Changes to Legislation: as of 13 October 2026, this Act is up to date with all changes known to be in force.

Number 41 *of* 2022

ONLINE SAFETY AND MEDIA REGULATION ACT 2022

REVISED

Updated to 17 February 2024

This Revised Act is an administrative consolidation of the *Online Safety and Media Regulation Act 2022*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Coroners (Amendment) Act 2024* (4/2024), enacted 16 February 2024, and all statutory instruments up to and including the *Digital Services Act 2024 (Commencement) Order 2024* (S.I. No. 53 of 2024), made 16 February 2024, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.

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ONLINE SAFETY AND MEDIA REGULATION ACT 2022

REVISED

Updated to 17 February 2024

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Number 41 *of* 2022

ONLINE SAFETY AND MEDIA REGULATION ACT 2022

REVISED

Updated to 17 February 2024

An Act to amend the Broadcasting Act 2009 to provide for the establishment of a body to be known as Coimisiún na Meán; to provide for the implementation of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010[1] as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018[2] ; for the purpose of fulfilling the State's responsibilities under those Directives, or otherwise in the interests of the common good, to impose obligations on providers of broadcasting services and audiovisual on-demand media services, and to provide for the regulation of content available on relevant online services and harmful online content available on designated online services; to enable authorised officers of Coimisiún na Meán to carry out investigations for the purposes of ensuring compliance with obligations imposed on persons by or under this Act; to provide for sanctions to be imposed on persons for failure to comply with obligations imposed by or under this Act, including to enable Coimisiún na Meán to impose administrative financial sanctions on providers of broadcasting services, audiovisual on-demand media services and designated online services for failure to comply with such obligations; to enable Coimisiún na Meán, for the purpose of meeting its expenses and its working capital requirements, to impose a levy on providers of broadcasting services, audiovisual on-demand media services and designated online services; to establish a register of providers of audiovisual on-demand media services; to enable Coimisiún na Meán to impose a levy on providers of audiovisual media services for the purposes of funding a scheme to support the production of European works; to enable Coimisiún na Meán to prepare a scheme for the provision of funds to local sound broadcasters and community broadcasters for the support of good professional journalistic practices; to provide for the dissolution of the Broadcasting Authority of Ireland and the transfer of its functions to Coimisiún na Meán; to otherwise amend and extend the Broadcasting Act 2009; to provide for the consequential amendment of certain other enactments; and to provide for related matters.

[10*th December*, 2022]

Be it enacted by the Oireachtas as follows:

PART 1

Preliminary and General

[1] OJ No. L95, 15.4.2010, p.1

[2] OJ No. L303, 28.11.2018, p.69

Short title, collective citation and commencement

1. (1) This Act may be cited as the Online Safety and Media Regulation Act 2022.

(2) The Principal Act and this Act, in so far as it amends the Principal Act, may be cited as the Broadcasting and Other Media Regulation Acts 2009 and 2022.

(3) 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.

Definitions

2. In this Act—

"Authority" means the Broadcasting Authority of Ireland;

"Commission" means Coimisiún na Meán established under section 6 of the Principal Act as inserted by *section 8*;

"Compliance Committee" means the Compliance Committee established by section 6 of the Principal Act as that section had effect immediately before the date of coming into operation of *section 8*;

"Contract Awards Committee" means the Contract Awards Committee established by section 6 of the Principal Act as that section had effect immediately before the date of coming into operation of *section 8*;

"establishment day" means the establishment day appointed under section 5 of the Principal Act as substituted by *section 8*;

"Minister" means the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media;

"Principal Act" means the Broadcasting Act 2009;

"statutory committees" means the Contract Awards Committee and the Compliance Committee.

PART 2

Amendment of Part 1 of Principal Act

Amendment of section 2 of Principal Act

3. (1) Section 2 of the Principal Act is amended by renumbering the existing section as subsection (1).

(2) Subsection (1), renumbered under *subsection (1)*, of section 2 of the Principal Act is amended—

(a) by the insertion of the following definitions after the definition of "Act of 2001":

"'advertisement' includes a commercial communication;

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

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

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

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

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

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

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

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

(b) in the definition of "broadcasting service", by the substitution of the following paragraph for paragraph (b):

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

(c) by the insertion of the following definitions after the definition of "broadcasting service":

"'category 1 offence' means an offence the penalties for which are specified in section 139ZZH(1);

'category 2 offence' means an offence the penalties for which are specified in section 139ZZH(2);

'category 3 offence' means an offence the penalties for which are specified in section 139ZZH(3);

'Charter' means the Charter of Fundamental Rights of the European Union;",

(d) by the insertion of the following definitions after the definition of "children":

"'commercial communication' means images or sound or both—

(a) designed to promote, directly or indirectly, the goods, services or image of a person pursuing an economic activity, and

(b) included in or accompanying a programme or user-generated content in return for payment or for similar consideration or for self-promotional purposes;

'Commissioner' has the meaning given by section 11(2);",

(e) by the substitution of the following definition for the definition of "communications media":

"'communications media' means—

(a) broadcasting services,

(b) audiovisual on-demand media services,

(c) designated online services, or

(d) newspapers or periodicals consisting substantially of news and comment on current affairs;",

(f) by the insertion of the following definitions after the definition of "Council Directive":

"'Data Protection Regulation' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016[3] on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation);

'designated online service' means a service designated under section 139E;

'Directive' means Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010[4] on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018[5];",

(g) by the insertion of the following definitions after the definition of "director general":

"'E-Commerce Directive' means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000[6] on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market;

'editorial responsibility', in relation to providing programmes, means effective control—

(a) over the selection of the programmes, and

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

(h) by the substitution of the following definition for the definition of "employment":

"'employment' includes—

(a) full-time paid employment,

(b) part-time paid employment,

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

[3] OJ No. L119, 4.5.2016, p.1

[4] OJ No. L 95, 15.4.2010, p.1

[5] OJ No. L 303, 28.11.2018, p.69

[6] OJ No. L178, 17.7.2000, p.1

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

(i) by the substitution of the following definition for the definition of "establishment day":

"'establishment day' means the day appointed by the Minister under section 5 to be the establishment day for the purposes of this Act;",

(j) by the insertion of the following definition after the definition of "free-to-air service":

"'harmful online content' has the meaning given by section 139A(1);",

(k) in the definition of "holding company", by the substitution of "Companies Act 2014" for "Companies Act 1963",

(l) in the definition of "Joint Oireachtas Committee", by the substitution of "to which this Act relates" for "relating to broadcasting",

(m) by the substitution of the following definition for the definition of "media literacy":

"'media literacy' means public understanding of material published in print, broadcast, online or other media, including understanding of—

(a) the nature and characteristics of published material,

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

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

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

(n) by the insertion of the following definitions after the definition of "media literacy":

"'media service code' means a code made under section 46N;

'media service provider' means a person who provides an audiovisual media service;

'media service rules' means rules made under section 46O;",

(o) by the insertion of the following definitions after the definition of "national emergency":

"'online safety code' means a code made under section 139K;

'Online Safety Commissioner' means a Commissioner designated under section 11(7) as an Online Safety Commissioner;",

(p) by the insertion of the following definitions after the definition of "ownership":

"'personal data' has the same meaning as it has in the Data Protection Regulation;

'programme' means a sound programme or audiovisual programme;",

(q) in the definition of "programme material"—

(i) by the insertion of "(subject to section 153)" after " 'programme material' ", and

(ii) by the deletion of "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",

(r) by the insertion of the following definition after the definition of "programme material":

"'programme schedule' means a chronological schedule of audiovisual or sound programmes;",

(s) by the insertion of the following definition after the definition of "provide a broadcasting service":

"'provider of communications media' means—

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

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

(c) in the case of a designated online service, the person who controls the service, and

(d) in the case of newspapers or periodicals consisting substantially of news and comment on current affairs, the person who controls the newspaper or periodical;",

(t) by the insertion of the following definition after the definition of "Raidió Teilifís Éireann":

"'relevant online service' means—

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

(b) any other information society service, within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015[7]—

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

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

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

(u) by the substitution of the following definition for the definition of "sound broadcasting service":

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

(a) the principal purpose of the service is devoted to providing sound programmes, by electronic communications networks, to the general public, under the editorial responsibility of the

[7] OJ No. L241, 17.9.2015, p.1

provider of the service, in order to inform, entertain or educate, and

(b) the service is provided for simultaneous or near-simultaneous listening to sound programmes on the basis of a programme schedule;",

(v) in the definition of "subsidiary", by the substitution of "Companies Act 2014" for "Companies Act 1963",

(w) in the definition of "terrestrial means", by the deletion of "a MMD system or",

(x) by the insertion of the following definitions after the definition of "transmission":

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

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

'video-sharing platform service' has the meaning given by subsections (2) and (3);",

and

(y) by the deletion of the definitions of "BCC", "broadcasting code", "broadcasting rules", "Compliance Committee", "Contract Awards Committee", "electronic programme guide", "electronic programme guide contract", "excepted person", "interests", "MMD system", "ownership", "transmission" (and "transmit" and "re-transmit"), and "website".

(3) Section 2 of the Principal Act is amended by the insertion of the following subsections after subsection (1), renumbered under *subsection (1)*:

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

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

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

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

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

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

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

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

Meaning of "under the jurisdiction of the State": media service providers

4. The Principal Act is amended by the insertion of the following section after section 2:

"2A. (1) For the purposes of this Act, the question whether a media service provider is under the jurisdiction of the State (or another Member State) is to be determined in accordance with this section.

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

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

(a) it uses a satellite up-link situated in that state, or

(b) it uses satellite capacity appertaining to that state.

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

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

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

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

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

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

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

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

(6) In this section—

'audiovisual media service activity' means activity relating to the audiovisual media service concerned;

'relevant editorial decisions' means editorial decisions about the audiovisual media service concerned.".

Meaning of "under the jurisdiction of the State": providers of video-sharing platform services

5. The Principal Act is amended by the insertion of the following section after section 2A:

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

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

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

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

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

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

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

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

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

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

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

(7) In this section—

(a)'established' has the same meaning as in Article 3(1) of the E-Commerce Directive;

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

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

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

Meaning of "under the jurisdiction of the State": providers of other services that may be relevant online services

6. The Principal Act is amended by the insertion of the following section after section 2B:

"2C. (1) For the purposes of this Act, the provider of an information society service, other than a provider to whom section 2A or 2B applies, is under the jurisdiction of the State if the provider of the service is established in the State within the meaning of Article 3(1) of the E-Commerce Directive.

(2) In this section 'information society service' has the same meaning as in Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015[8]".

Procedure for giving notices

7. The Principal Act is amended by the insertion of the following section after section 2C:

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

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

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

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

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

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

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

(a) the address at which the person ordinarily resides;

(b) an address at which the person carries on business;

[8] OJ No. L 241, 17.9.2015, p.1.

(c) a postal address at which the person has agreed in writing to receive notices under this Act.

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

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

(a) it is sent to an email address, fax number, or other electronic contact point, at which the person has agreed in writing to receive notices under this Act, and

(b) a record that the email, fax, or other electronic message has been sent is made for the sender by the email system, fax machine, or other electronic system used.

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

(a) if given in accordance with subsection (1)(a), is given at the time when it is delivered,

(b) if given in accordance with subsection (1)(b), is given at the time when it is left at the relevant address,

(c) if given in accordance with subsection (1)(c), is deemed, unless the contrary is proved, to be given at the time when it would be delivered in the ordinary course of the post or other service used, and

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

(7) In this section, 'notice' includes notification.".

PART 3

Coimisiún na Meán

Coimisiún na Meán

8. The Principal Act is amended by the substitution of the following Part for Part 2:

"PART 2

Coimisiún na Meán

Establishment day

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

Establishment of Commission

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

(2) The Commission—

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

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

(c) may, with the approval of the Minister, given with the consent of the Minister for Public Expenditure and Reform, acquire, hold and dispose of land or an interest in land, and

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

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

(a) a Commissioner, or

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

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

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

Powers and functions of Commission

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

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

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

(b) that the interests of the public, including the interests of children, are protected, with particular commitment to the safety of children,

(c) that the broadcasting services and audiovisual on-demand media services available in the State are open, inclusive and pluralistic, and that the Commission's policies in relation to those services best serve the needs of the people of the island of Ireland, bearing in mind—

(i) their languages and traditions,

(ii) their experiences, and the experiences of people of Irish ancestry living abroad,

(iii) their diversity, including religious, ethical, cultural, linguistic, socio-economic, and gender diversity,

(iv) their levels of participation in those services and their levels of representation in programmes on those services, and

(v) as regards people with disabilities, their requirements for accessibility to those services,

and

(d) that regulatory arrangements—

(i) address programme material, user-generated content, and other content, which are harmful or illegal,

(ii) take account of technological and societal change, and

(iii) operate proportionately, consistently and fairly.

(3) Without prejudice to the generality of subsection (2), the Commission shall—

(a) stimulate the provision of high quality, diverse, and innovative programmes by providers of broadcasting services and audiovisual on-demand media services,

(b) endeavour to ensure diversity and transparency in the control of communications media operating in the State,

(c) promote and encourage the use of the Irish language by communications media operating in the State,

(d) provide a regulatory environment that will sustain independent and impartial journalism,

(e) promote and stimulate the development of—

(i) programmes in the Irish language, and

(ii) programmes relating to climate change and environmental sustainability,

(f) promote and encourage environmental sustainability in the policies and practices of providers of broadcasting services, audiovisual on-demand media services, and relevant online services,

(g) encourage research, promote or endorse educational and training initiatives and activities, including in media literacy, and co-operate for that purpose with educational and training bodies, sporting bodies and community, local and representative bodies, and otherwise promote public awareness, knowledge and understanding, in relation to matters connected to its functions,

(h) engage in evidence-based decision-making in the exercise of its functions, and promote evidence-based decision-making by those with which it consults, and

(i) encourage compliance with the provisions of this Act, and the provisions of any code, rule or other statutory instrument made under it, in any manner the Commission considers appropriate, including by the publication of guidance as to how those provisions may be complied with.

(4) In performing its functions the Commission shall have regard to—

(a) the safety of children, and published policies of the Minister for Children, Equality, Disability, Integration and Youth in respect of that matter,

(b) the regulation of gambling, and published policies of the Minister for Justice in respect of that matter,

(c) climate change and environmental sustainability, and published policies of the Minister for the Environment, Climate and Communications in respect of that matter, and

(d) published policies of the Government in respect of any matter referred to in paragraph (a), (b) or (c).

(5) The Commission shall, in so far as consistent with its other functions and its available resources—

(a) provide advice on matters to which its functions relate, if requested to do so by a Minister of the Government, educational or training institution, or public body whose activities are concerned with those matters,

(b) give effect to any arrangements entered into with the Minister to stimulate the provision of high quality, diverse and innovative news and comment on current affairs—

(i) by publishers of newspapers or periodicals consisting substantially of news and comment on current affairs,

(ii) by broadcasters,

(iii) by providers of programme material consisting substantially of news and comment on current affairs to a broadcaster, and

(iv) by providers of services otherwise made available on an electronic communications network and providing content, consisting substantially of news and comment on current affairs, that is under the provider's editorial control,

(c) conduct or commission research on matters relating to its functions, including on any development outside the State, and publish, in the form and manner that it thinks fit, the findings of such research, as it considers appropriate,

(d) undertake strategic reviews of the broadcasting services sector, audiovisual on-demand media services sector, and relevant online services sector in respect of the following areas:

(i) funding of those sectors;

(ii) technological and societal change;

(iii) the protection of children;

(iv) other areas relevant to its functions, that the Minister may direct,

and

(e) co-operate, in relation to the regulation of gambling, with any public body concerned with that matter.

Delegation of functions

8. (1) Subject to subsection (3), the Commission may delegate the performance of any of its functions to a Commissioner, or to a member of the staff of the Commission, on such terms and conditions as it may determine, and the Commissioner or member of the staff of the Commission shall be accountable to the Commission for the performance of that function.

(2) Without prejudice to the generality of subsection (1), a function may be delegated under that subsection so as to be capable of being performed by any Online Safety Commissioner for the time being.

(3) The Commission may not delegate the performance of its functions under—

(a) section 17, 24, 29, or 31,

(b) subsection (3), (4) or (5) of section 48,

(c) section 50 or 51,

(d) Part 6 or 8,

(e) subsection (6) or (8) of section 139ZE,

(f) Part 8B, or

(g) Part 3A of the Competition Act 2002.

(4) A function delegated by the Commission under subsection (1) continues to be vested in the Commission and is capable of being performed concurrently by either the Commission or the delegate.

Conferral of additional functions

9. (1) The Minister may, after consulting with the Commission and any other Minister of the Government who, in the Minister's opinion, is concerned, by order confer on the Commission additional functions, connected with its existing functions and relating to the regulation of broadcasting services, audiovisual on-demand media services and designated online services, including as regards the protection of children, subject to such conditions as may be specified in the order.

(2) An order under this section may contain such incidental, supplemental and consequential provisions as the Minister considers necessary or expedient to give full effect to the conferral of additional functions on the Commission.

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

Independence of Commission

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

Membership of Commission

11. (1) The membership of the Commission shall consist of a chairperson and such number of other whole-time members, not being less than 3 nor greater than 6, as the Minister determines.

(2) Each member of the Commission, including the chairperson, shall be known as a Commissioner.

(3) The chairperson and each of the other Commissioners shall be appointed by the Minister on the recommendation of the Public Appointments Service.

(4) A Commissioner shall hold office for such term, not exceeding 5 years from the date of his or her appointment, as the Minister determines.

(5) A Commissioner whose term of office expires or is due to expire shall be eligible for reappointment to the Commission.

(6) A Commissioner who has served 2 terms of office shall not be eligible for reappointment to the Commission.

(7) One or more of the Commissioners shall be designated in writing by the Minister on the recommendation of the Public Appointments Service as an Online Safety Commissioner.

(8) Notwithstanding subsection (3), a person who immediately before the establishment day was the chief executive officer of the Authority may be appointed by the Minister to be a Commissioner for such period as the Minister determines (which period shall be no longer than one year from the establishment day).

(9) A person who becomes a Commissioner under subsection (8) shall be eligible for appointment as a Commissioner under subsection (3) at any time during or after the period referred to in subsection (8).

(10) The period referred to in subsection (8) shall not be considered a term of office for the purposes of subsection (6).

Conditions of office of Commissioner

12. (1) A Commissioner shall hold office on such terms and conditions as may be fixed by the Minister with the consent of the Minister for Public Expenditure and Reform.

(2) A Commissioner shall be paid such remuneration as the Minister, with the consent of the Minister for Public Expenditure and Reform, determines.

(3) A Commissioner holds office until his or her term of office expires, unless he or she ceases to be a Commissioner under any other provision of this section.

(4) A Commissioner may resign from the Commission by letter addressed to the Minister and the resignation shall take effect on the date specified in the letter, or on the date on which the Minister receives the letter, whichever is the later.

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

(a) the Commissioner has become incapable through ill-health or otherwise of performing the functions of the office,

(b) the Commissioner has engaged in serious misconduct,

(c) the Commissioner has a conflict of interest of such significance that the Commissioner should cease to hold office, or

(d) the Commissioner has failed without reasonable cause to perform his or her functions for a continuous period of at least 3 months.

(6) Where the Government proposes to remove a Commissioner from office under subsection (5), the Government shall give notice in writing to the Commissioner of that proposal.

(7) A notice under subsection (6) shall contain a statement—

(a) of the reasons for the proposed removal,

(b) that the Commissioner may make representations to the Government in such form and manner as may be specified by the Government,

(c) that any such representations must be made within a period of 20 working days from the date of the giving of the notice, or such longer period as the Government may, having regard to the requirements of natural justice, specify in the notice, and

(d) that at the end of the period referred to in paragraph (c) or the period specified in the notice, whether or not any representations are made, the Government shall decide whether to remove the Commissioner from office.

(8) In considering whether to remove a Commissioner from office under subsection (5), the Government shall take into account—

(a) any representations made by the Commissioner in accordance with paragraphs (b) and (c) of subsection (7), and

(b) any other matter the Government considers relevant.

(9) Where, after giving notice under subsection (6), the Government decides not to remove the Commissioner from office, the Government shall notify the Commissioner in writing of the decision.

(10) Where, after giving notice under subsection (6), the Government decides to remove a Commissioner from office, the Government shall—

(a) notify the Commissioner in writing of the decision, the reasons for it and the date from which it shall take effect (which shall be a date not earlier than the date of the notice under this paragraph),

(b) shall lay before each House of the Oireachtas a statement in writing of the decision and the reasons for it, and

(c) shall provide a copy of that statement to the Commissioner.

(11) A person shall cease to hold office as a Commissioner if he or she—

(a) is adjudicated bankrupt,

(b) makes a composition or arrangement with his or her creditors,

(c) is convicted of an indictable offence in relation to a company, a body corporate or a trust,

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

(e) is nominated as a member of Seanad Éireann,

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

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

(h) is elected or co-opted as a member of a local authority,

(i) becomes, or acquires a relevant interest in, a provider of communications media, or

(j) enters into employment with a provider of communications media, or with an organisation representative of providers of communications media.

(12) References to a relevant interest in a provider of communications media in subsection (11)(i) are to be read in accordance with subsections (13) and (14).

(13) A person has a relevant interest in a provider of communications media if the person, or a connected person—

(a) holds shares or any other proprietary interest in the provider, where the value of the interest exceeds €5,000,

(b) holds bonds, debentures, or other like investments in the provider, where their aggregate value exceeds €13,000,

(c) holds a directorship or shadow directorship (within the meaning of the Companies Act 2014) in the provider, or

(d) receives gifts or other benefits from the provider, where their aggregate value exceeds €650.

(14) A person also has a relevant interest in a provider of communications media if the person or a connected relative of the person is a party to an arrangement or agreement concerning land (whether or not enforceable) with the provider.

(15) In this section—

'civil partner' means a civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

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

(a) a connected relative of the person,

(b) a person acting on behalf of the person or of a connected relative of the person,

(c) a company or other body of which the person or a connected relative of the person, or a nominee of either of them, is a member,

(d) a partnership in which the person or a connected relative of the person is a partner, or

(e) an employer of the person, or of a connected relative of the person;

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

Appointment of Acting Commissioner

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

(2) An appointment under subsection (1)—

(a) shall be made for a period of not more than 6 months, and

(b) subject to paragraph (a), may be made for all or part of the period of vacancy, absence or inability.

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

Chairperson of Commission

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

(2) If a vacancy occurs in the office of the chairperson, or if the chairperson is absent from the State or is, for any other reason, unable to perform the functions of the chairperson, the Minister may appoint a Commissioner, other than an Acting Commissioner or a Commissioner appointed under section 11(8), to perform the functions of the chairperson, for all or part of that period of vacancy, absence or inability, and references in this Act to the chairperson of the Commission shall, unless the context otherwise requires, be construed as including references to that Commissioner.

Eligibility for appointment as Commissioner or member of staff

15. (1) A person shall be ineligible for appointment as a Commissioner, or as a member of the staff of the Commission, while he or she—

(a) is a member of either House of the Oireachtas,

(b) is a member of the European Parliament,

(c) is a member of a local authority, or

(d) is, or has a relevant interest in, a provider of communications media.

(2) The reference to a 'relevant interest' in subsection (1)(d) shall be construed in accordance with section 12(13) and (14).

Meetings of Commission

16. (1) The Commission shall hold such and so many meetings as it considers necessary for the performance of its functions.

(2) At a meeting of the Commission—

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

(b) if the chairperson is not present, the Commissioners present shall choose one of their number to be the chairperson of the meeting.

(3) Every question at a meeting on which a vote is required shall be determined by a majority of the votes of the Commissioners present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

(4) Subject to subsection (5), the Commission may act notwithstanding one or more vacancies among the Commissioners.

(5) The quorum for a meeting of the Commission shall, unless the Minister otherwise directs, be 3.

(6) A meeting of the Commission may take place by any means of communication by which all of the Commissioners participating can hear and be heard at the same time.

(7) Subject to the provisions of this Act, the Commission shall regulate its procedures in such manner as it determines.

Staff of Commission

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

(2) The terms and conditions of service of a member of the staff of the Commission shall, with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform, be determined by the Commission.

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

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

(a) nominated as a member of Seanad Éireann,

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

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

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

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

Superannuation

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

(a) a Commissioner, or

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

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

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

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

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

(6) A scheme shall include provision for appeals from a decision relating to a superannuation benefit under the scheme.

(7) No superannuation benefits shall be granted by the Commission to or in respect of a person who is a member of a scheme under this section on ceasing to be a Commissioner or a member of the staff of the Commission otherwise than—

(a) in accordance with a scheme or schemes under this section, or

(b) with the approval of the Minister, given with the consent of the Minister for Public Expenditure and Reform.

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

(9) Subsection (8) shall, with all necessary modifications, apply to an amendment to a scheme or a revocation of a scheme as it applies to a scheme.

(10) A scheme shall not provide for less favourable conditions in respect of people who immediately before the establishment day

were members of the staff of the Authority than those conditions to which they were entitled immediately before the establishment day.

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

(12) In this section, 'scheme' means a scheme made under subsection (1).

Committees

19. (1) The Commission may establish committees to assist and advise the Commission on matters relating to its functions or on such other matters as the Commission may determine.

(2) A committee may include such number of members as the Commission considers appropriate, and may include Commissioners, members of the staff of the Commission or other persons.

(3) The Commission shall specify in writing the purpose and terms of reference of each committee.

(4) The acts of a committee are subject to confirmation in writing by the Commission unless the Commission dispenses with the necessity for confirmation.

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

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

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

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

(9) Without prejudice to the generality of this section, the Commission shall, within one year after the establishment day, establish a committee under this section to be known as the 'Youth Advisory Committee'.

(10) The Youth Advisory Committee shall assist and advise the Commission—

(a) in the exercise of its functions under Part 8A in so far as those functions relate to the interests of children and people not more than 25 years of age, and

(b) on such other matters as the Commission may determine.

