broadcasters are unable to agree on what constitutes reasonable market rates with respect to television coverage of an event, either of the broadcasters may apply to the High Court in a summary manner for an order determining reasonable market rates for an event.

(2) An order under *subsection (1)* may contain such consequential or supplementary provisions as the High Court considers appropriate.

Qualifying broadcaster may apply to High Court to obtain rights from event organiser to provide coverage of designated event on free television services in State, etc.

**168.** — (1) Where an event has been designated, and if within 56 days, or such other lesser or greater period which the Minister directs, before the event or a part of it takes place the event organiser has not made an agreement or arrangement with a qualifying broadcaster to enable it to provide coverage on free television services in the State of the event or part of it, as determined under *section 162 (1) (b)* in the designation order which designated the event—

- (a) subject to *subsection (3)*, a qualifying broadcaster may apply to the High Court in a summary manner for an order directing the event organiser to give rights to the qualifying broadcaster to provide such coverage and upon such terms as are fixed by the High Court, including the fixing of reasonable market rates, in respect of the acquisition of the rights, or
- (b) within that period a qualifying broadcaster has not so applied, the event organiser may apply to the High Court in a summary manner to request the High Court to invite qualifying broadcasters to make such an application.

(2) Subject to *subsection (3)*, the High Court may, on application to it under *subsection (1)* by a qualifying broadcaster, direct the event organiser, upon such terms as the Court appears just and proper, to give to the qualifying broadcaster rights to provide coverage of the designated event or part of it on free television services, as determined under *section 162 (1) (b)* in the designation order which designated the event, notwithstanding that all of the terms for the acquisition of the rights to provide coverage under *subsection (1)*, have not yet been fixed by it, including the fixing of reasonable market rates.

(3) *Subsection (1)* does not apply where an event organiser decides, prior to the making of an application under *subsection (1)*, not to allow coverage of an event or a part of it, as determined under *section 162(1)(b)* in the designation order designating the event, on any television service provided by a broadcaster. Where an event organiser has so decided, the event organiser must notify, as soon as possible, the Minister.

(4) The High Court in fixing the terms under *subsection (1)* may, in arriving at a computation of reasonable market rates, to be paid by a qualifying broadcaster for the acquisition of the rights under that subsection, refer the computation of the rates to an arbitrator appointed by the High Court. The arbitrator shall report to the Court and the parties, by way of issuing an award, setting out the amount that he or she decides are reasonable market rates.

(5) An arbitration under *subsection (4)* shall be conducted in accordance with such procedures as are determined by the Court referring the computation of the rates to the arbitrator. The Court may, in determining such procedures, give such directions as it considers just and proper for the processing of the arbitration, including fixing the period within which the award of the arbitrator is to be issued.

(6) Where in an application under *subsection (1)*—

- (a) the High Court has fixed the reasonable market rates, or an arbitrator has issued an award under *subsection (4)*, and prior to the High Court making a final order in respect of the application, or
- (b) in the circumstances referred to in *subsection (2)*, the High Court indicates that it will fix the reasonable market rates for coverage of the event after the event has taken place, and prior to the event taking place,

the qualifying broadcaster may withdraw the application. The High Court may in these circumstances, having regard to the intention of the broadcaster making the application, award such costs to such party or parties to the application as it considers appropriate.

(7) The High Court may, either of its own motion or on application to it by an arbitrator appointed under *subsection (4)*, give, from time to time, such directions in connection with the arbitration as it considers just and proper.

(8) Where more than one qualifying broadcaster applies under *subsection (1)* for rights to provide coverage of a designated event or part of it and the High Court has fixed under this section the terms upon which a qualifying broadcaster may obtain the rights, the event organiser may choose to which qualifying broadcaster it gives the rights.

(9) Where there is an existing contract in respect of an event or part of it between the event organiser and another broadcaster, who is not a qualifying broadcaster, the High Court in an application to it under *subsection (1)* shall decide to whom and in which proportions monies in respect of the reasonable market rates, fixed under this section in respect of the acquisition of rights to the event or part of it, should be paid.

(10) The High Court may, if it considers it necessary, for the purposes of exercising its powers under this section, adjust an existing agreement or arrangement, in respect of rights to a designated event or a part of it, between the event organiser and a broadcaster, who is not a qualifying broadcaster.

(11) Without prejudice to *subsection (2)*, when considering any matter under this section, the High Court may make such interim or interlocutory order as it considers appropriate.

