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*Number 4 of 2001*

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**BROADCASTING ACT, 2001**

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Radio and Television Act, 1988	1988, No. 20
Wireless Telegraphy Act, 1926	1926, No. 45
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*Number 4 of 2001*

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**BROADCASTING ACT, 2001**

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AN ACT TO MAKE FURTHER PROVISION IN RELATION TO BROADCASTING, FOR THAT PURPOSE TO MAKE SEPARATE PROVISION IN RELATION TO THE FOLLOWING DISCRETE ASPECTS OF BROADCASTING, NAMELY, THE SUPPLY OF PROGRAMME MATERIAL FOR THE PURPOSE OF ITS BEING TRANSMITTED AND THE TRANSMISSION OF SUCH MATERIAL THAT IS SO SUPPLIED, TO CONFER ON 2 COMPANIES DESIGNATED BY THE MINISTER FOR ARTS, HERITAGE, GAELTACHT AND THE ISLANDS FOR THAT PURPOSE FUNCTIONS IN RELATION TO SUCH TRANSMISSION AND, AS REGARDS SUCH TRANSMISSION THAT IS EFFECTED BY DIGITAL MEANS, IN RELATION TO THE COMBINATION OF MATERIAL AS AFORESAID AND RELATED AND OTHER DATA IN DIGITAL FORM, TO CONFER ADDITIONAL FUNCTIONS ON THE INDEPENDENT RADIO AND TELEVISION COMMISSION AND RENAME THAT BODY AS COIMISIÚN CRAOLACHÁIN NA hÉIREANN OR, IN THE ENGLISH LANGUAGE, THE BROADCASTING COMMISSION OF IRELAND, TO ESTABLISH A BODY TO BE KNOWN AS TEILIFÍS NA GAEILGE AND TO DEFINE ITS FUNCTIONS, TO AMEND THE BROADCASTING AUTHORITY ACTS, 1960 TO 1993, AND CERTAIN OTHER ENACTMENTS AND TO PROVIDE FOR RELATED MATTERS.

[14th March, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Broadcasting Act, 2001.

Short title,  
collective citation,  
construction and  
commencement.

(2) The Broadcasting Authority Acts, 1960 to 1993, and this Act (in so far as it amends those Acts) may be cited together as the Broadcasting Authority Acts, 1960 to 2001.

(3) The Broadcasting Authority Acts, 1960 to 1993, and this Act (in so far as it amends those Acts) shall be construed together as one.

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(4) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Interpretation.

2.—(1) In this Act, unless the context otherwise requires—

“the Act of 1960” means the Broadcasting Authority Act, 1960;

“the Act of 1976” means the Broadcasting Authority (Amendment) Act, 1976;

“the Act of 1988” means the Radio and Television Act, 1988;

“the Authority” means Radio Telefís Éireann;

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

“broadcasting service” means a service which comprises a compilation of programme material of any description and which is transmitted or relayed by means of wireless telegraphy, a cable or MMD system or a satellite device, directly or indirectly for reception by the general public, whether that material is actually received or not, but does not include such a service that is provided by means of the Internet;

“cable-MMD content contract” has the meaning assigned to it by *section 41*;

“cable system” means a wired broadcast relay system;

“the Commission” means the body established by section 3 of the Act of 1988;

“community content contract” has the meaning assigned to it by *section 39*;

“contract” does not include any contract that comes into being between the multiplex company or the transmission company and another person by virtue of the entering into arrangements by the multiplex company or the transmission company with that person under *section 13(1)* or *14(1)*;

“the Council Directive” means Council Directive 89/552/EEC of 3 October 1989<sup>(1)</sup> on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997<sup>(2)</sup>;

“digital content contract” has the meaning assigned to it by *section 12*;

“digital multiplex licence” has the meaning assigned to it by *section 9*;

“the Director” means the Director of Telecommunications Regulation;

“DTT licence” has the meaning assigned to it by *section 7*;

<sup>(1)</sup> O.J. No. L. 298/23, 17 October 1989

<sup>(2)</sup> O.J. No. L. 202/60, 30 July 1997

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“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on the 2nd day of May, 1992, as amended for the time being; Pr.I S.2

“electronic programme guide” has the meaning assigned to it by *section 16*;

“establishment day” has the meaning assigned to it by *section 43*;

“excepted person” means a person who is under the jurisdiction of another Member State of the European Union or another Member State of the EEA and, for the purposes of this definition, the provisions of the Council Directive shall apply for the purpose of determining the state (whether it be a Member State of the European Union or of the EEA) under the jurisdiction of which the person falls;

“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 the Act of 1988 or this Act, the person with whom the Commission 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;

“the Internet” means the system commonly known by that name;

“local content contract” has the meaning assigned to it by *section 38*;

“Member State of the EEA” means a state that is a contracting party to the EEA Agreement;

“the Minister” means the Minister for Arts, Heritage, Gaeltacht and the Islands;

“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 8*;

“the multiplex company” has the meaning assigned to it by *section 8*;

“programme guide contract” has the meaning assigned to it by *section 16*;

“programme material” means audio-visual material or, where used in the context of a sound broadcasting service, 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 or relayed as a broadcasting service;

“sound broadcasting contractor” and “sound broadcasting service” have the same meaning as they have in the Act of 1988;

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“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;

“Teilifis na Gaeilge” means the body established by *section 44*;

“television programme service contract” and “television programme service contractor” have the same meaning as they have in the Act of 1988;

“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 cable or MMD system (or, where the said expression is used in the context of Northern Ireland, any system analogous to a cable or MMD system) or a satellite device and “digital terrestrial means” shall be construed accordingly;

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

“the transmission company” has the meaning assigned to it by *section 5*.

(2) In this Act—

- (a) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended,
- (c) a reference to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended, extended or adapted by or under subsequent enactments, including this Act.

Repeals.

**3.**—Each enactment specified in the *First Schedule* to this Act is hereby repealed to the extent specified in the *third column* of that Schedule.

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 moneys provided by the Oireachtas.

## PART II

### SUPPLY AND TRANSMISSION OF PROGRAMME MATERIAL GENERALLY

Transmission company.

**5.**—(1) In this section “the transmission company” means a company formed and registered under the Companies Acts, 1963 to 1999 (whether before or after the commencement of this section), being a company which is designated in writing by the Minister to be the



body that shall perform the functions expressed in this Act to be performable by the transmission company. Pr.II S.5

(2) The Minister shall not designate a company for the purposes aforesaid unless the following conditions as respects the company are satisfied, namely—

- (a) the company has been so formed and registered by 2 or more persons (who may include the Authority) each of whom the Minister is of the opinion, having regard to the responsibilities the company will assume under this Act, is a person who is a suitable person to be concerned in such formation and registration,
- (b) the name of the company is a name which the Minister considers to be appropriate having regard to the said responsibilities,
- (c) the company is a company limited by shares, and
- (d) the memorandum of association and articles of association of the company are in such form, consistent with this Act, as is approved of by the Minister, after consultation with the Minister for Public Enterprise.

(3) For the purposes of enabling or facilitating the performance by the transmission company of its functions under *section 13*, the Authority shall transfer such parts of its real and personal property to the company as the Minister, after consultation with the Authority, determines ought to be the subject of such a transfer.

(4) The principal objects of the transmission company shall be stated in its memorandum of association to be—

- (a) to transmit, by analogue means, broadcasting services on behalf of the Authority, Teilifís na Gaeilge and the television programme service contractor, being services that the Authority, Teilifís na Gaeilge and that contractor provide under the *Broadcasting Authority Acts, 1960 to 2001*, the Act of 1988 or this Act, as the case may be,
- (b) to transmit, by digital terrestrial means, programme material and related and other data in a digital form in accordance with arrangements entered into by it under this Act with the multiplex company,
- (c) to transmit, by analogue means, sound broadcasting services on behalf of the Authority and sound broadcasting contractors, being services that the Authority and such contractors provide under the *Broadcasting Authority Acts, 1960 to 2001*, or the Act of 1988, as the case may be,
- (d) to promote the development of multimedia services, and
- (e) to promote the development of electronic information services, including those provided by means of the Internet.

(5) The transmission company shall endeavour to ensure, in so far as it is reasonably practicable to do so, that the services provided by it are made available to the whole community in the State.

(6) The Authority shall not, without the consent of the Minister and the Minister for Finance, transfer to another person all or one or more of any shares it holds in the shareholding of the transmission company.

Pr.II S.5

(7) The Minister may, by order, require the Authority to divest itself of all or one or more of any shares it holds in the shareholding of the transmission company.

(8) Where an order is proposed to be made under *subsection (7)*, 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.

(9) Nothing in this section shall prevent or restrict the inclusion among the objects of the transmission company as stated in its memorandum of association of all such objects and powers as are reasonably necessary or proper for or incidental or ancillary to the due attainment of the principal objects aforesaid and are not inconsistent with this Act.

(10) The transmission company shall have power to do anything which appears to it to be requisite, advantageous or incidental to, or which appears to it to facilitate, either directly or indirectly, the performance by it of its functions as specified in this Act or its memorandum of association and is not inconsistent with any enactment for the time being in force.

Authorisation of the exercise of certain powers vested in Authority and transmission company.

6.—(1) In this section the “relevant section” means section 16 of the Act of 1960.

(2) Subsection (3)(a) of the relevant section shall be construed as including a prohibition with respect to the transmission company exercising its powers to transmit programme material (other than programme material referred to in *section 7(2)*) of a like kind to the prohibition which that subsection contains with respect to the Authority exercising the powers referred to in paragraphs (a) and (b) of subsection (2) of the relevant section and, accordingly, the Director may, in accordance with this section, issue licences under subsection (3) of the relevant section to the transmission company as well as to the Authority and attach conditions to any licence so issued to that company.

(3) On such date as the Minister, after consultation with the Minister for Public Enterprise and the Director, specifies for the purpose of this section, the Director shall issue a licence under subsection (3) of the relevant section or the Wireless Telegraphy Acts, 1926 to 1988, or both those enactments as appropriate, to—

- (a) the Authority with respect to the operation by it of any apparatus the operation of which requires a licence under either or both of the said enactments and which apparatus has not been the subject of the transfer referred to in *section 5(3)*, and
- (b) the transmission company with respect to the operation by it of any apparatus the operation of which requires a licence under either or both of the said enactments and which apparatus has been the subject of the said transfer.

(4) Pending the issuing by the Director of the licences referred to in *subsection (3)*, any licence issued to the Authority under subsection (3) of the relevant section or the Wireless Telegraphy Acts, 1926 to 1988, and in force immediately before the date specified for the purposes of *subsection (3)*, shall, in so far as any right or obligation arising under it relates to an apparatus which has been the subject

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of the transfer referred to in *section 5(3)*, operate and have effect as if it had been granted to the transmission company. Pr.II S.6

(5) Upon the issue by the Director of a licence referred to in *subsection (3)*, any licence issued to the Authority under *subsection (3)* of the relevant section or the Wireless Telegraphy Acts, 1926 to 1988, (including any licence to which *subsection (4)* applies) which relates to the same matter as the first-mentioned licence relates to and is in force immediately before the issue of that licence shall stand revoked.

(6) Paragraphs (b) and (c) of *subsection (3)* of the relevant section shall apply to a licence issued under that subsection to the transmission company as they apply to a licence issued under that subsection to the Authority and, for the purposes of such application, the reference in the said paragraph (b) to the Authority shall be construed as a reference to the transmission company.

7.—(1) The Director shall, on a date specified by the Minister, after consultation with the Minister for Public Enterprise, for the purposes of this section, grant to the transmission company, under the Wireless Telegraphy Acts, 1926 to 1988, a licence which shall be known as the “digital terrestrial television licence” and is in this Act referred to as the “DTT licence”.  
Authorisation of transmission company to transmit, by digital terrestrial means, programme material.

(2) The DTT licence shall be expressed to authorise, and shall operate to authorise, the transmission company to transmit by digital terrestrial means programme material and related and other data in a digital form in accordance with arrangements entered into by it under this Act with the multiplex company.