(11) The Youth Advisory Committee shall include such representatives as may be nominated at the invitation of the Commission by

organisations representing children or people of not more than 25 years of age.

(12) At least half of the members of the Youth Advisory Committee shall be not more than 25 years of age.

Consultants and advisers

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

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

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

Power to impose levies

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

(a) providers of audiovisual media services;

(b) providers of sound broadcasting services;

(c) providers of designated online services.

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

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

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

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

(a) shall consider the Commission's expenses in that period in performing functions in relation to services mentioned in that paragraph, as a proportion of its expenses in that period in performing functions in relation to all services mentioned in subsection (1), and

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

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

(a) the method of calculation of the levy,

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

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

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

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

(7) A levy order—

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) be refunded proportionately to those providers.

(12) In this section and section 22—

'levy order' has the meaning given in subsection (1);

'levy period' has the meaning given in subsection (2).

Levies under section 21: enforcement and procedure

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

(2) A person shall be guilty of a category 2 offence if in purported compliance with a requirement imposed by or under a levy order,

he or she provides information to the Commission which is to his or her knowledge false or misleading.

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

Grant to Commission

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

Power to borrow

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

Deposits and charges for services

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

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

(3) Any surplus of income under subsection (2) over the expenses incurred by the Commission in respect of the provision of the services or facilities concerned in a particular financial year shall be applied in such manner as the Minister, after consultation with the Commission and with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform, may direct and any such direction may require that all or part of such excess be paid into the Exchequer.

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

Estimates and accounts

26. (1) The Commission shall submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times as may be required by the Minister and shall furnish to the Minister any information which the Minister may require in relation to those estimates, including proposals and future plans relating to the performance by the Commission of its functions over a specified period of years.

(2) The Commission shall keep, in such form as may be approved by the Minister with the consent of the Minister for Public Expenditure and Reform, all proper and usual books or other records of account of—

(a) all moneys received or expended by the Commission,

(b) the sources of all moneys received and the reasons for all expenses, and

(c) all property, assets and liabilities of the Commission.

(3) The books and records referred to in subsection (2) shall include an income and expenditure account and a balance sheet and such special accounts, if any, as the Minister may from time to time direct.

(4) The Commission shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the books or other records of account of the Commission in respect of any financial year, or other period, and shall facilitate any such examination, and the Commission shall pay such fee for the examination as may be required by the Minister.

(5) Accounts kept under this section, signed by the chairperson and one other Commissioner or, in the absence of the chairperson, by 2 Commissioners, shall be submitted by the Commission to the Comptroller and Auditor General for audit as soon as practicable after the end of the financial year to which the accounts relate, but not later than 3 months thereafter.

(6) When so audited, a copy of the accounts together with a copy of the report of the Comptroller and Auditor General thereon shall be presented by the Commission to the Minister who shall, as soon as practicable but not later than 3 months thereafter, cause copies of them to be laid before each House of the Oireachtas.

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

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

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

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

Accountability of chairperson to Public Accounts Committee

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

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

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

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

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

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

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

(b) the objectives of such a policy.

Accountability of Commissioner to Oireachtas committees

28. (1) The chairperson, if required in writing to do so by a committee, shall attend before it to give account for the general administration of the Commission.

(2) Any Commissioner, if required in writing to do so by a committee, shall attend before it to give account for the performance of any functions of the Commission delegated to him or her.

(3) Subsections (1) and (2) do not require a Commissioner to give account before a committee for any matter which is or has been, or which may in the future be, the subject of proceedings before a court or tribunal.

(4) Where a Commissioner is of the opinion that a matter in respect of which he or she is requested to give an account before a committee is a matter to which subsection (3) applies, he or she shall inform the committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the committee at a time when the Commissioner is before it, the information shall be so conveyed in writing.

(5) Where the Commissioner has informed a committee of his or her opinion in accordance with subsection (4) and the committee does not withdraw the requirement referred to in subsection (1) or (2) in so far as it relates to a matter the subject of that opinion—

(a) the Commissioner may, not later than 21 days after being informed by the committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which subsection (3) applies, or

(b) the chairperson of the committee may, on behalf of the committee, make such an application,

and the High Court shall determine the matter.

(6) Pending the determination of an application under subsection (5), the Commissioner shall not attend before the committee to give account for the matter the subject of the application.

(7) If the High Court determines that subsection (3) applies to the matter concerned, the committee shall withdraw the requirement referred to in subsection (1) or (2), but if the High Court determines that subsection (3) does not apply, the Commissioner shall attend before the committee and give account for the matter.

(8) In this section, 'committee' means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the committee referred to in section 27 or the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann) or a subcommittee of such a committee.

Strategy statement and work programme

29. (1) As soon as practicable after the establishment day, and thereafter not earlier than 6 months before and not later than 3 months before each third anniversary of the establishment day, the Commission shall prepare and submit to the Minister a strategy statement for the 3 year period immediately following the year in which the statement is submitted.

(2) A strategy statement shall—

(a) specify the Commission's objectives and intended outputs for the 3 year period referred to in subsection (1), and its strategies for achieving them, including its strategies for the economic and efficient use of resources,

(b) specify the manner in which the Commission proposes to assess its performance in respect of the objectives referred to in paragraph (a), taking account of its proposed financial and non-financial performance indicators,

(c) except for the first strategy statement, include an assessment of the outcomes and effectiveness of the preceding strategy statement, based on the manner of assessment and the proposed performance indicators specified in the preceding strategy statement, and

(d) include any other matter that the Minister may direct.

(3) A strategy statement shall be prepared in the form and manner that the Minister directs.

(4) When preparing a strategy statement, the Commission may consult such persons as it considers appropriate.

(5) Prior to the adoption of a strategy statement and its submission to the Minister, the Commission shall undertake, for such reasonable period as the Commission may determine, a public consultation process on a draft of the strategy statement.

(6) As soon as practicable after a strategy statement has been submitted to the Minister under subsection (1), the Minister shall cause a copy of the strategy statement to be laid before each House of the Oireachtas and the Commission shall publish the strategy statement on a website maintained by the Commission.

(7) The Commission shall prepare and submit to the Minister, at least 2 months before the commencement of each financial year, a work programme relating to the discharge of its functions, including—

(a) having regard to the strategy statement, the objectives and intended outputs of the Commission for that year and its strategy for achieving those objectives and outputs,

(b) the Commission's priorities for its work to achieve those objectives and outputs, and

(c) any other matter that the Minister may direct.

(8) The Commission shall, in preparing each strategy statement and each work programme, have regard to the need to ensure the most effective, efficient, and economical use of its resources.

(9) The Commission shall give a copy of the strategy statement to such committees of either or both Houses of the Oireachtas as the Minister may direct.

Observations on legislative proposals and review of enactments

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

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

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

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

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

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

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

(5) In this section—

'Act' means—

(a) an Act of the Oireachtas, and

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

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

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

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

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

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

Reporting by Commission

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

(2) An annual report shall include information in such form and regarding such matters as the Minister may direct but nothing in this subsection shall be construed as requiring the Commission to include information the inclusion of which would, in the opinion of the Commission, be likely to prejudice the performance of its functions.

(3) An annual report shall include details of any scheme approved under Part 10 or 10A of this Act.

(4) An annual report shall include a report to the Minister on progress made towards increasing the accessibility of audiovisual media services to people with disabilities, and in particular, on progress made to achieve the intended outcomes relating to such accessibility set out in any media service rules.

(5) The Commission may furnish to the Minister such information or reports, in addition to the annual report, about the performance of its functions as it considers appropriate.

(6) In addition to information provided by the Commission in its annual report and in any reports made under subsection (5) the Commission shall supply to the Minister such information as the Minister may require regarding the performance of its functions.

(7) The Commission shall arrange for an annual report that has been laid before each House of the Oireachtas in accordance with subsection (1) to be published, on a website maintained by the Commission, as soon as practicable after copies of the report are so laid.

Co-operation with other bodies

32. (1) The Commission may, in the interests of the effective discharge of its functions, co-operate and enter into co-operation agreements with a body established in the State.

(2) The Commission may, in the interests of the effective discharge of its functions, co-operate, and enter into co-operation agreements, with a body not established in the State, if that body performs similar functions to the Commission.

(3) Without prejudice to the generality of subsection (2), a body which is a member of the European Regulators Group for Audiovisual Media Services established by Article 30b(1) of the Directive shall be considered to be a body which performs similar functions to the Commission.

(4) If the Commission enters into an agreement under this section—

(a) it shall provide the Minister and the Joint Oireachtas Committee with a copy of the agreement, and

(b) it may publish the agreement on a website maintained by it, with the consent of all parties to the agreement, and subject to such redaction as may be agreed between them.

Disclosure of personal data

33. (1) The Commission may, in the circumstances referred to in subsection (2), disclose personal data to any of the following:

(a) the Data Protection Commission;

(b) a national regulatory authority or body designated by another Member State under Article 30 of the Directive;

(c) the Garda Síochána;

(d) a broadcaster or a provider of an audiovisual on-demand media service;

(e) a body prescribed in regulations made by the Minister.

(2) The circumstances referred to in subsection (1) are:

(a) in the case of subsection (1)(a), where the Commission considers that a complaint, or part of a complaint, made under section 48 is not relevant to the performance by the Commission of its functions, but may be relevant to the performance by the Data Protection Commission of its functions, and the Commission considers that the disclosure is necessary and proportionate for the purposes of transferring the complaint or part to the Data Protection Commission;

(b) in the case of subsection (1)(b), where the Commission considers that a complaint, or part of a complaint, made under section 48 is made in relation to a broadcaster, or a provider of an audiovisual on-demand media service, which is under the jurisdiction of another Member State, and the Commission considers that the disclosure is necessary and proportionate for the purposes of transferring the complaint or part to the national regulatory authority or body designated by that Member State;

(c) in the case of subsection (1)(c), where the Commission considers that the disclosure may be necessary and proportionate for the prevention or investigation of a criminal offence;

(d) in the case of subsection (1)(d), where the Commission considers that a complaint, or part of a complaint, made under section 48 is made in relation to the broadcaster or provider of an audiovisual on-demand media service, and the Commission considers that the disclosure is necessary and proportionate for the purposes of transferring the complaint or part to the broadcaster or provider under section 48(3);

(e) in the case of any paragraph of subsection (1), where the Commission considers that the disclosure is necessary and proportionate in such other circumstances as may be prescribed in regulations made by the Minister.

(3) Where the Commission discloses a person's personal data under this section the Commission shall notify the person of the disclosure in so far as it is practicable to do so.

(4) The matters that section 19(1) of the Data Sharing and Governance Act 2019 requires to be specified or included in a data-sharing agreement shall be specified or included in any agreement entered into by the Commission for the disclosure to another body of personal data in accordance with subsection (1), subject to the following modifications to the description of those matters in section 19(1) of that Act:

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

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

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

(d) the following paragraph shall be substituted for paragraph (r):

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

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

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

(7) The Minister shall consider whether it is necessary to carry out an assessment of the impact of regulations made under subsection (1)(e) or (2)(e) on the processing of personal data before making the regulations and, where he or she considers it necessary to do so, shall carry out the assessment.

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

(9) The Commission shall give a copy of any agreement referred to in subsection (4) to the Minister.

Co-operation with self-regulatory systems

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

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

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

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

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

Policy communications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Confidential information

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

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

(a) the disclosure is made to the Commission,

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

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

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

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

(4) In this section—

'confidential information' means—

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

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

'relevant person' means—

(a) a Commissioner,

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

(c) an authorised officer,

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

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

Disclosure of interests

37. (1) Where a relevant person or a connected relative of a relevant person is likely to derive a benefit from any matter to be considered by the Commission, or where a relevant person has a relevant interest in any business or organisation representative of any business, which is likely to derive a benefit from such a matter, the relevant person—

(a) shall, in advance of any consideration of the matter, disclose that fact to the Commission,

(b) shall take no part in the deliberation by the Commissioners or members of the staff of the Commission in relation to the matter,

(c) shall withdraw from a meeting at which the matter is being considered for so long as it is being so considered, and shall not be counted towards a quorum during any such consideration,

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

(e) shall not make any recommendation to the Commission in relation to the matter.

(2) Subsection (1) does not apply to a person as regards—

(a) a contract or proposed contract of employment of that person as a member of the staff of the Commission, or

(b) a contract or proposed contract for services in respect of that person, provided that person is not a Commissioner or a member of staff.

(3) Where a Commissioner fails to comply with this section, and that failure has not resulted in the Government issuing a notice under section 12(6), the Minister shall decide the appropriate action to be taken.

(4) Where a person other than a Commissioner fails to comply with this section, the Commission shall decide the appropriate action to be taken, which may include termination of the person's contract of employment or contract for services.

(5) For the purposes of this section—

'connected relative' shall be construed in accordance with section 12(15);

'relevant interest' shall be construed in accordance with section 12(13) and (14), subject to the modifications that—

(a) references to a 'provider of communications media' or 'the provider' in those subsections shall be construed as references to the 'business' or 'organisation representative of any business' referred to in subsection (1), and

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

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

Judicial review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 4

Register of providers of audiovisual on-demand media services

Register of providers of audiovisual on-demand media services

Register of providers of audiovisual on-demand media services

9. The Principal Act is amended by the insertion of the following Part after Part 3:

"PART 3A

Register of providers of audiovisual on-demand media services

Register of providers of audiovisual on-demand media services

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

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

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

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

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

(a) the name of the media service provider;

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

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

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

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

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

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

Duty of media service providers to notify Commission

46B. (1) A media service provider that is subject to registration at the date of coming into operation of this Part shall give the Commission a notification under this section not later than the end of the transitional period.

(2) A media service provider that becomes subject to registration during the transitional period shall give the Commission a notification under this section not later than—

(a) the end of the transitional period, or

(b) if later, the end of 10 working days from the date on which the provider becomes subject to registration.

(3) A media service provider that becomes subject to registration after the transitional period shall give the Commission a

notification under this section not later than 10 working days from the date on which the provider becomes subject to registration.

(4) The transitional period is the period of 3 months from the date of coming into operation of this Part.

(5) A notification under this section shall contain—

(a) the name of the media service provider,

(b) contact details of the media service provider,

(c) the name of each audiovisual on-demand media service provided by the provider,

(d) in each case, a description of the nature of the service and the nature of the content provided by the service,

(e) a statement of the basis on which the media service provider considers that it is under the jurisdiction of the State, and

(f) such other matters as the Commission may prescribe by rules under section 46H.

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

Duty of registered media service providers to notify changes

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

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

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

Procedure where Commission notified under section 46B or 46C

46D. (1) This section applies if the Commission receives a notification under section 46B or 46C.

(2) The Commission may request further information from the media service provider for the purposes of deciding what action to take under subsection (3) or (4).

(3) In the case of a notification under section 46B, the Commission shall as soon as practicable—

(a) decide whether the media service provider is subject to registration, and

(b) if it decides that the media service provider is subject to registration, make the appropriate entry in the register.

(4) In the case of a notification under section 46C, the Commission shall as soon as practicable make any appropriate amendment to the register.

(5) The Commission shall give the media service provider—

(a) a statement in writing of any decision under subsection (3)(a),

(b) if that decision is that the provider is not subject to registration, a statement in writing of the reasons for the decision,

(c) a copy of any entry under subsection (3)(b), and

(d) a statement in writing of any amendment under subsection (4).

Review and correction of register

46E. (1) The Commission shall, from time to time as it considers appropriate, review each entry in the register.

(2) The Commission shall amend the register if it is satisfied, following a review under subsection (1) or otherwise, that—

(a) the provider to which an entry relates is not subject to registration, or

(b) information included in the register is incorrect.

(3) Before making an amendment under subsection (2) the Commission shall consult the provider concerned if it is practicable to do so.

(4) The Commission may request further information from the provider for the purposes of deciding whether to make an amendment under subsection (2).

(5) The Commission shall give the provider concerned a statement in writing of any amendment it makes under subsection (2).

Failure to notify or to provide further information

46F. (1) Where it appears to the Commission that a media service provider has failed to comply with section 46B, or 46C, or a request under section 46D(2) or section 46E(4), the Commission may by notice in writing direct the provider to take any action stated in the notice to comply with that section or that request.

(2) The Commission shall not give a direction under subsection (1) unless it has given the provider an opportunity to make representations about the apparent failure.

(3) A direction shall state—

(a) the reasons for it, and

(b) the period within which the provider must comply with it.

(4) Where a direction states that the provider has failed to comply with section 46B or 46C, the provider may appeal the direction to the Circuit Court within 28 days of receipt of the direction.

(5) On hearing an appeal under subsection (4), the Circuit Court may either—

(a) affirm the direction, or

(b) where it is satisfied that the Commission in giving the direction was irrational or erroneous in its reasoning, or committed a failure to comply with fair procedures, or any other clear error of law, order that the direction be withdrawn.

(6) A person who fails without reasonable excuse to comply with a direction under subsection (1) shall be guilty of a category 2 offence.

Removal of provider or service from register

46G. (1) If under section 46D(4) or 46E(2) the Commission—

(a) removes from the register the entry relating to a media service provider, or

(b) removes from the entry relating to a media service provider reference to an audiovisual on-demand media service,

the Commission shall enter in the register a statement to that effect and a statement of the reasons for that removal.

(2) The Commission shall give the provider concerned a copy of any statement included in the register under subsection (1).

Rules and guidelines

46H. (1) The Commission may, having regard to the efficiency of the registration process and the need to maintain an up-to-date register, make rules prescribing:

(a) subject to section 46A(3), the information to be included in the register;

(b) the form and manner of a notification under section 46B or 46C, including the information which must be provided under section 46B(5)(f);

(c) the procedures which the Commission shall follow in making requests for further information under sections 46D(2) and 46E(4).

(2) The Commission may issue guidelines in relation to the operation of this Part or of any rules made under subsection (1) and such guidelines shall be published on a website maintained by the Commission.".

PART 5

Duties, codes, and rules applying to media service providers and sound broadcasters

Duties, codes, and rules applying to media service providers and sound broadcasters

10. The Principal Act is amended by the insertion of the following Part before Part 4:

"PART 3B

Duties, codes, and rules applying to media service providers and sound broadcasters

Chapter 1

Interpretation

Interpretation

46I. (1) In this Part—

'party political programme' means a programme broadcast, or made available in a catalogue of an audiovisual on-demand media service, by or on behalf of a political party for the purpose of promoting the political party;

'political party' means a political party registered in the Register of Political Parties;

'relevant media service provider' means a provider of an audiovisual on-demand media service who is—

(a) a corporation, or a subsidiary of a corporation,

(b) a broadcasting contractor, or

(c) a person who meets one or more of the conditions in subsection (2) and whose annual sales derived from activities referred to in that subsection are greater than €2 million;

'relevant service' in relation to a relevant media service provider means an audiovisual on-demand media service provided by that provider.

(2) The conditions referred to in paragraph (c) of the definition of 'relevant media service provider' in subsection (1) are:

(a) that the person or a related person publishes a newspaper or periodical consisting substantially of news and comment on current affairs;

(b) that the person or a related person is a broadcaster;

(c) that the person or a related person provides programme material consisting substantially of news and comment on current affairs to a broadcaster; or

(d) that the person or a related person otherwise makes available on an electronic communications network any written, audio, audiovisual or photographic material, consisting substantially of news and comment on current affairs, that is under his or her editorial control.

(3) For the purposes of subsection (2), a person is a 'related person' if the person is part of the same group of companies (within the meaning given to that term by section 8 of the Companies Act 2014) as the person referred to in paragraph (c) of the definition of 'relevant media service provider' in subsection (1).

Chapter 2

Duties

Harm, offence, incitement, and authority of State

46J. (1) A broadcaster shall not broadcast, and a provider of an audiovisual on-demand media service shall not make available in a catalogue of the service—

(a) anything which may reasonably be regarded as causing harm or undue offence,

(b) anything which may reasonably be regarded as likely to promote, or incite to, crime,

(c) anything which may reasonably be regarded as conduct falling within Article 5 of Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017[9] on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA,

(d) anything which may reasonably be regarded as likely to incite to violence or hatred directed against a group of persons, or a member of a group, based on any of the grounds referred to in Article 21 of the Charter, or

(e) anything which may reasonably be regarded as tending to undermine the authority of the State.

(2) A failure to comply with subsection (1) shall be a contravention for the purposes of Part 8B.

Privacy

46K. (1) A broadcaster shall ensure that, in programmes broadcast by the broadcaster, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon.

(2) A provider of an audiovisual on-demand media service shall ensure that in programmes included in a catalogue of the service, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon.

(3) A failure to comply with subsection (1) or (2) shall be a contravention for the purposes of Part 8B.

News and current affairs

46L. (1) A broadcaster, in programmes which he or she broadcasts, and a relevant media service provider, in programmes which he or she makes available in a catalogue of the relevant service, shall ensure—

(a) that news is reported and presented in an objective and impartial manner and without any expression of the broadcaster's or provider's own views, and

(b) that the treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned, and that the matter broadcast or made available is presented in an objective and impartial manner and without any expression of the broadcaster's or provider's own views.

(2) Should it prove impracticable to apply subsection (1)(b) in relation to a single programme, 2 or more related programmes may be considered as a whole, if—

(a) where the programmes are broadcast, they are broadcast within a reasonable period of each other, or

(b) where the programmes are made available on a relevant service, they are made available in the same way on the relevant service within a reasonable period of each other.

(3) Nothing in subsection (1) prevents a broadcaster from broadcasting, or a relevant media service provider from making

[9] OJ No. L88, 31.3.2017, p.6

available, party political programmes, provided that an unfair preference is not given to any political party—

(a) by a broadcaster, in the allocation of time for such programmes, or

(b) by a relevant media service provider, in the positioning of such programmes in a catalogue of the relevant service.

(4) Subsection (1), in so far as it requires a broadcaster or a relevant media service provider not to express his or her own views, does not apply to news or current affairs relating to a proposal which—

(a) concerns policy as regards broadcasting which is of public controversy or the subject of current public debate, and

(b) is being considered by the Government or the Minister.

(5) Subject to subsection (6), a provider of a sound broadcasting service shall ensure that the time devoted to the broadcasting of news and current affairs programmes on the service—

(a) is not less than 20 per cent of the broadcasting time of the service, and

(b) if the service is provided for more than 12 hours in any one day, is not less than 2 hours of the broadcasting time of the service between 07. 00 hours and 19. 00 hours.

(6) The Commission may authorise a derogation in whole or in part from the requirement in subsection (5) in the case of a sound broadcasting service, if the Commission is satisfied that the derogation would be beneficial to the listeners of the service.

(7) The sound broadcasting services established and maintained by RTÉ are deemed to be one sound broadcasting service for the purposes of subsection (5).

(8) A failure to comply with this section shall be a contravention for the purposes of Part 8B.

Advertising

46M. (1) A programme broadcast, or made available in a catalogue of an audiovisual on-demand media service, may include advertisements inserted in it.

(2) A broadcaster shall not broadcast, and a relevant media service provider shall not make available in a catalogue of the relevant service, an advertisement which—

(a) is directed towards a political end or has any relation to an industrial dispute, or

(b) addresses the issue of the merits or otherwise of adhering to any religious faith or belief, or of becoming a member of any religion or religious organisation.

(3) A provider of a sound broadcasting service shall ensure that in the service the total daily time devoted to the broadcasting of advertisements does not exceed 15 per cent of the total daily broadcasting time.

(4) Nothing in subsection (2)(a) prevents a broadcaster from broadcasting, or a relevant media service provider from making

available, party political programmes, provided that an unfair preference is not given to any political party—

(a) by a broadcaster, in the allocation of time for such programmes, or

(b) by a relevant media service provider, in the positioning of such programmes in a catalogue of the relevant service.

(5) Subsection (2)(a) does not apply to advertisements broadcast by a broadcaster, or advertisements made available in a catalogue of a relevant service by a relevant media service provider, at the request of the Referendum Commission, in relation to a matter referred to in section 3 of the Act of 1998 concerning a referendum.

(6) A failure to comply with subsection (2) or (3) shall be a contravention for the purposes of Part 8B.

Chapter 3

Media service codes and media service rules

Media service codes

46N. (1) The Commission may make codes ('media service codes') governing the standards and practices of broadcasters and providers of audiovisual on-demand media services.

(2) Media service codes may provide for standards and practices to ensure—

(a) that broadcasters and providers of audiovisual on-demand media services comply with sections 46J and 46K,

(b) that broadcasters and relevant media service providers comply with section 46L(1) to (3),

(c) that in programme material audiences are protected from anything harmful or unduly offensive, and in particular that programme material relating to gratuitous violence or sexual conduct is presented—

(i) with due sensitivity to the convictions or feelings of the audience, and

(ii) in such a way that children will not normally hear or see anything which may impair their physical, mental or moral development,

(d) that commercial communications—

(i) protect the interests of the audience, and

(ii) in particular, where they relate to matters likely to be of direct or indirect interest to children, protect the interests of children having particular regard to the general public health interests of children,

and

(e) that the provision of a broadcasting service or audiovisual on-demand media service which has as one of its principal objectives the promotion of the interests of any organisation protects the interests of the audience.

(3) Media service codes may provide that party political programmes may be broadcast or made available only at specified times.

(4) Media service codes may provide for standards and practices to promote the following:

(a) balanced gender representation of participants in news and current affairs programmes broadcast by broadcasters or made available by providers of audiovisual on-demand media services;

(b) the broadcast in programmes broadcast on sound broadcasting services of music composed or performed by women.

(5) The Commission shall make media service codes providing for the matters required to be provided for by Articles 5, 6(1), 6a(1) to (3), 7b, 8, 9, 10, 11, 15, Chapter VI, and Chapter VII (other than Article 26) of the Directive (except in so far as provision is made by media service rules).