Arbitration in respect of reasonable market rates where event organiser is willing to sell broadcasting rights to designated event to qualifying broadcaster.

**169.** — (1) Where an event organiser is willing to sell rights enabling a qualifying broadcaster to provide coverage on free television services in the State of a designated event or a part of it, as determined under *section 162 (1) (b)* in the designation order which designated the event, but the qualifying broadcaster and the event organiser have not agreed the amount to be paid in respect of the acquisition of the rights, the following provisions of this section apply.

(2) The qualifying broadcaster or the event organiser may request the other to agree to the appointment of an arbitrator for the purposes of fixing reasonable market rates for the acquisition of the rights referred to in *subsection (1)*. In default of agreement, on the appointment of an arbitrator by the parties, the Minister may appoint an arbitrator, who he or she considers to be suitably qualified in this regard, within 21 days of being notified by either party of such default.

(3) An arbitrator appointed under *subsection (2)* shall issue his or her award, in writing, which, subject to *subsection (4)*, shall be a provisional award. The arbitrator shall notify the parties concerned of the award.

(4) An award issued under *subsection (3)* is not binding on the qualifying broadcaster concerned unless, within the period of 21 days from the date of issuing of the award of the arbitrator under *subsection (3)*, the qualifying broadcaster has notified the event organiser concerned of the qualifying broadcaster's acceptance of the award.

Criteria for determining reasonable market rates.

**170.** — In determining that which constitutes reasonable market rates or terms for the purposes of this Act, the High Court or an arbitrator shall have regard to, *inter alia*—

- (a) previous fees (if any) for the event or similar events,
- (b) time of day for live coverage of the event,
- (c) the period for which rights are offered,
- (d) the revenue potential associated with the live or deferred coverage of the event,
- (e) the purposes of ~~Article 3j of the Council Directive~~ [Article 14 of the Directive](#) and the rights conferred on Member States of the European Communities to regulate the exercise of broadcasting rights, and

(f) such other matters as may appear to be relevant.

Obligation to give copy of agreement or arrangement to broadcasting rights to Minister.

**171.** — (1) The Minister may, where he or she considers it is in the public interest, direct an event organiser who has entered into an agreement or arrangement with a broadcaster in respect of the broadcasting rights to a designated event to give to the Minister, at the Department of Communications, Energy and Natural Resources, within such period specified in the direction, a copy of the agreement or arrangement.

(2) Where an agreement or arrangement referred to in *subsection (1)* is not in writing, the event organiser must, upon receiving a direction of the Minister, notify the Minister of the agreement or arrangement and set out all its terms and conditions.

Service of directions and notification.

**172.** — (1) Where a direction or notification is required under this Part to be given to a person, it shall be in writing, addressed to the person and given to the person in one of the following ways—

- (a) by delivering it to the person,
  - (b) by leaving it at the address at which the person ordinarily carries on business,
  - (c) by sending it by post in a pre-paid registered letter addressed to the person at the address at which the person ordinarily carries on business,
  - (d) if an address for the service of directions or notifications has been furnished by the person, by leaving it at, or sending it by pre-paid registered post addressed to the person at that address,
  - (e) in any case where the person giving the direction or notification considers that the immediate giving of it is required, by sending it, by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the person ordinarily carries on business or, if an address for the service of directions or notifications has been furnished by the person, that address, but only if—
    - (i) the sender's—
      - (I) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
      - (II) facsimile machine generates a message confirming successful transmission of the total number of pages of the direction or notification,
- and
- (ii) the direction or notification is also given in one of the other ways mentioned in any of the preceding paragraphs.

(2) For the purposes of this section—

- (a) a company registered under the Companies Acts is deemed to carry on business at its registered office, and every other body corporate and unincorporated body is deemed to carry on business at its principal office or place of business, and
- (b) the Minister is deemed to carry on business at the Department of Communications, Energy and Natural Resources.

Review of designated events.

**173.** — (1) Subject to *subsection (2)*, the Minister shall review, from time to time, designated events and the designation of events under *section 162*.

(2) A review under *subsection (1)* shall be not later than 3 years after the preceding review under section 9 of the Broadcasting (Major Events Television Coverage) (Amendment) Act 2003 and every 3 years after that.

## PART 12

### TRANSITIONAL PROVISIONS

Dissolution of BCI and saver.

