



Number 18 of 2009

BROADCASTING ACT 2009

REVISED

Updated to 23 June 2016

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 *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016* (4/2016), enacted 11 February 2016, and all statutory instruments up to and including *Broadcasting Act 2009 (Section 130(1)(a)(iv) Designation) Order 2016* (S.I. No. 328 of 2016), made 23 June 2016, 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Acts previously included in the group but now repealed are: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 annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions. A version without annotations, showing only textual amendments, is also available.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

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.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1999, may be found in the Legislation Directory at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Communications Regulation (Postal Services) Act 2011* (21/2011)
- *Ministers and Secretaries (Amendment) Act 2011* (10/2011)

All Acts up to and including *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016* (4/2016), enacted 11 February 2016, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Broadcasting Act 2009 (Section 130 (1)(a)(iv) Designation) Order 2016* (S.I. No. 328 of 2016)
- *Broadcasting Act 2009 (Section 130(1)(a)(iv) Designation) Order 2014* (S.I. No. 542 of 2014)
- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)
- *European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011* (S.I. No. 334 of 2011)
- *Tourism and Sport (Transfer of Departmental Administration and Ministerial Functions) (No. 2) Order 2011* (S.I. No. 217 of 2011)
- *Broadcasting Act 2009 (Section 26(5)) (Conferral of Additional Functions - Broadcasting Services) Order 2011* (S.I. No. 67 of 2011)
- *RTÉ (National Television Multiplex) Order 2010* (S.I. No. 85 of 2010)
- *Broadcasting Act 2009 (Section 33) Levy Order 2010* (S.I. No. 7 of 2010)
- *Broadcasting Authority of Ireland (Establishment Day) Order 2009* (S.I. No. 389 of 2009)
- *Television Licence (Exemption of Classes of Television Set) Order 2009* (S.I. No. 319 of 2009)

All statutory instruments up to and including *Broadcasting Act 2009 (Section 130(1)(a)(iv) Designation) Order 2016* (S.I. No. 328 of 2016), made 23 June 2016, were considered in the preparation of this revision.



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European Parliament Elections Act 1997	1997, No. 2
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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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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 FOR MATTERS 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:

Annotations

Modifications (not altering text):

- C1** Functions transferred and references to “Department of Finance” and “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions.
2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.
- (2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.
3. The functions conferred on the Minister for Finance by or under the provisions of —
- (a) the enactments specified in Schedule 1, and
- (b) the statutory instruments specified in Schedule 2,
- are transferred to the Minister for Public Expenditure and Reform.
- ...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year	Short Title	Provision
...
No. 18 of 2009	Broadcasting Act 2009	Sections 10, 17(2), 34, 36(3), 37, 55(7), 61(4), 67(10), 69(13), 97, 104, 122(3), 123, 144(3), 149(5), 156 and 159
...

- C2** Functions transferred and references to “Minister” and “Department of Finance” construed (6.07.2011) by *Ministers and Secretaries (Amendment) Act 2011* (10/2011), ss. 7, 9, 11, 15, 20 and sch. 2 part 1, commenced as per s. 1(2).

Department of Public Expenditure and Reform.

7.— (1) There shall stand established on the appointed day a Department of State to be known, in the Irish language, as an Roinn Caiteachais Phoiblí agus Athchóirithe or, in the English language, as the Department of Public Expenditure and Reform.

(2) The member of the Government who is in charge of the Department of Public Expenditure and Reform—

(a) shall be known, in the Irish language, as an tAire Caiteachais Phoiblí agus Athchóirithe or, in the English language, as the Minister for Public Expenditure and Reform, and

(b) is, in this Act, referred to as the “Minister”.

...

Transfer of certain other functions to Minister.

9.— ...

(2) The functions conferred on the Minister for Finance by or under any of the provisions specified in Part 1 of Schedule 2 are transferred to the Minister.

...

Transfer of administration and business of Department of Finance.

11.— (1) The administration and business in connection with the performance of the functions transferred by sections 8 and 9 are hereby transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any statute or instrument under a statute in so far as they relate to the administration and business transferred by subsection (1) shall, from the appointed day, be construed as references to the Department of Public Expenditure and Reform.