(6) The Commission shall have regard to each of the following matters in making or amending a media service code—

(a) the degree of harm or offence likely to be caused by the inclusion of a particular matter in programme material,

(b) the likely size and composition of the potential audience for programme material,

(c) the likely expectation of the audience as to the nature of programme material, and the extent to which the nature of the programme material can be brought to the attention of potential members of the audience,

(d) the likelihood of persons who are unaware of the nature of programme material being unintentionally exposed to it by their own actions,

(e) the desirability of securing that the provider of a broadcasting service or an audiovisual on-demand media service informs the Commission of any change affecting the nature of the service and, in particular, of any change relevant to the application of media service codes, and

(f) the desirability of maintaining the independence of editorial control over programmes.

(7) Provision made for the purpose referred to in subsection (2)(d)(ii) may prohibit or restrict, in accordance with law, the inclusion in programmes of commercial communications relating to foods or beverages considered by the Commission to be the subject of public concern in respect of the general public health interests of children, in particular infant formula, follow-on formula or those foods or beverages which contain fat, trans-fatty acids, salts or sugars.

(8) In preparing a media service code the Commission may consult the relevant public health authorities about any provision made for the purpose referred to in subsection (2)(d)(ii).

(9) The Commission may amend or revoke a media service code.

(10) A failure to comply with a media service code shall be a contravention for the purposes of Part 8B.

(11) Subject to subsection (12), the following broadcasting codes prepared under section 42 of this Act before the date of coming into operation of this section shall, if in force immediately before that date, continue in force as if made under this section:

(a) the General Commercial Communications Code (1 June 2017);

(b) the Code of Fairness, Objectivity and Impartiality (1 July 2013);

(c) the Code of Programme Standards (1 March 2015);

(d) the Children's Commercial Communications Code (2 September 2013).

(12) After the coming into operation of this section, the broadcasting codes referred to in subsection (11) shall continue to apply to broadcasters only, unless otherwise amended or revoked by the Commission.

Media service rules

46O. (1) The Commission may make rules ('media service rules') for the purposes of this section.

(2) Subject to subsections (3) and (4), the Commission may make media service rules in relation to the total daily times that shall be allowed for broadcasting commercial communications on a broadcasting service provided by a broadcasting contractor.

(3) In the case of audiovisual broadcasting—

(a) media service rules under subsection (2) shall specify the time allowed for broadcasting audiovisual commercial communications in the period between 06. 00 and 18. 00 hours and in the period between 18. 00 and 24. 00 hours each day, but

(b) the time specified shall not exceed 20 per cent of the time in each period.

(4) Media service rules under subsection (2) relating to sound broadcasting shall be in accordance with section 46M(3).

(5) The Commission shall make media service rules requiring a broadcaster, as respects programmes broadcast by the broadcaster, and a provider of an audiovisual on-demand media service, as respects programmes made available in a catalogue of the service, to take steps to promote the understanding and enjoyment of those programmes by—

(a) persons who are deaf or have a hearing impairment,

(b) persons who are blind or partially sighted, and

(c) persons who have a hearing impairment and are partially sighted.

(6) Without prejudice to the generality of subsection (5), media service rules under that subsection shall require a media service provider to take steps to provide access to audiovisual programmes by persons within any paragraph of that subsection by means such as the provision of—

(a) a sign language service,

(b) subtitling, or

(c) audio description.

(7) Media service rules under subsection (5) shall require media service providers to have regard to whether facilities such as those referred to in subsection (6) are provided—

(a) in the case of an audiovisual broadcasting service—

(i) daily, or at other regular intervals,

(ii) at popular viewing times, as well as at other times, and

(iii) for news and news related matters, as well as for other matters,

or

(b) in the case of an audiovisual on-demand media service, in an easily identifiable and easily accessible manner.

(8) Media service rules under subsection (5) may require a broadcaster to ensure that a specified percentage of programmes broadcast on a broadcasting service in a specified period employs specified means by which the understanding and enjoyment by persons referred to in that subsection of that percentage of programmes may be promoted.

(9) Media service rules shall provide for the matters required to be provided for by Articles 6(1), 6a(1), 7, 7b, 8, 9, 10, 11, Chapter VI and Articles 23(2), 24 and 25 of the Directive (except in so far as provision is made by media service codes).

(10) The Commission may amend or revoke a media service rule.

(11) A failure to comply with a media service rule shall be a contravention for the purposes of Part 8B.

(12) The Commission shall prepare a report for the Minister on the operation of media service rules made under subsection (5), in such form and manner as the Minister may specify, not later than 3 years after the coming into operation of this subsection, and every 3 years thereafter.

(13) Subject to subsection (14), the following broadcasting rules prepared under section 43 of this Act before the date of coming into operation of this section shall, if in force immediately before that date, continue in force as if made under this section:

(a) Access rules (28 January 2019);

(b) Rules on Adverts and Teleshopping (28 July 2010).

(14) After the coming into operation of this section, the broadcasting rules referred to in subsection (13) shall continue to apply to broadcasters only, unless otherwise amended or revoked by the Commission.

Chapter 4

Retention of copies of programme material

Retention of copies of programme material

46P. (1) A broadcaster shall retain a copy of all programme material—

(a) broadcast by the broadcaster, or

(b) supplied by the broadcaster under a broadcasting contract or a content provision contract.

(2) A provider of an audiovisual on-demand media service shall retain a copy of all programme material made available in a catalogue of an audiovisual on-demand media service by the provider.

(3) The Commission may determine the duration for which copies of programme material shall be retained in each of the cases referred to in subsections (1) and (2) and shall publish the duration on a website maintained by it.

(4) The Commission may require the broadcaster or provider referred to in subsection (1) or (2) to provide a copy of any programme material to which that subsection applies within a specified period.

(5) A failure to comply with subsection (1) or (2) shall be a contravention for the purposes of Part 8B.

(6) A person who fails without reasonable excuse to comply with a requirement under subsection (4) shall be guilty of a category 2 offence.

(7) The making or retention of a copy of programme material for the purposes of compliance with subsection (1) or (2) is not a contravention of the Copyright and Related Rights Act 2000.

Chapter 5

Procedures in relation to media service codes and media service rules

Consultation

46Q. (1) Before making a media service code or media service rule, the Commission shall make a draft of it available for inspection by any person.

(2) A person may make submissions to the Commission in relation to the draft referred to in subsection (1), within such period as the Commission specifies for that purpose.

(3) The Commission shall publish on a website maintained by it, and may publish in a newspaper circulating in the State, notice—

(a) that a draft referred to in subsection (1) is available for inspection,

(b) of the place at which, or the means by which, it may be inspected, and

(c) of the period specified under subsection (2) for the making of submissions.

(4) The Commission shall, in finalising a draft media service code or media service rule, have regard to any submissions made during the period specified under subsection (2).

Laying of codes and rules

46R. (1) A copy of any media service code or media service rule made or amended, and notice in writing of the revocation of any code

or rule, shall be given to the Minister as soon as practicable after the code or rule is made, amended or revoked.

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

(3) Subject to section 46O(12), the Commission shall, from time to time as it sees fit, or at the direction of the Minister, review the effect of a media service code or media service rule and shall prepare a report in relation to that review and give it to the Minister.

(4) The Minister shall cause a copy of the report referred to in subsection (3) to be laid before each House of the Oireachtas as soon as practicable after receiving it.".

PART 6

Amendment of Part 4 of Principal Act

Amendment of section 47 of Principal Act

11. Section 47 of the Principal Act is amended—

(a) by the substitution of the following subsection for subsection (1):

"(1) A broadcaster or provider of an audiovisual on-demand media service shall give due and adequate consideration to a complaint made in writing to it that it has failed to comply with one or more of the matters referred to in section 48(1) where, in the opinion of the broadcaster or provider, the complaint is made in good faith and is not frivolous or vexatious.",

(b) in subsection (2)—

(i) in paragraph (b), by the deletion of "or" in the last place it occurs,

(ii) in paragraph (c), by the substitution of "those dates, or" for "those dates.", and

(iii) by the insertion of the following paragraph after paragraph (c):

"(d) in the case the complaint relates to programme material made available on an audiovisual on-demand media service, the date the programme material ceased to be available on that service.",

(c) in subsection (3), by the substitution of "in accordance with subsection (1) of complaints made in accordance with subsection (2) or referred under section 48(3)" for "of complaints made under subsection (1)",

(d) in subsection (5), by the substitution of "broadcasters or providers of an audiovisual on-demand media service" for "broadcasters",

(e) in subsection (6), by the substitution of "the matters referred to in subsection (3)(a) and (b), and the address of the website referred to in subsection (4)," for "the information required under subsection (3)",

(f) in subsection (7), by the insertion of "or referred under section 48(3)" after "made under subsection (1)", and

(g) by the substitution of "broadcaster or provider of an audiovisual on-demand media service" for "broadcaster" in each place in which it occurs.

Complaints to the Commission about broadcasts or programme material

12. The Principal Act is amended by the substitution of the following section for section 48:

"48. (1) A person may make a complaint to the Commission that there has been a failure to comply with section 46J, 46K, 46L, 46M(2) or (3), a media service code, a media service rule, section 46P(1) or (2), section 106(3) or section 127(6).

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

(a) where the complaint relates to one broadcast, the date of the broadcast,

(b) where the complaint relates to 2 or more unrelated broadcasts, the date of the earlier or earliest, as the case may be, of those broadcasts,

(c) where the complaint relates to 2 or more related broadcasts, of which at least 2 are made on different dates, the later or latest of those dates, or

(d) where the complaint relates to programme material made available on an audiovisual on-demand media service, the date the programme material ceased to be available on that service.

(3) The Commission may, in the first instance, refer the complaint to the broadcaster or provider of an audiovisual on-demand media service concerned, for his or her consideration in accordance with a code of practice prepared under section 47(3).

(4) If the Commission does not refer a complaint under subsection (3), it may, following consideration of the complaint, dismiss the complaint, if it is satisfied that—

(a) the complaint is frivolous or vexatious or was not made in good faith,

(b) the subject matter of the complaint is trivial,

(c) the complaint has been resolved effectively under a code of practice prepared under section 47(3), or

(d) the complaint was not made in accordance with subsection (2).

(5) If the Commission does not refer a complaint under subsection (3) or dismiss it under subsection (4), it shall refer the complaint to a person authorised under section 139ZI(2) for his or her consideration.

(6) Where the Commission refers a complaint under subsection (3) or (5) or dismisses a complaint under subsection (4), it shall notify the person who made the complaint of that reference or dismissal as soon as practicable after doing so, and no later than 30 days after the date of the reference or dismissal.

(7) Where a complaint is dismissed under subsection (4), the notification referred to in subsection (6) shall include a statement of the reasons for the dismissal.

(8) The Commission shall either refer a complaint under subsection (3) or (5) or dismiss a complaint under subsection (4) within 60 working days from the date on which the complaint is received and shall publish notice of the fact of the reference or dismissal on a website maintained by it.

(9) A complaint made under subsection (1) of section 47 in accordance with subsection (2) of that section may, whether resolved under a code of practice prepared under subsection (3) of that section or not, be treated by the Commission as a complaint made to the Commission in accordance with subsection (2) of this section.".

Amendment of section 49 of Principal Act

13. Section 49 of the Principal Act is amended—

(a) in subsection (3), by the deletion of "within 6 months of the establishment day,",

(b) in subsection (17)—

(i) by the substitution of "on application to it" for "on application to them", and

(ii) by the substitution of "as it considers appropriate" for "as they consider appropriate",

(c) in subsection (19), by the substitution of "the Commission proposes" for "the Compliance Committee propose",

(d) in subsection (20)—

(i) by the substitution of "it decides" for "they decide", and

(ii) by the substitution of "its decision" for "their decision", in both places in which it occurs,

(e) in subsection (21), in paragraph (q), by the substitution of "section 31 of the Electoral Reform Act 2022" for "section 3 of the Act of 1998",

(f) in subsection (22), in paragraph (a), by the substitution of "the giving of the notification" for "issue of the notification",

(g) in subsection (23), by the substitution of "the Commission may, on notice to the broadcaster," for "the Compliance Committee may recommend to the Authority, and the Authority shall follow such recommendation, that the Authority",

(h) by the insertion of the following subsection after subsection (25):

"(25A) The Commission may amend a scheme prepared under subsection (3) and an amended scheme shall be considered to be a scheme prepared under subsection (3).",

and

(i) by the insertion of the following subsection after subsection (28):

"(29) A scheme prepared under subsection (3) before the date of coming into operation of *section 13* of the *Online Safety and Media*

Regulation Act 2022 shall, if in force immediately before that date, continue in force as if made under this section as amended by that section.".

PART 7

Amendment of Part 5 of Principal Act

Amendment of section 50 of Principal Act

14. Section 50 of the Principal Act is amended—

(a) by the substitution of the following subsection for subsection (1):

"(1) In this section—

'contractor' means a holder of a contract under Part 6 or 8;

'investigator' means a person appointed as an investigator under subsection (2).",

(b) by the substitution of the following subsection for subsection (2):

"(2) If a person authorised by the Commission under subsection (2A) has reason to suspect that a contractor is not providing a service in accordance with the terms of the contractor's contract, the person may appoint a member of the staff of the Commission, or such other person as he or she considers appropriate, as an investigator to carry out an investigation under this section into the operational, programming, financial, technical or other affairs of the contractor.",

(c) by the insertion of the following subsection after subsection (2):

"(2A) The Commission may authorise any Commissioner or member of its staff to make an appointment referred to in subsection (2).",

(d) in subsection (3)—

(i) by the substitution of "investigator" for "Compliance Committee", and

(ii) by the substitution of "investigator" for "Committee" in the second place it occurs,

(e) in subsection (6), by the substitution of "Commission" for "Committee" in the second place it occurs,

(f) in subsection (8), by the insertion of "the operation of an investigation under this section, and" before "the conduct",

(g) by the insertion of the following subsections after subsection (8):

"(8A) The functions of the Commission under subsections (5), (6) and (7) shall be exercised by a division of the Commission consisting of such uneven number of Commissioners, not being less than 3, as the Commission may determine.

(8B) If the person appointing an investigator to carry out an investigation under subsection (2) is a Commissioner, the division exercising the functions referred to in subsection (8A) in relation to the investigation shall not include that Commissioner.",

and

(h) by the deletion of subsection (9).

Amendment of section 51 of Principal Act

15. Section 51 of the Principal Act is amended—

(a) by the substitution of the following subsection for subsection (1):

"(1) Without prejudice to any provision of this Act, or of a contract made under it, the Commission may terminate, or suspend for such period as it considers reasonable, a contract entered into under Part 6 or Part 8—

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

(b) if, following an investigation under section 50, the Commission has made a finding under subsection (7) of that section that the holder of the contract has failed on one or more occasions to comply with a term or condition of the contract, and the nature of that failure is of such seriousness as in the Commission's opinion warrants the termination or suspension of the contract.",

(b) by the insertion of the following subsections after subsection (1):

"(1A) The functions of the Commission under subsections (1) and (2), shall be exercised by a division of the Commission consisting of such uneven number of Commissioners, not being less than 3, as the Commission may determine.

(1B) In the case of functions under subsection (1)(b), and subsection (2) as it applies to a decision under subsection (1)(b), if the person who appointed the investigator to carry out the investigation referred to in subsection (1)(b) was a Commissioner, the division referred to in subsection (1A) shall not include that Commissioner.",

(c) by the substitution of the following subsection for subsection (2):

"(2) Where the Commission proposes to make a decision under subsection (1) the Commission shall by notice in writing afford the holder of the contract concerned an opportunity to make submissions, in accordance with any rules made under subsection (3), at a hearing before the Commission in respect of the matter under consideration.",

(d) in subsection (3), by the insertion of "the operation of this section, including" before "the conduct",

(e) by the insertion of the following subsection after subsection (3):

"(3A) The Commission may make guidelines in relation to the operation of section 50 and this section and shall publish any guidelines on a website maintained by it.",

and

(f) by the deletion of subsection (5).

Amendment of section 57 of Principal Act

16. Section 57 of the Principal Act is amended by the deletion of subsections (1) and (2).

PART 8

Amendment of Part 6 of Principal Act

Amendment of section 58 of Principal Act

17. Section 58 of the Principal Act is amended in subsection (1) by the deletion of the definition of "television programme service contract".

Amendment of section 59 of Principal Act

18. Section 59 of the Principal Act is amended in subsection (4) by the deletion of "registered".

Amendment of section 60 of Principal Act

19. Section 60 of the Principal Act is amended by the deletion of subsections (4) and (5).

Amendment of section 62 of Principal Act

20. Section 62 of the Principal Act is amended by the substitution of "The Commission shall not grant" for "The Contract Awards Committee shall not recommend to the Authority the grant of".

Amendment of section 63 of Principal Act

21. Section 63 of the Principal Act is amended by the substitution of "The Commission" for "The Authority, on the recommendation of the Contract Awards Committee,".

Amendment of section 64 of Principal Act

22. Section 64 of the Principal Act is amended by the substitution of "The Commission" for "The Authority, on the recommendation of the Contract Awards Committee,".

Amendment of section 65 of Principal Act

23. Section 65 of the Principal Act is amended—

(a) in subsection (2)—

(i) in paragraph (a), by the substitution of "invited." for "invited, and", and

(ii) by the deletion of paragraph (b),

(b) by the deletion of subsection (5),

(c) in subsection (6), by the substitution of "The Commission may, by public notice, in such form and manner as it considers appropriate," for "On

receipt of a direction from the Authority under subsection (2) the Contract Awards Committee may, in accordance with the terms of any such direction, by public notice",

(d) by the substitution of the following subsection for subsection (8):

"(8) Subject to this Part, the Commission shall invite applications for a sound broadcasting contract for the provision of a sound broadcasting service in each area specified by the Commission under subsection (2), and may enter into such a contract.",

(e) by the insertion of the following subsection after subsection (8):

"(8A) For the purposes of subsection (8) the Commission may consider the results of any study conducted under subsection (3).",

(f) in subsection (10), by the substitution of "score to each of the criteria specified in section 66(2), either individually or in combination," for "score to each, or a combination of, the criteria specified in section 66(2)", and

(g) by the deletion of subsection (12).

Amendment of section 66 of Principal Act

24. Section 66 of the Principal Act is amended—

(a) in subsection (2), in paragraph (l), by the deletion of "where directed by the Authority,",

(b) in subsection (4)—

(i) in paragraph (a), by the substitution of "application." for "application, and", and

(ii) by the deletion of paragraph (b),

and

(c) in subsection (5), by the substitution of "the Commission decides to refuse to award a broadcasting contract to an applicant, it shall" for "the Contract Awards Committee decides to refuse to recommend the award of a broadcasting contract to an applicant, the Contract Awards Committee shall".

Amendment of section 67 of Principal Act

25. Section 67 of the Principal Act is amended—

(a) in subsection (1), by the deletion of the definition of "Committee",

(b) in subsection (2), by the substitution of "Commission" for "Committee" in both places in which it occurs,

(c) in subsection (3), by the substitution of "Commission" for "Committee",

(d) in subsection (4)—

(i) by the substitution of "Commission" for "Committee" in both places in which it occurs,

(ii) in paragraph (i), by the substitution of "section 65(8)." for "section 65(8), or", and

(iii) by the deletion of paragraph (ii),

(e) in subsection (5), by the substitution of "Commission" for "Committee",

(f) in subsection (6)—

(i) by the substitution of "Commission" for "Committee" in the first place where it occurs, and

(ii) by the substitution of the following paragraph for paragraph (a):

"(a) assess the incumbent's compliance with the terms of its sound broadcasting contract and Part 3B,",

(g) in subsection (7), in paragraph (b), by the substitution of "Commission" for "Committee", and

(h) in subsection (8)—

(i) by the substitution of "Commission" for "Committee" in the first place where it occurs,

(ii) in paragraph (a), by the substitution of "concerned, or" for "concerned,",

(iii) by the deletion of paragraph (b), and

(iv) by the substitution of the following paragraph for paragraph (c):

"(c) agree amended contract terms with the incumbent.".

Amendment of section 68 of Principal Act

26. Section 68 of the Principal Act is amended—

(a) in subsection (1), by the substitution of "The Commission" for "The Authority, on the recommendation of the Contract Awards Committee,",

(b) in subsection (2), by the substitution of "The Commission" for "The Authority, on the recommendation of the Contract Awards Committee,", and

(c) in subsection (3), by the substitution of "Section 46L(5)" for "Section 39(1)(c)".

Amendment of section 69 of Principal Act

27. Section 69 of the Principal Act is amended—

(a) in subsection (4), by the substitution of "the Commission" for "the Authority or the Compliance Committee", and

(b) in subsection (5), by the deletion of "registered".

Amendment of section 70 of Principal Act

28. Section 70 of the Principal Act is amended in subsection (1) by the substitution of "The Commission" for "The Authority, on the recommendation of the Contract Awards Committee,".

Amendment of section 71 of Principal Act

29. Section 71 of the Principal Act is amended—

(a) in subsection (2), in paragraph (b), by the deletion of "a MMD system,",

(b) in subsection (4), by the substitution of "The Commission" for "The Authority, on the recommendation of the Contract Awards Committee,",

(c) in subsection (5), in paragraph (a), by the substitution of "media service codes or media service rules" for "broadcasting codes or rules",

(d) in subsection (6)—

(i) by the substitution of the following paragraph for paragraph (a):

"(a) contains anything referred to in section 46J(1)(c) or (d),",

and

(ii) by the insertion of the following paragraph after paragraph (a):

"(aa) contains anything which may impair the physical, mental or moral development of children which is not presented in such a way that children will not normally hear or see it, or",

(e) by the insertion of the following subsections after subsection (8):

"(8A) Where under a levy order under section 21 a levy becomes payable in respect of a levy period by a person who, in that period, paid a fee to the Commission under subsection (8), the Commission shall—

(a) deduct the amount of the fee from the amount payable by that person under the levy order, and

(b) if the fee paid is more than the amount payable under the levy order, refund to that person so much of the fee as exceeds that amount.

(8B) Payment of a refund under subsection (8A)(b) shall be deferred for any period for which payment of the amount under the levy order referred to in that paragraph is deferred.",

and

(f) by the insertion of the following subsection after subsection (10):

"(11) In this section, 'excepted person' means a person who is under the jurisdiction of another Member State, and for the purposes of this subsection section 2A applies to a person providing a sound broadcasting service—

(a) as if references to a media service provider were references to a provider of a sound broadcasting service,

(b) as if references to audiovisual media service activity were references to activity relating to the sound broadcasting service concerned, and

(c) as if references to relevant editorial decisions were references to editorial decisions about the sound broadcasting service concerned.".

Amendment of section 72 of Principal Act

30. Section 72 of the Principal Act is amended—

(a) in subsection (1), by the deletion of "under and in accordance with a MMD system transmission licence or",

(b) in subsection (3), by the deletion of "76(4) or", and

(c) in subsection (7)—

(i) by the deletion of "the holder of a MMD system transmission licence is required under section 76(4), or",

(ii) by the deletion of "holder or an", and

(iii) in paragraph (a), by the substitution of "Part 3B" for "Part 3".

Amendment of section 78 of Principal Act

31. Section 78 of the Principal Act is amended in subsection (1) by the deletion of "or 74(2)".

PART 9

Amendment of Part 7 of Principal Act

Amendment of section 86 of Principal Act

32. Section 86 of the Principal Act is amended in subsection (4) by the substitution of "a Commissioner" for "a member of the Authority, the Contract Awards Committee or the Compliance Committee".

Amendment of section 106 of Principal Act

33. Section 106 of the Principal Act is amended—

(a) in subsection (3)—

(i) by the substitution of "Subject to subsections (3A) and (3B)" for "Subject to the requirements of section 41(2)",

(ii) in paragraph (a), by the substitution of "advertisements," for "advertisements, and",

(iii) in paragraph (b), by the substitution of "hour, and" for "hour.", and

(iv) by the insertion of the following paragraph after paragraph (b):

"(c) for audiovisual broadcasting services, the time allowed for broadcasting advertisements in the period between 06. 00 and 18. 00 and in the period between 18. 00 and 24. 00 each day.",

(b) by the insertion of the following subsections after subsection (3):

"(3A) For sound broadcasting services—

(a) the time fixed under subsection (3)(a), shall not exceed 15 per cent of the total daily broadcasting time, and

(b) the period fixed under subsection (3)(b), shall not exceed 10 minutes in any hour.

(3B) The time fixed under subsection (3)(c) shall not exceed 20 per cent of the time in each period.

(3C) A failure to comply with subsection (3) shall be a contravention for the purposes of Part 8B.",

and

(c) by the deletion of subsection (7).

Amendment of section 114 of Principal Act

34. Section 114 of the Principal Act is amended in subsection (1)—

(a) in paragraph (b), by the deletion of "and teletext services", and

(b) in paragraph (h), by the substitution of "audiovisual on-demand media services" for "non-broadcast non-linear audio-visual media services".

Amendment of section 118 of Principal Act

35. Section 118 of the Principal Act is amended in subsection (1)—

(a) in paragraph (b), by the deletion of "and teletext services", and

(b) in paragraph (h), by the substitution of "audiovisual on-demand media services" for "non-broadcast non-linear audio-visual media services".

Amendment of section 123 of Principal Act

36. (1) Subject to *subsection (2)*, section 123 of the Principal Act is amended—

(a) by the substitution of the following subsection for subsection (1):

"(1) The Minister, with the approval of the Minister for Public Expenditure and Reform, may pay to RTÉ, TG4 and the Commission out of moneys provided by the Oireachtas, in respect of each financial year, an amount equal to the total of the receipts in that year in respect of television licence fees apportioned to RTÉ, TG4 and the Commission as the Minister determines in accordance with subsection (1A) less—

(a) any expenses certified by the Minister as having been incurred by him or her in that year in relation to the collection of those fees, and

(b) any amount paid under section 156(2).",

and

(b) by the substitution of the following subsection for subsection (1A):

"(1A)(a) The Minister shall, after consultation with the Minister for Public Expenditure and Reform, determine the portion of the amount referred to in subsection (1) to be paid to RTÉ, TG4 and the Commission respectively.