**174.** — (1) On the establishment day the BCI is dissolved.

(2) Notwithstanding the repeal of the Radio and Television Act 1988, the Act of 2001, the Broadcasting (Funding) Act 2003, the Broadcasting (Amendment) Act 2007 or any other enactment under *section 3*, the BCI continues in being until its dissolution on the establishment day and may act under and in accordance with and carry out its functions under those enactments and accordingly those enactments continue to apply to the BCI until its dissolution.

(3) Notwithstanding any of the conditions of their appointment, the term of a member of the BCI terminates on the establishment day.

Dissolution of BCC and saver.

**175.** — (1) On the establishment day the BCC is dissolved.

(2) Notwithstanding the repeal of the Act of 2001 under *section 3*, the BCC continues in being until its dissolution on the establishment day and may act under and in accordance with and carry out its functions under that Act and accordingly that Act continues to apply to the BCC until its dissolution.

(3) Notwithstanding any of the conditions of their appointment, the term of a member of the BCC shall terminate on the establishment day.

Transitional provisions — BCI.

**176.** — (1) On the establishment day all land which, immediately before that day, was vested in the BCI and all rights, powers and privileges relating to or connected with such land shall, without any conveyance or assignment, stand vested in the Authority for all the estate or interest for which immediately before the said day it was vested in the BCI, but subject to all trusts and equities affecting the land subsisting and capable of being performed.

(2) On the establishment day all property other than land, including choses-in-action, which immediately before that day was the property of the BCI shall stand vested in the Authority without any assignment.

(3) Every chose-in-action transferred by *subsection (2)* to the Authority may, after the establishment day, be sued on, recovered or enforced by it in its own name and it shall not be necessary for it or the BCI to give notice to the person bound by the chose-in-action of the transfer effected by that subsection.

(4) All rights and liabilities of the BCI arising by virtue of any contract or commitment (express or implied) entered into by it before the establishment day shall on that day stand transferred to the Authority.

(5) Every right and liability transferred by *subsection (4)* to the Authority may, on and after the establishment day, be sued on, recovered or enforced by or against it in its own name and it shall not be necessary for it or the BCI to give notice to the person whose right or liability is transferred by that subsection of such transfer.

(6) Any legal proceedings pending immediately before the establishment day to which the BCI is a party shall be continued with the substitution in the proceedings for the BCI of the Authority.

(7) Any licences granted by the Communications Regulator to the BCI under an enactment repealed by *section 3* which were extant on the passing of this Act continue.

(8) Any contracts entered into by the BCI under an enactment repealed by *section 3* which were extant on the passing of this Act continue.

(9) Anything commenced but not completed before the establishment day by the BCI may be carried on and completed on or after that day by the Authority or a statutory committee.

(10) References to the BCI in any statute or in any instrument made under any statute shall on the establishment day be read as references to the Authority.

Transitional provisions — BCC.

**177.** — (1) All rights, liabilities and assets of the BCC immediately before the establishment day stand transferred to the Authority.

(2) Any pending legal proceedings to which the BCC is a party immediately before the establishment day shall continue in the name of the Authority.

(3) Any investigations being carried out by the BCC immediately before the establishment day shall continue in the name of the Compliance Committee.

(4) Anything commenced but not completed before the establishment day by the BCC may be carried on and completed on or after that day by the Compliance Committee.

Final accounts of BCI.

**178.** — (1) Final accounts of the BCI shall be drawn up by the Authority as soon as may be after the establishment day in such form as may be approved of by the Minister, and in respect of such period or periods as may be specified by the Minister.

(2) Accounts prepared under this section shall be submitted as soon as may be by the Authority for audit, and, immediately after the audit, a copy of the income and expenditure account and of the balance sheet and of such other (if any) of the accounts as the Minister may direct and a copy of the auditor's report on the accounts shall be presented to the Minister who shall cause copies of them to be laid before each House of the Oireachtas.

Continuance of Ministerial consents given in respect of public service broadcasters.

**179.** — (1) Any consents granted by the Minister to Radio Telefís Éireann or TG4 under an enactment repealed by *section 3* which are in force on the passing of this Act continue.

(2) Any licences granted by the Communications Regulator to Radio Telefís Éireann or TG4 under an enactment repealed by *section 3* which are in force on the passing of this Act continue.

(3) A person appointed by the Government to be a member of Radio Telefís Éireann or TG4 under an enactment repealed by *section 3* who is such a member on the passing of this Act continues as such a member of the board of the corporation.