...

Construction of references

15.— (1) References to the Minister for Finance contained in any statute or instrument under a statute in so far as they relate to any function transferred by this Act shall, from the appointed day, be construed as references to the Minister.

...

Performance of certain functions transferred to Minister by section 9.

20.— (1) The Minister shall not perform a function transferred by subsection (2) of section 9 without the consent of the Minister for Finance.

...

SCHEDULE 2

Functions Transferred To Minister

...

PART 1

Functions performable with consent of Minister for Finance

STATUTES

Number and Year (1)	Short Title (2)	Provision (3)
...
No. 18 of 2009	Broadcasting Act 2009	Sections 35 and 107
...

C3 Functions transferred and references to “Department of Tourism, Culture and Sport” and “Minister for Tourism, Culture and Sport” construed (1.06.2011) by *Tourism and Sport (Transfer of Departmental Administration and Ministerial Functions) (No. 2) Order 2011* (S.I. No. 217 of 2011), arts. 2 and 3, in effect as per art. 1(2), subject to transitional provisions.

2. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 3 are transferred to the Department of Transport, Tourism and Sport.

(2) References to the Department of Tourism, Culture and Sport contained in any Act or any instrument made under such Act and relating to any administration and business transferred by paragraph (1) shall, from the commencement of this Order, be construed as references to the Department of Transport, Tourism and Sport.

3. (1) The functions vested in the Minister for Tourism, Culture and Sport—

(a) by or under—...

...

(vi) the Broadcasting Act 2009 (No. 18 of 2009), and

...

(2) References to the Minister for Tourism, Culture and Sport contained in any Act or instrument made under such Act and relating to any functions transferred by this Article shall, from the commencement of this Order, be construed as references to the Minister for Transport, Tourism and Sport.

PART 1

PRELIMINARY AND GENERAL MATTERS

Short title. 1.— This Act may be cited as the Broadcasting Act 2009.

Definitions. 2.— In this Act—

“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;

“Authority” means Broadcasting Authority of Ireland;

“BCC” means Broadcasting Complaints Commission;

“BCI” means Broadcasting Commission of Ireland;

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

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

“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;

“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 1989¹ 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 30 June 1997² and by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007³;

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

“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*;

¹OJ No. L. 298/23, 17.10.1989

²OJ No. L. 202/60, 30.07.1997

³OJ No. L. 332, 18.12.2007

“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;

“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*;

“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;

“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 charge is made by the person providing the service;

“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;

“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;

“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;

“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;

“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;

“programme material” 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;

“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;

“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;

“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;

“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;

“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 programmeservicecontract” and “televisionprogrammeservicecontractor” 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;

“website” means a website maintained on the Internet;

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

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.*

Annotations**Editorial Notes:**

E1 Power pursuant to section exercised (1.10.2009) by *Broadcasting Authority of Ireland (Establishment Day) Order 2009* (S.I. No. 389 of 2009).

2. The day appointed to be the establishment day for the purposes of Part 2, sections 49 and 157 and Part 12 of the Broadcasting Act 2009 (No. 18 of 2009) is 1 October 2009.

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 those 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 *Iris Oifigiúil*.

(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 commit-
tee.

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 Authori-
ty.

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 contract or 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.

Annotations**Editorial Notes:**

- E2** Power pursuant to subs. (5) exercised (10.02.2011) by *Broadcasting Act 2009 (Section 26(5)) (Conferral of Additional Functions - Broadcasting Services) Order 2011* (S.I. No. 67 of 2011).

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)*.

Annotations

Editorial Notes:

- E3** Power pursuant to section exercised (17.01.2010) by *Broadcasting Act 2009 (Section 33) Levy Order 2010* (S.I. No. 7 of 2010), in effect as per art. 1(2).

Exchequer fund-
ing.

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 3

BROADCASTERS — DUTIES, CODES AND RULES

Duties of broadcasters.