(b) When making a determination for the purposes of paragraph (a), the Minister shall—

(i) have regard to the ability of RTÉ and TG4 to fulfil their public service objects, and

(ii) ensure that the amount, if any, to be paid to the Commission under subsection (1) shall not exceed 50 per cent of the estimate of the expenses of the Commission for the financial year concerned as set out in its estimates of income and expenditure submitted to the Minister under section 26(1) in the financial year immediately preceding the year in which an amount under subsection (1) is to be paid.".

(2) The amendment of section 123 of the Principal Act by *subsection (1)* shall have effect only in relation to financial years beginning on or after the date on which the Commission first makes a levy order under section 21 of that Act as inserted by *section 8*.

Amendment of section 124 of Principal Act

37. Section 124 of the Principal Act is amended in subsection (9) by the deletion of paragraph (h).

Amendment of section 125 of Principal Act

38. Section 125 of the Principal Act is amended in subsection (7) by the deletion of "and material which, if transmitted, would constitute a direct offer to the public for the sale or supply to them of goods or other property (whether real or personal) or services".

Amendment of section 127 of Principal Act

39. Section 127 of the Principal Act is amended—

(a) in subsection (6)—

(i) in paragraph (a), by the substitution of "advertisements," for "advertisements, and",

(ii) in paragraph (b), by the substitution of "period, and" for "period.", and

(iii) by the insertion of the following paragraph after paragraph (b):

"(c) subject to subsection (6A), the time allowed for broadcasting advertisements in the period between 06.00 and 18.00 hours and in the period between 18.00 and 24.00 hours each day.",

(b) by the insertion of the following subsections after subsection (6):

"(6A) The time fixed under subsection (6)(c) shall not exceed 20 per cent of the time in each period.

(6B) A failure to comply with subsection (6) shall be a contravention for the purposes of Part 8B.",

and

(c) by the deletion of subsection (11).

Availability and prominence of public service programmes and services

40. Part 7 of the Principal Act is amended by the insertion of the following Chapter after Chapter 6:

"Chapter 7

Availability and prominence of public service programmes and services

Interpretation

128A. In this Chapter—

'appropriate network' has the same meaning as it has in section 77;

'interactive guide' means an interface, transmitted by means of an electronic communications network, by which a person can select a service or programme to view on a platform, appropriate network or satellite television service;

'platform' means a service, transmitted by means of an electronic communications network and accessed by the use of an interactive guide, which re-transmits or makes available more than one audiovisual media service, including at least one audiovisual on-demand media service;

'platform provider' means a person who provides a platform, whether or not the person is also the provider of an interactive guide to the platform;

'public service audiovisual broadcasting service' means an audiovisual broadcasting service which—

(a) is provided by a corporation or a subsidiary of a corporation,

(b) is provided by the holder of a television programme service contract, under that contract, or

(c) is designated under section 128D;

'public service audiovisual on-demand media service' means an audiovisual on-demand media service which—

(a) is provided by a corporation or a subsidiary of a corporation,

(b) is provided by the holder of a television programme service contract, or

(c) is designated under section 128D;

'public service programme' means an audiovisual programme broadcast on a public service audiovisual broadcasting service or made available in a catalogue of a public service audiovisual on-demand media service;

'public service provider' means the provider of a public service audiovisual broadcasting service or a public service audiovisual on-demand media service;

'satellite television service' has the same meaning as it has in section 77.

Must-carry and must-offer obligations for platforms

128B. (1) A platform provider shall comply with a request—

(a) by a public service provider that a particular public service audiovisual broadcasting service provided by the public service

provider be re-transmitted on the platform provider's platform, and

(b) by a public service provider that a particular public service audiovisual on-demand media service provided by the public service provider be made available on the platform provider's platform.

(2) A public service provider shall ensure that any public service audiovisual broadcasting service or public service audiovisual on-demand media service it provides is at all times offered to platform providers in such a way that it may be re-transmitted or made available on their platforms.

(3) The obligations in subsections (1) and (2) shall not preclude the conclusion of an agreement between the public service provider and the platform provider in relation to—

(a) the remuneration of the public service provider by the platform provider, or

(b) fair, reasonable and non-discriminatory terms of use of the public service audiovisual broadcasting service or public service audiovisual on-demand media service.

(4) If a dispute arises between a platform provider and a public service provider in relation to the remuneration of the public service provider—

(a) the dispute shall be notified to the Commission by the public service provider or the platform provider,

(b) the Commission shall take whatever steps it considers appropriate to encourage the use of mediation to resolve the dispute, and

(c) if the dispute is not resolved within a reasonable period of time the Commission shall, at the request of either the platform provider or the public service provider and following a reasonable opportunity for each of them to make submissions, make a determination in relation to the dispute.

(5) The Commission may make rules prescribing:

(a) the ways in which a platform provider may re-transmit or make available on its platform the services referred to in subsection (1) for the purposes of complying with a request;

(b) the ways in which a public service audiovisual broadcasting service may be transmitted or a public service audiovisual on-demand media service may be made available by a public service provider in order to ensure compliance with subsection (2).

(6) Where a platform is also an appropriate network or a satellite television service—

(a) in respect of the re-transmission of broadcasting services, section 77 shall apply to the platform notwithstanding this section and any rules made under it, and

(b) in respect of the making available of audiovisual on-demand media services, this section and any rules made under it, in so far as they relate to such services, shall apply to the platform.

(7) A failure to comply with subsection (1) or (2) shall be a contravention for the purposes of Part 8B.

(8) In this section, 're-transmission' means the provision of near-simultaneous, unaltered and unabridged transmission.

Prominence on interactive guides

128C. (1) The Commission may, subject to subsection (3), make rules requiring providers of interactive guides to take steps to ensure the prominence on such guides of any of the following:

(a) public service programmes, or categories of them;

(b) public service audiovisual broadcasting services, or the schedules of such services;

(c) public service audiovisual on-demand media services, or the catalogues of such services.

(2) In preparing rules under subsection (1), the Commission shall have regard to the following matters:

(a) the need to promote access by the widest possible audience to the programmes and services referred to in subsection (1);

(b) the nature of providers of interactive guides, including the technical ability of providers and the number of users of guides;

(c) the nature of public service providers, including the amount of public service programmes broadcast or made available by providers;

(d) the rights of providers of interactive guides;

(e) the rights of users of interactive guides, and their likely expectations as to the availability and prominence on such guides of the programmes and services referred to in subsection (1), with particular regard to their rights and likely expectations regarding Irish language programmes and services;

(f) contractual arrangements which may exist between public service providers and providers of interactive guides;

(g) technological developments;

(h) the proportionality of any requirement under the rules, in light of the matters referred to in paragraphs (b), (c), (d) and (e).

(3) The Commission may make rules under subsection (1)(a) only if it appears to the Commission that the programmes concerned—

(a) relate to Irish culture, history, heritage, society, sport, language, or other matters of interest to the people of the island of Ireland,

(b) contain impartial and independent journalism,

(c) relate to an event or issue of major importance to the people of the island of Ireland, and to people of Irish ancestry living abroad,

(d) relate to environmental sustainability and climate change,

(e) relate to human rights, including equality, diversity and inclusion, or

(f) relate to science or education.

(4) Rules under subsection (1) may require that different steps be taken—

(a) by different types of providers, or

(b) in relation to different types of guides.

(5) A failure to comply with any rules made under subsection (1) shall be a contravention for the purposes of Part 8B.

Designation of public service audiovisual broadcasting or on-demand media services

128D. (1) Subject to subsection (2), if the Commission recommends to the Minister—

(a) that a specified audiovisual broadcasting service provided by a media service provider under the jurisdiction of the State be designated as a public service audiovisual broadcasting service for the purposes of section 128B or 128C, or

(b) that a specified audiovisual on-demand media service provided by a media service provider under the jurisdiction of the State be designated as a public service audiovisual on-demand media service for the purposes of section 128B or 128C,

the Minister may make an order designating the service accordingly.

(2) The Commission shall not make a recommendation under subsection (1), and the Minister shall not make an order under that subsection, unless satisfied that the service has the character of a public service.

Consultation and laying

128E. (1) In making rules under section 128B(5) or 128C(1), or a recommendation under section 128D(1), the Commission may consult with such persons as it sees fit.

(2) Any rule made under section 128B(5) or 128C(1) shall be laid by the Commission, and any order made under section 128D(1) shall be laid by the Minister, before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the rule or order is passed by either such House within the next 21 days on which that House sits after the rule or order is laid before it, the rule or order shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.".

PART 10

Amendment of Part 8 of Principal Act

Amendment of section 129 of Principal Act

41. Section 129 of the Principal Act is amended in subsection (1)—

(a) by the insertion of the following definition after the definition of "Acts of 1926 to 2009":

"'listed simulcast service' means a sound broadcasting service designated as a listed simulcast service under section 134(7)(b);",

(b) in the definition of "television multiplex licence", by the substitution of "section 132." for "section 132;", and

(c) by the deletion of the definition of "television programme service contract".

Amendment of section 134 of Principal Act

42. F1**[**Section 134 of the Principal Act**]** is amended by the substitution of the following subsections for subsections (1) to (6):

"(1) Where the Commission invites applications for a sound broadcasting multiplex contract under section 136, it may—

(a) identify as 'relevant incumbents' sound broadcasting contractors who, under sound broadcasting contracts have the right and duty to establish, maintain and operate sound broadcasting transmitters in part or all of the coverage area (specified under section 136(3)) to which the contract relates, and

(b) offer to any relevant incumbents it considers appropriate an amendment to its relevant sound broadcasting contract ('a simulcasting amendment') for the purpose of ensuring simulcasts of sound broadcasting contract services on sound broadcasting multiplexes.

(2) In identifying relevant incumbents the Commission may use whatever procedures it considers necessary, including consultation with the Communications Regulator.

(3) A relevant incumbent shall have 60 days in which to accept in full or reject in full the offer of a simulcasting amendment.".

Amendment of section 136 of Principal Act

43. Section 136 of the Principal Act is amended—

(a) in subsection (1)—

(i) by the substitution of "the whole" for "a whole",

(ii) by the substitution of "shall invite" for "shall direct the Contract Awards Committee to invite", and

(iii) by the deletion of "and the Contract Awards Committee shall comply with the direction",

(b) by the substitution of the following subsection for subsection (2):

"(2) Subject to this Part, the Commission may enter into a multiplex contract with a person who makes an application for such a contract in accordance with this section.",

and

(c) in subsection (7), by the substitution of "Commission invites" for "Authority directs the Contract Awards Committee to invite".

Amendment of section 138 of Principal Act

44. Section 138 of the Principal Act is amended—

(a) in subsection (4), in paragraph (b), by the substitution of "the Commission" for "the Authority or the Compliance Committee", and

(b) in subsection (5), by the deletion of "registered".

PART 11

Online safety

Online safety

45. The Principal Act is amended by the insertion of the following Part after Part 8:

"PART 8A

Online safety

Chapter 1

Interpretation: harmful online content and age-inappropriate online content

Harmful online content

139A. (1) For the purposes of this Act, online content is 'harmful online content' if it is one of the following 2 kinds:

(a) content that falls within one of the offence-specific categories of online content defined in subsection (2);

(b) content that—

(i) falls within one of the other categories of online content defined in subsection (3), and

(ii) meets the risk test defined in subsection (4).

(2) The offence-specific categories of online content are—

(a) the categories listed in Schedule 3, and

(b) any category specified for the purposes of this paragraph by order under section 139B.

(3) The other categories of online content are:

(a) online content by which a person bullies or humiliates another person;

(b) online content by which a person promotes or encourages behaviour that characterises a feeding or eating disorder;

(c) online content by which a person promotes or encourages self-harm or suicide;

(d) online content by which a person makes available knowledge of methods of self-harm or suicide;

(e) any category specified for the purposes of this paragraph by order under section 139B.

(4) Online content meets the risk test for the purposes of subsection (1)(b)(ii) if it gives rise to—

(a) any risk to a person's life, or

(b) a risk of significant harm to a person's physical or mental health, where the harm is reasonably foreseeable.

(5) For the purposes of this Act, any question whether particular online content falls within a category under this section shall be determined on the balance of probabilities.

Power to specify other harmful online content

139B. (1) If the Commission makes a proposal to the Minister that a category of online content should be specified for the purposes of section 139A(2)(b) or (3)(e), the Minister may make an order giving effect to the proposal.

(2) Section 139C sets out the procedure for proposals and orders under subsection (1).

(3) A proposal under subsection (1) that a category of online content should be specified for the purposes of section 139A(2)(b), and an order giving effect to such a proposal, may be made only if—

(a) it is a category of content by which a person does a thing contrary to an enactment specified in the proposal, and

(b) the thing done is an offence under that enactment.

(4) The Commission may make a proposal under subsection (1) only if satisfied—

(a) that giving effect to the proposal will enable the Commission to take action against significant risks posed by the content within the proposed category,

(b) that those risks are not sufficiently addressed by available means (including means available to other regulators, providers of relevant online services, or others), and

(c) that, having regard to the protection of children, to the protection of the public generally, and to all other relevant considerations, it is in the public interest to give effect to the proposal.

(5) In deciding whether to make a proposal under subsection (1), the Commission shall have regard in particular to—

(a) levels of availability of any online content on relevant online services,

(b) levels of risk of exposure to any online content when using relevant online services,

(c) levels of risk of harm, and in particular harm to children, from the availability of content or exposure to it,

(d) changes in the nature of online content and in levels of availability and risk referred to in paragraphs (a) to (c),

(e) the impact of automated decision-making in relation to content delivery and content moderation by relevant online services, and

(f) the rights of providers of designated online services and of users of those services.

Procedure for proposals and orders under section 139B

139C. (1) The Commission may make a proposal under section 139B(1) only if—

(a) the Commission has published a draft of the proposal in a way that it thinks appropriate to bring it to the attention of members of the public,

(b) it has published with the draft a notice stating how members of the public may submit comments to it, and within what time,

(c) it has consulted about the draft any advisory committee it has established for that purpose under section 19,

(d) it has carried out any other consultation that it considers appropriate on the draft, and

(e) it has considered any comments submitted to it in accordance with a notice under paragraph (b) or in consultation under this subsection.

(2) On receiving a proposal the Minister shall—

(a) consult the Joint Oireachtas Committee,

(b) consider the proposal in the light of that consultation and any other consultation the Minister considers appropriate, and

(c) respond to the Commission within a reasonable time.

(3) The Minister's response must be either—

(a) to accept the proposal for consideration by the Government, or

(b) to request the Commission to reconsider the proposal.

(4) The Minister may make an order under section 139B(1) giving effect to a proposal only if—

(a) the Minister has accepted the proposal for consideration by the Government, and

(b) the Government has approved the proposal.

(5) The Minister may accept a proposal for consideration, and the Government may approve a proposal, only if satisfied of the matters listed in section 139B(4).

(6) In deciding whether to accept or approve a proposal, the Minister and the Government shall have regard in particular to the matters listed in section 139B(5).

(7) Where an order is proposed to be made under section 139B(1), a draft of the order shall be laid by the Minister before each House

of the Oireachtas and the order shall not be made unless a resolution approving the draft has been passed by each such House.

Age-inappropriate online content

139D. In this Part, 'age-inappropriate online content' means online content that is likely to be unsuitable for children (either generally or below a particular age), having regard to their capabilities, their development, and their rights and interests, including in particular content consisting of—

(a) pornography, or

(b) realistic representations of, or of the effects of, gross or gratuitous violence or acts of cruelty.

Chapter 2

Designated online services

Designation of online services

139E. (1) The Commission may designate a relevant online service as a service to which online safety codes may be applied under Chapter 3.

(2) A designation under this section may be made in relation to a named service, or in relation to all services falling within a category of services described in the designation (and a service may be designated both as a named service and as falling within a category).

(3) Subject to section 139G the Commission, in deciding whether to designate a named service or a category of services, shall have regard in particular to—

(a) the nature and the scale of the service or of services within the category,

(b) provision made or that may be made by online safety codes that may be applied to the service or to services within the category,

(c) other provisions of or made under this Act that apply to designated online services,

(d) levels of availability of harmful online content on the service, or on services within the category,

(e) levels of risk of exposure to harmful online content when using the service, or services within the category,

(f) levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it on the service, or on services within the category,

(g) the rights of the provider of the service, or providers of services within the category, and

(h) the rights of users of the service, or users of services within the category.

Power to require information relevant to designation

139F. (1) The Commission may by notice in writing require the provider of a relevant online service to provide the Commission with any information relating to the service that appears to the Commission to be—

(a) relevant to a decision under section 139E as to whether to designate the service as a named service,

(b) relevant to a decision under section 139E as to whether to designate a category of services including the service, or

(c) required for inclusion in the register under section 139J.

(2) A provider who fails, without reasonable excuse, to comply with a notice under subsection (1) shall be guilty of a category 1 offence.

Requirement to designate video-sharing platform services

139G. (1) The Commission shall designate as a category of services under section 139E the video-sharing platform services the provider of which is under the jurisdiction of the State.

(2) The Commission shall designate as a named service under section 139E any relevant online service that appears to the Commission to be a video-sharing platform service the provider of which is under the jurisdiction of the State.

(3) Where the Commission has reason to believe that a relevant online service may be a video-sharing platform service the provider of which is under the jurisdiction of the State, the Commission shall issue a notice under section 139F requiring the provision of any information that appears to the Commission to be relevant for the purpose of complying with subsection (2).

(4) For the purposes of subsections (2) and (3) the Commission shall have regard to any guidelines issued by the European Commission in respect of the practical application of the essential functionality criterion in the definition of a video-sharing platform service in Article 1(1)(aa) of the Directive.

Procedure for designation of online services

139H. (1) Before designating a service under this Chapter, the Commission shall consult—

(a) where the designation is of a named service, the provider of the service,

(b) where the designation is of a category of services—

(i) an organisation representative of providers of services falling within the category, if there is such an organisation, and

(ii) the providers of those services, so far as the Commission is able to consult them,

(c) any advisory committee the Commission has established for that purpose under section 19, and

(d) any other person the Commission considers appropriate.

(2) Subsections (1)(a) and (1)(b)(i) do not apply in the case of a provider or organisation if, after taking reasonable steps to consult it, the Commission is unable to do so.

(3) A designation under this Chapter takes effect—

(a) in the case of a named service, on the Commission giving the provider of the service notice in writing of the designation, and

(b) in the case of a category of services, at the end of the period of 28 days after the date on which notice of the designation is published by the Commission on a website maintained by it.

Revocation of designation

139I. (1) The Commission may, subject to section 139G(1) and (2), at any time revoke a designation under section 139E.

(2) Sections 139E(3), 139F and 139H apply in relation to revocation of a designation of a named service or a category of services as they apply in relation to a designation.

Register of designated online services

139J. (1) The Commission shall maintain and make available to the public a register of—

(a) the services for the time being designated under this Chapter as named services, and

(b) the categories of services for the time being designated under this Chapter.

(2) The register shall state—

(a) for each named service—

(i) the provider of the service,

(ii) the address of the provider and any other information the Commission considers appropriate about how the provider may be contacted by members of the public, and

(iii) any designated category of services that the named service appears to the Commission to fall within,

and

(b) for each named service and each category of services, any online safety code under Chapter 3 that applies to that service or to the services within that category.

Chapter 3

Online safety codes

Online safety codes

139K. (1) The Commission may make codes ('online safety codes'), to be applied to designated online services in accordance with section 139L.

(2) An online safety code may make provision with a view to ensuring—

(a) that service providers take appropriate measures to minimise the availability of harmful online content and risks arising from the availability of and exposure to such content,

(b) that service providers take any other measures that are appropriate to protect users of their services from harmful online content,

(c) that service providers take any other measures that are appropriate to provide the protections set out in Article 28b(1)(a), (b) and (c) of the Directive, and

(d) that service providers take any measures in relation to commercial communications on their services that are appropriate to protect the interests of users of their services, and in particular the interests of children.

(3) In the case of video-sharing platform services, the Commission shall exercise its powers under this section with a view to ensuring (without prejudice to any other exercise of those powers in relation to video-sharing platform services) that service providers—

(a) take appropriate measures to provide the protections referred to in subsection (2)(c), including appropriate measures referred to in Article 28b(3) of the Directive,

(b) comply with the requirements set out in Article 9(1) of the Directive with respect to audiovisual commercial communications that are marketed, sold or arranged by them, and

(c) take appropriate measures to comply with the requirements set out in Article 9(1) of the Directive with respect to audiovisual commercial communications that are not marketed, sold or arranged by them, taking into account the limited control they exercise over those communications.

(4) Without prejudice to subsection (2) an online safety code may provide for:

(a) standards that services must meet, practices that service providers must follow, or measures that service providers must take;

(b) in particular, standards, practices or measures relating to the moderation of content or to how content is delivered on services;

(c) the assessment by service providers of the availability of harmful online content on services, of the risk of it being available, and of the risk posed to users by harmful online content;

(d) the making of reports by service providers to the Commission;

(e) the handling by service providers of communications from users raising complaints or other matters.

(5) Without prejudice to subsection (2) or (4), an online safety code may prohibit or restrict, in accordance with law, the inclusion in programmes or user-generated content of commercial communications relating to foods or beverages considered by the Commission to be the subject of public concern in respect of the general public health interests of children, in particular infant formula, follow-on formula or foods or beverages which contain fat, trans-fatty acids, salts or sugars.

(6) Without prejudice to subsection (4), the Commission shall make an online safety code, to be applied in accordance with section 139L to such designated online services as the Commission considers appropriate, requiring the service provider to report to the Commission at intervals, specified in the code, of not more than 3 months on the provider's handling of communications from users raising complaints or other matters.

(7) In this section, 'service provider' means the provider of a designated online service.

Application of online safety codes

139L. (1) An online safety code applies to a designated online service if—

(a) the Commission has determined that the code is to apply to the service, or to a designated category of services that includes the service,

(b) the Commission has given notice of the determination, and the notice has taken effect, in accordance with subsection (2), and

(c) the determination has not been revoked.

(2) Notice under subsection (1)(b)—

(a) in the case of a service designated as a named service, must be given to the provider of the service in writing, and takes effect when the notice is given to the provider, and

(b) in the case of a designated category of services, must be given by publication of notice of the determination on a website maintained by the Commission, and takes effect at the end of the period of 28 days after the date on which the notice is published on the website.

(3) Before making or revoking a determination under subsection (1) in relation to a named service or a category of services, the Commission shall have regard in particular to—

(a) the nature and the scale of the service, or of services within the category,

(b) levels of availability of harmful online content on the service, or on services within the category,

(c) levels of risk of exposure to harmful online content when using the service, or services within the category,

(d) levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it on the service, or on services within the category,

(e) the rights of the provider of the service, or providers of services within the category, and

(f) the rights of users of the service, or users of services within the category.

(4) Before making or revoking a determination under subsection (1), the Commission shall consult—

(a) where the designation is of a named service, the provider of the service,

(b) where the designation is of a category of services—

(i) an organisation representative of providers of services falling within the category, if there is such an organisation, and

(ii) the providers of those services, so far as the Commission is able to consult them,

(c) any advisory committee the Commission has established for that purpose under section 19, and

(d) any other person the Commission considers appropriate.

(5) An online safety code applying to an interpersonal communications service or a private online storage service applies to that service only in so far as it relates to content that falls within one of the offence-specific categories of online content defined in section 139A(2).

(6) In this section—

'interpersonal communications service' means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information between a finite number of persons by means of electronic communications networks, where the persons initiating or participating in the communication determine its recipients, but it does not include services which enable interpersonal and interactive communication only as a minor ancillary feature that is intrinsically linked to another service;

'private online storage service' means any service providing online storage, other than—

(a) local or temporary storage, or

(b) storage provided for the purpose of enabling the provision of another service, or as a minor ancillary feature intrinsically linked to another service;

'temporary storage' means the automatic, intermediate and temporary storage of information for the sole purpose of making more efficient onward transmission of that information.

Online safety codes: matters to be considered

139M. When preparing an online safety code the Commission shall have regard in particular to—

(a) the desirability of services having transparent decision-making processes in relation to content delivery and content moderation,

(b) the impact of automated decision-making on those processes,

(c) the need for any provision to be proportionate having regard to the nature and the scale of the services to which a code applies,

(d) levels of availability of harmful online content on designated online services,

(e) levels of risk of exposure to harmful online content when using designated online services,

(f) levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it,

(g) the rights of providers of designated online services and of users of those services, and

(h) the e-Commerce compliance strategy prepared under section 139ZF.

Online safety codes: procedure

139N. (1) Before making an online safety code, the Commission—

(a) shall consult—

(i) any advisory committee it has established for that purpose under section 19, and

(ii) any other person the Commission thinks appropriate,

and

(b) may consult a public health authority about any provision of an online safety code referred to in section 139K(2)(d) which it proposes to make.

(2) As soon as practicable after making an online safety code, the Commission shall give a copy of the code to the Minister.

(3) As soon as practicable after receiving a copy of an online safety code under subsection (2), the Minister shall lay copies of the code before each House of the Oireachtas.

(4) The Commission may at any time amend or revoke an online safety code, or any provision of an online safety code, and subsections (1) to (3) apply to an amendment or revocation of an online safety code as they apply to an online safety code.

(5) The Commission shall from time to time review the operation of any online safety code it makes.

(6) If the Minister makes a request in writing to the Commission to review the operation of an online safety code, the Commission shall carry out the review and give the Minister a report on the review in writing within a reasonable time.

(7) The Commission shall publish a report given to the Minister under subsection (6) on a website maintained by the Commission.

Compliance with online safety codes: information notices

139O. (1) The Commission may by notice in writing require the provider of a designated online service to provide the Commission with information relating to the provider's compliance with an online safety code over any period, and may require such information to be provided periodically for a succession of periods.

(2) A notice must—

(a) identify the information to be provided and the period or periods it must relate to, and

(b) state when the information is to be provided.

(3) A notice may not require information to be provided before the end of the period of 7 days beginning on the date on which the notice is received by the provider.