## PART 13

### WIRELESS TELEGRAPHY

Collective citations — Wireless Telegraphy Acts.

**180.** — (1) The Wireless Telegraphy Acts 1926 to 1988 and *sections 181(1) to (7)* and *(9)* and *section 182* may be cited together as the Wireless Telegraphy Acts 1926 to 2009.

(2) The Broadcasting (Offences) Acts 1968 and 1988, sections 9 to 16 of the Broadcasting Act 1990 and *section 181(8), (10) and (11)* may be cited together as the Broadcasting (Offences) Acts 1968 to 2009.

Amendment of  
Broadcasting and  
Wireless  
Telegraphy Acts  
(increase of fines,  
etc.).

**181.** — (1) Section 2 of the Act of 1926 is amended—

(a) by substituting for the definition of “the appropriate authority” (inserted by Part 1 of Schedule 1 of the Act of 2007) the following:

“except as provided by section 9, ‘appropriate authority’—

(a) in relation to wireless telegraphy apparatus in ships and vessels associated with safety and security on board them and their operation (including the certificates of competency for the operation of apparatus for wireless telegraphy on ships and vessels), means the Minister for Transport, and

(b) in relation to any other matter, means the Commission;”,

(b) by deleting the definition of “broadcast matter”, and

(c) by inserting after the definition of “signalling station” the following:

“ ‘television set’ has the meaning assigned to it by *section 140* of the *Broadcasting Act 2009*.”.

(2) Section 3 of the Act of 1926 is amended by substituting for subsection (3) (inserted by section 12(1)(a) of the Act of 1988) the following:

“(3) A person who keeps, has in his or her possession, installs, maintains, works or uses any apparatus (other than a television set) in contravention of this section commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine not exceeding €250,000.”.

(3) Section 10 of the Act of 1926 is amended in subsection (8) (inserted by section 12(1)(d)(ii) of the Act of 1988) by substituting for paragraphs (a) and (b) the following:

“(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine not exceeding €250,000.”.

(4) Section 11 of the Act of 1926 is amended in subsection (3) (inserted by section 12(1)(f) of the Act of 1988) by substituting—

(a) in paragraph (a) “€5,000” for “one thousand pounds”, and

(b) in paragraph (b) “€250,000” for “twenty thousand pounds”.

(5) Section 12 of the Act of 1926 is amended in subsection (1) (as amended by section 34(e) of the Broadcasting Authority Act 1960) by substituting “under the *Broadcasting Act 2009*” for “under Part II of this Act or under the Broadcasting Authority Act, 1960”.

(6) Section 12 of the Act of 1926 is amended in subsection (3) (as amended by section 12(1)(g) of the Act of 1988) by substituting for paragraphs (a) and (b) the following:

“(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine not exceeding €250,000.”.



(7) Section 12A of the Act of 1926 is amended by substituting for subsection (12) (inserted by section 12(1)(h) of the Act of 1988) the following:

“(12) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine not exceeding €5,000, or
- (b) on conviction on indictment, to a fine not exceeding €250,000.”.

(8) Section 7(1) of the Broadcasting (Offences) Act 1968 is amended by substituting—

- (a) in paragraph (a) “€5,000” for “£1,000” (inserted by section 18 of the Act of 1988), and
- (b) in paragraph (b) “€250,000” for “£20,000” (inserted by that section).

(9) Section 10 of the Act of 1972 is amended—

(a) in subsection (1), by substituting for paragraph (a) the following:

“(a) without reasonable cause or excuse, fails to comply with a requirement of an order under section 5, or”,

(b) in subsection (3) (as amended by section 12(2)(a) of the Act of 1988) by substituting—

- (i) in paragraph (a), “€2,000” for “five hundred pounds”, and
- (ii) in paragraph (b), “€5,000” for “one thousand pounds”, and

(c) in subsection (4)(a) (inserted by section 12(2)(b) of the Act of 1988) by substituting for subparagraph (i) the following:

“(i) A person guilty of an offence under subsection (2) is liable—

- (I) on summary conviction, to a fine not exceeding €5,000, or
- (II) on conviction on indictment, to a fine not exceeding €250,000.”.