(3) Without prejudice to any powers he or she may have in that behalf under the Wireless Telegraphy Acts, 1926 to 1988, the Director may attach such conditions to the DTT licence as he or she considers appropriate including conditions specifying requirements to be complied with by the transmission company in respect of the entering into of arrangements under *subsection (1)* of *section 13* or the imposition of charges under *subsection (3)* of that section and, in particular—

- (a) a requirement that, as respects such arrangements that are entered into in similar circumstances by the company with different persons for the transmission of broadcasting services comprising similar kinds of programme material supplied to it by each of those persons, the terms of those arrangements, and the charges imposed in respect of them, are similar,
- (b) a requirement that the company, as respects any decision made by it to exercise or not to exercise its power under *subsection (3)* of *section 13*, and as respects any consequent exercise by it of that power, otherwise ensures fairness of treatment of the persons concerned, and
- (c) a requirement that the transmission company supplies such information to the Director, and adopts such procedures in the performance of its functions under this Act, as the Director specifies, in pursuance of the requirement, for the purpose of enabling the Director to verify that each condition attached to the licence is being complied with.

Pr.II S.7

(4) Nothing in this section shall be construed as preventing the Director from granting under the Wireless Telegraphy Acts, 1926 to 1988, in addition to the DTT licence and whether to the transmission company or any other person, licences authorising the transmission, by digital terrestrial means, of programme material and related and other data in a digital form.

Multiplex company.

**8.—(1)** In this section—

“multiplex” means a multiplex referred to in *subsection (3)*;

“the multiplex company” means a company formed and registered under the Companies Acts, 1963 to 1999 (whether before or after the commencement of this section), being a company which is designated in writing by the Minister to be the body that shall perform the functions expressed in this Act to be performable by the multiplex company.

(2) The Minister shall not designate a company for the purposes aforesaid unless the following conditions as respects the company are satisfied, namely—

- (a) the company has been so formed and registered by one or more than one person who or each of whom the Minister is of the opinion, having regard to the responsibilities the company will assume under this Act, is a person who is a suitable person to be concerned in such formation and registration,
- (b) the name of the company is a name which the Minister considers to be appropriate having regard to the said responsibilities,
- (c) the company is a company limited by shares, and
- (d) the memorandum of association and articles of association of the company are in such form, consistent with this Act, as is approved of by the Minister, after consultation with the Minister for Public Enterprise.

(3) The principal objects of the multiplex company shall be stated in its memorandum of association to be—

- (a) to establish, operate and maintain 6 digital multiplexes, that is to say, 6 electronic systems which combine programme material and related and other data in a digital form for the purposes of that material and data, so combined, being transmitted by the transmission company,
- (b) to enter into arrangements, in accordance with the provisions of this Act, with the Authority, Teilifís na Gaeilge, the television programme service contractor and any other person concerned for the transmission of programme material and related and other data in a digital form by the transmission company,
- (c) to promote the development of multimedia services, and
- (d) to promote the development of electronic information services, including those provided by means of the Internet.

(4) The multiplex company shall endeavour to ensure, in so far as it is reasonably practicable to do so, that the services provided by it are made available to the whole community in the State. Pr.II S.8

(5) Nothing in this section shall prevent or restrict the inclusion among the objects of the multiplex company as stated in its memorandum of association of all such objects and powers as are reasonably necessary or proper for or incidental or ancillary to the due attainment of the principal objects aforesaid and are not inconsistent with this Act.

(6) The multiplex company shall have power to do anything which appears to it to be requisite, advantageous or incidental to, or which appears to it to facilitate, either directly or indirectly, the performance by it of its functions as specified in this Act or its memorandum of association and is not inconsistent with any enactment for the time being in force.

9.—(1) The Director shall, on a date specified by the Minister, after consultation with the Minister for Public Enterprise, for the purposes of this section, grant to the multiplex company, under the Wireless Telegraphy Acts, 1926 to 1988, a licence which shall be known, and is in this Act referred to, as the “digital multiplex licence”.  
Authorisation of multiplex company to combine programme material in digital form.

(2) The digital multiplex licence shall be expressed to authorise, and shall operate to authorise, the multiplex company to establish, operate and maintain 6 multiplexes.

(3) The Director shall attach to the digital multiplex licence a condition requiring the multiplex company to use the whole or, as the case may be, the part of a multiplex specified in *column (2)* of the Table to this section solely for the purposes of programme material and related and other data supplied to it by the person who is specified in *column (1)* of that Table opposite the specification of that whole or that part of a multiplex.

(4) If, on the expiration of the appropriate period, a person specified in *column (1)* of the Table to this section—

(a) has not supplied any programme material and related and other data to the multiplex company for the purposes of that material and data being combined in a digital form by means of the multiplex or part of the multiplex specified in *column (2)* of that Table opposite the specification of that person, or

(b) is not supplying programme material and related and other data that is sufficient to exhaust, on a day-to-day basis, the capacity of the said multiplex or part,

the designated multiplex company may use—

(i) in a case falling within *paragraph (a)*, the whole of the said multiplex or part,

(ii) in a case falling within *paragraph (b)*, so much of the said multiplex or part as is not being so exhausted,

in respect of programme material and related and other data supplied to it by another person or persons under and in accordance with this Act or for the purposes referred to in *subsection (9)*.

(5) In *subsection (4)* “appropriate period” means the period beginning on the commencement of this section and ending on such day as the Commission, after consultation with the multiplex company and the first-mentioned person in *subsection (4)*, determines to be the day by which in the opinion of the Commission, it would be reasonable to expect that person to be supplying sufficient programme material to that company to exhaust, on a day-to-day basis, the capacity of the multiplex or part referred to in that subsection.

(6) The Director shall attach a condition to the digital multiplex licence requiring the multiplex company, where the Commission, in accordance with a direction given by the Minister under *subsection (7)* for the time being in force, requests it to do so, to use a multiplex or part of a multiplex solely for the purposes of programme material supplied to it under and in accordance with this Act by a person who provides a broadcasting service in Northern Ireland, being a broadcasting service that is receivable throughout the whole of Northern Ireland and which is provided by terrestrial means.

(7) The Minister may, whenever and so often as he or she considers it appropriate to do so, give a direction to the Commission requiring it to make a request of the multiplex company of the kind referred to in *subsection (6)* and the Commission shall comply with that direction; such a direction may, subject to *subsection (8)*, be revoked at any time by the Minister and where the direction is so revoked, the multiplex company shall thereupon be relieved of the obligation of having to comply any further with the request concerned of the Commission.

(8) The Minister shall not revoke a direction under *subsection (7)* otherwise than for stated reasons and then only upon resolutions passed by both Houses of the Oireachtas calling for such revocation.

(9) Subject to *subsections (3)* and *(6)*, nothing in this section shall be construed as preventing the multiplex company from using one or more of the multiplexes for the purposes of providing electronic information services in accordance with the requirements (if any) imposed by any enactment relating to the provision of services concerned which is for the time being in force.

(10) Without prejudice to any powers he or she may have in that behalf under the Wireless Telegraphy Acts, 1926 to 1988, the Director may attach such conditions to the digital multiplex licence as he or she considers appropriate including conditions specifying requirements to be complied with by the multiplex company in relation to the imposition of charges under *section 14(4)*.

(11) The requirement imposed by a condition referred to in *subsection (3)* or *(6)* to use a multiplex or part of a multiplex for the purposes referred to in *subsection (3)* or *(6)*, as the case may be, may be satisfied by the multiplex company’s using, with the consent of the relevant person specified in *column (1)* of the Table to this section, so much of the capacity of 2 or more of the multiplexes that is equivalent to the capacity of that multiplex or part, and references in this section to the capacity of a multiplex or a part of a multiplex being exhausted or not being exhausted, as the case may be, shall be construed accordingly.

(12) Nothing in this section shall be construed as preventing the Director from granting under the Wireless Telegraphy Acts, 1926 to 1988, in addition to the digital multiplex licence and whether to the multiplex company or any other person, licences authorising the combination, by means of a multiplex other than a multiplex referred

to in *section 8(3)*, of programme material and related and other data in a digital form. Pr.II S.9

TABLE

(1)	(2)
The Authority	One multiplex
Teilifís na Gaeilge	One half of one multiplex
The television programme service contractor	One half of one multiplex

**10.—(1)** The Commission shall henceforth be known as Coimisiún Craolacháin na hÉireann or, in the English language, the Broadcasting Commission of Ireland and section 3 of the Act of 1988 shall be construed and have effect accordingly. Alteration of name of Commission.

(2) The Commission shall, as soon as may be after the commencement of this section, provide itself with a new seal under paragraph 6 of the Schedule to the Act of 1988.

**11.—(1)** Without prejudice to the functions conferred on it by the Act of 1988 or any other enactment, it shall be a function of the Commission to make arrangements, in accordance with the provisions of this Act, for the provision of broadcasting services in the State additional to those provided by the Authority, Teilifís na Gaeilge, the television programme service contractor and each sound broadcasting contractor. Additional functions of Commission.

(2) In performing the function conferred on it by this section or the functions conferred on it by the Act of 1988, the Commission shall endeavour to ensure that the number and categories of broadcasting services made available in the State by virtue of this Act or the Act of 1988 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.

(3) The Commission shall have all such powers as are necessary for or incidental to the performance of its function under this section.

**12.—(1)** Subject to *subsection (2)*, a person shall not supply a compilation of programme material for the purpose of any arrangements to be entered into by him or her under *paragraph (a) or (b) of section 14(1)* otherwise than under and in accordance with a digital content contract. Digital content contracts.

(2) *Subsection (1)* shall not apply to such a supply made by—

- (a) an excepted person for the purpose of any such arrangements, or
- (b) the Authority, Teilifís na Gaeilge or the television programme service contractor for the purpose of any such arrangements, being arrangements for the transmission by the designated company of a free-to-air service.

(3) The Commission may enter into a contract with a person whereby that other person may supply a compilation of programme material for the purposes referred to in *subsection (1)*, and such a contract shall be known as a “provision of content (digital) contract” and is in this Act referred to as a “digital content contract”.

- (4) A digital content contract shall include—
- (a) a condition requiring the holder of the contract to comply with the codes and rules under *section 19* with respect to the programme material supplied in pursuance of the contract, and
  - (b) a condition authorising the Commission to request the holder of the contract to pay to it, 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.
- (5) A digital content contract shall include a condition providing that, where any of the programme material supplied in pursuance of the contract—
- (a) contravenes Article 22 or 22A of the Council Directive or a provision of the Prohibition of Incitement to Hatred Act, 1989, or
  - (b) constitutes an incitement to commit an offence,

the Commission 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.

Transmission of digital and other broadcasting services by transmission company.

- 13.—**(1) The transmission company—
- (a) shall, if requested to do so by the body or contractor concerned, enter into arrangements with each of the following, namely, the Authority, Teilifís na Gaeilge and the television programme service contractor whereby the company transmits, by analogue means, free-to-air services comprising compilations of programme material supplied to it by the body or contractor for that purpose,
  - (b) shall, if requested to do so by the multiplex company, enter into arrangements with that company to transmit, by digital terrestrial means, programme material and related and other data in a digital form,
  - (c) shall, if requested to do so by the Authority or the contractor concerned, enter into arrangements with the Authority and each sound broadcasting contractor whereby the company transmits, by analogue terrestrial means, a sound broadcasting service comprising a compilation of programme material supplied to it by the Authority or contractor concerned for that purpose.

(2) The transmission company, on being notified by the Commission that the Commission has terminated a television programme service contract or sound broadcasting contract, as the case may be, or that such a contract has expired and has not been renewed, shall forthwith discontinue any arrangements it has entered into under *subsection (1)* with the former holder of the contract in so far as they relate to the transmission of a broadcasting service or sound broadcasting service, as the case may be, comprising programme material supplied pursuant to that contract.



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(3) The transmission company may impose charges on a person in respect of the entering into of arrangements under *subsection (1)* with that person. Pr.II S.13

(4) For the avoidance of doubt, nothing in this section shall be construed as preventing the transmission company from providing services other than those referred to in *subsection (1)* in accordance with the requirements (if any) imposed by any enactment relating to the provision of the services concerned which is for the time being in force.

**14.—(1)** The multiplex company—

Arranging by multiplex company for transmission of digital broadcasting services by transmission company.