(4) The Commission may at any time by notice in writing extend the time within which information is to be provided.

(5) If within the period referred to in subsection (3) the provider requests the Commission to make an extension under subsection (4), the period beginning with the date on which the Commission receives the request and ending on the date notice of the Commission's decision on the request is received by the provider does not count towards the time within which the information is to be provided.

(6) The provider of a designated online service is guilty of a category 1 offence if—

(a) the provider fails without reasonable excuse to comply with a notice under subsection (1), or

(b) in purported compliance with a notice under subsection (1), the provider provides false information, knowing that it is false or being reckless as to whether it is false.

(7) If the Commission is notified by a nominated body of a matter that appears to the Commission to be relevant to a provider's compliance with an online safety code, the Commission shall consider that matter for the purpose of deciding whether to exercise its functions under this section.

Audit of complaints and complaint handling

139P. (1) The Commission may appoint a person to carry out an audit under this section, and may by notice in writing require the provider of a designated online service to co-operate with any person appointed.

(2) A notice under subsection (1) may relate to audits to be undertaken periodically, at intervals specified in the notice.

(3) The purpose of an audit under this section is—

(a) to enable the Commission to assess compliance by the provider with provisions of an online safety code that relate to the handling of communications by which users raise complaints or other matters relating to designated online services with the providers of those services, and

(b) to provide the Commission with information to identify any trends in complaints or other matters raised by such communications that may be relevant to the Commission's functions under this Part.

(4) A person appointed to carry out an audit under this section—

(a) must be independent of the provider, and

(b) must not be a Commissioner, or a member of the staff of the Commission.

(5) A notice under this section must—

(a) identify the person appointed to carry out the audit,

(b) identify the provisions of the online safety code that the audit is to assess compliance with,

(c) state when the audit is to commence,

(d) specify the co-operation that may be requested by the person appointed, and

(e) require the provider to provide that co-operation, subject to reasonable notice being given by the person appointed.

(6) The co-operation that may be specified under subsection (5)(d) may include the taking, on reasonable notice from the person carrying out the audit, of steps specified by that person that are reasonably required to assist the carrying out of an audit under this section.

(7) A person who carries out an audit under this section shall provide the Commission with a report on the audit, setting out any information relevant to an assessment in accordance with subsection (3)(a), and any information relevant for the purposes of subsection (3)(b).

(8) The Commission shall provide a copy of the report—

(a) to the provider concerned, and

(b) to the Minister,

and shall give the provider an opportunity to make representations in writing to the Commission on the report within such period as the Commission specifies.

(9) After considering any representations made under subsection (8), the Commission shall publish the report on a website maintained by it, with any redactions the Commission considers necessary on grounds of the personal, confidential or commercially sensitive nature of any part of the report.

(10) If the Commission is notified by a nominated body of a matter that appears to the Commission to be relevant to compliance by a provider with a provision of the kind mentioned in subsection (3)(a), the Commission shall consider that matter for the purpose of deciding whether to exercise its functions under this section.

(11) A provider who fails without reasonable excuse to comply with a notice under subsection (1) shall be guilty of a category 1 offence.

Enforcement of online safety codes

139Q. A failure by a provider of a designated online service to comply with an online safety code that applies to the service shall be a contravention for the purposes of Part 8B.

Chapter 4

Complaints to Commission about harmful online content

Complaints to Commission about harmful online content

139R. Where a scheme under section 139V provides for the making of a complaint to the Commission on the grounds that harmful online content is available on a designated online service, the Commission may deal with the complaint in accordance with this Chapter and the provisions of the scheme.

Complaints which may be considered by Commission

139S. (1) Subject to subsection (2), the Commission may not consider a complaint under this Chapter unless it is satisfied that the following conditions are met:

(a) the complainant has made a complaint to the provider of the designated online service concerned about the availability of the content on the service;

(b) a period of more than 2 days has elapsed since the complainant made the complaint to the provider;

(c) where the provider operates a process in accordance with an online safety code for handling such a complaint, the complainant has taken reasonable steps in that period to have the complaint resolved through that process.

(2) Where the Commission is not satisfied that the conditions in subsection (1) are met, it may consider a complaint under this Chapter if it considers it appropriate to do so having regard to the principles referred to in section 139U.

(3) Where a complaint relates to content which falls within one of the offence-specific categories of harmful online content defined in section 139A(2), the Commission may consider the complaint under this Chapter only if—

(a) the Commission has brought the complaint to the attention of the Garda Síochána, or any other body the Commission considers appropriate,

(b) the Commission has informed the complainant and the provider of the designated online service that it has done so, and

(c) where the complaint was brought to the attention of the Garda Síochána, the Garda Síochána has informed the Commission that they do not intend to take any action, or any further action, in relation to the availability of the content on the service concerned.

Resolution of complaints

139T. (1) The Commission may take any of the following actions for the purpose of resolving a complaint under this Chapter:

(a) referring the complaint to the provider concerned with such advice, guidance or support as the Commission considers appropriate;

(b) bringing the complaint to the attention of another body, where the Commission considers the complaint relates to the activities of that body;

(c) giving the provider a notice under section 139ZZD(1);

(d) dismissing the complaint where the Commission concludes that the content is not harmful online content, or is no longer available on the designated online service;

(e) dismissing the complaint where the Commission finds that the complaint is frivolous or vexatious;

(f) taking any other action provided for in a scheme under section 139V.

(2) Where the Commission concludes its consideration of a complaint under this Chapter but does not consider any action within subsection (1) to be appropriate, it shall provide such advice, guidance or support to the complainant as it considers appropriate.

Principles for resolution of complaints

139U. In dealing with complaints under this Chapter, the Commission shall have regard to—

(a) the rights of—

(i) the complainant,

(ii) the person who uploaded the content to the designated online service,

(iii) the provider of the designated online service,

(iv) the users of the designated online service, and

(v) any person to whom the content relates or at whom it is directed,

(b) the interests of any child concerned as complainant, as the person who uploaded the content to the designated online service, or as a person to whom the content relates or at whom it is directed,

(c) the levels of risk of harm, and in particular harm to children, from the availability of the content or exposure to it, and

(d) the desirability of resolving the complaint efficiently.

Complaint scheme: content

139V. (1) Subject to this Chapter the Commission may make a scheme providing for the making and resolution of complaints referred to in section 139R.

(2) The Commission may make a scheme relating to complaints about the availability of a type of harmful online content on designated online services only if there is an online safety code that—

(a) applies to the designated online services concerned, and

(b) relates to the handling, by those providers, of communications from users raising complaints about harmful online content of that type.

(3) A scheme shall provide, in particular, for—

(a) the content of a complaint,

(b) the procedures by which a complaint may be made,

(c) the procedures the Commission shall follow in considering and resolving complaints,

(d) the making of representations in relation to the complaint by the person who uploaded the content that the complaint is about to the designated online service,

(e) the requirements the Commission may impose on providers of designated online services for the purpose of resolving complaints, and

(f) the procedures by which the Commission shall inform the complainant of the Commission's resolution of the complaint.

(4) A complaint shall contain, in particular—

(a) a description of the content that the complaint is about,

(b) a description of the category of harmful online content into which the complainant considers the content falls, and the reasons for that consideration,

(c) a description of the location of the content on the designated online service, and

(d) evidence that the conditions in section 139S(1) are met.

Complaint scheme: procedure

139W. (1) Before making a scheme under section 139V, the Commission shall consult—

(a) any advisory committee it has established for that purpose under section 19, and

(b) any other person the Commission thinks appropriate.

(2) The Commission shall give the Minister a copy of any scheme made under section 139V as soon as practicable after it is made.

(3) The Commission may amend or replace a scheme made under section 139V, and subsections (1) and (2) apply to the amendment of a scheme as they apply to the making of a scheme.

(4) A scheme made under section 139V, and any amendment of it, shall be laid by the Commission before each House of the Oireachtas as soon as may be after it is made.

Implementation of schemes

139X. (1) The Commission shall prepare a plan describing the period within which, and the manner in which, it proposes to make schemes under section 139V such that, in any case where there is an online safety code that relates to the handling, by providers of designated online services, of communications from users raising complaints about harmful online content of any type, the Commission is able to deal with complaints about the availability of that type of harmful online content on any designated online service to which the code is applied under section 139L.

(2) The Commission's proposals in the plan prepared under subsection (1) shall prioritise the making of schemes under section 139V relating to complaints about harmful online content relating to or directed at children.

(3) A plan prepared under subsection (1) shall be given to the Minister and published on a website maintained by or on behalf of the Commission as soon as practicable after it is prepared.

Review of operation of scheme

139Y. (1) The Commission shall review the operation of this Chapter at the end of the period of 5 years after the date of its coming into operation.

(2) Without prejudice to subsection (1), the Commission shall review the operation of a scheme under section 139V where the Minister requests the Commission in writing to do so.

(3) The Commission shall give a report of a review to the Minister as soon as practicable after completing the review.

(4) The Commission shall publish the following annually on a website maintained by it:

(a) the number of complaints it has received in the previous year under a scheme and how those complaints were resolved;

(b) the categories of harmful online content to which the complaints related;

(c) such case studies of complaints as it considers appropriate.

Chapter 5

Online safety guidance materials and advisory notices

Guidance materials and advisory notices

139Z. (1) The Commission may issue guidance materials for providers of relevant online services—

(a) on identifying harmful online content, and in particular on the application of subsection (4) of section 139A,

(b) on any other matter relating to the operation of this Part or for which provision may be made by an online safety code, and

(c) otherwise for the protection of minors and the general public from harmful online content and age-inappropriate online content.

(2) Before issuing guidance materials under subsection (1), the Commission shall consult—

(a) any advisory committee it has established for that purpose under section 19, and

(b) any other person the Commission thinks appropriate.

(3) Where the Commission considers there is an urgent need to bring to the attention of a provider or providers of relevant online services any matter on which guidance materials may be issued under this section, the Commission may issue an online safety advisory notice to the provider or providers on the matter.

(4) Before issuing an advisory notice under subsection (3), or as soon after as is practicable, the Commission shall consult—

(a) any advisory committee it has established for that purpose under section 19, and

(b) any other person the Commission thinks appropriate.

Guidance materials and advisory notices: matters to be considered

139ZA. In preparing guidance materials or advisory notices under section 139Z, the Commission shall have regard in particular to—

(a) Article 28b of the Directive,

(b) the desirability of services having transparent decision-making processes in relation to content delivery and content moderation,

(c) the impact of automated decision-making on those processes,

(d) the need for any provision to be proportionate having regard to the nature and the scale of the services concerned,

(e) levels of availability of any online content, and of age-inappropriate online content, on relevant online services,

(f) levels of risk of exposure to harmful online content, or of exposure of children to age-inappropriate online content, when using relevant online services,

(g) levels of risk of harm, and in particular harm to children, from the availability of such content or exposure to it,

(h) the rights of providers of relevant online services and of users of those services, and

(i) the e-Commerce compliance strategy prepared under section 139ZF.

Guidance materials and advisory notices: procedure

139ZB. (1) This section applies to any guidance materials or advisory notices issued by the Commission under section 139Z.

(2) The Commission shall—

(a) publish any guidance materials or advisory notices in whatever way it thinks appropriate, and

(b) take any other steps it considers appropriate to bring guidance materials or advisory notices to the attention of providers of services to which they are relevant.

(3) As soon as practicable after issuing guidance materials or an advisory notice, the Commission shall give a copy to the Minister.

(4) If the Minister makes a request in writing to the Commission to review guidance materials or an advisory notice, the Commission shall carry out the review and give the Minister a report on the review in writing within a reasonable time.

(5) The Commission may at any time withdraw guidance materials or an advisory notice.

Chapter 6

Ancillary matters

Scheme for notifications by nominated bodies

139ZC. (1) The Commission shall make a scheme under which bodies are nominated by it for the purpose of notifying the Commission of matters relevant to its functions under this Part.

(2) Where a nominated body notifies the Commission in accordance with a scheme, the Commission shall inform the nominated body of any action taken by the Commission as a result of the notification.

(3) The matters that may be notified to the Commission under a scheme shall include, but need not be limited to, the following:

(a) concerns arising from the manner in which a designated online service purports to comply with the online safety codes that apply to it;

(b) concerns relating to the availability of harmful online content on a designated online service or a relevant online service;

(c) concerns relating to the availability of age-inappropriate online content on a designated online service or a relevant online service;

(d) measures taken by the provider of a designated online service, in purported compliance with an online safety code, which the nominated body considers excessive having regard to users' freedom of expression or other rights, or for any other reason.

(4) A scheme shall in particular provide for the following:

(a) the procedure for applying for nomination, and the nomination process;

(b) the criteria for nomination;

(c) revocation of a nomination;

(d) matters of which nominated bodies may notify the Commission;

(e) the form and content of a notification;

(f) the process by which notification is to be given by a nominated body and acknowledged by the Commission;

(g) the process by which the Commission is to inform a nominated body of any action taken by the Commission as a result of a notification.

(5) As soon as practicable after making a scheme under this section, the Commission shall give a copy to the Minister.

(6) If the Minister makes a request in writing to the Commission to review a scheme under this section, the Commission shall carry out the review and give the Minister a report on the review in writing within a reasonable time.

(7) The Commission may at any time amend or replace a scheme under this section.

(8) Subsection (5) applies to the amendment or replacement of a scheme as it applies to the making of a scheme.

(9) A scheme and any amendment of a scheme under this section shall be laid by the Commission before each House of the Oireachtas as soon as may be after it is made.

(10) In this section, 'scheme' means a scheme made under this section.

(11) In this section and sections 139O and 139P, 'nominated body' means a body nominated by the Commission under a scheme.

Duty of Commission to encourage use of mediation

139ZD. The Commission shall take whatever steps it considers appropriate to encourage the use by users and providers of mediation by an independent mediator to resolve any dispute arising from users' complaints about a provider taking or not taking any action—

(a) in response to an online safety code, or

(b) in response to guidance materials or an advisory notice issued under section 139Z.

Voluntary arrangements with providers in third countries

139ZE. (1) This section applies if the Commission enters into a voluntary arrangement, within the meaning assigned to it by subsection (2), with the provider of a service, where—

(a) the provider is not under the jurisdiction of the State or another Member State, but

(b) the service would be a relevant online service if the provider were under the jurisdiction of the State.

(2) In this section, a 'voluntary arrangement' means an arrangement under which the provider agrees, for the period during which the arrangement is in force—

(a) that the provider will comply with any online safety code, and any guidance materials issued under section 139Z, that may be specified in the arrangement, to the extent specified in the arrangement,

(b) that the provider will comply with any request made by the Commission under subsection (5), and

(c) that the Commission may publish the information it is required to publish in accordance with subsections (4) and (6).

(3) The Commission shall notify the Minister of any voluntary arrangement it enters into.

(4) The Commission shall publish, on a website maintained by it, the following details of any voluntary arrangement it enters into with a provider:

(a) the name of the provider and any other information necessary to identify the provider;

(b) the matters specified in accordance with subsection (2)(a).

(5) The Commission—

(a) may request information from the provider regarding its compliance with any online safety code or guidance materials, to the extent that it has agreed to comply with them, and

(b) may request the provider to provide such information on a periodic basis.

(6) If it appears to the Commission that there has been a failure by a provider to comply with an online safety code, guidance materials, or a request under subsection (5), the Commission may publish, on a website maintained by it, a notice of the failure, and information about the nature of the failure.

(7) The Commission shall keep any voluntary arrangement under review.

(8) The Commission or the provider may at any time end a voluntary arrangement by notice in writing to the other.

e-Commerce compliance strategy

139ZF. (1) The Commission shall prepare, and may revise, an e-Commerce compliance strategy setting out its approach to ensuring that—

(a) no requirements that are inconsistent with the limitations placed on the liability of intermediary service providers by regulations 16 to 18 of the European Communities (Directive 2000/31/EC) Regulations 2003 (S. I. No. 68 of 2003), and

(b) no general obligation on providers, when providing the services covered by regulations 16 to 18 of those Regulations, to monitor the information which they transmit or store, and no general obligation actively to seek facts or circumstances indicating illegal activity, contrary to Article 15 of the E-Commerce Directive,

are imposed, by virtue of online safety codes or online safety guidance materials or advisory notices.

(2) Before preparing an e-Commerce compliance strategy the Commission shall consult—

(a) any advisory committee it has established for that purpose under section 19, and

(b) any other person the Commission thinks appropriate.

(3) The Commission shall publish an e-Commerce compliance strategy prepared or revised under this section on a website maintained by it.".

Harmful online content: offence-specific categories

46. The Principal Act is amended by the insertion of the following Schedule after Schedule 2:

"SCHEDULE 3

Section 139A

Harmful Online Content: Offence-Specific Categories

Offences against the State Act 1939

1. Online content by which a person publishes or broadcasts information about an application under section 30(4) of the Offences against the State Act 1939 contrary to subsection (4BA)(d) of that section (application for further detention of a person arrested for certain offences).

Criminal Law (Rape) Act 1981

2. Online content by which a person publishes or broadcasts matter likely to lead members of the public to identify a person as the complainant in relation to a charge of a sexual assault offence, contrary to section 7(1) of the Criminal Law (Rape) Act 1981.

3. Online content by which a person publishes or broadcasts matter likely to lead members of the public to identify a person as the person charged with a rape offence, contrary to section 8(1) of the Criminal Law (Rape) Act 1981.

Prohibition of Incitement to Hatred Act 1989

4. Online content by which a person publishes or distributes written material, or a recording of visual images or sounds, contrary to section 2(1) of the Prohibition of Incitement to Hatred Act 1989 (material, images or sounds which are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred).

5. Online content by which a person broadcasts visual images or sounds, contrary to section 3(1) of the Prohibition of Incitement to Hatred Act 1989 (threatening, abusive or insulting images or sounds whose broadcast is intended or, having regard to all the circumstances, is likely to stir up hatred).

Criminal Justice Act 1993

6. Online content by which a person publishes or broadcasts information relating to, or to part of, evidence given under section 5(3) of the Criminal Justice Act 1993, contrary to an order under subsection (5)(a) of that section (sentencing: evidence of a person in respect of whom an offence is committed).

Criminal Law (Suicide) Act 1993

7. Online content by which a person counsels the suicide of another, contrary to section 2(2) of the Criminal Law (Suicide) Act 1993.

Criminal Justice (Drug Trafficking) Act 1996

8. Online content by which a person publishes or broadcasts information about an application under section 2(2) of the Criminal Justice (Drug Trafficking) Act 1996 contrary to subsection (3A)(d) of that section (application for detention of a person arrested for a drug trafficking offence).

Bail Act 1997

9. Online content by which a person publishes or broadcasts information relating to the criminal record of a person applying for bail, contrary to section 4(3) of the Bail Act 1997.

10. Online content by which a person publishes or broadcasts information relating to, or to part of, evidence given under section 9A(1) of the Bail Act 1997 contrary to an order under subsection (3) of that section (evidence, at application for bail, from a person in respect of whom an offence is alleged to have been committed).

Non-Fatal Offences against the Person Act 1997

11. Online content by which a person applies force to the body of another, or causes another to believe on reasonable grounds that he or she is likely immediately to be subjected to such force, contrary to section 2 of the Non-Fatal Offences against the Person Act 1997.

12. Online content by which a person makes a threat, contrary to section 5(1) of the Non-Fatal Offences against the Person Act 1997 (threat to kill or cause serious harm to a person).

13. Online content by which a person harasses another, contrary to section 10(1) of the Non-Fatal Offences against the Person Act 1997 (harassment by persistently following, watching, pestering, besetting or communicating with or about another person).

Child Trafficking and Pornography Act 1998

14. Online content by which a person distributes, transmits, disseminates or publishes child pornography, contrary to section 5(1)(b) of the Child Trafficking and Pornography Act 1998.

15. Online content by which a person publishes, distributes, transmits or disseminates an advertisement, contrary to section 5(1)(e) of the Child Trafficking and Pornography Act 1998 (advertisement of sale etc. of child pornography).

Children Act 2001

16. Online content by which a person publishes or includes in a broadcast a report to which section 51(1) of the Children Act 2001 applies (report in relation to admission of a child to the Programme etc. or revealing information likely to lead to identification of the child).

17. Online content by which a person publishes or includes in a broadcast any such report or picture as is referred to in section 93(1) of the Children Act 2001, except so far as the requirements of that section have been dispensed with under subsection (2) of that section (proceedings before a court concerning a child: particulars likely to lead to identification etc.).

18. Online content by which a person encourages unlawful activity involving a child, contrary to section 249 of the Children Act 2001 (person with custody, charge or care of a child encouraging sexual offences on the child etc.).

19. Online content by which a person publishes or includes in a broadcast a report or picture to which section 252(1) of the Children Act 2001 applies, except so far as the requirements of subsection (1) of that section have been dispensed with under subsection (2) of that section (proceedings for an offence against a child or where a child is a witness: report or picture likely to lead to identification of the child etc.).

Criminal Justice (Terrorist Offences) Act 2005

20. Online content by which a person engages in public provocation to commit a terrorist offence, contrary to section 6(1)(a)(i) of the Criminal Justice (Terrorist Offences) Act 2005 (where a 'terrorist-linked activity' includes public provocation to commit a terrorist offence, as defined by section 4A of that Act).

21. Online content by which a person makes a threat to engage in a terrorist activity, contrary to section 6(1)(a)(iii) of the Criminal Justice (Terrorist Offences) Act 2005.

Criminal Law (Insanity) Act 2006

22. Online content by which a person publishes, contrary to section 4(9) of the Criminal Law (Insanity) Act 2006, a report of evidence adduced under subsection (8) of that section as to whether an accused person did the act alleged, or of the decision of the court under that subsection not to order the accused to be discharged.

Criminal Justice Act 2006

23. Online content by which a person publishes any matter relating to criminal proceedings which would identify a person as having a particular medical condition, contrary to an order under section 181 of the Criminal Justice Act 2006.

Criminal Justice Act 2007

24. Online content by which a person publishes or broadcasts information about an application under section 50 of the Criminal Justice Act 2007 contrary to subsection (4A)(d) of that section (application for further detention for investigation of certain serious offences).

Criminal Law (Human Trafficking) Act 2008

25. Online content by which a person publishes or broadcasts, contrary to section 11(1) of the Criminal Law (Human Trafficking) Act 2008—

(a) a photograph of, or that includes a depiction of, the alleged victim of an offence with which a person is charged under section 2 or 4, or section 3 (other than subsections (2A) and (2B)) of the Child Trafficking and Pornography Act 1998,

(b) any other representation of the physical likeness, or any representation that includes a depiction of the physical likeness, of the alleged victim of such an offence, or

(c) any other information in relation to such an offence,

that is likely to enable the identification of the alleged victim of the offence.

Criminal Procedure Act 2010

26. Online content by which a person publishes or broadcasts, contrary to an order under section 12(3) of the Criminal Procedure Act 2010—

(a) evidence given or referred to at a hearing of an application for a re-trial order, or

(b) matter identifying or having the effect of identifying a person who is the subject of an application for a re-trial order, or any other person connected with the re-trial for which an order is sought under section 8 or 9 of that Act.

27. Online content by which a person publishes or broadcasts, contrary to an order under section 25(3) of the Criminal Procedure Act 2010—

(a) evidence given or referred to during a proceeding under section 23 of that Act, or

(b) matter identifying or having the effect of identifying a person who is the subject of an appeal under section 23 of that Act, or any other person connected with a re-trial for which an order is sought under that section.

Criminal Justice (Female Genital Mutilation) Act 2012

28. Online content by which a person publishes matter contrary to section 9(1) of the Criminal Justice (Female Genital Mutilation) Act 2012 (matter likely to lead to identification of a woman or girl

as a person in relation to whom an offence is alleged to have been committed).

29. Online content by which a person publishes matter contrary to section 10(1) of the Criminal Justice (Female Genital Mutilation) Act 2012 (matter likely to lead to identification of a person charged with an offence).

Animal Health and Welfare Act 2013

30. Online content by which a person—

(a) publicises or promotes a proposed animal fight or performance,

(b) provides information about an animal fight or performance, or

(c) supplies, displays, shows or publishes anything by which an animal fight or performance is recorded,

contrary to section 15 of the Animal Health and Welfare Act 2013.

International Protection Act 2015

31. Online content by which a person publishes or broadcasts information, contrary to section 26(2) of the International Protection Act 2015 (publication or broadcast of information likely to lead to identification of an applicant for protection).

Criminal Law (Sexual Offences) Act 2017

32. Online content by which a person communicates with another person for the purpose of facilitating the sexual exploitation of a child, contrary to section 8(1) of the Criminal Law (Sexual Offences) Act 2017.

33. Online content by which a person sends sexually explicit material to a child, contrary to section 8(2) of the Criminal Law (Sexual Offences) Act 2017.

34. Online content by which a person publishes matter contrary to section 30(1) of the Criminal Law (Sexual Offences) Act 2017 (matter likely to lead to identification of a person as a person charged with an offence under the Punishment of Incest Act 1908 or as a person in relation to whom an offence is alleged to have been committed).

35. Online content by which a person exposes his or her genitals intending to cause fear, distress or alarm to another person contrary to section 45(1) of the Criminal Law (Sexual Offences) Act 2017.

36. Online content by which a person intentionally engages in offensive conduct of a sexual nature contrary to section 45(3) of the Criminal Law (Sexual Offences) Act 2017.

Domestic Violence Act 2018

37. Online content by which a person publishes or broadcasts information, or a photograph, depiction, or other representation, contrary to section 36(1) of the Domestic Violence Act 2018 (publication or broadcast of material likely to lead to the identification of persons concerned in proceedings).

Harassment, Harmful Communications and Related Offences Act 2020

38. Online content by which a person distributes or publishes or threatens to distribute or publish an intimate image, contrary to section 2(1) of the Harassment, Harmful Communications and Related Offences Act 2020 (distribution etc. of image without consent and with intent to cause harm etc.).