39.— (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.— (1) A broadcaster, by means of its own facilities and in a manner approved of 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 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.

(2) A complaint under *subsection (1)* shall be made to the broadcaster 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.

(3) A broadcaster shall prepare and implement a code of practice for the handling 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 shall respond to complaints, and

(c) the procedures to be followed by the broadcaster in the resolution of complaints.

(4) A broadcaster shall publish on a website maintained by the broadcaster, 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 for the purposes of ensuring compliance with *subsection (3)*.

(6) A broadcaster shall supply the information required under *subsection (3)* to the Compliance Committee who shall cause such information to be published on a website maintained by the Authority.

(7) A broadcaster shall keep a record of complaints made under *subsection (1)* and of any reply made thereto for a period of 2 years from the date of receipt of the complaint.

(8) A broadcaster shall, if directed by the Compliance Committee, make available for inspection by the Compliance Committee all records kept by the broadcaster under *subsection (7)*.

Complaints
process.

48.— (1) Subject to this section, the Compliance Committee may investigate and decide upon any of the following complaints—

(a) 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)*,

(b) 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)*,

(c) a complaint that on an occasion specified in the complaint, there was an encroachment by a broadcaster contrary to *section 39 (1) (e)*,

(d) 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)*.

(2) A complaint under *subsection (1)* shall be in writing and be made to the Compliance Committee 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.

(3) 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)*.

(4) 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.

(5) Where a complaint is made to the Compliance Committee under *subsection (1)* and—

(a) a person employed by the broadcaster concerned in the making of any programme the subject of the complaint, or

(b) if the making of any programme the subject of the complaint was commissioned by the broadcaster concerned, the person commissioned to make that programme,

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—

(i) 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

(ii) the prospects of the person referred to in *paragraph (b)* obtaining further commissions in respect of programmes from the broadcaster concerned,

may, because of the complaint, be adversely affected.

(6) 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.

(7) As soon as may be after they decide on a complaint made under this section, the Compliance Committee shall send to—

(a) the person who made the complaint, and

(b) the broadcaster concerned,

a statement in writing of their decision, including the reasons for their decision.

(8) 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.

(9) 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.

(10) 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

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.

(11) 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.

(12) As regards proceedings under this section, the Compliance Committee does not have any power to award to any party costs or expenses.

(13) *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.

(14) Where a matter has been the subject of multiple complaints made under—

(a) this section, or

(b) in respect of a broadcast transmitted from another jurisdiction targeted at audiences in the State,

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.

(15) The Compliance Committee shall endeavour to decide upon a complaint as soon as practicable after such a complaint is received.

(16) The Compliance Committee may, where it deems it appropriate, hold an oral hearing in respect of proceedings under this section.

(17) 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)*.

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 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—

(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 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 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.

(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, 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 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.

(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.

PART 5

ENFORCEMENT

CHAPTER 1

Compliance with terms of contract

Investigation into affairs of contractor.

50.— (1) 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.

(3) The Compliance Committee 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 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 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 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.

(9) In this section "investigator" means a person appointed as such under *subsection (2)*.

Termination or suspension of contract under *Part 6* or *8*.

51.— (1) 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 Awards Committee by or on behalf of the holder of the contract before it was entered into, or

(b) if the holder of the contract has, upon a finding by the Compliance Committee under *section 50 (7)*, having regard to the 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,

and the Authority shall—

(i) 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

(ii) 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.

(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.

(3) The Compliance Committee shall make rules providing for 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.

(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.

(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).

(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*). **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.

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.

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 sanc-
tions.

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.

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—

- (a) by delivering it to the broadcaster or contractor,
 - (b) by leaving it at the address at which the broadcaster or contractor carries on business,
 - (c) 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,
 - (d) 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
 - (e) 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—
 - (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 notification,
- and
- (ii) 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) 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.

(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 seems 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—

(a) by delivering it to the Authority or the broadcasting contractor,

(b) by leaving it at the address at which the Authority or the broadcasting contractor carries on business,

(c) 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,

(d) 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

(e) 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—

(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 notice,

and

(ii) the notice is also given in one of the other ways mentioned in any of the preceding paragraphs.