(a) shall, if requested to do so by the body or contractor concerned, enter into arrangements with the transmission company for the transmission by that company of free-to-air services, comprising compilations of programme material and related and other data in a digital form, supplied by the Authority, Teilifís na Gaeilge or the television programme service contractor to the multiplex company, being programme material and related and other data that has been combined in such form by the use of the multiplex or part of the multiplex referred to in *section 9(3)*,

(b) may enter into arrangements with the transmission company for the transmission by that company of broadcasting services (including free-to-air services) comprising compilations of programme material and related and other data in a digital form supplied, in accordance with the provisions of this Act, to the multiplex company by any person (including a person referred to in *paragraph (a)*),

(c) may enter into arrangements with any person whereby the company supplies electronic information services in a digital form for transmission by the transmission company in accordance with the requirements (if any) imposed by any enactment relating to the provision of the services concerned which is for the time being in force.

(2) The multiplex company, on being notified by the Commission that the Commission has terminated a digital content contract or a television programme service contract, as the case may be, or that such a contract has expired and has not been renewed, shall forthwith discontinue any arrangements it has entered into under *subsection (1)* in so far as they relate to the transmission of a broadcasting service comprising programme material supplied pursuant to that contract.

(3) The multiplex company shall take all reasonable steps to ensure that the number of arrangements for the time being entered into by it under *subsection (1)* and the terms of those arrangements (including as to the periods for which the arrangements are to be in force) are not such as to result in there not being sufficient capacity available on one or more of the multiplexes referred to in *subsection (2)* of *section 9* for the purpose of the company's being able to comply with a request referred to in *subsection (6)* of that section.

(4) The multiplex company may impose charges on a person—

(a) in respect of the entering into by it of arrangements under *subsection (1)* at the request of or, as the case may be, with that person,

- (b) in respect of the reception by the person of a broadcasting service (other than a free-to-air service provided pursuant to an arrangement entered into under *subsection (1)(a)*) comprising programme material supplied by the multiplex company to the transmission company, and
- (c) in respect of the provision by it to the person of any apparatus or device enabling the reception by the person of broadcasting services (including free-to-air services) in a digital form.

(5) For the avoidance of doubt, the reference in *subsection (4)* to arrangements entered into under *subsection (1)* includes a reference to arrangements entered into under that subsection in respect of programme material supplied to the multiplex company by a person providing a broadcasting service in Northern Ireland to whom a direction given by the Minister under *section 9(7)* relates and references in *subsection (4)* to a broadcasting service shall be construed accordingly.

Non-liability of transmission company and multiplex company for dealing with programme material.

**15.**—For the avoidance of doubt, neither the transmission company nor the multiplex company shall—

- (a) be under any duty to ensure that the programme material supplied to it, pursuant to arrangements under *section 13(1)* or *14(1)*, complies with the enactments applied to the supply of such material by *section 18* or with the codes and rules under *section 19*,
- (b) be liable in damages for any infringement of copyright, other intellectual property rights or other legal rights of any person by virtue of having accepted a supply of programme material, pursuant to arrangements under *section 13(1)* or *14(1)*, and dealt with the material in the performance of its functions,
- (c) be liable in damages for any infringement of copyright, other intellectual property rights or other legal rights of any person by virtue of having accepted a supply of data (other than programme material), pursuant to arrangements under *section 13(1)* or *14(1)*, and dealt with the data in the performance of its functions, unless in so dealing with the data it has effective control over its content,
- (d) be regarded, for the purposes of the law of defamation, malicious falsehood or any other form of civil liability, as having, by virtue of accepting a supply of programme material, pursuant to arrangements under *section 13(1)* or *14(1)*, and dealing with the material in the performance of its functions, published the material, or
- (e) be liable in damages to the holder of a contract referred to in *section 13(2)* or *14(2)* for the discontinuance by it in good faith under *section 13(2)* or *14(2)*, as the case may be, of any arrangements under *section 13(1)* or *14(1)* in respect of that contract in circumstances where the contract was not lawfully terminated or had not, in fact, expired or had expired but had, in fact, been renewed at the date of the notification by the Commission under *section 13(2)* or *14(2)*.

**16.—(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.

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programme guides.

(2) A person shall not prepare or make available for use by another an electronic programme guide otherwise than under and in accordance with a programme guide contract.

(3) The Commission may enter into a contract with a person whereby that other person may prepare and make available for use by another one or more electronic programme guides and such a contract shall be known as an “electronic programme guide contract” and is in this Act referred to as a “programme guide contract”.

(4) A programme guide contract shall include a condition requiring the holder of the contract to comply with guidelines under *section 17* with respect to the electronic programme guide or guides prepared by him or her in pursuance of that contract.

(5) A programme guide contract shall include a condition requiring the holder of the contract to ensure that the electronic programme guide or guides prepared in pursuance of it 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 broadcasting service—

(a) provided in the State by—

(i) the Authority,

(ii) Teilifís na Gaeilge, and

(iii) the television programme service contractor,

and

(b) provided in Northern Ireland by any person, being a service that is receivable throughout the whole of Northern Ireland and which is provided by terrestrial means.

(6) An electronic programme guide prepared by a person who is the holder of a contract that has been entered into under any other section of this Act shall not be designed in such a way as to result in a user of the guide experiencing difficulty in accessing the programme material supplied pursuant to any contract entered into with another person under that or any other section of this Act and which is the subject of a broadcasting service.

(7) If the Commission 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 transmitted by the transmission company pursuant to arrangements under *section 14(1)* and each holder of a licence referred to in *section 37(1)*, it may invite expressions of interest in the securing of a programme guide contract in relation to the electronic programme guide or guides prepared under which the Commission may give a direction under *subsection (9)*.

(8) The Commission 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

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for such electronic programme guide or guides would, in its opinion, best serve the needs of the public.

(9) The Commission may give a direction to—

- (a) the multiplex company requiring that company to enter into arrangements with the transmission company for the transmission by the transmission company of the electronic programme guide or guides prepared under the programme guide contract referred to in *subsection (8)*, and
- (b) each holder of a licence referred to in *section 37(1)* requiring him or her to transmit the said guide or guides,

and the said company and each such holder shall comply with such a direction.

Guidelines with respect to programme guide contracts.

**17.**—The Commission, after consultation with the Director, shall prepare guidelines 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 enable the broadcasters referred to in *subsection (5) of section 16* to have access to those guides so that the condition referred to in that subsection of each programme guide contract may be properly implemented in their favour.

Application of certain enactments to digital and other broadcasting services.

**18.**—The following provisions of the Act of 1988, namely—

- (a) paragraphs (a), (b), (d) and (e) of subsection (1), and subsection (2), of section 9, and
- (b) section 10(3),

shall apply to a broadcasting service which consists of a compilation of programme material supplied pursuant to a contract entered into under this Act with the following and any other necessary modifications—

- (i) references in those provisions to a sound broadcasting contractor shall be construed as references to the holder of the contract concerned,
- (ii) references in those provisions to any thing being broadcast shall be construed as references to the thing being supplied pursuant to a contract entered into under this Act for the purpose of its being transmitted as part of a broadcasting service, and
- (iii) paragraph (d) of the said section 9(1) shall have effect as if the words “as offending against good taste or decency, or” were omitted.

### PART III

#### STANDARDS IN BROADCASTING

Codes and rules with respect to programme material.

**19.**—(1) The Commission shall, upon being directed by the Minister to do so and in accordance with the provisions of this section, prepare—

- (a) a code specifying standards to be complied with, and rules and practices to be observed, in respect of the taste and

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*Broadcasting Act, 2001.*

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decency of programme material, the subject of a broadcasting service or sound broadcasting service, and, in particular, in respect of the portrayal of violence and sexual conduct in such material, and

(b) a code specifying standards to be complied with, and rules and practices to be observed, in respect of advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service or sound broadcasting service (other than advertising and other activities as aforesaid falling within *paragraph (c)*), and

(c) a code specifying standards to be complied with, and rules and practices to be observed, in respect of advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service or sound broadcasting service, being advertising and other activities as aforesaid which relate to matters likely to be of direct or indirect interest to children.

(2) A direction of the Minister under *subsection (1)* shall specify that the Commission shall give priority to the preparation of the code under *paragraph (c)* of that subsection before the preparation of the other codes under that subsection and the Commission shall give such priority in the preparation of the first-mentioned code accordingly.

(3) The Commission shall, in accordance with *subsection (5)*, make 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 or sound broadcasting service, being a service which consists of a compilation of programme material supplied pursuant to a contract entered into under this Act or the Act of 1988, and

(b) the maximum period that shall be allowed in any given hour for the transmission of advertisements and teleshopping material on such a broadcasting service or sound broadcasting service,

and the Commission may make different such rules with respect to different classes of broadcasting service or sound broadcasting service.

(4) The codes under *subsection (1)* and the rules under *subsection (3)* shall, respectively, provide for the matters required to be provided for by Chapters IV and V of the Council Directive.

(5) Before preparing a code or making a rule under this section, the Commission shall make available for inspection by any person who makes a request of it in that behalf a draft of the code it proposes so to prepare or the rule it proposes so 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 code or makes the rule concerned.

(6) The Commission shall cause to be published in at least one newspaper circulating in the State notice of the fact that, pursuant to *subsection (5)*, 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.

(7) In preparing a code under *paragraph (c) of subsection (1)* the Commission shall, taking into account any relevant instrument made or relevant guidelines issued by any body in which are vested functions in relation to the welfare of children, have regard to—

- (a) any research which it considers appropriate (including research under *subsection (8)*) conducted with respect to the effect of activities referred to in that paragraph on children, and
- (b) the merits or otherwise and the feasibility of such a code containing a prohibition on a specified class or classes of such activity in so far as those activities relate to children in general or children under a particular age.

(8) The Commission may, for the purpose of performing its functions under *paragraph (c) of subsection (1)*, conduct, or cause to be conducted, research with respect to the effect of activities referred to in that paragraph on children.

(9) The Commission shall make to the Minister a report in relation to the performance of its functions under *subsections (1)(c) and (8)* not later than 1 year from the date of the giving to it of the direction under *subsection (1)* and 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.

(10) The Commission shall, once in each period of 3 years, beginning with the period of 3 years commencing on the date of the preparation of the code, review the effect of the code prepared under *subsection (1)(c)*, and shall prepare a report in relation to that review and furnish the report to the Minister; 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.

(11) The Commission shall make rules requiring each broadcaster to take specified steps to promote the understanding and enjoyment by—

- (a) persons who are deaf or hard of hearing, and
- (b) persons who are blind or partially sighted,

of programmes transmitted on any broadcasting service provided by him or her.

(12) Rules under *subsection (11)* may, in respect of any specified period beginning on or after the commencement of this subsection, 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 *paragraphs (a) and (b)* of that subsection of that percentage of programmes may be promoted.

(13) In *subsection (12)* “specified” means specified in, or in accordance with, the rules concerned.

(14) The Commission shall prepare a code specifying standards to be complied with, and rules and practices to be observed, in respect of the provision of a broadcasting service which has, as one of its principal objectives, the promotion of the interests of any organisation. Pr.III S.19

(15) The Commission shall from time to time as it considers appropriate prepare a code or make rules amending a code or rules prepared or, as the case may be, made under each provision of this section.

(16) The making or preparation of a code or rules under *subsection (15)* shall be subject to the like (if any) consents and conditions as the code or rules that the first-mentioned code or rules is or are amending.

(17) Pending the preparation of the codes under *paragraphs (b) and (c) of subsection (1)* and the making of rules under *subsection (3)*, the provisions of a code under section 4 of the Broadcasting Act, 1990, which are in force before the repeal by this Act of that section 4 and which correspond to the matters to which those codes or those rules will relate shall, notwithstanding the repeal of that section 4, continue in force and have effect in relation to each class of broadcaster in relation to whom they had effect before that repeal.

(18) In this section “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.

**20.—**(1) The Commission 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 the preparation by that person or those persons of codes or standards with respect to the transmission of information by any electronic means (other than by means of broadcasting), including by means of the Internet. Codes or standards with respect to certain types of information.

(2) In this section “codes or standards” does not include codes or standards with respect to any technical aspect of the transmission of information by the means referred to in *subsection (1)*.

**21.—**(1) It shall be a function of the Commission to enforce— Functions of Commission in relation to enforcement of Act.

