Online Safety and Media Regulation Bill 2022

Explanatory and Financial Memorandum
General

The purpose of this Bill is to make amendments to the Broadcasting Act, 2009, in order to provide for the establishment of a new regulator, a multi-person Coimisiún na Meán (‘the Commission’), and dissolve the existing regulator, the Broadcasting Authority of Ireland, to provide for the implementation of (EU) Directive 2018/1808, also referred to as the revised Audiovisual Media Services Directive, to provide for an updated regulatory framework for broadcasting and on-demand audiovisual media services and for a new regulatory framework for online safety, and to provide the Commission with the powers and functions to appropriately apply and enforce the new and updated regulatory frameworks.

In updating the regulatory framework for broadcasting and on-demand audiovisual media services, the Bill sets out the duties of broadcasting and on-demand audiovisual media services and the powers of the Commission to make codes and rules in respect of those media services. The Bill provides the Commission with the powers to ensure the availability and prominence of public service programmes and audiovisual services on interactive guides through which people select services or programmes to view on a platform or satellite television service. The Bill also requires that platform providers must carry public service audiovisual broadcasting services on their platforms when requested by a public service provider, and that public service providers must ensure that any service it provides is offered in such a way that it can be carried on platforms.

In providing for the new regulatory framework for online safety, the Bill sets out defined categories of harmful online content and a definition of ‘age-inappropriate online content’, the process by which additional categories of harmful online content may be specified, provides that the Commission may make online safety codes that are binding on designated online services, and sets out the process by which online services are designated for regulation. The Bill also provides for the issuance of guidance materials on the application of online safety codes and for the protection of minors and the general public from harmful online content and age-inappropriate online content by the Commission, and the establishment of a scheme by the Commission through which nominated bodies may notify the Commission of concerns relating to the availability of harmful online content and compliance with the online safety codes, which is sometimes referred to as a ‘super-complaints scheme’.
To ensure the enforcement of online safety codes, media safety codes and media service rules and any other contravention under the Bill or Broadcasting Act, 2009, the Bill provides for the appointment of authorised officers by the Commission to investigate such contraventions, the making and publication of a decision by the Commission on foot of a report from an authorised officer, and for the imposition of administrative financial sanctions on providers of up to €20 million, or 10% of relevant annual turnover, by the Commission on foot of a decision. The Bill also provides for the issuance and publication of a content limitation notice by the Commission to a provider of a designated online service to remove, disable or limit access to an item of harmful online content, and, in circumstances of on-going contravention, for the application by the Commission to the High Court for an order requiring an internet service provider to block access to a relevant online service or audiovisual on-demand media service. As part of the enforcement framework, the Bill provides for a number of criminal offences and sets out three categories of offence.

Finally, the Bill provides that the Commission may make two new schemes for the purpose of making grants. First, a scheme may be made for the making of grants to community sound broadcasters for the purposes of supporting and promoting good professional journalistic practices and standards. The Bill provides that such a scheme shall be funded under Part 10 of the Principal Act, meaning that it shall be funded by 7% of net licence fee receipts. Second, the Bill provides that the Commission may impose a levy (the ‘European works levy’) on media service providers under the jurisdiction of the State, or those under the jurisdiction of another Member State and targeting audiences in the State. This levy shall be used to fund a scheme (the ‘European works scheme’) under which grants may be made to provide support for the production of European works to media service providers which are under the jurisdiction of the State, or target audiences in the State and are established in another Member State.

Provisions

Part 1

PRELIMINARY AND GENERAL

Short title, collective citation and commencement

Section 1 contains the short title, collective citations and provides that all sections of the Bill shall be subject to a commencement order or orders to be made by the Minister.

Definitions

Section 2 provides a definition of a number of terms used within the Bill, including “Principal Act”, which means the Broadcasting Act, 2009, and “Minister”, which means the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media.