39. Online content by which a person distributes or publishes an intimate image, contrary to section 3(1) of the Harassment, Harmful Communications and Related Offences Act 2020 (distribution etc. of image without consent and so as seriously to interfere with peace and privacy or to cause alarm, distress or harm).

40. Online content by which a person—

(a) distributes or publishes a threatening or grossly offensive communication about another person, or

(b) sends a threatening or grossly offensive communication to another person,

contrary to section 4(1) of the Harassment, Harmful Communications and Related Offences Act 2020 (distribution etc. of communication with intent to cause harm).

41. Online content by which a person publishes or broadcasts information, or a photograph or other representation, likely to enable the identification of the alleged victim of an offence under section 2 or 3 of the Harassment, Harmful Communications and Related Offences Act 2020, contrary to section 5(1) of that Act.

Criminal Procedure Act 2021

42. Online content by which a person publishes or broadcasts information about a preliminary trial hearing, or an appeal under section 7 of the Criminal Procedure Act 2021, contrary to section 10(1) of that Act.".

PART 12

INVESTIGATIONS AND SANCTIONS

Investigations and sanctions

47. The Principal Act is amended by the insertion of the following Part before Part 9:

"PART 8B

Investigations and sanctions

Chapter 1

Interpretation

Interpretation

139ZG. In this Part—

(a)'contravention' means a failure to comply with section 46J, 46K, 46L, 46M(2) or (3), a media service code, a media service rule, section 46P(1) or (2), section 106(3), section 127(6), section 128B(1) or (2), any rules made under section 128C, an online

safety code, section 159B(1) (or any rules made under section 159B(6)) or section 159C(1) (or any rules made under section 159C(3) or (6));

(b)'investigation' means an investigation pursuant to a direction under section 139ZI(1);

(c) in relation to an investigation—

'the authorised officer' means the authorised officer carrying out the investigation;

'the provider' means the person whose suspected contravention is the subject of the investigation;

'relevant equipment' means any electronic, photographic, magnetic, optical or other equipment, including a computer, which may be used for processing or holding relevant material;

'relevant material' means any document, information, or content, however communicated, recorded or stored, which may be relevant to the investigation;

(d)'place' includes—

(i) a dwelling;

(ii) a building;

(iii) any other premises;

(iv) a vehicle, vessel, aircraft, or other means of transport.

Chapter 2

Authorised officers and investigations

Appointment of authorised officers

139ZH. (1) The Commission may appoint a person to be an authorised officer for the purposes of this Act.

(2) The Commission shall provide an authorised officer appointed under subsection (1) with a certificate of his or her appointment.

(3) An authorised officer exercising a power conferred by or under this Act shall, if requested by a person affected by the exercise of the power, produce for that person to inspect—

(a) the certificate of his or her appointment, or a copy of it, and

(b) a form of personal identification.

(4) An authorised officer shall be appointed subject to such terms and conditions (including terms as to remuneration and allowances for expenses (if any)) as the Commission may, with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform, determine.

(5) A person's appointment under subsection (1) ceases—

(a) if it is revoked in writing by the Commission,

(b) if it is for a fixed period and the period expires, or

(c) if the person was when appointed, or has since become, a member of the staff of the Commission, and the person ceases to be a member of its staff.

Commencement and terms of investigation

139ZI. (1) If a person authorised by the Commission under subsection (2) believes there is reason to suspect that there has been a contravention, the person may direct an authorised officer to carry out an investigation of the suspected contravention.

(2) The Commission may authorise any Commissioner or member of its staff for the purposes of subsection (1).

(3) The person who directs the authorised officer to carry out an investigation under subsection (1) shall define the terms of the investigation in writing.

Notice of commencement of investigation

139ZJ. (1) An authorised officer directed to carry out an investigation under section 139ZI(1) shall give the provider a notice in writing of the commencement of the investigation.

(2) The notice shall include—

(a) a statement of the nature and particulars of the suspected contravention,

(b) a copy of the terms of the investigation defined under section 139ZI(3), and

(c) a copy of any material relied upon by the person referred to in section 139ZI(3) in defining those terms or notice of the place at which such material may be inspected and copied by the provider.

(3) A notice under subsection (1) shall state that the provider may respond in writing to the contents of the notice within—

(a) the period of 10 working days from the date on which the notice was received, or

(b) any further period, of not more than 10 working days, that the authorised officer considers necessary to give the provider an opportunity to respond.

Powers of authorised officer

139ZK. (1) For the purposes of an investigation, an authorised officer may do any of the following:

(a) subject to subsection (7), at any reasonable time, enter any place where the authorised officer has reasonable grounds for believing—

(i) that an activity connected with a broadcasting service, audiovisual on-demand media service or designated online service takes place, or

(ii) that relevant material or relevant equipment is kept;

(b) search a place referred to in paragraph (a);

(c) stop any vehicle, or detain any vessel, aircraft or other means of transport, for the purpose of exercising a power under paragraph (a) or (b) to enter, search or inspect the vehicle, vessel, aircraft or other means of transport;

(d) require any person to produce to him or her any relevant material which is in that person's power or control or which that person is able to procure, and to produce it, where necessary, in a form in which it can be taken away and in which it is, or can be made, legible and comprehensible;

(e) require a person who is unable to produce relevant material within that person's power, procurement or control to state, to the best of that person's knowledge and belief, where the material is or from whom it may be obtained;

(f) require any person to give the authorised officer such information as the officer may reasonably require relating to any relevant material which is in that person's power or control or which that person is able to procure;

(g) require any person to give the authorised officer any information that the officer may reasonably require relating to a broadcasting service, an audiovisual on-demand media service, or a designated online service;

(h) require any person to attend before the authorised officer to give any information that the officer may require the person to give under this section;

(i) operate any relevant equipment, or cause it to be operated by a person accompanying the authorised officer, for the purpose of accessing relevant material;

(j) require any person to give the authorised officer all reasonable assistance in the operation of relevant equipment for the purpose of accessing relevant material, including—

(i) making the material legible and comprehensible or providing any authentication necessary to do so, or

(ii) enabling the material to be taken away in any form;

(k) secure for later inspection, for such period as the authorised officer reasonably considers necessary, any place where the authorised officer has reasonable grounds for believing there is relevant material or relevant equipment;

(l) inspect and take extracts from or copies of any relevant material;

(m) remove from any place, and retain, any relevant material or relevant equipment, for such period as the authorised officer reasonably considers necessary;

(n) require any person who has any relevant material or relevant equipment in his or her power or control to retain the material or maintain the equipment for such period as the authorised officer reasonably considers necessary.

(2) An authorised officer may specify that a requirement under paragraph (d), (e), (f), (g), (h) or (j) be complied with within such reasonable period as he or she may determine.

(3) An authorised officer may conduct an oral hearing if he or she considers it necessary for the purposes of the investigation.

(4) Schedule 4, and any rules made by the Commission under section 139ZN, shall have effect for the purposes of an oral hearing referred to in subsection (3).

(5) When performing a function under this Act, an authorised officer may, subject to the terms of any warrant issued under section 139ZL, be accompanied by such and so many other persons, including members of the Garda Síochána, as he or she considers appropriate.

(6) An authorised officer may require a person to provide his or her name and address if the authorised officer has reasonable grounds for requiring the information in order to apply for a warrant under section 139ZL.

(7) An authorised officer shall not enter a dwelling, other than—

(a) with the consent of the occupier, or

(b) in accordance with a warrant under section 139ZL.

(8) A person shall be guilty of a category 2 offence if he or she—

(a) without reasonable excuse, obstructs an authorised officer in the exercise of his or her powers under this section,

(b) without reasonable excuse, fails or refuses to comply with a requirement of an authorised officer under this section,

(c) with the intention of obstructing an authorised officer in the conduct of an investigation, alters, hides, or destroys, any relevant material or relevant equipment which is, or which could reasonably be, the subject of a requirement of an authorised officer under this section,

(d) in purported compliance with a requirement under this section, gives to an authorised officer information which the person knows to be false or misleading in any material respect, or

(e) falsely represents himself or herself to be an authorised officer.

(9) Where an authorised officer has exercised his or her powers under this section in good faith, the Commission shall indemnify the authorised officer against all actions or claims howsoever arising in respect of the exercise of those powers.

(10) A statement or admission made by a person pursuant to a requirement of an authorised officer under subsection (1) shall not be admissible in evidence in proceedings brought against the person for an offence, other than an offence under subsection (8), and this shall be explained to the person in ordinary language by the authorised officer.

(11) A person the subject of a requirement under subsection (1) shall be entitled to the same immunities and privileges in respect of compliance with such requirement as if the person were a witness before the High Court.

Search warrant

139ZL. (1) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable

grounds for suspecting that relevant material required by an authorised officer for the purpose of performing his or her functions under this Act is held at any place, the judge may issue a warrant authorising an authorised officer, on production, if so required, of the warrant, to enter the place, if necessary by reasonable force, and to exercise all or any of the powers conferred on an authorised officer by section 139ZK.

(2) A warrant under subsection (1) may permit an authorised officer to be accompanied by such and so many other persons, including members of the Garda Síochána, as the officer considers necessary.

(3) A warrant issued under this section shall be valid for 28 days from its date of issue.

Report of authorised officer

139ZM. (1) As soon as is practicable after the completion of an investigation, the authorised officer shall prepare a draft report of the investigation.

(2) In preparing the draft report referred to in subsection (1), the authorised officer shall consider, in so far as they are relevant to the investigation—

(a) the terms of the investigation,

(b) the notice under section 139ZJ(1), and any response made by the provider to that notice under section 139ZJ(3),

(c) any relevant material or relevant equipment obtained in the course of the investigation in the exercise of powers under section 139ZK,

(d) any statement or admission made by any person in the course of the investigation pursuant to a requirement, or during an oral hearing, under section 139ZK, and

(e) any submissions made by any person during an oral hearing under section 139ZK.

(3) The authorised officer shall, as soon as is practicable after preparing the draft report, give the provider—

(a) a copy of the draft report,

(b) a copy of any material relied upon by the authorised officer in preparing the draft report,

(c) a copy of this section, and

(d) a notice in writing stating that the provider may, not later than 28 days from the date on which it receives the notice, or such further period as the authorised officer considers necessary, make submissions in writing to the authorised officer on the draft report.

(4) The authorised officer shall, as soon as is practicable after the expiration of the period referred to in subsection (3)(d), and having considered any submissions made under that subsection, make any revisions to the draft report which, in the opinion of the authorised officer are warranted, and finalise the report.

(5) An authorised officer shall not make any recommendation, or express any opinion, in a draft report under subsection (1) or in a

final report under subsection (4), as to whether an administrative financial sanction should be imposed under section 139ZS in the event that the Commission is satisfied that the provider has committed a contravention, or as to the amount of any such sanction imposed.

(6) An authorised officer shall, as soon as is practicable after the draft report has been finalised under subsection (4), provide a copy of the final report to the provider.

(7) An authorised officer shall, as soon as is practicable after the draft report has been finalised under subsection (4), provide a copy of the final report and any submissions made under subsection (3)(d), to the Commission.

(8) An authorised officer may provide a copy of the final report, and any such submissions to such other persons as he or she considers appropriate.

(9) A person who receives a final report or any submissions under subsection (8) shall not, without the prior authorisation of the Commission, disclose the existence or the content of the report or of the submissions to any other person.

(10) A person who without reasonable excuse contravenes subsection (9) shall be guilty of a category 1 offence.

Rules

139ZN. (1) Subject to the provisions of this Part and Schedule 4, the Commission may make rules providing for the conduct of investigations under this Chapter, and the conduct of its proceedings under Chapters 3 and 4.

(2) In making rules under subsection (1), the Commission shall have regard to the need for fairness and efficiency in the conduct of such investigations and proceedings, in particular the need to address conflicts of interest which may arise in investigations or proceedings.

(3) The Commission shall publish rules made under subsection (1) on a website maintained by it.

Guidelines

139ZO. (1) The Commission may make guidelines with respect to the operation of this Chapter, Chapters 3 and 4, Schedule 4 and any rules made under section 139ZN.

(2) The Commission shall publish any guidelines made under this section, and any amendment to or revocation of those guidelines, on a website maintained by it.

Conduct of investigations

139ZP. (1) Subject to the provisions of this Part and Schedule 4, any rules made under section 139ZN and any guidelines made under section 139ZO, an authorised officer may follow such procedures for the conduct of an investigation as he or she considers appropriate.

(2) An authorised officer shall, in the conduct of an investigation, take reasonable steps to keep the provider informed as to the progress of the investigation.

Chapter 3

Decision of Commission

Division of Commission

139ZQ. (1) The functions of the Commission under this Chapter (except this subsection), Chapter 4 (except sections 139ZY, 139ZZ and 139ZZA), and Schedule 4 shall, unless otherwise stated, be exercised by a division of the Commission consisting of such uneven number of Commissioners, not being less than 3, as the Commission may determine.

(2) If the person who directed an investigation be carried out under section 139ZI is a Commissioner, the division exercising functions in relation to the investigation shall not include that Commissioner.

Action by Commission after receiving report

139ZR. (1) After the authorised officer has complied with subsections (6) and (7) of section 139ZM the Commission shall, subject to subsection (2), give the provider—

(a) a copy of this section, and

(b) a notice in writing stating that the provider may make submissions in writing to the Commission on the final report within the period of 28 days from the date the provider receives the notice, or such further period as the Commission may allow.

(2) The Commission need not comply with subsection (1) if it holds an oral hearing under subsection (3) at which the provider may make submissions to it on the final report.

(3) The Commission shall at any time after the authorised officer has complied with subsections (6) and (7) of section 139ZM conduct an oral hearing if it considers it necessary to do so in order for the procedures under this Part to operate fairly.

(4) The Commission may, at any time after the authorised officer has complied with subsections (6) and (7) of section 139ZM, do any of the following that it considers necessary to resolve an issue of fact or otherwise enable it to make a decision under section 139ZS:

(a) request the provider to provide the Commission with further information within such period as the Commission specifies;

(b) request any other person to provide the Commission with further information within such period as the Commission specifies;

(c) for the purposes of a request under paragraph (b), provide a copy of the final report, or of part of the final report, with any redactions the Commission considers necessary, to the person the request is made to;

(d) conduct an oral hearing.

(5) As soon as practicable after making a request under subsection (4)(b), the Commission shall give the provider a copy of the request.

(6) As soon as practicable after receiving any information pursuant to a request under subsection (4)(b), the Commission shall give the provider—

(a) a copy of the information, and

(b) a notice in writing stating that the provider may make submissions in writing to the Commission on the information within the period of 20 working days from the date the provider receives the notice, or such further period as the Commission may allow.

(7) A person who receives a copy of a report, or of part of a report, under subsection (4)(c) shall not, without the prior authorisation of the Commission, disclose the existence or the content of the report to any other person.

(8) A person who without reasonable excuse—

(a) fails to comply with a request for further information under subsection (4)(a) or (b), or

(b) contravenes subsection (7),

shall be guilty of a category 2 offence.

(9) A person who, in purported compliance with a request for further information under subsection (4)(a) or (b), gives to the Commission information which the person knows to be false or misleading in any material respect shall be guilty of a category 2 offence.

(10) A statement or admission made by a person pursuant to a request for further information under subsection (4)(a) or (b), shall not be admissible in evidence in proceedings brought against the person for an offence, other than an offence under subsection (9), and this shall be explained to the person in ordinary language by the Commission.

Decision by Commission

139ZS. (1) The Commission shall decide, in respect of a provider who is the subject of a report under section 139ZM—

(a) whether or not it is satisfied on the balance of probabilities that the provider has committed the contravention to which the investigation relates, and

(b) if so, whether or not to impose an administrative financial sanction.

(2) A decision under subsection (1) that a contravention has been committed, or that an administrative financial sanction shall be imposed, does not take effect unless it is confirmed on appeal under section 139ZX or on summary application under section 139ZY.

(3) For the purposes of making a decision under subsection (1), the Commission shall consider—

(a) the final report provided under section 139ZM(7) and any submissions provided with the report,

(b) any evidence adduced or submissions made during an oral hearing conducted under section 139ZR,

(c) any information provided as a result of a request under section 139ZR(4), and

(d) any submissions made pursuant to a notice under subsection (1) or (6) of section 139ZR.

(4) In deciding under subsection (1)(b) whether or not to impose an administrative financial sanction on a provider, the Commission shall have regard to the matters referred to in paragraphs (a), (b), (c), (d), (e), (g), (h), (i), (j) and (k) of section 139ZW(3).

Notice and publication of decision of Commission

139ZT. (1) The Commission shall, as soon as is practicable after making a decision under section 139ZS give notice in writing of the decision to the provider the subject of the decision.

(2) The notice under subsection (1) shall set out the decision made and the reasons for it.

(3) If the Commission decides that a contravention has occurred, the notice shall also—

(a) state that the decision does not take effect unless it is confirmed on appeal under section 139ZX or on summary application under section 139ZY, and

(b) state that, if the provider does not appeal under section 139ZX, the Commission will, as soon as is practicable after the expiration of the period for the making of an appeal referred to in section 139ZX(1), make an application in a summary manner for confirmation of the decision under section 139ZY.

(4) If the Commission decides to impose an administrative financial sanction, the notice shall also—

(a) state that the provider may make submissions in relation to the application of section 139ZW to the determination of the amount of the sanction,

(b) state either that—

(i) those submissions may be made at an oral hearing, under section 139ZU(2)(a), on a date specified in the notice, or

(ii) that those submissions may be made in writing, under section 139ZU(2)(b), within a period specified in the notice in accordance with that section,

and

(c) state that the Commission may request further information under section 139ZU(3).

(5) The Commission shall publish the decision made under section 139ZS on a website maintained by it and that publication shall include the following matters:

(a) the name of the provider;

(b) the nature of the suspected contravention to which the investigation related;

(c) the reasons for the decision;

(d) such other particulars, reports or material as the Commission considers appropriate.

(6) The Commission may provide a copy of a notice referred to in subsection (1) to a person other than the provider where it considers it appropriate to do so.

(7) A person who receives a copy of a notice under subsection (6) prior to the publication of the decision under subsection (5) shall not, without the prior authorisation of the Commission, disclose the existence or the content of the notice, including any content redacted in accordance with subsection (9) from a notice published under subsection (5), to any other person.

(8) A person who without reasonable excuse contravenes subsection (7) shall be guilty of a category 2 offence.

(9) The Commission may, for the purposes of publication under subsection (5), redact any particulars which appear to the Commission—

(a) to be commercially sensitive, or

(b) to relate to the commission of an offence.

Chapter 4

Administrative financial sanctions

Submissions and requests for information

139ZU. (1) Subsections (2) and (3) apply where the Commission has made a decision under section 139ZS to impose an administrative financial sanction on a provider.

(2) The provider may make submissions to the Commission in relation to the application of section 139ZW to the determination of the amount of the sanction—

(a) at an oral hearing, where the Commission considers it necessary, or

(b) otherwise, in writing, within the period of 10 working days from the date the provider receives the notice under section 139ZT, or such longer period as the Commission may specify in the notice.

(3) Where the provider makes submissions to the Commission under subsection (2)(b), the Commission may by notice in writing request the provider to provide, within a specified period, such further information as the Commission considers appropriate for the purposes of determining the amount of the sanction.

(4) A person who without reasonable excuse fails to comply with a request under subsection (3) shall be guilty of a category 2 offence.

Determination of amount of administrative financial sanction

139ZV. (1) Where a decision has been made under section 139ZS to impose an administrative financial sanction, the Commission shall determine the amount of the sanction in accordance with section 139ZW.

(2) The Commission shall make the determination as soon as practicable after—

(a) where section 139ZU(2)(a) applies, the date of the oral hearing referred to in that paragraph, or

(b) where section 139ZU(2)(b) applies, the expiry of the period or further period referred to in that paragraph, or if applicable the period specified in any notice under section 139ZU(3),

whether or not any submissions have been made or information provided.

(3) As soon as practicable after making the determination, the Commission shall give the provider a notice in writing of the determination and the reasons for it.

(4) As soon as practicable after giving the notice under subsection (3), the Commission shall publish the notice on a website maintained by it.

(5) The Commission may, for the purposes of publication under subsection (4), redact any particulars from the notice which appear to the Commission—

(a) to be commercially sensitive, or

(b) to relate to the commission of an offence.

Limitations on amount of administrative financial sanction

139ZW. (1) The amount of an administrative financial sanction imposed under section 139ZS shall not exceed—

(a) in the case of an individual, €20,000,000, or

(b) in the case of a provider that is not an individual, €20,000,000 or, if greater, 10 per cent of the relevant turnover of the provider in the financial year preceding the date of the decision under section 139ZS to impose the sanction.

(2) In subsection (1)(b), 'relevant turnover' means turnover of the provider attributable to the service which gave rise to the contravention.

(3) The Commission shall have regard to the following matters in determining the amount of the administrative financial sanction imposed under section 139ZS:

(a) the nature, gravity and duration of the contravention;

(b) the degree of harm to particular people or to the public caused as a result of the contravention;

(c) the extent of any failure by the provider to co-operate with an investigation, provided that acknowledgement of a contravention shall not in itself constitute grounds for reduction of a sanction;

(d) any explanation accepted by the Commission for the contravention or the failure to co-operate with an investigation;

(e) any gain (financial or otherwise) made, or any loss (financial or otherwise) avoided, by the provider or by any person in which that provider has a pecuniary interest or beneficial interest, as a consequence of the contravention;

(f) whether a previous decision under section 139ZS in respect of the provider has been confirmed or made by the appropriate court (within the meaning of section 139ZX) under section 139ZX or confirmed by the Circuit Court under section 139ZY;

(g) the nature and timeliness of any steps taken by the provider to bring the contravention to an end, and any steps taken by the provider to remedy the consequences of the contravention;

(h) the absence or ineffectiveness of internal mechanisms or procedures intended to prevent such a contravention;

(i) the extent to which the contravention was contributed to by the act or omission of a third party, and the extent to which the provider took steps to identify, and mitigate the effect of, the act or omission;

(j) the extent to which the contravention was contributed to by circumstances beyond the control of the provider, and the extent to which the provider took steps to identify, and mitigate the effect of, those circumstances;

(k) the extent to which the management of the provider knew, or ought to have known, that the contravention was occurring or would occur;

(l) the turnover of the provider in the financial years during which the contravention occurred and the ability of the provider to pay a sanction;

(m) any submissions made by the provider under section 139ZU(2) in relation to the determination of the amount of the sanction;

(n) any further information given to the Commission by the provider in response to a request under section 139ZU(3);

(o) previous determinations under this section which have been confirmed or made by the appropriate court (within the meaning of section 139ZX) under section 139ZX or confirmed by the Circuit Court under section 139ZY.

(4) The amount of an administrative financial sanction imposed under section 139ZS shall—

(a) be proportionate to the nature of the contravention, and

(b) be set with a view to deterring the provider, and other providers of broadcasting services, audiovisual on-demand media services or designated online services, from committing a contravention.

(5) The amount of an administrative financial sanction imposed under section 139ZS shall not—

(a) in the case of an individual, be such as would be likely to cause the individual to be adjudicated bankrupt, or

(b) in the case of a provider that is not an individual, be such as would be likely to cause the provider to cease trading.

Appeal against decision

139ZX. (1) The provider to whom a decision under section 139ZS relates may, within 28 days from the date on which the notice referred to in section 139ZT is received, or where section 139ZV applies, within 28 days from the date on which the notice referred to in section 139ZV(3) is received, appeal to the appropriate court against the decision.

(2) An appeal may only be made on—

(a) any ground that could, but for section 38(1), be relied upon by the provider in an application seeking judicial review of the Commission's decision,

(b) in so far as it is not within the grounds referred to in paragraph (a), the ground that any sanction imposed is not proportionate, or

(c) more than one of the grounds referred to at paragraph (a) and (b).

(3) The appropriate court may, on the application of a provider to whom a decision under section 139ZS relates, extend the period for the making of an appeal under subsection (1), where it is satisfied that—

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

(b) the circumstances that resulted in the failure to bring an appeal within the period referred to in subsection (1) were outside the control of the provider, and

(c) an application for confirmation has not been determined under section 139ZY.

(4) In considering an appeal, the appropriate court—

(a) shall have regard to the record of the decision the subject of the appeal, and

(b) may, where it considers it necessary for the fair and proper determination of the appeal, consider any evidence adduced or submission made by the provider concerned, whether or not already adduced or made to the authorised officer or the Commission.

(5) Subject to subsection (7), the appropriate court may, on the hearing of an appeal under subsection (1)—

(a) confirm the decision, or

(b) subject to subsection (6)—

(i) set aside the decision,

(ii) set aside the decision and replace it with such other decision as the court considers it just and appropriate to make, including a decision not to impose an administrative financial sanction, or a decision to impose an administrative financial sanction of a different amount, or

(iii) remit the decision for reconsideration by the Commission, subject to such directions as the court considers appropriate.

(6) A decision of the Commission may not be set aside or remitted by the appropriate court under subsection (5)(b) for error of law or fact unless the appropriate court is satisfied that the Commission committed a serious and significant error in making the decision, or that the Commission committed a series of minor errors which, when taken together, amount to a serious and significant error.

(7) For the purposes of subsection (5), sections 139ZS(4) and 139ZW shall apply to the appropriate court and references to the Commission in those sections shall be construed as references to the appropriate court.

(8) Where the appropriate court is the Circuit Court it may make such interim or interlocutory orders in any proceedings under subsection (1) or (3) as it considers appropriate.

(9) The appropriate court may direct how the costs of an appeal under this section are to be borne.

(10) In this section, 'appropriate court' means—

(a) where no administrative financial sanction is imposed under section 139ZS or where the amount of any administrative financial sanction imposed does not exceed €75,000, or such other sum as stands specified in law as that court's jurisdiction in tort, the Circuit Court, or

(b) in any other case, the High Court.