- (a) the provisions of *Parts II, III and V* of this Act,
- (b) any code or rules prepared or made under this Act, and
- (c) the terms and conditions of any contract entered into by it under this Act.

(2) *Subsection (1)* is without prejudice to the functions of the Broadcasting Complaints Commission under *section 24*.

**22.—**(1) In this section “the Commission” means the Broadcasting Complaints Commission. Broadcasting Complaints Commission.

(2) Notwithstanding the repeal by *section 3* of section 18A of the Act of 1960, the Commission shall continue in being.

(3) The Commission shall consist of not less than 7 nor more than 9 members.

(4) The members of the Commission shall be appointed by the Government.

(5) Where the number of members of the Commission for the time being is 7, not less than 3 of them shall be men and not less than 3 of them shall be women.

(6) Where the number of members of the Commission for the time being is 8 or 9, not less than 4 of them shall be men and not less than 4 of them shall be women.

(7) A person who was a member of the Commission immediately before the commencement of this section shall continue in office as such a member for the remainder of the term of office for which he or she was appointed, unless he or she sooner dies or resigns from office.

(8) When appointing a member of the Commission, the Government shall fix his or her term of office which shall not exceed 5 years and, subject to *subsections (12) and (13)*, the member shall hold his or her office on such terms and conditions (other than terms or conditions relating to remuneration or the payment of allowances) as are determined by the Government at the time of his or her appointment.

(9) A member of the Commission may at any time resign his or her office by letter addressed to the Government and the resignation shall take effect as on and from the date of receipt of the letter by the Government.

(10) A member of the Commission whose term of office expires by the effluxion of time shall be eligible for re-appointment.

(11) There shall be paid to members of the Commission such remuneration (if any) and allowances (if any) as the Minister, with the consent of the Minister for Finance, from time to time determines.

(12) A member of the Commission may be removed from office by the Government for stated reasons if, and only if, resolutions are passed by each House of the Oireachtas calling for his or her removal.

(13) Where a member of the Commission is—

- (a) nominated as a member of Seanad Éireann, or
- (b) nominated as a candidate for election to either House of the Oireachtas or to 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 the European Parliament,

he or she shall thereupon cease to be a member of the Commission.

(14) 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 he or she is so



entitled or is such a member, be disqualified from becoming a member of the Commission. Pr.III S.22

(15) A member of the Authority, the Broadcasting Commission of Ireland or Teilifis na Gaeilge or an officer or servant of any such body shall be disqualified from becoming or being a member of the Commission.

(16) The Government shall from time to time as occasion requires appoint a member of the Commission to be chairperson thereof.

(17) The chairperson of the Commission shall, unless he or she sooner dies, resigns the office of chairperson or ceases to be chairperson under *subsection (19)*, hold office until the expiration of his or her period of office as a member of the Commission.

(18) The chairperson of the Commission may at any time resign his or her office as chairperson by letter sent to the Government and the resignation shall take effect at the commencement of the meeting of the Commission held next after the body has been informed by the Government of the resignation.

(19) Where the chairperson of the Commission ceases during his or her term of office as chairperson to be a member of the Commission he or she shall also cease to be chairperson of the Commission.

(20) The Commission may act notwithstanding one or more vacancies among its members (including one or more vacancies that result in *subsection (5)* or *(6)* not being complied with).

(21) The quorum for a meeting of the Commission shall be determined by the Commission under *subsection (22)*, but—

(a) the quorum so determined shall not be less than 5, and

(b) until it is so determined, the quorum shall be 5.

(22) Subject to the provisions of this Act, the Commission shall regulate its procedure and practice.

**23.—**(1) The Commission may supply or provide to the Broadcasting Complaints Commission, on such terms or conditions as the first-mentioned Commission may specify, any services (including services of staff), accommodation or facilities required by the second-mentioned Commission for the performance of their functions. Services, facilities, etc. for Broadcasting Complaints Commission.

(2) Subject to *subsection (3)*, the Commission shall defray the expenses incurred by the Broadcasting Complaints Commission in performing their functions out of moneys paid to the Commission under section 20 (inserted by *section 58*) of the Act of 1988.

(3) Where in the opinion of the Commission an expense incurred by the Broadcasting Complaints Commission in performing their functions is of an exceptional nature, the Commission may, in lieu of defraying the whole or a part of that expense out of moneys referred to in *subsection (2)*, defray the whole or a part of the expense out of moneys paid to it under *subsection (4)*.

(4) The Minister, with the consent of the Minister for Finance, may pay to the Commission an amount equal to the amount, or a

part thereof, of an expense referred to in *subsection (3)* for the purpose of enabling the Commission to defray the amount of that expense or, as the case may be, that part of it in respect of which that payment is made.

(5) Section 8 of the Act of 1976 is hereby amended by the substitution of the following subparagraph for subparagraph (iii) of paragraph (a):

“(iii) the amount of any moneys paid in that year to the Broadcasting Commission of Ireland by the Minister under *section 23(4)* of the *Broadcasting Act, 2001*, and”.

**24.—(1)** In this section—

“broadcaster” means (in addition to the meaning assigned to that expression by *section 2(1)*) a sound broadcasting contractor;

“the Commission” means the Broadcasting Complaints Commission.

(2) Subject to the provisions of this section, the Commission 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 18(1)* (inserted by the Act of 1976) of the Act of 1960 or, as the case may be, of paragraphs (a) and (b) of *section 9(1)* of the Act of 1988 (including that section or those paragraphs as applied by this Act),
- (b) a complaint that in broadcasting a programme specified in the complaint, a broadcaster either did not comply with one or more of the said requirements or was in breach of the prohibition contained in *section 18(1A)* (inserted by the Act of 1976) of the Act of 1960 or, as the case may be, in paragraph (d) of *section 9(1)* of the Act of 1988 (including that section or paragraph as applied by this Act),
- (c) a complaint that on an occasion specified in the complaint, there was an encroachment by a broadcaster contrary to *section 18(1B)* (inserted by the Act of 1976) of the Act of 1960 or paragraph (e) of *section 9(1)* of the Act of 1988 (including that section or paragraph as applied by this Act),
- (d) a complaint that on an occasion specified in the complaint a broadcaster failed to comply with a provision of a code under *section 19(1)(a)*,
- (e) a complaint that on an occasion specified in the complaint a broadcaster failed to comply with a provision of a code under *paragraph (b)* or (c) of *section 19(1)* or of a code under *section 4* of the *Broadcasting Act, 1990*, continued in force under *section 19(17)*,
- (f) a complaint by a person that in a broadcast by a broadcaster which is specified in the complaint an assertion was made of inaccurate facts or information in relation to that person which constituted an attack on that person’s honour or reputation.

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(3) A complaint under *subsection (2)* shall be in writing and be made to the Commission not more than 30 days after—

- (a) in case the complaint relates to one broadcast or to 2 or more unrelated broadcasts—
  - (i) if it relates to one broadcast, the date of the broadcast, or
  - (ii) if it relates to 2 or more such broadcasts, the date of the earlier or earliest, as the case may be, of those broadcasts,

and

- (b) 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.

(4) When the Commission propose to investigate a complaint made under this section, the Commission shall afford to the broadcaster to whom the complaint relates (hereafter in this section referred to as “the broadcaster concerned”) an opportunity to comment on the complaint.

(5) Where a complaint is made to the Commission and—

- (a) a person employed by the broadcaster concerned, 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 Commission to afford to him or her an opportunity to comment on the complaint, the Commission shall, having considered the reasons so specified, afford to the person such an opportunity 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 Commission 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 Commission propose to consider a complaint referred to in *subsection (2)(e)*, the Commission shall afford to the relevant advertiser an opportunity of making to the Commission submissions in relation to the relevant advertisement.

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

- (a) the person who made the complaint,
- (b) the broadcaster concerned, and

(c) if the complaint is in respect of a broadcast made on a broadcasting service which is not a free-to-air service provided by the Authority or Teilifís na Gaeilge, the Broadcasting Commission of Ireland,

a statement in writing of their decision.

(8) In case the Commission decide on a complaint referred to in *subsection (2)(e)*, as soon as may be after their decision, the Commission shall (in addition to complying with the requirement 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 Commission of a complaint made to them under this section shall be carried out by the Commission in private.

(10) Unless they consider it inappropriate to do so, the Commission 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 Commission and the broadcaster concerned.

(11) Without prejudice to *subsection (10)*, the broadcaster concerned shall, unless the Commission consider it inappropriate for the broadcaster to do so, broadcast the Commission's decision on every complaint considered by the Commission in which the Commission found in favour, in whole or in part, of the person who made the complaint, including, in the case of a complaint under *subsection (2)(f)*, any correction of inaccurate facts or information relating to the individual concerned, 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 Commission shall not have any power to award to any party costs or expenses.

(13) A person shall not act as a member of the Commission in relation to any matter with respect to which he or she has a material financial or other beneficial interest.

(14) *Subsection (2)* shall not apply to a complaint which, in the opinion of the Commission, is frivolous or vexatious, nor, unless the Commission consider that there are special reasons for investigating the complaint (which reasons shall be stated by the Commission when giving their decision), shall that subsection apply to a complaint which is withdrawn.

**25.**—As soon as may be, but not later than 6 months, after the end of each year, the Broadcasting Complaints Commission shall make to the Minister a report of their activities during that year and the report shall contain such particulars (if any) as they think fit of decisions made by them pursuant to *section 24* during that year, and 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.

**26.—**(1) A person who is a holder of a contract entered into under the Act of 1988 or this Act shall, for the purposes of *section 24*, record every item of programme material supplied by him or her under the contract in such manner as stands approved of by the Broadcasting Complaints Commission for the purposes of this section.

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Holders of contracts to record programme material.

(2) A recording made by a person under this section shall be retained by that person for such period as stands determined by the Broadcasting Complaints Commission for the purposes of this section, and when a complaint is being investigated by the Commission under *section 24*, the recording of the broadcast to which the complaint relates, together with the recording, made and being retained pursuant to this section, of any other broadcast which in the opinion of the Commission is relevant to that broadcast, shall be supplied by the person to the Commission on a request made by the Commission at any time during such period.

(3) The making or retaining of a recording in compliance with this section shall not constitute a contravention of any provision of Part III of the Copyright and Related Rights Act, 2000, or an infringement of copyright, and nothing contained in the Copyright and Related Rights Act, 2000, shall be construed as prohibiting or restricting the making of such a recording.

**27.—**Notwithstanding the repeal by *section 3* of sections 18A to 18C of the Act of 1960, anything commenced but not completed before the commencement of *section 3* by the Broadcasting Complaints Commission under the said sections 18A to 18C may be carried on and completed by them after that commencement as if those sections had not been repealed.

Transitional provision in relation to Broadcasting Complaints Commission.

## PART IV

### PROVISIONS IN RELATION TO THE AUTHORITY

**28.—**(1) The national television and sound broadcasting service required to be maintained by the Authority under section 16 of the Act of 1960 shall have the character of a public service, continue to 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 and the Authority shall have all such powers as are necessary for or incidental to that purpose.

Public service character of Authority's national broadcasting service.

(2) Without prejudice to the generality of *subsection (1)*, the Authority shall ensure that the programme schedules of the broadcasting service 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, both on television and radio (and also, where appropriate, any means of transmission referred to in section 16(2)(*bbb*) (inserted by this Act) of the Act of 1960) 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.

(3) Subject to *subsections (5) to (7)*, the Minister may, for the purpose of ensuring that the character, as a public service, of the broadcasting service referred to in *subsection (1)* is maintained, by order modify *subsection (2)*—

(a) by adding thereto provisions specifying categories of programmes that shall be included in the programme schedules referred to in that subsection, and

(b) by making such other alterations to *subsection (2)* as are necessary or expedient in consequence of the addition of such provisions.

(4) The Minister may by order amend or revoke an order under this section (including an order under this subsection).

(5) Nothing in *subsection (3) or (4)* shall be construed as enabling a requirement to be imposed on the Authority with respect to the manner in which any particular programme broadcast on the broadcasting service referred to in *subsection (1)* is made or the manner in which any decision of an editorial nature relating to the broadcasting of such a programme is made.