(10) The Act of 1988 is amended—

(a) in section 6, by substituting for subsection (1) the following:

“(1) A person guilty of an offence under section 3, 4 or 5 is liable—

- (a) on summary conviction, to a fine not exceeding €5,000, or
- (b) on conviction on indictment, to a fine not exceeding €250,000.”,

(b) in section 8, by substituting “€5,000” for “£1,000”,

(c) in section 9, by substituting for subsection (4) the following:

“(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding €5,000.”.

(11) Section 11 of the Broadcasting Act 1990 is amended by substituting for subsection (1) the following:

“(1) A person guilty of an offence under section 9 or 10 is liable—

- (a) on summary conviction to a fine not exceeding €5,000, or
- (b) on conviction on indictment, to a fine not exceeding €250,000.”.

Matters relating to wireless telegraphy.

**182.** — The Act of 1926 is amended by substituting for sections 5 to 9 the sections set out in *Schedule 2* .

## PART 14

### MISCELLANEOUS

Amendment to definitions in Copyright and Related Rights Act 2000.

**183.** — Section 2 of the Copyright and Related Rights Act 2000 is amended—

(a) by substituting for the definition of “broadcast” the following:

“ ‘broadcast’ means a transmission by wireless means, including by terrestrial or satellite means, whether digital or analogue, for direct public reception or for presentation to members of the public of sounds, images or data or any combination of sounds, images or data, or the representations thereof, but does not include transmission by means of MMDS or digital terrestrial retransmission;”

(b) in the definition of “cable programme service” by substituting “including MMDS and digital terrestrial retransmission” for “including MMDS”,

(c) by inserting after the definition of “database” the following:

“ ‘digital terrestrial retransmission’ means the reception and immediate retransmission on an encrypted basis without alteration by means of a multiplex of a broadcast or a cable programme initially transmitted from another Member State of the EEA;”

and

(d) by inserting after the definition of “MMDS” the following:

“ ‘multiplex’ has the meaning assigned to it in *section 129* of the *Broadcasting Act 2009*;”

Minister’s functions in relation to electronic communications networks and electronic communications services.

**184.** — (1) Without prejudice to the Minister’s functions under this or any other enactment, the Minister has the power and is deemed always to have had the power, by himself or herself, or in conjunction with any other person, to fund, install, own and operate electronic communications networks and to provide electronic communications services, including where such networks or services are for the purpose of providing broadcasting services.

(2) The Minister has all such incidental, supplemental, ancillary and consequential powers as are necessary or expedient for the purpose of the exercise by him or her of the above powers.

(3) The exercise of the powers referred to in *subsections (1) and (2)* is subject to all requirements otherwise imposed by law.

(4) The powers referred to in *subsections (1) and (2)* are in addition to and not in substitution for any other powers or functions of the Minister under this or any other enactment.

Amendment of section 5 of Act of 1998 (advertisement, etc., by Referendum Commission).

**185.** — The following section is substituted for section 5 of the Act of 1998:

“5.— (1) *Section 41 (3)* of the *Broadcasting Act 2009* does not apply to advertisements broadcast at the request of the Commission in relation to a matter referred to in *section 3* concerning the referendum.

(2) The Minister for Communications, Energy and Natural Resources, if so requested by the Commission following consultation by the Commission with RTÉ and TG4 and consideration of any proposals of RTÉ or TG4 for broadcasts in connection with the referendum that RTÉ or TG4 communicate to the Commission, shall direct RTÉ and TG4 in writing to allocate broadcasting time to facilitate the Commission in performing its functions. RTÉ and TG4 shall comply with the direction.

(3) The Minister for Communications, Energy and Natural Resources, if so requested by the Commission following consultation by the Commission with the BAI and consideration of any proposals of the BAI for broadcasts in connection with the referendum by sound broadcasting contractors, a television programme service contractor or content provision contractors that it communicates to the Commission, shall direct the BAI in writing to arrange for the provision for and on behalf of the Commission of services (with or without charge) including the allocation of broadcasting time to facilitate the Commission in performing its functions. The BAI shall comply with the direction.

(4) In this section—

‘BAI’ means Broadcasting Authority of Ireland;

‘RTÉ’ and ‘TG4’ have the meaning assigned to them, respectively, by *section 2* of the *Broadcasting Act 2009*.”.

Section 3.