Circuit Court confirmation of decision

139ZY. (1) Where the provider to whom a decision under section 139ZS relates does not appeal against the decision in accordance with section 139ZX(1), the Commission shall, as soon as is practicable after the expiration of the period referred to in section 139ZX(1), and on notice to the provider, make an application in a summary manner to the Circuit Court for confirmation of the decision.

(2) On the hearing of an application under subsection (1), the Circuit Court shall confirm the decision unless it is satisfied, on the basis of the evidence that was before the Commission when making the decision—

(a) that the Commission made an error of law which is—

(i) manifest from the record of the decision, and

(ii) fundamental so as to deprive the decision of its basis,

or

(b) that any administrative financial sanction imposed is manifestly disproportionate.

(3) If under subsection (2) the Circuit Court does not confirm the decision it may—

(a) annul the decision, or

(b) remit it for reconsideration by the Commission, subject to such directions as it considers appropriate.

(4) A provider may, as soon as practicable after receiving notice of the application under subsection (1), inform the Commission in writing that it does not intend to appear at, or make submissions at, the hearing of the application.

(5) If an application to extend the period for the making of an appeal against a decision is made under section 139ZX(3) to the High Court, the Circuit Court shall make an order staying any application under subsection (1) for the confirmation of that decision until the High Court has made a decision under section 139ZX(3).

(6) If the High Court makes an order under section 139ZX(3) extending the period for the making of an appeal under section 139ZX(1) against a decision, the Circuit Court shall make an order staying any application under subsection (1) for the confirmation of that

decision until the High Court has made a decision on the appeal under section 139ZX(5).

(7) The Circuit Court may make such interim or interlocutory orders as it considers appropriate in any proceedings under subsection (1).

(8) The Circuit Court may direct how the costs of an application under subsection (1) are to be borne.

Treatment of amounts paid in respect of administrative financial sanctions

139ZZ. A payment received by the Commission of any amount due to it pursuant to a decision confirmed or made under section 139ZX or confirmed under section 139ZY shall be paid into, or disposed of for the benefit of, the Exchequer in such manner as the Minister for Finance may direct.

Reference on point of law to High Court

139ZZA. (1) Where a division of the Commission decides, before the making of a decision under section 139ZS, or where a decision is made under that section to impose an administrative financial sanction, before the making of a determination under section 139ZV(1), to refer any question of law arising under Chapter 3 or 4 to the High Court, the Commission shall refer the question.

(2) Subject to subsection (3), no appeal shall lie to the Court of Appeal from a decision of the High Court on a reference under subsection (1).

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

Chapter 5

Notice to end contravention

Notice to end contravention

139ZZB. (1) Where—

(a) the Commission has decided under section 139ZS that it is satisfied that a contravention has occurred, and

(b) the Commission's decision in so far as it relates to the occurrence of the contravention is confirmed under section 139ZX or 139ZY or is replaced under section 139ZX with a decision to the same effect,

the Commission may, if it is of the view that the contravention is continuing, give notice in writing to the provider the subject of the decision directing him or her to put an end to the contravention.

(2) A notice under subsection (1) shall state—

(a) the steps which the Commission requires the provider to take to put an end to the contravention, and

(b) the period within which those steps must be taken.

(3) A notice under subsection (1) shall be given as soon as practicable after the date on which the decision is confirmed under section 139ZX or 139ZY or is replaced under section 139ZX with a decision to the same effect.

(4) A provider who without reasonable excuse fails to comply with a notice under subsection (1) shall be guilty of a category 1 offence.

(5) Where an offence has been committed under subsection (4) by a provider of a designated online service that is a body corporate and the offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a person who was either a director, manager, secretary or other officer of the body corporate, or a person purporting to act in such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the offence committed by the body corporate.

(6) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts or defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(7) Any proceedings, including summary proceedings, under subsection (5) shall not be instituted except by or with the consent of the Director of Public Prosecutions.

Chapter 6

Access blocking order

Access blocking order

139ZZC. (1) The Commission may apply to the High Court for an order requiring an internet service provider or a provider of an application store service to block access in the State to a relevant online service or an audiovisual on-demand media service.

(2) An application to the High Court under subsection (1) shall be made on notice—

(a) to the internet service provider or the provider of an application store service concerned, and

(b) to the provider of the relevant online service or audiovisual on-demand media service concerned.

(3) The court may make an order requiring the blocking of access to a relevant online service if it is satisfied that the provider of the service has actual knowledge that it is making available content that falls within one of the offence-specific categories of harmful online content defined in section 139A(2) and either—

(a) where the service is a designated online service—

(i) the content is made available in contravention of an online safety code which applies to the service, and

(ii) the provider has been convicted of an offence under section 139ZZB(4) for failure to comply with a notice to end the contravention,

or

(b) where the Commission has designated the service but the designation has not taken effect as notice of the designation has not been served on the provider in accordance with section 139H(3)(a)—

(i) making available the content would be a contravention of an online safety code which the Commission intends to apply to the service, and

(ii) the failure to serve notice of the designation on the provider is due to the fault of the provider.

(4) The court may make an order requiring the blocking of access to an audiovisual on-demand media service if it is satisfied that—

(a) the provider of the service has actual knowledge that it is making anything referred to in paragraph (b), (c) or (d) of section 46J(1) available in a catalogue of the service, and

(b) the provider has been convicted of an offence under section 139ZZB(4), for failure to comply with a notice to end the contravention referred to in paragraph (a).

(5) An order may be made under this section if—

(a) the application under subsection (1) was made as soon as practicable after the provider concerned was convicted of the offence referred to in subsection (3)(a)(ii), or (4)(b), or as soon as practicable after the failure referred to in subsection (3)(b)(ii) occurred, as the case may be, and

(b) the order would not be disproportionate.

(6) The High Court may provide in an order under this section that a requirement imposed by the order is subject to such conditions as it considers necessary.

(7) The following persons may apply to the High Court to vary or discharge an order under this section in the event that there is any material change in the circumstances which gave rise to the order:

(a) the internet service provider or provider of an application store service the subject of the order;

(b) the provider of a service access to which is required to be blocked under the order.

(8) Without prejudice to subsection (7), the High Court may, on an application under that subsection or of its own motion, discharge an order under this section if it is satisfied that—

(a) where the order was made on grounds falling within subsection (3)(a)(ii) or (4)(b), the provider of the service has complied with the notice to end the contravention concerned, or

(b) where the order was made on grounds falling within subsection (3)(b), the relevant online service, access to which is required to be blocked under the order, has been designated as a designated online service.

(9) In this section, references to a provider of an application store service blocking access to a service include references to the

provider blocking the downloading of software used to provide the service or to access the service.

(10) For the purposes of this section:

'internet service provider' means a person who provides access to the internet at endpoints of the internet (including, for example, on a smartphone);

'provider of an application store service' means a person who provides a service the main purpose of which is to facilitate the download of, or access to, application software at endpoints of the internet.

Chapter 7

Content limitation notice

Content limitation notice

139ZZD. (1) Subject to subsection (2), where it appears to the Commission, either in the course of an investigation under this Part or otherwise, that content available on a designated online service is harmful online content, the Commission may give a notice in writing to the provider of the designated online service—

(a) where the content appears to the Commission to fall within the offence-specific category of harmful online content defined in section 139A(2), requiring the provider to remove it or to disable access to it, or

(b) in any other case, requiring the provider to remove the content, to disable access to it, or to limit the availability of it.

(2) Where subsection (1) applies in the course of the investigation of a suspected contravention that relates to the content concerned, the Commission—

(a) shall not issue a notice under subsection (1) before it has made a decision under section 139ZS, and

(b) if the decision under that section is that the contravention has occurred, shall not issue a notice under subsection (1) before the decision, in so far as it relates to the occurrence of the contravention, is confirmed under section 139ZX or 139ZY or is replaced under section 139ZX with a decision to the same effect.

(3) In issuing a notice under subsection (1), the Commission shall have regard to the following matters:

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

(b) the technical capacity of the provider;

(c) levels of risk of harm, and in particular harm to children, from the availability of the content or exposure to it;

(d) the rights of the provider and users of the designated online service, and of the uploader of the content;

(e) the rights of persons to whom the content may pertain;

(f) the proportionality of any requirement contained in the notice, in light of the matters referred to in paragraphs (a) to (e).

(4) Where a notice under subsection (1) requires that the availability of an item of content be limited, the notice may also, without prejudice to the generality of subsection (1), require one or more of the following:

(a) that the provider restrict access to the content to persons who have attained the age of 18 years, or such other age less than 18 years as the Commission may specify;

(b) that a warning or specified information be placed by the provider with the content in a way specified in the notice;

(c) that the provider limit the ability of users of the designated online service to interact with the content;

(d) that the provider ensure that prominence is not given to the content, or the content is not recommended to users of the designated online service, or to users below a specified age, including by automated means.

(5) A notice under subsection (1) shall not impose an obligation on a provider contrary to Article 15 of the E-Commerce Directive.

Procedure in relation to content limitation notice

139ZZE. (1) A notice under section 139ZZD(1) shall—

(a) identify the content the subject of the notice,

(b) state the particular category of harmful online content under section 139A into which the Commission considers that the content falls, and the reasons for that consideration,

(c) provide sufficient information to allow the provider to locate the content on the designated online service,

(d) specify the action required by the Commission under section 139ZZD(1) and the reasons for that action,

(e) where the action required by the Commission under section 139ZZD(1) is that the availability of the content be limited, specify the nature of the limitation,

(f) identify the geographical area within which the action required by the Commission under section 139ZZD(1) must be taken, and

(g) state that the provider, and the uploader where relevant, may make submissions in relation to the notice within such period as may be specified in the notice, which shall not be less than 28 days after the date on which the notice is issued.

(2) A provider who receives a notice under section 139ZZD(1) shall, where the content is user-generated content, take all reasonable steps to provide a copy of that notice and a copy of this section to the uploader of the content within 2 days of receiving it.

(3) The provider shall inform the Commission of all steps taken by the provider in order to comply with subsection (2) and the Commission may direct—

(a) that such further steps as the Commission considers necessary for the purposes of complying with subsection (2) be taken by the provider, within such period as the Commission considers appropriate, or

(b) that no further steps are necessary.

(4) Where a provider receives a notice under section 139ZZD(1), the provider may make submissions to the Commission in relation to the notice within the period specified in the notice, or within such further period as the Commission may allow.

(5) Where an uploader receives a copy of the notice under subsection (2), the uploader may make submissions to the Commission in relation to the notice within the period specified in the notice, or within such further period as the Commission may allow.

(6) Submissions may be made under subsection (4) or (5) in relation to—

(a) whether or not the content the subject of the notice is harmful online content (provided that issue has not been determined by the Commission in a decision under section 139ZS, or by the court under section 139ZX or 139ZY), and

(b) the requirements set out in the notice.

(7) The Commission, after considering any submissions made under subsections (4) and (5) and, having regard to the matters referred to in section 139ZZD(3), shall—

(a) confirm the notice after making such amendments, if any, as it considers necessary, and specify the period within which the provider must comply with the notice, or

(b) revoke the notice.

(8) If the Commission confirms the notice under subsection (7)(a), it shall provide to the provider and (if applicable) the uploader a copy of the notice, or of the notice as amended, and a statement in writing—

(a) of the confirmation and the reasons for it,

(b) of the reasons for any amendment made to the notice,

(c) of the period determined under subsection (7)(a) within which the provider must comply with the notice, and

(d) of the right of the provider or (if applicable) the uploader to appeal the notice in accordance with section 139ZZF.

(9) A provider who without reasonable excuse fails to comply with a notice confirmed under subsection (7)(a) within the period specified under that paragraph, shall be guilty of a category 3 offence.

Appeal

139ZZF. (1) The provider of a designated online service or the uploader of user-generated content concerned may within 28 days of receipt of a notice confirmed under section 139ZZE(7)(a), appeal to the Circuit Court against the notice.

(2) The Circuit Court, where it considers that the Commission was irrational or erroneous in its reasoning, or committed a failure to comply with fair procedures, or any other clear error of law, in the issuing of the notice referred to in subsection (1), may—

(a) set aside the notice,

(b) replace the notice with such other notice as it considers appropriate, or

(c) remit the notice for reconsideration by the Commission, with such directions as the court considers appropriate.

Publication of content limitation notice

139ZZG. (1) The Commission shall publish the following on a website maintained by it:

(a) a notice which has been confirmed under section 139ZZE(7)(a);

(b) a notice of a decision by the Circuit Court under section 139ZZF(2) to affirm, set aside, replace or remit a notice confirmed under section 139ZZE(7)(a).

(2) The Commission shall publish a list of the notices referred to in subsection (1), in such form as it considers appropriate, on a website maintained by it.

(3) The Commission may redact information from a notice to be published under subsection (1) if it appears to the Commission that—

(a) the publication of the information may prejudice an ongoing investigation under this Part by the Commission, the Garda Síochána or any other public body, or

(b) the information is personal data.

(4) Where the redaction of information under subsection (3) would prevent the remainder of the notice, or a portion of the notice, being understood, the Commission may publish a summary in place of the notice or the portion of the notice.

Chapter 8

Offences

Categories of offences

139ZZH. (1) A person guilty of an offence under this Act that is stated to be a category 1 offence shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 10 years or both.

(2) A person guilty of an offence under this Act that is stated to be a category 2 offence shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

(3) A person guilty of an offence under this Act that is stated to be a category 3 offence shall be liable, on summary conviction, to a class A fine.

Summary prosecution and costs

139ZZI. (1) Summary proceedings for an offence under this Act may be brought and prosecuted by the Commission.

(2) Notwithstanding (in the case of a category 3 offence) section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted—

(a) at any time within 2 years from the date on which the offence was alleged to have been committed, or

(b) if, at the expiry of that period, the person against whom the proceedings are to be brought is outside the State, within 6 months of the date on which he or she next enters the State,

provided that no such proceedings shall be commenced later than 5 years from the date on which the offence concerned was alleged to have been committed.

(3) Where a person is convicted of an offence under this Act, the court may, where it is satisfied that there are good reasons for so doing, order the person to pay the costs and expenses, measured by the court, incurred by the Commission in relation to the investigation, detection and prosecution of the offence, including the costs and expenses of and incidental to an examination of any information provided to the Commission or an authorised officer.".

Oral hearings

48. The Principal Act is amended by the insertion of the following Schedule after Schedule 3:

"SCHEDULE 4

Sections 139ZK(3), 139ZR(3) and (4) or 139ZU(2)(a)

Oral hearings

1. (1) This Schedule applies to an oral hearing under section 139ZK(3), 139ZR(3) or (4) and 139ZU(2)(a).

(2) In this Schedule—

(a) 'conducting authority' means—

(i) in relation to an oral hearing under section 139ZK(3), the authorised officer conducting the hearing, and

(ii) in relation to an oral hearing under section 139ZR(3) or (4) or section 139ZU(2)(a), the Commission,

(b) 'investigation' means—

(i) in relation to an oral hearing under section 139ZK(3), the investigation for the purposes of which the hearing is conducted, and

(ii) in relation to an oral hearing under section 139ZR(3) or (4) or section 139ZU(2)(a), the investigation to which the report mentioned in that provision relates,

and

(c)'remote hearing' means a hearing in which—

(i) the participants, including the conducting authority, are not all in the one place, and

(ii) one or more of them participate in the hearing by means of electronic communications technology permitting real time transmission and real-time two-way audiovisual, or audio, communications.

2. The conducting authority may by notice in writing require a person to attend or participate in an oral hearing at a time and place specified in the notice—

(a) to give evidence in respect of any matter in issue, or

(b) to produce any relevant material or relevant equipment which is within the person's possession or control or which the person is able to procure.

3. At an oral hearing, the conducting authority may take evidence on oath or affirmation, and may administer an oath for that purpose.

4. (1) The conducting authority may allow a witness at an oral hearing to give evidence by tendering a written statement.

(2) A statement tendered under subparagraph (1) shall be verified by oath or affirmation.

5. A person giving evidence at an oral hearing, including an authorised officer where the conducting authority is the Commission, may be examined and cross-examined at the oral hearing.

6. The conducting authority is bound by the rules of evidence in the conduct of an oral hearing, subject to such exceptions to the rule against hearsay evidence as may be provided for by rules under section 139ZN.

7. A person to whom notice is given under paragraph 2 shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in that paragraph as if the person were a witness before the High Court.

8. Where a person to whom notice is given under paragraph 2 does not comply with a requirement referred to in that paragraph, the conducting authority may apply in a summary manner to the Circuit Court, on notice to that person, for an order requiring the person to comply with the requirement within a period to be specified by the Court, and the Court may make the order sought or such other order as it thinks fit or refuse to make any order.

9. Nothing in this Schedule compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person's possession.

10. The conducting authority, where it is satisfied that special circumstances arise which so necessitate, may—

(a) hold an oral hearing otherwise than in public, or partly otherwise than in public, or

(b) require that any information is not disclosed in an oral hearing, or not otherwise published or reported where the Commission considers that—

(i) it is commercially sensitive,

(ii) its publication may prejudice an ongoing investigation by the Commission, the Garda Síochána or any other public body, or

(iii) it is personal data.

11. The conducting authority may pay or reimburse out of moneys at its disposal, in whole or in part, the reasonable travelling and subsistence expenses of a person required to attend an oral hearing.

12. An oral hearing may be held by remote hearing.

13. A person who without reasonable excuse knowingly gives false or misleading evidence on oath or affirmation, shall be guilty of an offence and may be liable—

(a) on summary conviction, to a class B fine or to imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 10 years, or both.

14. A person who does not comply with a requirement under paragraph 2 or paragraph 10(b), shall be guilty of a category 2 offence.

15. A statement or admission made by a person in the course of an oral hearing, shall not be admissible in evidence in proceedings brought against the person for an offence, other than an offence under paragraph 13, and this shall be explained to the person in ordinary language by the conducting authority.".

PART 13

Amendment of Part 10 of Principal Act

Amendment of section 153 of Principal Act

49. Section 153 of the Principal Act is amended—

(a) by the insertion of the following definition after the definition of "free television service":

"'local sound broadcaster' means a person holding a sound broadcasting contract under section 63—

(a) which is a contract for the provision of a sound broadcasting service in an area consisting of a part, but not the whole, of the State, and

(b) which is not a contract under section 64 or 68(1)(b);",

and

(b) by the substitution of the following definition for the definition of "scheme":

"'scheme' means—

(a) in sections 154 and 155, a scheme prepared under section 154,

(b) in section 155A, a scheme prepared under that section, and

(c) in sections 156 to 159, a scheme prepared under section 154 or 155A.".

Amendment of section 154 of Principal Act

50. Section 154 of the Principal Act is amended—

(a) in subsection (2)(a)(ii), by the deletion of "or MMD system", and

(b) by the deletion of subsection (11).

Scheme for professional journalistic practices in local sound broadcasting and community broadcasting

51. The Principal Act is amended by the insertion of the following section after section 155:

"155A. (1) The Commission shall prepare and submit to the Minister for his or her approval a scheme or a number of schemes for the making of grants to local sound broadcasters and community broadcasters for the purposes of supporting and promoting good professional journalistic practices and standards in local sound broadcasting and community broadcasting and towards the cost of such ancillary measures as are necessary to support such a scheme or schemes.

(2) A scheme may provide for—

(a) the number of grants to be awarded in a year,

(b) the procedures for the making of applications for grants by local sound broadcasters and community broadcasters,

(c) the amount which may be awarded in respect of each grant, and

(d) the terms and conditions subject to which a grant may be awarded.

(3) A scheme may in particular require a local sound broadcaster or community broadcaster to whom a grant is awarded—

(a) to apply the grant to the costs of providing appropriate training or professional development for persons employed by, or providing services to, the broadcaster for the purposes referred to in subsection (1), and

(b) to co-fund the costs of that training or professional development.

(4) The Commission, in preparing a scheme—

(a) shall have regard to its duty set out in section 7(3)(d), and

(b) may have regard to the developmental needs of local sound broadcasters and community broadcasters.

(5) The Minister may direct the Commission—

(a) to provide in any scheme for practices and standards in a description of local sound broadcasting or community broadcasting specified by the Minister,

(b) to amend or revoke a scheme,

and the Commission shall comply with any such direction.

(6) If a scheme is approved of by the Minister, the Commission shall—

(a) as soon as practicable after the approval, make the scheme, and

(b) carry out the scheme in accordance with its terms.

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

(8) Where a broadcaster—

(a) submits, in an application for a grant under a scheme, information that is incomplete or inaccurate in a material respect and on which the Commission relies in awarding a grant to the broadcaster, or

(b) having been awarded a grant, fails to comply with a condition subject to which the grant was awarded,

the broadcaster shall repay such amount of the grant as the Commission may demand in writing.

(9) If the broadcaster does not repay an amount demanded under subsection (8), the Commission may recover the amount due and owing from the broadcaster as a simple contract debt in any court of competent jurisdiction.".

Amendment of section 157 of Principal Act

52. Section 157 of the Principal Act is amended—

(a) in subsection (1), by the substitution of "continue to maintain" for "establish and maintain on the establishment day", and

(b) in subsection (3), by the insertion of "or section 155A" after "under section 154".

Amendment of section 159 of Principal Act

53. Section 159 of the Principal Act is amended in subsection (3) by the insertion of "or section 155A" after "under section 154".

PART 14

European works

European works

54. The Principal Act is amended by the insertion of the following Part after Part 10:

"PART 10A

European works

Interpretation of European works

159A. (1) For the purposes of this Act, subject to subsections (2) and (3), the following are European works:

(a) works originating in Member States;

(b) works originating in third countries that are European states party to the European Convention on Transfrontier Television of the Council of Europe done at Strasbourg on 5 May 1989;

(c) works that do not fall within paragraph (a) or (b), that are co-produced within the framework of agreements related to the audiovisual sector concluded between the European Union and third countries, and that fulfil the conditions defined in those agreements;

(d) works that do not fall within paragraph (a), (b) or (c), and that are co-produced within the framework of bilateral co-production agreements concluded between Member States and third countries, provided that—

(i) the co-producers from the Member States supply a majority share of the total cost of production, and

(ii) the production is not controlled by one or more co-producers established in a third country.

(2) Subsection (1)(b) and (c) do not apply in the case of a third country if works originating in Member States are the subject of discriminatory measures in that country.

(3) A work falls within paragraph (a) or (b) of subsection (1) only if it is mainly made with authors and workers residing in one or more of the states referred to in those paragraphs and meets one of the conditions in subsections (4) to (6).

(4) The first condition is that the work is made by one or more producers established in one or more of those states.

(5) The second condition is that the production of the work is supervised and controlled by one or more producers established in one or more of those states.

(6) The third condition is that there are co-producers, including one or more established outside those states, but—

(a) the contribution of co-producers established in those states to the total co-production costs is preponderant, and

(b) the co-production is not controlled by one or more co-producers established outside those states.

(7) In this section, 'third country' means a state other than a Member State.

Share of European works

159B. (1) A media service provider under the jurisdiction of the State shall not provide an audiovisual on-demand media service with a

catalogue in which the share of European works is less than 30 per cent.

(2) Subsection (1) does not apply to—

(a) a media service provider with a low turnover or low audience, or

(b) a service exempted by rules under section 159I.

(3) The Commission shall make rules for determining—

(a) for the purposes of subsection (1), whether an audiovisual on-demand media service has a catalogue in which the share of European works is less than 30 per cent, and

(b) for the purposes of subsection (2)(a), whether a media service provider has a low turnover or low audience.

(4) In making rules under subsection (3), the Commission shall have regard to—

(a) any guidelines issued by the European Commission in accordance with Article 13(7) of the Directive, and

(b) any relevant reports produced by the European Regulators Group for Audiovisual Media Services established by Article 30b of the Directive.

(5) In making rules under subsection (3)(b), the Commission shall have regard to any relevant characteristics of the market in which a media service provider under the jurisdiction of the State provides an audiovisual on-demand media service, including—

(a) the turnover of the provider from the service in the market, as a proportion of the total turnover of providers of audiovisual on-demand media services from those services in the market, and

(b) the number of audience members of the service in the market, as a proportion of the total number of audience members for audiovisual on-demand media services in the market.

(6) The Commission may make rules prescribing records a provider must keep and any other action a provider must take to enable compliance with the requirement in subsection (1) to be assessed.

(7) A failure to comply with subsection (1) or any rules made under subsection (6) is a contravention for the purposes of Part 8B.

Prominence of European works

159C. (1) A media service provider under the jurisdiction of the State which provides an audiovisual on-demand media service shall take any steps required by rules under this section to ensure prominence of European works in any catalogue of that service.

(2) Subsection (1) does not apply to—

(a) a media service provider with a low turnover or low audience, or

(b) a service exempted by rules under section 159I.

(3) The Commission shall make rules setting out the steps that media service providers must take for the purposes of subsection (1).

(4) Without prejudice to the generality of subsection (3), the steps required by the rules referred to in subsection (3) may relate to:

(a) the visibility and presentation of European works within a catalogue;

(b) the inclusion of information in a catalogue in relation to whether or not a work is a European work, and the placement of that information;

(c) the accessibility of European works within a catalogue, including the configuration of search tools;

(d) references to European works in advertising for the service;

(e) the promotion of minimum percentages of European works within a catalogue to the audience of the service, and the means to be used for such promotion.

(5) In making rules under subsection (3), the Commission shall have regard to—

(a) the objective of cultural diversity,

(b) the desirability of providing European works to the widest possible audience,

(c) technological developments,

(d) developments in audiovisual on-demand media service markets, and

(e) any relevant reports produced by the European Regulators Group for Audiovisual Media Services established by Article 30b of the Directive.

(6) The Commission may make rules prescribing records a provider must keep and any other action a provider must take to enable compliance with the requirement in subsection (1) to be assessed.

(7) Rules made under section 159B(3)(b) shall apply for the purposes of subsection (2)(a).

(8) A failure to comply with subsection (1) or any rules made under subsection (3) or (6), is a contravention for the purposes of Part 8B.

Reporting

159D. (1) The Commission shall report to the Minister annually on the operation of sections 159B and 159C.