(6) Where the Minister proposes to make an order under this section, the Minister shall—

(a) consult with the Authority, the Commission and such other persons as he or she considers appropriate,

(b) publish a notice of his or her intention to make such an order in at least one newspaper circulating in the State,

(c) invite, by means of that notice or such other means as he or she considers appropriate, comments from members of the public in relation to the order proposed to be made, and

(d) publish in such manner as he or she considers appropriate a statement outlining the consultations that have been carried out under *paragraph (a)* and any comments received by him or her pursuant to the invitation referred to in *paragraph (c)* and indicating a place at which any document furnished to the Minister by a person referred to in *paragraph (a)* in the course of consultations under that paragraph or by a member of the public pursuant to the said invitation may be inspected (and such a document shall, accordingly, be made available at that place for inspection at all reasonable times before a draft of the order concerned is laid before the Houses of the Oireachtas under *subsection (7)*).

(7) Where an order is proposed to be made 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 of the draft has been passed by each such House.

(8) The amount paid to the Authority in each financial year under section 8 of the Act of 1976 shall be used by the Authority solely for the purposes of—

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- (a) providing programmes for the purposes of the programme schedules referred to in *subsection (2)*, Pr.IV S.28
- (b) complying with its duty under section 17 of the Act of 1960,
- (c) exercising all or any of the powers conferred on it by *subsection (2)* (other than paragraphs *(bb)* and *(bbb)* (inserted by this Act) thereof) of section 16 of the Act of 1960, and
- (d) providing, pursuant to its powers under the *Broadcasting Authority Acts, 1960 to 2001*, any service (other than a broadcasting service) for the benefit of the public.

(9) The Authority may use moneys it obtains from any source, other than under section 8 of the Act of 1976, in whole or in part for any of the purposes referred to in *subsection (8)*.

(10) Without prejudice to sections 25(1) and 26 of the Act of 1960, the Authority shall, as soon as may be after the end of each financial year, make a report to the Minister of the use it has made, with regard to, respectively, the television broadcasting service and the sound broadcasting service referred to in *subsection (1)*, of the moneys paid to it under section 8 of the Act of 1976 in that year for the purpose of the activities, during that year, referred to in *paragraphs (a), (b) and (c) of subsection (2) and subsection (8)(d)*.

(11) The Minister shall cause copies of each report made to him or her under *subsection (10)* to be laid before each House of the Oireachtas.

(12) Nothing in this section shall be construed as preventing the Authority from including in the programme schedules referred to in *subsection (2)* programmes made outside the State.

**29.**—Subsection (1) (as amended by the Broadcasting Authority (Amendment) Act, 1979) of section 16 of the Act of 1960 is hereby amended by the substitution for “local broadcasting services” of “broadcasting services of a local, community or regional character”. Amendment of section 16(1) of Act of 1960.

**30.**—Subsection (2) of section 16 of the Act of 1960 is hereby amended by the insertion of the following paragraphs after paragraph *(b)* (inserted by the Act of 1976): Amendment of section 16(2) of Act of 1960.

“(bb) to provide, in addition to the broadcasting services referred to in *subsection (1)* of this section, 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 (within the meaning of the *Broadcasting Act, 2001*);

*(bbb)* to transmit by electronic means (other than by means of broadcasting) such of the programme schedules of the broadcasting services referred to in *subsection (1)* of this section or paragraph *(bb)* of this subsection, with such alterations or adaptations as are appropriate, as it thinks fit;”.

**31.**—(1) In the case of a broadcasting service provided by the Authority (not being a broadcasting service which consists of programme material supplied by it pursuant to a contract entered into Advertising broadcasts by Authority.

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under this Act), the total daily times for broadcasting advertisements and teleshopping material fixed by the Authority and the maximum period so fixed to be given to advertisements and teleshopping material in any hour shall be subject to the approval of the Minister.

(2) In section 20 of the Act of 1960 references to advertisements shall be construed as including references to teleshopping material (within the meaning of this section).

(3) In this section “teleshopping material” has the same meaning as it has in *section 19*.

Special accounts under section 25(1) of Act of 1960 and amendment of section 6 of Act of 1976.

**32.**—(1) The function conferred on the Minister by section 25(1) of the Act of 1960 with respect to directing (whether on the Minister’s own motion or at the request of the Minister for Finance) the Authority to keep special accounts includes a power (exercisable on the Minister’s own motion or at the request of the Minister for Finance) to direct the Authority to keep a special account showing the manner, with regard to, respectively, the television broadcasting service and sound broadcasting service referred to in *subsection (1) of section 28*, in which the moneys paid to it under section 8 of the Act of 1976 in the year concerned have been appropriated for the purpose of the activities of the Authority, during that year, referred to in *paragraphs (a), (b) and (c) of subsection (2) and subsection (8)(d) of section 28*.

(2) Section 6 of the Act of 1976 is hereby amended by the deletion in subsection (1) of all the words from “; provided that as regards a television broadcast” to the end of that subsection.

Amendment of Broadcasting Authority (Amendment) Act, 1993.

**33.**—With respect to the financial year 2001 and subsequent financial years, section 4 of the Broadcasting Authority (Amendment) Act, 1993, shall have effect as if—

(a) in subsection (7)(a), “vary the sum referred to in the definition of ‘the appropriate amount’” were substituted for “vary an amount or percentage referred to in column (2) of the Table to this section or the amount referred to in paragraph (i) of the definition of ‘the appropriate amount’”,

(b) in subsection (8)—

(i) the following definition were substituted for the definition of “the appropriate amount” in paragraph (a):

“‘the appropriate amount’ means the sum of £20,000,000 as increased by an amount equal to the appropriate percentage of the said sum;”,

(ii) the definition of “television programme expenditure” in paragraph (a) were deleted, and

(iii) the following paragraph were substituted for paragraph (b):

“(b) In this subsection ‘the appropriate percentage’ means the difference between the consumer price index number at mid-August, 2000, and



the said number at the mid-August immediately preceding the financial year concerned expressed as a percentage of the first-mentioned number.”, Pr.IV S.33

and

(c) the following Table were substituted for the Table to the section:

“TABLE

Financial year (1)	Amount of monies to be paid by the Authority into the account (2)
2001	£20,000,000
Each subsequent financial year	The appropriate amount

”.

PART V

ADDITIONAL BROADCASTING SERVICES — CABLE, SATELLITE SYSTEMS, ETC.

**34.—**(1) Subject to *subsection (3)*, the television programme service contractor may provide, in addition to any free-to-air service being provided by it immediately before the commencement of this section, such other broadcasting services (whether free-to-air or not) as it considers appropriate, including broadcasting services of a community, local or regional character. Additional broadcasting services by television programme service contractor.

(2) The television programme service contractor may, for the purposes of providing a broadcasting service under *subsection (1)*, enter into arrangements with a holder of a digital content contract whereby that holder provides a compilation of programme material to the contractor for that service.

(3) The television programme service contractor shall not provide any broadcasting service referred to in *subsection (1)* unless the Commission has authorised the provision by the contractor of that service by means of a variation made by it, at the request of the contractor, of the terms and conditions of the television programme service contract (which variation the Commission is hereby authorised to make) and the provision of the service shall be subject to the terms and conditions of that contract as so varied and subsections (1) to (3) of section 18 of the Act of 1988.

**35.—**The Commission shall ensure that any contract entered into by it under section 17 of the Act of 1988, any such contract renewed by it under that Act and any other arrangement in writing entered into by it with the holder of such a contract, being in each case a contract or an arrangement entered into or renewed by it after the commencement of this section, contains a term providing that the expression “independent television programme”, where used in the contract or arrangement, has the same meaning as it has in the Broadcasting Authority (Amendment) Act, 1993. Meaning of “independent television programme” in certain contracts.

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Satellite content  
contracts.

**36.—**(1) A person who is under the jurisdiction of the State (within the meaning of the Council Directive) shall not supply a compilation of programme material for the purpose of its being transmitted as a broadcasting service (whether for reception in the State or elsewhere) by means of a satellite device otherwise than under and in accordance with a satellite content contract.

(2) The Commission may enter into a contract with a person whereby that other person may supply a compilation of programme material for the purposes referred to in *subsection (1)*, and such a contract shall, without prejudice to *subsection (4)*, be known as a “provision of content (satellite) contract” and is in this Act referred to as a “satellite content contract”.

(3) A satellite content contract shall include the same kind of conditions as *subsections (4) and (5) of section 12* provide that a digital content contract shall include.

(4) The Commission 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 to the name by which *subsection (2)* provides a contract under this section shall be known.

(5) The Commission may, before it enters into a satellite content contract with a person, require that person to pay a fee to it of such amount as it considers appropriate; if that person fails to pay that fee to the Commission, the Commission shall not enter into the contract with him or her.

(6) The fee referred to in *subsection (5)* is in addition to any fee the Commission may charge under *section 56* in respect of an application by the person concerned for a satellite content contract.

(7) The amount of any fee paid to the Commission under *subsection (5)* may be used by it for the purpose of defraying the expenses incurred by it in performing its functions generally.

Transmission of  
broadcasting  
services by cable or  
MMD system.

**37.—**(1) A holder of a licence granted by the Director, being a licence that authorises the transmission by means of a cable or MMD system of programme material, shall not transmit, by such means, a broadcasting service unless the programme material, the subject of the broadcasting service, is supplied for such transmission—

(a) by—

- (i) the Authority,
- (ii) Teilifís na Gaeilge,
- (iii) the television programme service contractor,
- (iv) the holder of a digital content contract or satellite content contract and the programme material so supplied by him or her is the compilation of programme material authorised by that contract to be supplied by him or her for transmission otherwise as a broadcasting service, or

(v) an excepted person,

or

(b) pursuant to—

(i) a local content contract,

(ii) a community content contract, or

(iii) a cable-MMD content contract.

(2) A person, other than a person referred to in *subparagraph (i), (ii), (iii) or (v) of subsection (1)(a)* but including a holder of the licence concerned, shall not supply a compilation of programme material for the purpose of its being transmitted as a broadcasting service by means of a cable or MMD system, the subject of a licence referred to in *subsection (1)*, unless—

(a) the material is supplied under and in accordance with a local content contract, a community content contract or a cable-MMD content contract, or

(b) in case the person is the holder of a digital content contract or satellite content contract, the material is the compilation of programme material authorised by that contract to be supplied by him or her for transmission otherwise as a broadcasting service.

(3) A holder of a licence referred to in *subsection (1)* who transmits by the means referred to therein a broadcasting service shall—

(a) if that service was being transmitted by him or her immediately before the commencement of this section, forthwith, after such commencement, notify, in writing, the Commission of the fact that that service is being transmitted by him or her,

(b) if the transmission of that service begins on or after the commencement of this section, forthwith, after that transmission begins, notify, in writing, the Commission of the fact that that service is being transmitted by him or her.

(4) A holder of a licence granted by the Director, being a licence that authorises the re-transmission by means of a cable or MMD system of programme material shall—

(a) in relation to any broadcasting service that is being re-transmitted by him or her, pursuant to that licence, immediately before the commencement of this section, forthwith, after such commencement, notify, in writing, the Commission of the fact that that service is being re-transmitted by him or her,

(b) in relation to any broadcasting service the re-transmission of which, pursuant to that licence, by him or her begins on or after the commencement of this section, forthwith, after that re-transmission begins, notify, in writing, the Commission of the fact that that service is being re-transmitted by him or her.

(5) The holder of a licence referred to in *subsection (4)*, being a licence that authorises the re-transmission of programme material by means of a cable system, shall re-transmit, by those means—

(a) in case the cable system used by that holder is, in whole or in part, an analogue system, each free-to-air service of an analogue nature provided for the time being by the Authority, Teilifís na Gaeilge and the television programme service contractor and which that body or contractor requests the holder to so re-transmit,

(b) in case the cable system used by that holder is, in whole or in part, a digital system, each free-to-air service of a digital nature provided for the time being by the Authority, Teilifís na Gaeilge and the television programme service contractor and which that body or contractor requests the holder to so re-transmit.