## SCHEDULE 1

## ENACTMENTS REPEALED

Number and year	Short title	Extent of repeal
No. 45 of 1926	Wireless Telegraphy Act 1926	Section 3A (inserted by section 17 of No. 37 of 1976) and Part II.
No. 4 of 1956	Wireless Telegraph Act 1956	The whole Act
No. 10 of 1960	Broadcasting Authority Act 1960	The whole Act (other than Part II of the Third Schedule)
No. 4 of 1964	Broadcasting Authority (Amendment) Act 1964	The whole Act
No. 7 of 1966	Broadcasting Authority (Amendment) Act 1966	The whole Act
No. 2 of 1971	Broadcasting Authority (Amendment) Act 1971	The whole Act
No. 5 of 1972	Wireless Telegraphy Act 1972	Sections 2, 3, 4, 9, 12 and 14 and the Schedule
No. 1 of 1973	Broadcasting Authority (Amendment) Act 1973	The whole Act
No. 33 of 1974	Broadcasting Authority (Amendment) Act 1974	The whole Act
No. 37 of 1976	Broadcasting Authority (Amendment) Act 1976	Sections 2 to 17 and 21
No. 36 of 1979	Broadcasting Authority (Amendment) Act 1979	The whole Act
No. 24 of 1983	Postal and Telecommunications Services Act 1983	Sections 76 to 79
No. 19 of 1988	Broadcasting and Wireless Telegraphy Act 1988	Sections 2(2), 10, 11 and 17 to 20
No. 20 of 1988	Radio and Television Act 1988	The whole Act
No. 24 of 1990	Broadcasting Act 1990	Sections 5, 6, 7 and 8
No. 15 of 1993	Broadcasting Authority (Amendment) Act 1993	The whole Act
No. 28 of 1999	Broadcasting (Major Events Television Coverage) Act 1999	The whole Act
No. 4 of 2001	Broadcasting Act 2001	The whole Act
No. 13 of 2003	Broadcasting (Major Events Television Coverage) (Amendment) Act 2003	The whole Act
No. 43 of 2003	Broadcasting (Funding) Act 2003	The whole Act
No. 14 of 2005	Disability Act 2005	Section 53
No. 15 of 2007	Broadcasting (Amendment) Act 2007	The whole Act
No. 22 of 2007	Communications Regulation (Amendment) Act 2007	Paragraph (b) in the third column at item 4 in the first column of Part 1 of Schedule 1

Section 182 .

## SCHEDULE 2

## SECTIONS 5 TO 9 OF THE WIRELESS TELEGRAPHY ACT 1926

Grant of licences. 5.— (1) The appropriate authority may, subject to this Act and on payment of the prescribed fee (if any) grant to any person a licence to keep and have possession of apparatus for wireless telegraphy in any specified place in the State or to keep and have possession of apparatus for wireless telegraphy in any specified ship or other vessel or aircraft.

(2) Every licence granted under this section shall be in such form, continue in force for such period and be subject to such conditions and restrictions (including conditions as to suspension and revocation) as shall be prescribed in regard to it by regulations made by the appropriate authority under section 6.

(3) Where it appears appropriate to the appropriate authority, it may, in the interests of the efficient and orderly use of wireless telegraphy, limit the number of licences for any particular class or classes of apparatus for wireless telegraphy granted under this section.

(4) This section does not apply to television sets.

(5) For the purposes of this Act and any regulations under section 6, a vehicle is itself deemed to be a place separate and distinct from the premises in which the vehicle is ordinarily kept, and place and specified place shall in this Act and in any such regulations be read accordingly.

Regulations in regard to licences.

6.— (1) The appropriate authority may make regulations prescribing in relation to all licences granted by it under section 5 or any particular class or classes of such licences all or any of the matters following that is to say—

- (a) the form of such licences,
- (b) the period during which such licences continue in force,
- (c) the manner in which, the terms on which, and the period or periods for which such licences may be renewed,
- (d) the circumstances in which or the terms under which such licences are granted,
- (e) the circumstances and manner in which such licences may be suspended or revoked by that authority,
- (f) the terms and conditions to be observed by the holders of such licences and subject to which such licences are deemed to be granted,
- (g) the fees to be paid on the application, grant or renewal of such licences or classes of such licences, subject to such exceptions as the appropriate authority may prescribe, and the time and manner at and in which such fees are to be paid,
- (h) matters which such licences do not entitle or authorise the holder to do.

(2) Regulations made under this section may authorise and provide for the granting of a licence under section 5 subject to special terms, conditions, and restrictions to any person who satisfies the appropriate authority that the person requires the licence solely for the purpose of conducting experiments in wireless telegraphy.