(5) 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 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 broadcast-
ing contracts. **63.**— The Authority, on the recommendation of the Contract Awards Committee, 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, 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 broadcast-
ing 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 wide 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
- (b) 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 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.

(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.

(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)* 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.

(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)*.

(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.

(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

(b) 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 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)*.

Fast-track application process for award of sound broadcasting contracts.

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, the only response made in good faith pursuant to a public notice under *section 65(6)*, is received from the incumbent, then the Committee 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

(ii) refer the matter to the Authority for direction.

(5) Where, in the opinion of the Committee, 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 may—

- (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*,
 - (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 may consider relevant.
- (8) On consideration of a proposal received under *subsection (6)* the Committee 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,
 - (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.
- (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, 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, 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)* 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 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, 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.

(4) The Authority, on the recommendation of the Contract Awards Committee, 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 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) contravenes Article 22 or 3b of the Council Directive or the Prohibition of Incitement to Hatred Act 1989, 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.

(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.

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 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 or 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 3*,
- (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 obliga-
tions.

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 RTÉ, 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 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 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 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 as 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 or her 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 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 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)*, 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.

(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, 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, 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.]

Annotations

Amendments:

- F1** Substituted (2.08.2011) by *Communications Regulation (Postal Services) Act 2011 (21/2011)*, s. 68, commenced on enactment.

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.— 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—

(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).]

F3[(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 and TG4 respectively.

(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.]

(2) 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—

(a) pursuing its public service objects, and

(b) paying amounts levied on RTÉ under *section 33*.

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*.]

(3) 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.

(4) 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*.

(5) The Minister in making a determination under *subsection (4)* shall consider the multi-annual funding needs of TG4.

Annotations

Amendments:

- F2** Substituted (2.08.2011) by *Communications Regulation (Postal Services) Act 2011* (21/2011), s. 69(a), commenced on enactment.
- F3** Inserted (2.08.2011) by *Communications Regulation (Postal Services) Act 2011* (21/2011), s. 69(b), commenced on enactment.
- F4** Inserted (2.08.2011) by *Communications Regulation (Postal Services) Act 2011* (21/2011), s. 69(c), commenced on enactment.

Editorial Notes:

- E4** Amounts paid to broadcaster by Minister for Communications, Energy and Natural Resources under section confirmed qualifying income for the purposes of *Broadcasting Act 2009 (Section 33) Levy Order 2010* (17.01.2010) by *Broadcasting Act 2009 (Section 33) Levy Order 2010* (S.I. No. 7 of 2010), sch. 2 par. 3, in effect as per art. 1(2).

Recommendations as to changes to public funding.

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;

“annual television licence fee modification” = (Δ 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.

Annotations

Amendments:

- F5** Substituted (2.08.2011) by *Communications Regulation (Postal Services) Act 2011 (21/2011)*, s. 70, commenced on enactment.

CHAPTER 6

Bealach Thithe an Oireachtais and Bealach Scannán na hÉireann

Bealach Thithe an Oireachtais (Houses of the Oireachtas Channel).

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.

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).

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 the Minister for Arts, Sport and Tourism 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.

(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 Irish Film Channel.

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.

PART 8

DIGITAL BROADCASTING AND ANALOGUE SWITCH-OFF

Definitions (*Part 8*).

129.— In this Part—

“Acts of 1926 to 2009” means *Wireless Telegraphy Acts 1926 to 2009*;

“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.

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.

Annotations

Editorial Notes:

- E5** Power pursuant to subs. (1)(a)(iv) exercised (23.06.2016) by *Broadcasting Act 2009 (Section 130 (1)(a)(iv) Designation) Order 2016* (S.I. No. 328 of 2016).
- E6** Power pursuant to subs. (1)(a)(iv) exercised (1.12.2014) by *Broadcasting Act 2009 (Section 130(1)(a)(iv) Designation) Order 2014* (S.I. No. 542 of 2014).
- E7** Additional functions conferred on Broadcasting Authority in relation to section (10.02.2011) by *Broadcasting Act 2009 (Section 26(5)) (Conferral of Additional Functions - Broadcasting Services) Order 2011* (S.I. No. 67 of 2011), art. 3.
- E8** Power pursuant to subs. (1)(b)(i)(i) exercised (26.02.2010) by *RTÉ (National Television Multiplex) Order 2010* (S.I. No. 85 of 2010).