(6) The holder of a licence referred to in *subsection (4)*, being a licence that authorises the re-transmission of programme material by the means of a MMD system, shall re-transmit, by those means—

(a) in case the MMD system used by that holder is, in whole or in part, an analogue system, each free-to-air service of an analogue nature provided for the time being by the television programme service contractor and which that contractor requests the holder to so re-transmit,

(b) in case the MMD system used by that holder is, in whole or in part, a digital system, each free-to-air service of a digital nature provided for the time being by the television programme service contractor and which that contractor requests the holder to so re-transmit.

(7) If a dispute arises between the holder of a licence referred to in *subsection (4)* and the Authority, Teilifís na Gaeilge or the television programme service contractor 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 an analogue cable or MMD system for the purposes of the holder's complying with a request by that body or contractor under *subsection (5)(a)* or *(6)(a)*, as the case may be, the dispute shall be referred to the Commission for its determination and the determination of the Commission in the matter shall be final.

(8) The holder of a licence referred to in *subsection (4)*, being a licence that authorises the re-transmission of programme material by the means of a cable system, shall re-transmit, by those means, each national sound broadcasting service provided for the time being by the Authority and each sound broadcasting contractor and which the Authority or the contractor concerned requests the holder to so re-transmit.

(9) The holder of a licence referred to in *subsection (4)* shall not impose a charge in relation to the making available to a person of any service referred to in *subsection (5)*, *(6)* or *(8)* 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 cable or MMD system concerned.

(10) Subject to *subsection (11)*, the Commission may require the holder of a licence referred to in *subsection (1)* to transmit as a

broadcasting service, by means of the cable system or, as the case may be, the MMD system concerned, the whole or part of the programme material supplied under one or more specified community content contracts the holders of which are members of the local community that is served by the said system and who request the first-mentioned holder to so transmit the whole or, as the case may be, a part of that programme material. Pr.V S.37

(11) *Subsection (10)* shall not apply if the system used by the holder of the licence concerned is an analogue MMD system.

(12) A person of whom a requirement is made by the Commission under *subsection (10)* shall comply with that requirement.

(13) 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 (10)*, 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 cable or MMD system concerned.

(14) In this section “re-transmission” means simultaneous, unaltered and unabridged transmission.

**38.—**(1) Subject to *subsection (2)*, the Commission may enter into a contract under this section with a person whereby that person may supply a compilation of programme material for the purposes of its being transmitted as a broadcasting service under and in accordance with a licence referred to in *section 37(1)*, and such a contract shall be known as a “provision of local content contract” and is in this Act referred to as a “local content contract”. Local interest channels.

(2) The Commission shall not enter into such a contract unless it is satisfied that—

(a) either—

- (i) the programme material to be supplied pursuant to the contract will be made by the person with whom it proposes to enter into that contract, or
- (ii) the making of that programme material will be commissioned by that person,

and

- (b) a substantial proportion of that programme material will be made in the locality which the cable or MMD system, the subject of the licence concerned referred to in *subsection (1)*, serves or will be of such a character as is likely to make it of special interest to persons living in that locality.

(3) Without prejudice to *subsection (4)*, a local content contract shall include a condition requiring the holder of the contract to comply, in relation to the programme material supplied in pursuance of the contract, with such guidelines as the Commission may from time to time issue for the purposes of this section with respect to the general character of the programme material that may be supplied in pursuance of local content contracts.

(4) A local content contract shall include a condition requiring the holder of the contract to comply with the codes and rules under *section 19* with respect to the programme material supplied in pursuance of the contract.

(5) A local content contract may include one or more of the following conditions, namely—

- (a) a condition requiring the holder of the contract not to include in the programme material supplied in pursuance of the contract a specified class or specified classes of advertisement,
- (b) a condition requiring the said holder to ensure, as respects that programme material, that a specified proportion of that material supplied for the time being constitutes material that has been made within a specified period ending immediately before that time,
- (c) a condition requiring the said holder to ensure, as respects that programme material, that a specified proportion of the financial resources for the time being used for the purpose of funding the provision of that material is used for the purpose of funding the provision of programme material that has been made within a specified period ending immediately before that time.

(6) In deciding whether to enter into a local content contract with a particular person, the Commission shall have regard to whether the entering into of such a contract would operate against the public interest and, in particular, shall have regard to—

- (a) 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 locality served by the cable or MMD system proposed to be used to transmit that material, and
- (b) the desirability of promoting diversity in the sources of information available to the public and in the opinions expressed in the communications media.

(7) For the purposes of *subsection (6)*, the Commission may require the person referred to in that subsection to furnish to it such information as it specifies with respect to the extent (if any) of—

- (a) any interest of a proprietary or financial nature held by him or her in relation to the provision of broadcasting services (including sound broadcasting services) in the State or the publication of any newspaper, magazine or journal in the State, or
- (b) the control he or she may exercise in relation to the provision of any such service or the publication of any such newspaper, magazine or journal,

and if the person fails to comply with any such requirement, then the Commission shall not enter into a local content contract with him or her.

[2001.]

*Broadcasting Act, 2001.*

[No. 4.]

39.—(1) Subject to the provisions of this section, 2 or more members of a local community may supply a compilation of programme material for the purposes of its being transmitted as a broadcasting service under and in accordance with a licence referred to in *section 37(1)*. Pr.V  
Community channels.

(2) Subject to *subsections (3) and (4)*, the Commission may enter into a contract with 2 or more members of a local community 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 the community concerned,
- (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 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,

and

- (c) there is a reasonable prospect that all such expenses as are likely to be incurred during the period of the contract will be defrayed,

and such a contract shall be known as a “provision of community content contract” and is in this Act referred to as a “community content contract”.

(3) The Commission shall not enter into a community content contract save after consultation with the person who it appears to the Commission will transmit or, as the case may be, will be the subject of a requirement under *section 37(10)* to transmit, the programme material supplied pursuant to the contract as a broadcasting service.

(4) The Commission shall establish procedures whereby members of local communities are enabled, at regular intervals, to make submissions to the Commission 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 Commission to furnish, on request, to any such members particulars of any proposals formulated, for the time being, by the Commission itself with regard to each of those matters.

(5) Before entering into a community content contract, the Commission 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 Commission shall conduct, or arrange with members of the local community 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—

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- (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 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 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) For the avoidance of doubt, if the holder of a licence referred to in *subsection (1)* of *section 37* is required under *subsection (10)* of that section to transmit as a broadcasting service the programme material supplied pursuant to a community content contract, he or she shall not be—

- (a) under any duty to ensure that the material complies with the terms and conditions of that contract or the enactments that apply in respect of the supply of the material by virtue of *section 18*,
- (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.

(8) In this section “local community” means the community of a town or other urban or rural area.

Assessment of community needs in respect of broadcasting.

**40.**—The Commission may, on its own initiative or at the request of a community group or organisation, 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.

Commercial cable and MMD system channels.

**41.**—(1) Without prejudice to the means under *section 38* or *39* that may enable him or her to make such a supply, a person may supply a compilation of programme material for the purpose of its being transmitted as a broadcasting service by means of a cable or MMD system, the subject of a licence referred to in *section 37(1)*, under and in accordance with a contract entered into by him or her with the Commission under this section, which contract shall be



[2001.] *Broadcasting Act, 2001.* [No. 4.]

known as “a provision of content (cable-MMD) contract” and is in Pr.V S.41 this Act referred to as a “cable-MMD content contract”.

(2) The Commission may enter into a cable-MMD content contract with a person if, but only if, it is satisfied that the entering into that contract will result in the range and diversity of broadcasting services available in the relevant area being increased.

(3) In *subsection (2)* “relevant area” means the area served by the cable or MMD system by which it is proposed that the programme material concerned will be transmitted as a broadcasting service.

(4) Subject to *subsection (5)* but without prejudice to *subsection (6)*, a cable-MMD content contract shall, where appropriate, include a condition that, as respects the programme material supplied pursuant to it, the provisions of the Council Directive in relation to European works (within the meaning of that Directive) shall be complied with.

(5) *Subsection (4)* shall not apply in relation to a cable-MMD content contract the programme material supplied pursuant to which does not contain any advertisements that are to be broadcast in return for payment or for similar consideration.

(6) A cable-MMD content contract shall include the same kind of conditions as *subsections (4) and (5) of section 12* provide that a digital content contract shall include.

## PART VI

### TEILIFÍS NA GAELIGE

**42.**—In this Part “establishment day” means the day appointed by the Minister under *section 43*. Definition.

**43.**—The Minister may by order appoint a day to be the establishment day for the purposes of this Part. Establishment day.

**44.**—(1) On the establishment day there shall stand established a body, to be known as Teilifís na Gaeilge, to perform the functions assigned to it by this Act. Teilifís na Gaeilge.

(2) Teilifís na Gaeilge shall be a body corporate with perpetual succession and power to sue and be sued in its corporate name and to acquire, hold and dispose of land and other property.

(3) The provisions of the *Second Schedule* to this Act shall have effect in relation to Teilifís na Gaeilge.

**45.**—(1) Teilifís na Gaeilge shall establish and maintain a national television broadcasting service which shall have the character of a public service and be made available, in so far as it is reasonably practicable, to the whole community on the island of Ireland. Functions of Teilifís na Gaeilge.

(2) The broadcasting service referred to in *subsection (1)* shall be a free-to-air service.

(3) Teilifís na Gaeilge shall have all such powers as are necessary for or incidental to its function under *subsection (1)*.

(4) Without prejudice to the generality of *subsection (1)*, Teilifís na Gaeilge shall commission the making of programme material, originate programme material and, subject to, and in accordance with, *subsection (5)*, acquire programme material from such sources as it thinks appropriate so as to ensure that the programme schedules of the broadcasting service referred to in *subsection (1)* (and also, where appropriate, any means of transmission referred to in *subsection (8)(c)*)—

- (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.

(5) Teilifís na Gaeilge 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, Teilifís na Gaeilge shall have regard to the need to maintain the distinctive character of the broadcasting service referred to in *subsection (1)* and to cater for the expectations of audiences who are not generally catered for by other broadcasting services.

(6) Each amount paid to Teilifís na Gaeilge under *section 51* shall be used by it solely for the purposes of performing its function under *subsection (1)* and exercising the powers conferred on it by this Act with respect to that function.

(7) Teilifís na Gaeilge may use moneys it obtains from any source, other than under *section 51*, in whole or in part for the purposes referred to in *subsection (5)*.

(8) Without prejudice to the generality of the preceding provisions of this section, Teilifís na Gaeilge shall have the following powers—

- (a) to make contracts, agreements and arrangements incidental or conducive to the functions of Teilifís na Gaeilge,
- (b) to provide, in addition to the broadcasting service referred to in *subsection (1)*, broadcasting services which are of a special interest to only certain members of the community or which are made available on a subscription or pay-per-view basis,
- (c) to transmit by any electronic means (other than by means of broadcasting) such of the programme schedules of the broadcasting services referred to in *subsection (1)* or *paragraph (b)*, with such alterations or adaptations as are appropriate, as it thinks fit,

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- (d) to acquire and make use of copyrights, patents, licences, Pr.VI S.45 privileges and concessions,
- (e) to collect news and information and to subscribe to news services and such other services as may be conducive to the functions of Teilifís na Gaeilge,
- (f) 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 functions of Teilifís na Gaeilge,
- (g) to arrange with other broadcasters for the distribution, receipt, exchange and relay of programme material (whether live or recorded),
- (h) to organise, provide and subsidise concerts and other entertainments in connection with the broadcasting service referred to in *subsection (1)* or for any purpose incidental thereto 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 Teilifís na Gaeilge to be conducive or incidental to its functions,
- (j) to compile, publish, distribute, sell and exchange recorded aural and visual material in whatsoever form contained (including any form of electronic storage developed after the establishment day).

46.—In performing its functions, Teilifís na Gaeilge—

General duty of  
Teilifís na Gaeilge.

- (a) shall use its best endeavours to commission the making of, procure, adapt or originate programme material for the purposes of the broadcasting service referred to in *section 45(1)* that is responsive to the interests and concerns of the whole community,
- (b) shall—
  - (i) be mindful of the need for understanding and peace within the whole island of Ireland, and
  - (ii) ensure that the programme material aforesaid reflects the varied elements which make up the culture of the whole island of Ireland and have special regard for the elements which distinguish that culture, and, in particular, the Gaeltachtaí,
- (c) shall uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, and
- (d) shall 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 the Member States of the European Union.