Part 2

AMENDMENT OF PART 1 OF PRINCIPAL ACT

Amendment of section 2 of Principal Act

Section 3 amends section 2 of the Principal Act by renumbering that section as subsection (1) and inserting a number of definitions, including a number of those which are provided in Directive (EU) 2018/1808 (hereafter ‘the revised Directive’). The section sets out, as part of these definitions, the meaning of a “relevant online service”, which encompasses the pool of services which may be designated for regulation under Part 11 (Online Safety).
The section also amends the Principal Act by the insertion of a subsection (2) at section 2 of the Principal Act, which provides for a definition of a “video-sharing platform service” pursuant to the Directive.

**Meaning of “under the jurisdiction of the State”: media service providers**

Section 4 amends the Principal Act by the insertion of section 2A after section 2. In line with the relevant paragraphs of Article 2 of the revised Directive, this section provides for the circumstances in which a “media service provider” will be deemed to be under the jurisdiction of the State pursuant to the Directive.

**Meaning of “under the jurisdiction of the State”: providers of video-sharing platform services**

Section 5 amends the Principal Act by the insertion of section 2B which, in line with the revised Directive, provides for the circumstances in which a “video-sharing platform service” will be deemed to be under the jurisdiction of the State.

**Procedure for giving notices**

Section 6 amends the Principal Act by the insertion of section 2C, which sets out the accepted methods of giving notice to a person under the amended Act and requirements which must be met in order for the notice to be valid.

**Part 3**

**COIMISIÚN NA MEÁN**

**Coimisiún na Meán**

Section 7 amends the Principal Act by substituting Part 2 of that Act for a new Part 2, including the following sections which have the effect of providing for the establishment, powers, functions and operation of the Coimisiún na Meán (or “the Commission”):

**Establishment day**

Section 5 provides that the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media (“the Minister”) shall appoint a day on which the the Commission is deemed to be established.

**Establishment of Commission**

Section 6 provides for the establishment of a new body, “Coimisiún na Meán” the reference throughout the Act to that body as the “Commission”, and standard provisions relating to the establishment of a new body including, *inter alia*, that the Commission is a body corporate with perpetual succession and details of how the seal of the Commission may be authenticated.

**Powers and functions of Commission**

Section 7 provides for the powers and functions of the Commission, which are required to be performed effectively and efficiently, for the matters the Commission shall endeavour to ensure in performing its functions, sets out that the Commission shall have regard to the policies of Government and the relevant Minister in respect of climate change and environmental sustainability and provides for a number of matters that the Commission may undertake in so far as they are consistent with its other functions and available resources.
Delegation of functions
Section 8 provides that the Commission may delegate the performance of its functions to an individual Commissioner, subject to a number of exclusions, particularly in relation to Part 12 (Investigations and Sanctions).

Conferral of additional functions
Section 9 provides that the Minister, following appropriate consultation with the Commission and any other Minister of the Government, may, by order, confer additional functions on the Commission. Such additional functions must be connected with Commission’s existing functions and relate to the regulation of services already regulated under the amended Principal Act. An order under this section may be annulled by either House in certain circumstances.

Independence of Commission
Section 10 provides that the Commission shall be independent in the performance of its functions.

Membership of Commission
Section 11 provides that the membership of the Commission shall consist of a chairperson and between three and six other Commissioners, each of which must be appointed by the Minister on the recommendation of the Public Appointments Service. A Commissioner’s term may not exceed five years, though one may serve two terms.

This section also provides that the chief executive officer of the Broadcasting Authority of Ireland may be appointed as a Commissioner by the Minister for a period of no more than one year from the establishment of the Commission.

Conditions of office of Commissioner
Section 12 provides that a Commissioner shall hold office on such terms and conditions that may be fixed by the Minister in consultation with the Minister for Public Expenditure and Reform and be paid such remuneration as may be determined by the Minister, with the consent of the Minister for Public Expenditure and Reform. The section also sets out the procedures by which a Government may, for specified reasons, remove a Commissioner from office, and reasons which shall cause a person to cease to hold the office of Commissioner.