(2) The Minister may specify the form and contents of a report referred to in subsection (1).

European works levy

159E. (1) The Commission may, for the purposes of funding a scheme made under section 159F, make an order imposing a levy on the media service providers referred to in subsection (2), or on any class of those providers.

(2) The providers mentioned in subsection (1) are media service providers and—

(a) are under the jurisdiction of the State, or

(b) target audiences in the State and are established in another Member State in accordance with section 2A(2).

(3) A levy order may provide for the collection, payment and administration of a levy, including:

(a) the method of calculation of the levy;

(b) the period in respect of which the levy is imposed;

(c) the times at which payment is to be made and the form of payment;

(d) the records which a provider must keep and make available to the Commission;

(e) exemptions from the levy, deferrals of payment of the levy or refunds of the levy;

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

(4) In the case of a media service provider that is under the jurisdiction of the State and targets audiences in another Member State, the method of calculation of a levy shall take into account any financial contribution imposed on the provider by that Member State.

(5) In the case of a media service provider which targets audiences in the State and is established in another Member State in accordance with section 2A(2)—

(a) the method of calculation of a levy shall be based on the revenue earned by the provider in the State from any audiovisual media service which it provides there, and

(b) the levy shall be proportionate and non-discriminatory.

(6) A levy shall not apply to a media service provider—

(a) with a low audience or a low turnover, in accordance with any rules made under section 159B(3)(b), or

(b) in respect of a service exempted under any rules made under section 159I.

(7) Where a levy imposed on a media service provider remains unpaid, in whole or in part, the levy or part of the levy may be recovered by the Commission as a simple contract debt in any court of competent jurisdiction.

(8) In this section and section 159F—

'levy' means a levy imposed by a levy order;

'levy order' means an order made under subsection (1).

European works scheme

159F. (1) The Commission, following consultation with Fís Éireann, may prepare a scheme for funds to be granted, out of the proceeds of

any levy, to provide support for the production of European works included, or to be included, in the programme schedule of an audiovisual broadcasting service, or in a catalogue of an audiovisual on-demand media service.

(2) The kinds of support for which funds may be granted under a scheme shall be support of such of the following, or such classes or descriptions of any of the following, as the scheme may specify:

(a) new audiovisual programmes relating to—

(i) Irish culture, language, history, heritage, society and sport,

(ii) the experiences of the people of the island of Ireland, including the experiences of people of Irish ancestry living abroad,

(iii) environmental sustainability, biodiversity, and climate change,

(iv) human rights, equality, diversity and inclusion,

(v) news, current affairs and international affairs,

(vi) science, or

(vii) education;

(b) new audiovisual programmes to—

(i) improve adult literacy, or

(ii) improve media literacy;

(c) incidental, supplementary or consequential measures that appear to the Commission to be necessary to support programmes referred to in paragraph (a) or (b);

(d) any activity in the development of programmes referred to in paragraph (a) or (b) or of measures referred to in paragraph (c).

(3) A scheme may in particular:

(a) specify the kind of support for which funds may be granted by reference to the nature or subject matter of programmes within paragraph (a) or (b) of subsection (2);

(b) limit support for which funds may be granted in a particular period to support of specified kinds;

(c) impose requirements as to the time within which programmes in relation to which funds have been granted are to be made available in the schedule of an audiovisual broadcasting service or in a catalogue of an audiovisual on-demand media service;

(d) impose requirements as to such services or as to how such programmes are to be made available on them, which may include requirements to ensure that such services are, or include, services—

(i) that are so far as practicable available in the whole of the State, and

(ii) on which the programmes concerned are made available without charge to the viewer.

(4) A scheme shall allocate—

(a) not less than 25 per cent of its annual funds to programmes in the Irish language that fall within paragraph (a) or (b) of subsection (2), and

(b) not less than 80 per cent of its annual funds to programmes that fall within paragraph (a) or (b) of subsection (2), the producers of which are independent producers for the purposes of the scheme.

(5) A scheme shall include provision for determining whether the producer of a programme is an independent producer, and for the purpose of making such provision the Commission may have regard to the following matters:

(a) the ownership structure of the person that produces the programme;

(b) the amount of programmes supplied by the person who produces the programme to the same media service provider;

(c) the ownership of the rights to broadcast the programme or make it available in a catalogue of an audiovisual on-demand media service, or otherwise use the programme for a commercial purpose;

(d) such other matters as it considers appropriate.

(6) If the Minister directs it to do so, the Commission shall prepare a scheme specifying in accordance with subsection (2) any kind of support the Minister directs.

(7) A scheme may provide for:

(a) applications for a grant of funding;

(b) the terms and conditions upon which funds are granted;

(c) the records a provider which receives funding must keep and make available to the Commission.

(8) In preparing a scheme, the Commission shall have regard to the need to—

(a) ensure understanding and enjoyment of new audiovisual programmes by people with disabilities,

(b) support the development of new audiovisual programmes of interest to children, and to young people under the age of 25 years, and

(c) encourage the development of community broadcasters, including development as regards audiovisual on-demand media services provided by such broadcasters.

(9) In this section, and sections 159G and 159H, 'scheme' means a scheme prepared under subsection (1).

Procedure for making schemes under section 159F

159G. (1) The Commission shall submit a scheme to the Minister for approval.

(2) The Minister shall consider a scheme submitted to him or her, and may—

(a) approve the scheme,

(b) refuse to approve the scheme,

(c) direct the Commission to reconsider the scheme, or

(d) direct the Commission to resubmit the scheme with such amendments as the Commission thinks fit.

(3) Where a scheme is approved by the Minister under subsection (2)(a), the Commission shall, as soon as is practicable after the approval, make the scheme.

(4) The Commission shall administer a scheme approved by the Minister under subsection (2)(a) in accordance with its terms.

(5) The Commission may prepare amendments to a scheme approved by the Minister under subsection (2)(a), and subsections (1) to (4) and section 159J apply to amendments to such a scheme as they apply to a scheme.

(6) The Minister may, in respect of a scheme approved under subsection (2)(a), direct the Commission to—

(a) review the scheme, and prepare and submit to the Minister any amendments to the scheme the Commission thinks fit, or

(b) revoke the scheme.

(7) The Commission shall comply with a direction under paragraph (c) or (d) of subsection (2), or subsection (6).

Designation of Fís Éireann for the purpose of making a European works scheme

159H. (1) The Minister may, where he or she considers it appropriate to do so, by order provide that Fís Éireann may prepare a scheme under section 159F(1), subject to any restriction in the order as to the kinds of support for which funds may be granted under such a scheme.

(2) Where an order is made under subsection (1), sections 159F and 159G shall apply to the preparation and making of a scheme by Fís Éireann subject to any restriction referred to in subsection (1) and the modification—

(a) that references in those sections to the Commission shall be construed as references to Fís Éireann, and

(b) in section 159F(1), that 'following consultation with the Commission' shall be substituted for 'following consultation with Fís Éireann'.

(3) Where the Minister makes an order under subsection (1), he or she may direct the Commission to pay such monies collected out of the levy referred to in section 159E to Fís Éireann for the purposes of funding a scheme prepared by Fís Éireann as he or she considers appropriate, and the Commission shall comply with such a direction.

Exemptions for particular services

159I. (1) The Commission may make rules providing that the obligations in section 159B(1) or 159C(1) shall not apply to an audiovisual on-demand media service, or that a levy under section 159E shall not apply to a media service provider in respect of an audiovisual media service, where it would be impracticable or unjustified by reason of the nature of the service, or the general theme of audiovisual programmes provided by the service, to impose those obligations.

(2) In making rules under subsection (1), the Commission shall have regard to whether an audiovisual media service provides audiovisual programmes—

(a) dealing with a narrow subject matter which may not be of general interest to an audience, or

(b) which may impair the physical, mental or moral development of children, including gratuitous violence and pornography.

Laying of rules, orders and schemes

159J. Any rule, order or scheme made under this Part shall be laid by the Commission, or in the case of a scheme made by Fís Éireann in accordance with section 159H, by Fís Éireann before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the rule, order or scheme is passed by either such House within the next 21 days on which that House sits after the rule, order or scheme is laid before it, the rule, order or scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.".

PART 15

Amendment of Part 11 of Principal Act

Amendment of section 160 of Principal Act

55. Section 160 of the Principal Act is amended in subsection (1)—

(a) in the definition of "broadcaster", by the substitution of "Directive" for "Council Directive", and

(b) in the definition of "television broadcasting", by the substitution of "Directive" for "Council Directive".

Amendment of section 163 of Principal Act

56. Section 163 of the Principal Act is amended in subsection (1), in paragraph (a), by the deletion of "for the purpose of the Council Directive".

Amendment of section 165 of Principal Act

57. Section 165 of the Principal Act is amended by the substitution of "Article 14(2) of the Directive" for "Article 3j.2 of the Council Directive".

Amendment of section 170 of Principal Act

58. Section 170 of the Principal Act is amended in paragraph (e) by the substitution of "Article 14 of the Directive" for "Article 3j of the Council Directive".

PART 16

DISSOLUTION AND TRANSITIONAL PROVISIONS

Dissolution of Authority and statutory committees

59. (1) The Authority and the statutory committees are dissolved on the establishment day.

(2) Notwithstanding any of the conditions of their appointment, the term of a member of the Authority or a member of either of the statutory committees terminates on the establishment day.

Transfer of functions

60. (1) On the establishment day all functions that immediately before the establishment day were vested in the Authority or the statutory committees are transferred to the Commission.

(2) Unless otherwise provided, references to the Authority, or to the Broadcasting Commission of Ireland, in any Act of the Oireachtas passed before the establishment day, other than this Act, or in any instrument made before that day under an Act of the Oireachtas shall, on and after that day, be construed as references to the Commission.

(3) Unless otherwise provided, references to the Contract Awards Committee or the Compliance Committee in any Act of the Oireachtas passed before the establishment day, other than this Act, or in an instrument made before that day under an Act of the Oireachtas shall, on and after that day, be construed as references to the Commission.

Transfer of staff

61. (1) Every person who immediately before the establishment day was a member of the staff of the Authority shall on that day become a member of the staff of the Commission.

(2) Except in accordance with a collective agreement negotiated with a recognised trade union or staff association, a person shall not, on becoming a member of the staff of the Commission under this section, be subject to less favourable terms and conditions of service, including those relating to tenure of office, or of remuneration, than those to which he or she was subject immediately before the establishment day.

(3) In relation to a person transferred to the staff of the Commission under *subsection (1)*, previous service with the Authority shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the following Acts of the Oireachtas:

(a) the Redundancy Payments Acts 1967 to 2014;

(b) the Protection of Employees (Part-Time Work) Act 2001;

(c) the Protection of Employees (Fixed-Term Work) Act 2003;

(d) the Minimum Notice and Terms of Employment Acts 1973 to 2005;

(e) the Unfair Dismissals Acts 1977 to 2015;

(f) the Terms of Employment (Information) Acts 1994 to 2014;

(g) the Organisation of Working Time Act 1997;

(h) the Parental Leave Acts 1998 to 2019;

(i) the Carer's Leave Act 2001;

(j) the Maternity Protection Acts 1994 and 2004;

(k) the Adoptive Leave Acts 1995 and 2005, together with the amendments of the Adoptive Leave Act 1995 in Part 2 of the Family Leave and Miscellaneous Provisions Act 2021;

(l) the Paternity Leave and Benefit Act 2016;

(m) the Parent's Leave and Benefit Act 2019.

(4) A superannuation scheme made under section 16 of the Principal Act, before the coming into operation of *section 8*, and in force immediately before the establishment day, shall continue in force on and after that day and shall—

(a) be considered to be a scheme made under section 18 of the Principal Act as substituted by *section 8*, and

(b) be construed as if references to a member of the staff of the Commission included references to a member of the staff of the Authority.

Transfer of land and other property

62. (1) On the establishment day, all land that, immediately before that day, was vested in the Authority and all rights, powers and privileges relating to or connected with such land shall, without any conveyance or assignment, stand vested in the Commission for all the estate or interest for which, immediately before the establishment day, the land was vested in the Authority, but subject to all trusts and equities affecting the land continuing to subsist and being capable of being performed.

(2) Subject to *subsection (4)*, on the establishment day all property other than land, including choses-in-action, that immediately before that day was vested in the Authority shall stand vested in the Commission without any assignment.

(3) Every chose-in-action vested in the Commission by virtue of *subsection (2)* may, on and from the establishment day, be sued on, recovered or enforced by the Commission in its own name, and it shall not be necessary for the Commission, or the Authority, to give notice to any person bound by the chose-in-action of the vesting effected by that subsection.

(4) Any levy income paid to the Authority under a levy order made under section 33 of the Principal Act (as that section had effect immediately before the coming into operation of *section 8*) surplus to the expenses incurred by the Authority in the discharge of its functions shall, if transferred to the Commission, be used by the Commission to discharge its expenses in performing its functions in relation only to broadcasting services, as defined by section 2 of the Principal Act before the coming into operation of *section 3*.

Transfer of rights and liabilities

63. (1) All rights and liabilities of the Authority arising by virtue of any contract or commitment, whether expressed or implied, subsisting immediately before the establishment day, and all obligations imposed on the Authority by virtue of an order of a court or tribunal, shall on that day be transferred to the Commission.

(2) Every right and liability transferred by *subsection (1)* to the Commission may, on and after the establishment day, be sued on, recovered or enforced by or against the Commission in its own name, and it shall not be necessary for the Commission, or the Authority, to give notice of such transfer to the person whose right or liability is transferred by that subsection.

(3) Every lease, licence, wayleave or permission granted by the Authority in relation to land or other property vested in the Commission by or under this Act, and in force immediately before the establishment day, shall continue in force as if granted by the Commission.

Liability for loss incurring before establishment day

64. (1) A claim in respect of any loss or injury alleged to have been suffered by any person arising out of the performance before the establishment day of any of the functions of the Authority shall on and after that day, lie against the Commission and not against the Authority.

(2) Any legal proceedings pending immediately before the establishment day to which the Authority is a party shall be continued with the substitution in the proceedings of the Commission for the Authority.

(3) Where, before the establishment day, agreement has been reached between the parties concerned in settlement of a claim to which *subsection (1)* relates, the terms of which have not been implemented, or judgment in such a claim has been given in favour of a person but has not been enforced, the terms of the agreement or judgment, as the case may be, shall, in so far as they are enforceable against the Authority, be enforceable against the Commission and not the Authority.

(4) Any claim made or proper to be made by the Authority in respect of any loss or injury arising from the act or default of any person before the establishment day shall be regarded as having been made by or proper to be made by the Commission and may be pursued and sued for by the Commission as if the loss or injury had been suffered by the Commission.

Provisions consequent upon transfer of functions, assets and liabilities to Commission

65. (1) Anything commenced and not completed before the establishment day by or under the authority of the Authority or the statutory committees may, in so far as it relates to a function transferred to the Commission by this Act, be carried on or completed on or after the establishment day by the Commission.

(2) Every instrument made under an enactment, and every document granted or made, in the performance of a function transferred by this Act shall, if and in so far as it was operative immediately before the establishment day, have effect on and after that day as if it had been granted or made by the Commission.

(3) References to the Authority in the memorandum or articles of association or constitution of any company and relating to a function transferred by

this Act shall, on and after the establishment day, be construed as references to the Commission.

(4) Any money, stocks, shares or securities transferred by *section 62* that immediately before the establishment day were standing in the name of the Authority shall, on the request of the Commission be transferred into its name.

(5) A certificate signed by the Minister that any property, right or liability has or, as the case may be, has not vested in the Authority under this Act shall be sufficient evidence, unless the contrary is shown, of the fact so certified for all purposes.

Final accounts and final annual report of Authority

66. (1) Final accounts of the Authority shall be drawn up by the Commission as soon as may be after the establishment day but not later than 6 months thereafter and shall be in such form as may be approved by the Minister, in respect of the financial year or part of the financial year of the Authority.

(2) Accounts prepared pursuant to this section shall be submitted as soon as may be by the Commission to the Comptroller and Auditor General for audit, and, immediately after the audit, a copy of the income and expenditure account and of the balance sheet and of such other (if any) of the accounts as the Minister may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies of them to be laid before each House of the Oireachtas.

(3) The Commission shall prepare the final annual report for the Authority and submit the report to the Minister not later than 6 months after the establishment day.

(4) Subject to *subsection (3)* and to the modifications referred to in *subsection (5)*, section 31 of the Principal Act as substituted by *section 8* shall apply in relation to an annual report prepared under this section.

(5) The modifications referred to in *subsection (4)* are that—

(a) the reference to Part 10A of the Principal Act in section 31(3) of the Principal Act shall be deleted, and

(b) the reference in section 31(4) of the Principal Act to media service rules shall be construed as a reference to broadcasting rules made under section 43(1)(c) of the Principal Act as it existed before the coming into operation of *section 73(a)*.

Transfer of records

67. Each record held by the Authority immediately before the establishment day shall, on the establishment day, be transferred to the Commission and shall, on and after that day, be the property of the Commission and be regarded as being held by the Commission.

Amendment of section 46M(5) of Principal Act

68. Section 46M(5) of the Principal Act, as inserted by *section 10*, is amended—

(a) by the substitution of "An Coimisiún Toghcháin" for "the Referendum Commission", and

(b) by the substitution of "section 31 of the Electoral Reform Act 2022" for "section 3 of the Act of 1998".

Complaints under section 48 of Principal Act

69. (1) A complaint made under section 48 of the Principal Act which has not before the date of coming into operation of *section 12*—

(a) been decided upon by the Compliance Committee, or (subject to section 48(13) of the Principal Act) been withdrawn, under section 48 of the Principal Act, or

(b) been resolved by a broadcaster under section 47 of the Principal Act,

shall, on and after that date, and subject to the modifications referred to in *subsection (2)*, be considered by the Commission as if *sections 11* and *12* had not come into operation.

(2) The modifications are that—

(a) references to the Compliance Committee in section 48 of the Principal Act shall be construed as references to the Commission, and

(b) where before the date of coming into operation of *section 12*, an oral hearing has been held under section 48(16) of the Principal Act, but the complaint has not been decided upon, withdrawn, or resolved, the Commission may hold a further oral hearing under that section 48(16).

Investigation under section 50 of Principal Act

70. (1) Where before the date of coming into operation of *section 14* an investigation conducted under section 50 of the Principal Act has not resulted in a finding under section 50(7) of the Principal Act the investigation shall, on and after that date and subject to the modifications referred to in *subsection (2)*, be considered to be an investigation under section 50 of the Principal Act as amended by this Act.

(2) The modifications are that—

(a) the investigator appointed by the Compliance Committee shall be deemed to have been appointed in accordance with section 50(2) and (2A) of the Principal Act as amended by this Act, and

(b) where before the date of coming into operation of *section 14* submissions have been made by a contractor under section 50(5) of the Principal Act, but a finding has not been made under section 50(7) of that Act, the contractor may be afforded a further opportunity to make submissions to the Commission under section 50(5) of the Principal Act as amended by this Act.

Termination or suspension of contract under section 51 of Principal Act

71. (1) Where before the date of coming into operation of *section 15* the Compliance Committee has issued a notification under section 51(2) of the Principal Act but not heard submissions under that subsection, the notification shall on and after that date, and subject to the modification referred to in *subsection (4)(a)*, be considered to be a notice under section 51(2) of the Principal Act as amended by *section 15*, and section 51 of the Principal Act as amended by *section 15* shall apply accordingly.

(2) Where before the date of coming into operation of *section 15* the Compliance Committee has received submissions under section 51(2) of

the Principal Act but has not made a recommendation under section 51(1) of the Principal Act, the Commission shall on and after that date, and subject to the modifications referred to in *subsection (4)*, make a decision in accordance with section 51 of the Principal Act as amended by *section 15*.

(3) Where before the date of coming into operation of *section 15* the Compliance Committee has made a recommendation under section 51(1) of the Principal Act but the Authority has not suspended or terminated the contract under section 51(1) of the Principal Act, the Commission shall, on and after that date, and subject to the modification referred to in *subsection (5)*, act in accordance with section 51(1) and (5) of the Principal Act as if *section 15* had not come into operation.

(4) The modifications referred to in *subsections (1)* and *(2)* are that—

(a) the reference in section 51(1) of the Principal Act as amended by *section 15* to the finding of the Commission under section 50(7) of the Principal Act, shall be construed as a reference to the finding of the Compliance Committee under section 50(7) of the Principal Act as it existed prior to the coming into operation of *section 15*, and

(b) the Commission may afford the holder of the contract referred to in section 51 of the Principal Act a further opportunity to make submissions in accordance with section 51(2) of the Principal Act as amended by *section 15*.

(5) The modification referred to in *subsection (3)* is that references to the Authority in section 51 of the Principal Act shall be construed as references to the Commission.

(6) Any rules made by the Authority under section 51(5) of the Principal Act which were in force immediately before the coming into operation of *section 15* shall continue in force for the purposes of *subsection (3)*, subject to any amendment made by the Commission.

Procedures under Chapter 2 of Part 5 of Principal Act

72. Where a procedure under Chapter 2 of Part 5 of the Principal Act has commenced, but not concluded, before the date of coming into operation of *section 73(b)*, it shall on and after that date be continued in accordance with that Chapter as if *section 73(b)* had not come into operation, subject to the following modifications:

(a) other than the reference to the Compliance Committee in section 54(7) of the Principal Act, references to the Compliance Committee or the Authority shall be construed as references to the Commission;

(b) where the Compliance Committee has received submissions under section 54(2) of the Principal Act before the date of coming into operation of *section 73(b)*, the Commission may afford the broadcaster referred to in section 54(2) of the Principal Act a further opportunity to make submissions to it in accordance with that subsection;

(c) section 54(3) of the Principal Act is amended by the substitution of "the Commission shall notify the broadcaster concerned in accordance with subsection (4)." for "the Committee may recommend to the Authority that the Authority notify the broadcaster concerned in accordance with subsection (4). The Authority shall comply with the recommendation.";

(d) any rules made under section 54(8) of the Principal Act which were in force immediately before the coming into operation of *section 73(b)* shall continue in force for the purposes of any procedure referred to in this section, subject to any amendment made by the Commission;

(e) the period for the making of an appeal against a statement of findings or a financial sanction in accordance with section 55(5) of the Principal Act shall be 28 days from the date of the making of the statement of findings, or where there is a direction under section 55(3) of the Principal Act, 28 days from the date of the direction;

(f) where a broadcaster does not appeal in accordance with section 55(5) of the Principal Act against a statement of findings issued to the broadcaster by the Authority or the Commission under section 55(2) of that Act, or against a financial sanction that the Authority or the Commission has directed the broadcaster to pay under section 55(3) of that Act—

(i) the Commission shall, as soon as is practicable after the expiration of the period referred to in *paragraph (e)*, and on notice to the broadcaster, make an application in a summary manner to the Circuit Court for confirmation of the decision to issue the statement or to direct payment of the financial penalty, and

(ii) subsections (2) to (4), (7) and (8) of section 139ZY of the Principal Act as inserted by *section 47* shall apply for the purposes of the application as they apply for the purposes of an application under section 139ZY(1) (but substituting "broadcaster" for "provider" in subsection (4)).

Repeals

73. The following provisions of the Principal Act are repealed:

(a) Part 3;

(b) Chapter 2 of Part 5;

(c) section 74;

(d) section 75;

(e) section 76;

(f) section 77(1)(c) and 77(14);

(g) Part 12.

PART 17

Amendments to other enactments

Amendment of Referendum Act 1998

74. Section 5 of the Referendum Act 1998 is amended in subsection (1) by the substitution of "Section 46M(2)(a)" for "Section 41(3)".

Repeal of certain provisions of Copyright and Related Rights Act 2000

75. Sections 103 and 251 of the Copyright and Related Rights Act 2000 are repealed.

Amendment of Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010

76. The Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 is amended—

(a) in section 3, in the definition of "broadcasting service" by the insertion of ", except that it does not include any audio or audiovisual services provided by way of the internet" after "Broadcasting Act 2009", and

(b) in section 7—

(i) in subsection (4), by the substitution of "audiovisual on-demand media service under the Broadcasting Act 2009" for "on-demand audiovisual media services under the Council Directive", and

(ii) by the deletion of subsection (5).

Amendment of Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013

77. Section 9 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 is amended in subsection (6), in paragraph (j), by the substitution of "12(5)" for "10(5)".

Amendment of Irish Sign Language Act 2017

78. Section 8 of the Irish Sign Language Act 2017 is amended, by the substitution of "media service rules made under section 46O(5)" for "broadcasting rules made under section 43(1)(c)".

Amendment of Criminal Justice (Corruption Offences) Act 2018

79. The Criminal Justice (Corruption Offences) Act 2018 is amended—

(a) in section 14, in subsection (3)—

(i) in paragraph (h), by the substitution of "those Acts;" for "those Acts.", and

(ii) by the insertion of the following paragraph after paragraph (h):

"(i) the performance by Coimisiún na Meán of its functions.",

and

(b) in section 17, in subsection (9), in the definition of "relevant Irish official"—

(i) by the substitution of the following paragraph for paragraph (p):

"(p) a member of Coimisiún na Meán,",

and

(ii) by the deletion of paragraphs (q) and (r).

Amendment of Electoral Reform Act 2022

80. Section 32(1) of the Electoral Reform Act 2022 is amended by the substitution of "Section 46M(2)(a)" for "Section 41(3)".

Number 41 *of* 2022

ONLINE SAFETY AND MEDIA REGULATION ACT 2022

REVISED

Updated to 17 February 2024

About this Revised Act

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

Related legislation

Broadcasting and Other Media Regulation Acts 2009 and 2022: this Act is one of a group of Acts included in this collective citation (*Online Safety and Media Regulation Act 2022* (41/2022), s. 1(2)). The Acts in this group are:

- *Broadcasting Act 2009* (18/2009)
- *Online Safety and Media Regulation Act 2022* (41/2022), in so far as it amends the Broadcasting Act 2009

Annotations

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

Material not updated in this revision

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