2. The date specified as the date on which the national television multiplex is required to be operational and available free-to-air to approximately 90 per cent of the population is 31 October 2010.

Additional functions of Authority.

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.

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.

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.

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.

(6) 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.

(7) A simulcasting amendment may contain such terms and conditions as the Authority thinks appropriate and shall contain the following terms and conditions:

- (a) an increase in the period during which the existing sound broadcasting contract shall continue in force,
- (b) a designation of the sound broadcasting contractor's sound broadcasting service as a "listed simulcast service" for the purpose of this Part,
- (c) a requirement on the sound broadcasting contractor to provide its sound broadcasting service so that it may be provided as part of a digital sound broadcasting multiplex under this Part, and
- (d) a requirement to enter into any such subsequent agreements with sound broadcasting multiplex contractors which the Authority may specify, including agreements in relation to the payment of appropriate fees in relation to the costs of establishing, maintaining and operating a multiplex to the sound broadcasting multiplex contractor or contractors.

(8) 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.

(9) Where a relevant incumbent fails to meet its obligations under *subsection (7) (c)* or *(d)*, the simulcasting amendment to its sound broadcasting contract will be considered to be null and void.

Regulations
prescribing fees.

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.

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 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 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.

(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 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.

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.

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 condition 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 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.

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)* 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)* 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 her 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 9

TELEVISION LICENCE

Definitions (*Part 9*) — order — “specified place”.

140.— (1) In this Part—

“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.

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.

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.

Annotations

Modifications (not altering text):

- C4** Exemption from the television licensing requirements provided in respect of certain classes of television pursuant to subs. (3) (31.07.2009) by *Television Licence (Exemption of Classes of Television Set) Order 2009* (S.I. No. 319 of 2009), art. 3.

3. The following classes of television set are declared to be classes of television set to which section 142 of the Broadcasting Act 2009 (No. 18 of 2009) does not apply, namely—

- (a) a non-portable television set capable of exhibiting television broadcasting services distributed by means of the publicly available Internet, and
- (b) a portable television set.

Grant of television licences.

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.

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.

Annotations

Editorial Notes:

- E9** Regulations continued in force under subs. (6) are listed in the Classified List of Acts and Statutory Instruments under the listing for this Act at Title 2.3, available on www.lawreform.ie under the Classified List link.

Issue of television licences by agent.

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.

F6[(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.]

Annotations

Amendments:

- F6** Inserted (2.08.2011) by *Communications Regulation (Postal Services) Act 2011* (21/2011), s. 71, commenced on enactment.

Request to show television licence. **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. **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 accompanied 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.

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.

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.

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.

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.

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*).

153.— In this Part—

“appropriate network provider” means a body referred to in *section 77(1)*;

“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” means a scheme prepared under *section 154*.

Broadcasting funding scheme.

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,

F7[(e) the development of archiving of programme material for all or any of the descriptions of programme material 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.

Annotations

Amendments:

- F7** Substituted (2.08.2011) by *Communications Regulation (Postal Services) Act 2011 (21/2011)*, s. 72, commenced on enactment.

Objectives of scheme.

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.

Amounts to be paid by Minister to scheme.

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.

157.— (1) The Authority shall establish and maintain on the establishment day 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 expenditure by the Authority for the purposes of grants under, and any administration of or reasonable expenses relating to, a scheme duly approved under *section 154*.

(4) Monies 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) Whenever 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.

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.

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*.

(4) (a) A dissolution order shall be laid before each of the Houses of the Oireachtas as 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 11

MAJOR EVENTS TELEVISION COVERAGE

Definitions (*Part 11*).

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 the Minister for Arts, Sport and Tourism 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 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 to 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 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.