Pt. VI  
Supply of  
programme  
material by  
Authority to Teilifís  
na Gaeilge.

**47.**—The Authority shall provide to Teilifís na Gaeilge programme material in the Irish language of such amounts and at such times as may be agreed between them, being such amounts and such times as, in their opinion, will result in the equivalent of one hour of such programme material being provided daily by the Authority to Teilifís na Gaeilge.

Approval of total  
time per year for  
broadcasting by  
Teilifís na Gaeilge.

**48.**—The total number of hours per year of broadcasting by Teilifís na Gaeilge in providing the television broadcasting service referred to in *section 45(1)* shall neither exceed a maximum nor be less than a minimum fixed by Teilifís na Gaeilge, with the approval of the Minister, for that service.

Advertising  
broadcasts by  
Teilifís na Gaeilge.

**49.**—(1) In the case of a broadcasting service provided by Teilifís na Gaeilge (not being a broadcasting service which consists of programme material supplied by it pursuant to a contract entered into under this Act), the total daily times for broadcasting advertisements and teleshopping material fixed by Teilifís na Gaeilge and the maximum period so fixed to be given to advertisements and teleshopping material in any hour shall be subject to the approval of the Minister.

(2) In this section “teleshopping material” has the same meaning as it has in *section 19*.

Application of  
certain enactments  
to Teilifís na  
Gaeilge.

**50.**—(1) Section 18 (as amended by the Act of 1976) of the Act of 1960 shall apply to Teilifís na Gaeilge as it applies to the Authority and for the purposes of that application the reference in that section to section 16 of that Act shall be construed as a reference to *section 45* of this Act.

(2) Subsections (1), (2) and (4) of section 20, section 21 (as amended by the Act of 1976) and section 31(2) of the Act of 1960 shall apply to Teilifís na Gaeilge as they apply to the Authority and for the purposes of that application the reference in subsection (4) of that section 21 to the Director-General shall be construed as a reference to the chief executive of Teilifís na Gaeilge.

(3) Section 6 (as amended by this Act) of the Act of 1976 shall apply to Teilifís na Gaeilge as it applies to the Authority.

Provision of moneys  
by Minister to  
Teilifís na Gaeilge.

**51.**—The Minister, with the consent of the Minister for Finance, may from time to time pay to Teilifís na Gaeilge such an amount as he or she determines to be reasonable for the purposes of defraying the expenses incurred by Teilifís na Gaeilge in performing its functions.

Transitional  
provisions in  
relation to Teilifís  
na Gaeilge.

**52.**—(1) On the establishment day all land which, immediately before that day, was vested in Seirbhísí Theilifís na Gaeilge Teoranta and all rights, powers and privileges relating to or connected with such land shall, without any conveyance or assignment, stand vested in Teilifís na Gaeilge for all the estate or interest for which immediately before the said day it was vested in the said company, 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 Seirbhísí Theilifís na Gaeilge Teoranta shall stand vested in Teilifís na Gaeilge without any assignment. Pr.VI S.52

(3) Every chose-in-action transferred by *subsection (2)* to Teilifís na Gaeilge 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 Seirbhísí Theilifís na Gaeilge Teoranta 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 Seirbhísí Theilifís na Gaeilge Teoranta 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 Teilifís na Gaeilge.

(5) Every right and liability transferred by *subsection (4)* to Teilifís na Gaeilge 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 Seirbhísí Theilifís na Gaeilge Teoranta 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 Seirbhísí Theilifís na Gaeilge Teoranta is a party shall be continued with the substitution in the proceedings for that company of Teilifís na Gaeilge.

(7) Anything commenced but not completed before the establishment day by Seirbhísí Theilifís na Gaeilge Teoranta may be carried on and completed on or after that day by Teilifís na Gaeilge.

(8) Nothing in the preceding provisions of this section shall operate to transfer to Teilifís na Gaeilge any right or liability of Seirbhísí Theilifís na Gaeilge Teoranta under any contract of employment entered into by that company with any person before the establishment day unless that person is designated as a person to be employed by Teilifís na Gaeilge on and after the establishment day in a direction given by the Authority for the purposes of this section (which the Authority is hereby empowered to give).

**53.**—A reference in a provision of this Act to a free-to-air service being provided by Teilifís na Gaeilge shall, to the extent that that provision falls to be applied at, or by reference to, a time that is prior to the establishment day (including a time that is prior to the passing of this Act), be construed as a reference to such a service being provided by Seirbhísí Theilifís na Gaeilge Teoranta.

Construction of references to certain acts of Teilifís na Gaeilge.

## PART VII

### MISCELLANEOUS

**54.**—(1) In this section “secondary broadcasting service” means a broadcasting service that is not the national television and sound broadcasting service referred to in section 16(1) of the Act of 1960 or the television service referred to in *section 45(1)*.

Provisions in relation to certain broadcasting services provided by Authority or Teilifís na Gaeilge.

(2) In relation to any secondary broadcasting services provided by the Authority or Teilifís na Gaeilge—

(a) each such body shall keep, separately from the accounts it keeps in respect of its other activities, such accounts in

respect of the provision of those services as it is required by section 25 of the Act of 1960 or, as the case may be, *paragraph 17* of the *Second Schedule* to this Act to keep in respect of the carrying on by it of those other activities,

- (b) moneys which it receives in consideration of broadcasting advertisements on any free-to-air service, the provision of which by it commenced before the passing of this Act, or from sponsorship of such a service, shall not be used to defray, in whole or in part, the expenses incurred by it in providing a secondary broadcasting service that is not a free-to-air service or taking any steps in pursuance of arrangements entered into under *subsection (4)* for the purposes of such a service.

(3) The Minister may require the Authority or Teilifís na Gaeilge to prepare, and furnish to him or her, such financial and other statements as he or she may specify indicating the extent to which, in its opinion, the provision by it of any secondary broadcasting services has, in a specified period—

- (a) facilitated the provision by it of any free-to-air service, the provision of which commenced before the passing of this Act, or contributed to an improvement in the quality of that service,

- (b) in the case of the Authority, facilitated the carrying on by it of any activity, apart from broadcasting, mentioned in section 16 of the Act of 1960,

and the Authority or Teilifís na Gaeilge, as the case may be, shall comply with such a requirement.

(4) The Authority and Teilifís na Gaeilge may each, for the purpose of providing a secondary broadcasting service, enter into arrangements with a holder of a digital content contract whereby that holder provides a compilation of programme material to it for that service.

Provisions in relation to contracts generally under Act.

**55.—**(1) Without prejudice to any specific provision of this Act, or of a contract thereunder, in that behalf, the Commission may terminate or suspend for such period as it specifies any contract entered into by it under this Act—

- (a) if any false or misleading information was given to the Commission by or on behalf of the holder of the contract before it was entered into, or

- (b) if the holder of the contract, has, in the opinion of the Commission, 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 Commission, warrants the termination or suspension by it of the contract.

(2) A contract terminated or suspended under this or any other provision of this Act, or pursuant to a provision of that contract,

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shall, in case it is terminated, cease to have effect and, in case it is suspended, cease to have effect for the period for which it is suspended. Pr.VII S.55

(3) A contract under this Act may contain such terms and conditions as the Commission considers appropriate and specifies in the contract.

(4) Without prejudice to the generality of *subsection (3)* or any other provision of this Act, a contract under this Act may include—

(a) terms or conditions with respect to—

(i) the period during which the contract shall continue in force,

(ii) 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 renewed,

and

(b) a condition prohibiting the assignment of the contract or any interest therein.

**56.**—The Commission may charge a fee, of such an amount as it considers reasonable, in respect of an application made by a person to the Commission for the entry into, by the Commission with that person, of— Fees in respect of applications for contracts.

(a) a contract under the Act of 1988, or

(b) a contract under this Act.

**57.**—(1) A person who contravenes *section 12(1), 16(2), 36(1) or subsection (1), (2), (3), (4), (5), (6), (8), (9), (12) or (13) of section 37* shall be guilty of an offence. Offences.

(2) A person guilty of an offence under *subsection (1)* shall be liable—

(a) on summary conviction, to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both,

(b) on conviction on indictment, to a fine not exceeding £15,000 or imprisonment for a term not exceeding 2 years or both.

**58.**—The Act of 1988 is hereby amended by the substitution of the following section for section 20: Provision of moneys by Minister to Commission.

“20. Without prejudice to *section 23(4) or 59(3) of the Broadcasting Act, 2001*, the Minister, after consultation with the Commission and with the consent of the Minister for Finance, may from time to time pay to the Commission such an amount as he or she determines to be reasonable for the purposes of defraying the expenses incurred by the Commission in performing its functions.”.

PT.VII

Capital grants to sound broadcasting contractors.

**59.**—(1) The Commission shall, as soon as may be after the commencement of this section, prepare a scheme providing for the grant by it of such an amount of moneys, if any, as it considers appropriate to each relevant sound broadcasting contractor for the purposes of defraying capital expenditure incurred by the contractor in connection with the transmission by it of a sound broadcasting service.

(2) A scheme under *subsection (1)* shall—

(a) provide for the making of applications to the Commission by relevant sound broadcasting contractors for the grant, under the scheme, of moneys to them,

(b) provide that the Commission, in considering any such application, shall have regard to—

(i) any difficulty the applicant has experienced in providing a sound broadcasting service in the area to which his or her sound broadcasting contract relates,

(ii) the financial resources available to the applicant for the purposes of providing such a service,

(iii) the improvement (if any) in the quality of the service concerned that has resulted or, as the case may be, is likely to result by reason of the capital expenditure, the subject of the application, being incurred.

(3) The Minister, with the consent of the Minister for Finance, may pay to the Commission such amounts as he or she determines to be reasonable for the purposes of the making by the Commission of grants of moneys under a scheme under *subsection (1)*.

(4) The aggregate of the amounts paid under *subsection (3)* to the Commission shall not exceed £500,000.

(5) In this section “relevant sound broadcasting contractor” means a sound broadcasting contractor whose sound broadcasting contract authorises the provision of a sound broadcasting service in a specified part only of the State or to a local community that is readily identifiable.

Amendment of section 6 of Act of 1988.

**60.**—Section 6 of the Act of 1988 is hereby amended by the insertion of the following subsections after subsection (3):

“(4) In considering the suitability of an applicant for the award of a sound broadcasting contract, the Commission shall have regard to the overall quality of the performance of the applicant with respect to the provision by him of a sound broadcasting service under any sound broadcasting contract held by him at, or before, the date of the making of the application.

(5) Where the Commission decides to refuse to award a sound broadcasting contract to an applicant therefor, the Commission shall notify the applicant of the reasons for the decision.”.

Amendment of section 8 of Act of 1988.

**61.**—Section 8 of the Act of 1988 is hereby amended by the substitution, in subsection (1), of “thirty” for “fourteen”.



**62.**—The following section is hereby substituted for section 15 of the Act of 1988: Pt.VII

“Derogation from requirements relating to news and current affairs programming.

15. Notwithstanding section 9(1)(c), the Commission may authorise a derogation from the requirement in question in whole or in part in the case of a sound broadcasting service which a sound broadcasting contractor contracts to provide in any area, but only if it is satisfied that the authorisation of such a derogation would be beneficial to the listeners of sound broadcasting services in that area.”.

Amendment of section 15 of Act of 1988.

**63.**—Section 15 of the Act of 1960 is hereby amended—

Amendment of section 15 of Act of 1960.

- (a) in subsection (3), by the insertion after “amending” of “or revoking”,
- (b) in subsection (6), by the insertion after “in pursuance of a scheme” of “or schemes”, and
- (c) by the insertion after subsection (6A) (inserted by the Act of 1976) of the following subsection:

“(6B) No pension, gratuity or other allowance shall be granted by the Authority on the resignation, retirement or death of an officer or servant of the Authority (including the Director-General) otherwise than in accordance with a scheme under this section or, if the Minister, with the consent of the Minister for Finance, sanctions the granting of such a pension, gratuity or allowance, in accordance with that sanction.”.

**64.**—Paragraph 11 of the Schedule to the Act of 1988 is hereby amended—

Amendment of Schedule to Act of 1988.