Appointment of Acting Commissioner
Section 13 provides that the Minister may appoint an acting Commissioner for a period of no more than six months. However, this period may be extended for a further six months if the Minister deems it not reasonably practicable to appoint a permanent Commissioner to the position within the original six months.

Chairperson of Commission
Section 14 sets out the role of the chairperson of the Commission, who will be responsible for managing and controlling, generally, the staff, administration and business of the Commission. Where there is a vacancy, the Minister may appoint a Commissioner to perform the functions of the chairperson.
Eligibility for appointment as Commissioner or member of staff

Section 15 sets out criteria that shall determine whether a person is ineligible for appointment as Commissioner.

Meetings of Commission

Section 16 provides for the rules governing the holding of meetings of the Commission.

Staff of Commission

Section 17 provides that the Commission may determine the number of staff it may appoint, the terms and conditions of such staff, and the remuneration and allowances of such staff, subject to the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform.

This section also provides that a member of staff shall stand seconded from employment from the Commission if he or she is nominated, elected, or co-opted as a member of either House of the Oireachtas, the European Parliament, or a local authority.

Superannuation

Section 18 provides that the Commission may, with the consent of the Minister and the approval of the Minister for Public Expenditure and Reform make a scheme granting superannuation benefits to a Commissioner or to a member of staff of the Commission. Such a scheme must be laid before each House of the Oireachtas and may be annulled by either House in certain circumstances.

Committees

Section 19 provides that the Commission may establish committees to assist and advise on specified matters relating to its functions, or on other specified matters as determined by the Commission.

Consultants and advisers

Section 20 provides that the Commission may engage such consultants and advisers as it considers necessary for the performance of its functions, will be responsible for paying any fees due, and must have regard to the advice provided.

Power to impose levies

Section 21 provides that the Commission may make a levy order to impose a levy on providers of audiovisual media services, sound broadcasting services, and designated online services. The section further provides that the Commission shall seek to ensure that the levies collected are sufficient to meet its expenses and capital requirements and that community broadcasting services shall be exempt from paying any such levy.

A levy order made under this section shall provide for the collection, payment and administration of a levy, including the method of calculation of the levy, the times at which payment is to be made, and any provisions for exemptions, deferrals or refunds. The Commission is also obliged to account for its expenditure on the basis of the different services it levies and how the expenditure relates to the exercise of functions related to the regulation of those services.
Levies under section 21: enforcement and procedure
Section 22 provides that the Commission may recover a levy payable by a simple contract debt in any court of competent jurisdiction and provides that a levy order made under section 21 shall be laid before each House of the Oireachtas and may be annulled by either House in certain circumstances.

Grant to Commission
Section 23 provides that the Minister may, with the consent of the Minister for Public Expenditure and Reform, provide grants to the Commission out of moneys provided by the Oireachtas.

Power to borrow
Section 24 provides that the Commission may borrow money for the purpose of performing any of its functions, subject to the approval of the Minister and consent of the Ministers for Public Expenditure and Reform and Finance, and any conditions they may determine.

Deposits and charges for services
Section 25 provides that the Commission may require the payment of a deposit in respect of an application for a broadcasting contract and charge for services or facilities provided by it. The section further provides that any surplus of income in respect of a charge for services or facilities shall be applied in such manner as the Minister, after consultation with the Commission and Ministers for Finance and Public Expenditure and Reform, may direct, including making payments into the Central Fund. Finally, the section provides that the Commission may recover any amount due to it under the section as a simple contract debt in any court of competent jurisdiction.

Estimates and accounts
Section 26 provides that the Commission shall submit, as may be required by the Minister, estimates of income and expenditure including proposals and future plans relating to the performance by the Commission of its functions over a specified period of years. This section also provides that the Commission shall keep records of accounts of all monies received or expended, the sources of such monies and reasons for expenses, and all properties, assets, and liabilities of the Commission, the publication of annual accounts and estimates of income and expenditure by the Commission, and for annual audit of the Commission’s accounts by the Comptroller and Auditor General.