(3) If it appears to be expedient to the appropriate authority to do so it may by instrument in writing recognise as valid a licence issued by another country or state in respect of a class or classes of apparatus for wireless telegraphy subject to such conditions or restrictions as to the use of such apparatus as that authority sees fit.

(4) (a) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made.

- (b) Either House of the Oireachtas may, within 21 sitting days after the day on which a regulation was laid before it in accordance with paragraph (a), pass a resolution annulling the regulation.
- (c) The annulment under paragraph (b) of a regulation takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under it before the passing of the resolution.

Obligation to furnish certain information.

7.— (1) The appropriate authority may, whenever it considers it appropriate to do so, serve on a person a special notice, accompanied by or including a form of declaration, requiring the person—

- (a) to state on the form of declaration such one or more of the matters specified in subsection (2) as is specified in the notice,
- (b) to complete and sign the declaration, and
- (c) to give or send the completed declaration by post to a specified officer of that authority.

The special notice is required to be in writing and to be sent by registered post.

(2) The matters which a person may be required under this section to state in a declaration are—

- (a) whether he or she does or does not keep or has or has not in his or her possession any apparatus for wireless telegraphy (other than television sets),
- (b) if he or she keeps or has in his or her possession any such apparatus, the nature of such apparatus, the name and address of the person by whom such apparatus was sold, let, hired or otherwise supplied to him or her and the place at which he or she keeps or has the same,
- (c) whether he or she has or has not a licence granted under section 5 and then in force,
- (d) if he or she has such a licence, the number, date, and office of issue of such licence,
- (e) any matter which the Commission may require for the purpose of an order under section 5 of the Wireless Telegraphy Act 1972, and
- (f) any other matter relating to wireless telegraphy (other than television sets).

(3) Every person on whom a special notice is duly served under this section shall, within 14 days after service, duly and correctly complete in accordance with the notice and this section the form of declaration to the officer named in that behalf in the notice. If the person fails or neglects so to complete and give or send the declaration or makes in the declaration any statement which is to his or her knowledge false or misleading he or she commits an offence and is liable on summary conviction to a fine not exceeding €1,000.

(4) In a prosecution for an offence under subsection (3) in which it is shown that a specific notice has been sent by registered post, it shall be presumed, until the contrary is shown, that the person to whom the notice was sent has not complied with the requirements of that subsection.

Issue of search warrants.

8.— (1) A judge of the District Court may, upon the information on oath of an officer of the appropriate authority or of a member of the Garda Síochána that there is reasonable ground for believing that apparatus for wireless telegraphy is being kept or is being worked or used at any specified place, specified vehicle or in any specified ship or other vessel in contravention of the *Wireless Telegraphy Acts 1926 to 2009* or any regulation made or condition imposed under those Acts or the *Broadcasting*

(*Offences*) Acts 1968 to 2009, issue to such officer or (with the consent of the appropriate authority) to such member of the Garda Síochána (as the case may be) a search warrant which shall be expressed and shall operate to authorise the officer of that authority or member of the Garda Síochána to whom the same is granted—

- (a) to enter, within one month from the date of issue of the warrant, on production of the warrant, if so requested, and if need be by force, the place, vehicle, ship or other vessel named in the information,
- (b) there to search for apparatus for wireless telegraphy and to examine all such apparatus or any such vehicle found there, and
- (c) to seize and take away all or any part of such apparatus which appears to such officer or member to be kept, worked or used in contravention of the *Wireless Telegraphy Acts 1926 to 2009* or any regulation made or condition imposed under those Acts or the *Broadcasting (Offences) Acts 1968 to 2009*.

(2) A search warrant granted under this section shall operate to authorise any one or more of the following, namely, any member of the Garda Síochána or officer of the appropriate authority or other person authorised by the person to whom the warrant is granted to accompany and assist him or her in the exercise of the powers conferred on him or her by the warrant.

(3) An officer of the appropriate authority may retain anything seized under this section which he or she believes to be evidence of any offence or suspected offence under the *Wireless Telegraphy Acts 1926 to 2009* or the *Broadcasting (Offences) Acts 1968 to 2009*, for use as evidence in proceedings in relation to any such offence, for such period from the date of seizure as is reasonable, or, if proceedings are commenced in which the thing so seized is required for use in evidence, until the conclusion of the proceedings.