- (a) in subparagraph (3), by the insertion after “amending” of “or revoking”, and
- (b) in subparagraph (6), by the insertion after “under this paragraph” of “or, if the Minister, with the consent of the Minister for Finance, sanctions the granting of such a pension, gratuity or allowance, in accordance with that sanction”.

**65.**—Nothing in section 20(4) of the Act of 1960 or section 10(3) of the Act of 1988 (including either of those sections as applied by this Act) shall be construed as preventing the broadcasting of a notice of the fact—

Religious advertising.

- (a) that a particular religious newspaper, magazine or periodical is available for sale or supply, or
- (b) that any event or ceremony associated with any particular religion will take place,

if the contents of the notice do not address the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation.

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[2001.]

FIRST SCHEDULE

ENACTMENTS REPEALED

Number and Year (1)	Short Title (2)	Extent of Repeal (3)
No. 10 of 1960.	Broadcasting Authority Act, 1960.	Sections 18A, 18B, 18C and 19; subsections (1), (1A) and (1B) of section 31.
No. 20 of 1988.	Radio and Television Act, 1988.	Subsections (3) and (4) of section 11; sections 12 and 14(4)(b).
No. 24 of 1990.	Broadcasting Act, 1990.	Section 4.
No. 15 of 1993.	Broadcasting Authority (Amendment) Act, 1993.	Section 2.

Section 3.

Section 44.

SECOND SCHEDULE

PROVISIONS IN RELATION TO TEILIFÍS NA GAELIGE

1. In this Schedule “the body” means Teilifís na Gaeilge.
2. (1) The body shall consist of not less than 7 nor more than 9 members.  
(2) The members of the body shall be appointed by the Government.  
(3) Where the number of members of the body for the time being is 7, not less than 3 of them shall be men and not less than 3 of them shall be women.  
(4) Where the number of members of the body for the time being is 8 or 9, not less than 4 of them shall be men and not less than 4 of them shall be women.  
(5) The period of office of a member of the body shall be such period, not exceeding 5 years, as the Government may determine when appointing him or her.  
(6) A member of the body whose term of office expires by effluxion of time shall be eligible for reappointment.  
(7) A member of the body may resign his or her membership by letter sent to the Government and the resignation shall take effect on and from the date of receipt of the letter.  
(8) A person shall not be appointed to be a member of the body unless—
  - (a) he or she has experience of or shown capacity in—
    - (i) media or commercial affairs,
    - (ii) radio communications engineering,
    - (iii) trade union affairs,
    - (iv) administration, or

(v) social, cultural, educational or community activities or Gaeltacht affairs, SCH. 2

and

(b) he or she is able to speak and write proficiently in the Irish language.

3. (1) The Government shall from time to time as occasion requires appoint a member of the body to be chairperson thereof.

(2) The chairperson of the body shall, unless he or she sooner dies, resigns the office of chairperson or ceases to be chairperson under *subparagraph (4)* of this paragraph, hold office until the expiration of his or her period of office as a member of the body.

(3) The chairperson of the body may at any time resign his or her office as chairperson by letter sent to the Government and the resignation shall take effect at the commencement of the meeting of the body held next after the body has been informed by the Government of the resignation.

(4) Where the chairperson of the body ceases during his or her term of office as chairperson to be a member of the body, he or she shall also then cease to be chairperson of the body.

4. A member of the body may be removed from office by the Government for stated reasons, if, but only if, resolutions are passed by both Houses of the Oireachtas calling for his or her removal.

5. (1) A member of the body shall be paid out of funds at the disposal of the body—

(a) such remuneration as may be fixed from time to time by the Minister, with the consent of the Minister for Finance, and

(b) such amounts in respect of expenses as the body, with the approval of the Minister given with the consent of the Minister for Finance, considers reasonable.

(2) Subject to the provisions of this Schedule, a member of the body shall hold office upon and subject to such terms and conditions as may, from time to time, be determined by the Minister, with the consent of the Minister for Finance.

(3) The Minister shall cause a statement in writing specifying the terms of office and the remuneration of the members of the body to be laid before both Houses of the Oireachtas.

6. A member of the body who has—

(a) any interest in any company or concern with which the body proposes to enter into any contract, or

(b) any interest in any contract which the body proposes to enter into,

shall disclose to the body the fact of the interest and the nature thereof, and shall take no part in any deliberation or decision of the body relating to the contract, and the disclosure shall be recorded in the minutes of the body.

7. (1) The body shall as soon as may be after its establishment provide itself with a seal.

(2) The seal of the body shall be authenticated by the signature of the chairperson of the body or some other member thereof authorised by the body to act in that behalf and the signature of an officer of the body authorised by the body to act in that behalf.

(3) Judicial notice shall be taken of the seal of the body, and every document purporting to be an instrument made by the body and to be sealed with the seal (purporting to be authenticated in accordance with this paragraph) of the body shall be received in evidence and be deemed to be such instrument without further proof unless the contrary is shown.

8. (1) The body shall hold such and so many meetings as may be necessary for the due fulfilment of its functions.

(2) The Minister may fix the date, time and place of the first meeting of the body.

(3) Subject to the provisions of this Schedule, the body shall regulate its procedure by rules made under this subparagraph.

(4) At a meeting of the body—

(a) the chairperson of the body shall, if present, be chairperson of the meeting,

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

(5) Every question at a meeting of the body shall be determined by a majority of the votes of the members 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.

(6) The body may act notwithstanding one or more vacancies among its members (including one or more vacancies that result in *subparagraph (3) or (4) of paragraph 2* not being complied with).

(7) The quorum for a meeting of the body shall be fixed by rules made under *subparagraph (3) of this paragraph*, but—

(a) it shall not be less than five, and

(b) until it is so fixed, it shall be five.

9. (1) The body shall, with the approval of the Minister, from time to time appoint a person to be the chief executive officer of the body, and such person shall be known, and in this Act is referred to, as the “chief executive”.

(2) The body may, as well as appointing the chief executive, appoint so many other persons to be members of the staff of the body as the body, with the approval of the Minister, given with the consent of the Minister for Finance, from time to time determines.

(3) The body may perform all or any of its functions through or by such members of its staff as may be duly authorised in that behalf by it.

10. (1) A member of the staff of the body (including the chief executive) shall hold his or her office or employment on such terms and conditions as the body, with the approval of the Minister given with the consent of the Minister for Finance, may from time to time determine. SCH. 2

(2) There shall be paid by the body to its staff (including the chief executive) such remuneration and allowances as the body, with the approval of the Minister given with the consent of the Minister for Finance, thinks fit.

(3) In determining the remuneration or allowances to be paid to its staff or the terms or conditions subject to which such staff hold or are to hold their employment, the body shall comply with any directive with regard to such remuneration, allowances, terms and conditions which the Minister, with the consent of the Minister for Finance, may give, from time to time, to the body.

(4) The body may at any time remove any member of the staff of the body from being a member of its staff.

(5) Notwithstanding the foregoing provisions of this paragraph, the chief executive shall not be removed without the consent of the Minister.

11. (1) Where a member of the body is—

- (a) nominated as a member of Seanad Éireann, or
- (b) nominated as a candidate for election to either House of the Oireachtas or to 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 the European Parliament,

he or she shall thereupon cease to be a member of the body.

(2) Where a person employed by the body is—

- (a) nominated as a member of Seanad Éireann, or
- (b) nominated as a candidate for election to either House of the Oireachtas or to the European Parliament, or
- (c) regarded pursuant to the said Part XIII as having been elected to the European Parliament,

he or she shall stand seconded from employment by the body and shall not be paid by, or entitled to receive from, the body any remuneration or allowances—

- (i) in case he or she is nominated as a member of Seanad Éireann or is regarded as having been elected to the European Parliament, in respect of the period commencing on such nomination or election, as the case may be, and ending when he or she ceases to be a member of Seanad Éireann or the European Parliament,
- (ii) in case he or she is nominated as a candidate for election to either House of the Oireachtas or to the European Parliament, in respect of the period commencing on his or her nomination and ending when he or she ceases to

be a member of such House or the European Parliament, as the case may be, or withdraws his or her candidature or fails to be elected, as may be appropriate.

(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 he or she is so entitled or is such a member, be disqualified from becoming a member of the body or from employment in any capacity by the body.

(4) Without prejudice to the generality of *subparagraph (2)* of this paragraph, that subparagraph shall be construed as prohibiting the reckoning of a period mentioned in *clause (i)* or *(ii)* of that subparagraph as service with the body for the purpose of any pensions, gratuities or other allowances payable on retirement or death.

12. (1) The body may prepare a scheme or schemes for the granting of pensions, gratuities and other allowances on retirement or death to or in respect of such members of the staff of the body (including the chief executive) as it may think fit and the body shall submit any such scheme to the Minister for his or her approval.

(2) Every such scheme shall fix the time and conditions of retirement for all persons to or in respect of whom pensions, gratuities or allowances on retirement or death are payable under the scheme, and different times and conditions may be fixed in relation to different classes of persons.

(3) The body may at any time prepare and submit to the Minister a scheme amending or revoking a scheme previously submitted and approved of under this paragraph.

(4) If any dispute arises as to the claim of any person to, or the amount of, any pension, gratuity or other allowance payable in pursuance of a scheme or schemes under this paragraph, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(5) A scheme submitted to the Minister under this paragraph shall, if approved of by the Minister with the consent of the Minister for Finance, be carried out by the body in accordance with its terms.

(6) No pension, gratuity or other allowance shall be granted by the body on the resignation, retirement or death of a member of the staff of the body (including the chief executive) otherwise than in accordance with a scheme under this paragraph or, if the Minister, with the consent of the Minister for Finance, sanctions the granting of such a pension, gratuity or allowance, in accordance with that sanction.

(7) Every scheme submitted and approved under this paragraph shall be laid before each House of the Oireachtas as soon as may be after it is approved of and if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

13. It shall be the duty of the body so to conduct its affairs as to ensure that its expenses can be met from its revenues.

14. The body may, with the approval of the Minister, given with the consent of the Minister for Finance, borrow temporarily by

arrangement with bankers such sums (including sums in a currency other than the currency of the State) as it may require for the purpose of providing for current expenditure. SCH. 2

15. (1) The body may, with the approval of the Minister, given with the consent of the Minister for Finance, borrow money (including money in a currency other than the currency of the State) 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 body, with the consents aforesaid, may determine.

(2) The borrowing powers conferred by this paragraph on the body may, subject to the consent of the Minister, be exercised for any purpose arising in the performance of its functions, but there may be attached to a consent to borrow the condition that the moneys shall be utilised only for the purpose of a programme of capital works approved by the Minister.

(3) The terms upon which moneys are borrowed under this paragraph may include provisions charging the moneys and interest thereon upon all property of whatsoever kind for the time being vested in the body or upon any particular property of the body and provisions establishing the priority of such charges amongst themselves.

16. The body may invest any of its funds in any manner in which a trustee is empowered by law to invest trust funds.

17. (1) The body shall keep in such form as shall be approved by the Minister, after consultation with the Minister for Finance, all proper and usual accounts of all moneys received or expended by it, including an income and expenditure account and a balance sheet.

(2) Accounts kept in pursuance of this paragraph shall be submitted annually by the body to the Comptroller and Auditor General for audit at such time as the Minister, with the concurrence of the Minister for Finance, directs.

(3) Immediately after every audit under this paragraph of its accounts, the body shall send to the Minister—

(a) a copy of the income and expenditure account and balance sheet as certified by the Comptroller and Auditor General,

(b) a copy of the report of the Comptroller and Auditor General, and

(c) copies of such of the accounts submitted for audit as the Minister may appoint as accounts of which copies are to be furnished to him or her.

(4) As soon as may be after he or she has received the documents required to be furnished to him or her under this paragraph, the Minister shall cause such documents to be laid before each House of the Oireachtas.

18. (1) The body shall, in each year, at such date as the Minister may direct, make a report to the Minister of its proceedings under this Act during the preceding year, and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

[No. 4.]                      *Broadcasting Act, 2001.*                      [2001.]

SCH. 2

(2) Whenever the Minister so directs, the annual report shall also include information on such particular aspects of the body's proceedings under this Act as the Minister may specify.

(3) The body shall submit to the Minister such information regarding the performance of its functions as the Minister may from time to time require.