(4) The appropriate authority shall, as soon as may be after the conclusion of any proceedings, deliver any thing seized and retained under this section to the person who in its opinion is the owner of it, unless—

- (a) the appropriate authority decides it is unable to ascertain who owns the thing, in which case the Police (Property) Act 1897 applies to the thing so seized and retained, or
- (b) such delivery would result in a contravention of the *Wireless Telegraphy Acts 1926 to 2009* or the *Broadcasting (Offences) Acts 1968 to 2009*, in which case the Police (Property) Act 1897 applies to the thing so seized and retained as though the appropriate authority could not ascertain the owner of the thing.

(5) (a) A person who by act or omission impedes or obstructs an officer of the appropriate authority or a member of the Garda Síochána or any other person in the exercise of a power conferred by a search warrant issued under this section commits an offence.

(b) A person who with intent to impede or obstruct an officer of the appropriate authority or a member of the Garda Síochána or any other person in the exercise of a power conferred by a search warrant issued under this section places, erects, installs, keeps or maintains any thing commits an offence.

(c) A person guilty of an offence under this subsection is liable on summary conviction to a fine not exceeding €2,000.

Regulations as to wireless telegraphy in ships and aircraft.

9.— (1) The appropriate authority may make regulations in respect of all or any of the following matters, that is to say:

- (a) requiring operators and other persons engaged in the working of apparatus for wireless telegraphy on—

- (i) all or any ships registered under the Mercantile Marine Act 1955, or
  - (ii) all or any classes or class of ships or vessels navigating or operating in the State,
- to hold certificates of competency;
- (b) requiring operators and other persons engaged in the working of apparatus for wireless telegraphy on all or any classes of aircraft owned or leased by persons in the State to hold certificates of competency;
  - (c) the grant and renewal of such certificates of competency, the terms and conditions on which such certificates will be granted, and the qualifications to be possessed and the examinations and other tests to be undergone by persons to whom such certificates are granted;
  - (d) the duration, revocation and suspension of certificates of competency granted under the regulations;
  - (e) the validity, duration, renewal, revocation, and suspension of certificates of competency granted otherwise than under the regulations whether by the appropriate authority or any other person;
  - (f) the fees to be charged for or in connection with the granting and renewal of any such certificates of competence as aforesaid and the collection and disposal of such fees;
  - (g) regulating and controlling the times and manner of working apparatus for wireless telegraphy in ships registered under the Mercantile Marine Act 1955 and, while they are in the State, ships registered outside the State and unregistered ships and other vessels;
  - (h) regulating and controlling the times and manner of working apparatus for wireless telegraphy in aircraft owned or leased by persons in the State and, while they are in or over the State or the territorial waters thereof, aircraft not so owned;
  - (i) giving effect to and securing compliance with the provisions (save in so far as the same relate to ships to which this section and regulations made under it do not apply) of any international convention in relation to wireless telegraphy entered into by the Government.
- (2) Regulations made under this section may—
- (a) provide that a breach or contravention of any specified such regulation shall be an offence, and
  - (b) in relation to convictions on indictment for such an offence, provide that the court by whom the defendant is convicted may order the interest of the defendant, whether as owner or otherwise, in all or any apparatus in respect of or by means of which the court is satisfied a breach or contravention of a specified such regulation was committed to be forfeited.
- (3) (a) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made.
- (b) Either House of the Oireachtas may, within 21 sitting days after the day on which a regulation was laid before it in accordance with paragraph (a), pass a resolution annulling the regulation.
  - (c) The annulment under paragraph (b) of a regulation takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under it before the passing of the resolution.



(4) A person guilty of an offence by reason of a breach or contravention of a regulation specified, by virtue of paragraph (a) of subsection (2), in regulations made under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine not exceeding €250,000.

(5) For the purposes of this section—

(a) a ship is deemed to be navigating or operating in the State if it is usually kept in Irish waters (within the meaning of section 2 of the Maritime Safety Act 2005), and

(b) an aircraft is deemed to be owned or leased by a person in the State if but only if it is owned or leased by a person who—

(i) in the case of an individual, has his or her place of residence in the State, or

(ii) in the case of an association, company (within the meaning of the Companies Acts) or other body (whether corporate or unincorporate) has its principal office in the State.

(6) In this section, ‘appropriate authority’—

(a) in relation to apparatus for wireless telegraphy on ships or other vessels, means the Minister for Transport, and

(b) in relation to apparatus for wireless telegraphy on aircraft, means the Commission.