Accountability of chairperson to Public Accounts Committee
Section 27 sets out the matters for which the chairperson of the Commission will be responsible to the Public Accounts Committee.

Accountability of Commissioner to Oireachtas committees
Section 28 provides that the chairperson of the Commission shall attend before an Oireachtas Committee to give account for the general administration of the Commission if requested to do so, and provides that any Commissioner shall attend to give account for the performance of any functions of the Commission delegated to him or her, and sets out the conditions under which a Commissioner is not required to attend.
Strategy statement and work programme

Section 29 provides that the Media Commission shall submit a strategy statement to the Minister as early as practicable after its establishment and every three years thereafter. Prior to the adoption of a strategy statement a public consultation must take place. Following submission of a strategy statement to the Minister, it must be laid before each House of the Oireachtas. This section also requires the Media Commission to submit to the Minister, on an annual basis, a work programme relating to the discharge of its functions.

Observations on legislative proposals and review of enactments

Section 30 provides that the Minister may direct the Commission to provide observations on legislative proposals or to undertake a review of the operation or intended operation of an enactment. Following such a direction, or of its own volition, the Commission may make a proposal to any Minister for a legislative measure on a matter related to the functions of the Commission.

Reporting by Commission

Section 31 provides that the Commission, in June each year, shall submit an annual report on its activities to the Minister, which must incorporate information on such matters as the Minister may direct, information on progress made towards increasing the accessibility of audiovisual media services to people with disabilities, information on progress made to achieve the intended outcomes relating to such accessibility set out in any media service rules made under section 46O of the amended Principal Act, and information on schemes established under Part 10 of the Principal Act, which includes broadcasting funding schemes such as the existing Sound and Vision Scheme, and under Part 10A of the amended Principal Act, which refers to a scheme funded by the European works levy.

Co-operation with other bodies

Section 32 provides that the Commission may co-operate and enter into co-operation agreements with a body established in the State and may co-operate, and enter into agreements to co-operate, with a body not established in the State if that body performs similar functions to the Commission, including those which are members of the European Regulators Group for Audiovisual Media Services.

Disclosure of personal data

Section 33 provides a legal basis for the Commission to disclose personal information, under specific circumstances, to specified bodies, including An Garda Síochana and the Data Protection Commission.

Co-operation with self-regulatory systems

Section 34 provides that the Commission may co-operate with a person or group of persons in the preparation by that person or group of standards, or in the establishment and administration by that person or group of a self-regulatory system, defined as 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.
Policy communications

Section 35 provides that the Minister may issue a policy communication to the Commission, provides that the Commission may consider any communication issued to it, and sets out the procedures by which a policy communication shall be issued and considered.

Confidential information

Section 36 prohibits the disclosure of confidential information obtained by a relevant person in the course of performing functions under the amended Principal Act, including Commissioners and other staff, unless it is required or permitted by law, or duly authorised by the Commission. This prohibition does not apply where the disclosure is made to specified individuals or bodies, for example, to a Minister or to the Commission itself.

Disclosure of interests

Section 37 provides that Commissioners and staff of the Commission must disclose any relevant interests to the Commission. This includes where the individual is likely to derive a benefit from any matter to be considered by the Commission. Following a disclosure, the individual may not take part in any deliberations or meetings relevant to the interest disclosed.

Judicial review

Section 38 states that leave will not be granted for judicial review of a decision under section 139AK of the amended Principal Act, which relates to a decision by the Commission as to whether a provider has committed a contravention to which an investigation relates and whether an administrative financial sanction may be imposed. Moreover, leave will only be granted for judicial review of other decisions made or done by the Commission under the amended Principal Act provided an application for review is made within a certain timeframe.

Part 4

REGISTER OF PROVIDERS OF AUDIOVISUAL ON-DEMAND MEDIA SERVICES

Register of providers of audiovisual on-demand media services

Section 8 amends the Principal Act by inserting Part 3A, including the following sections, after Part 3 of that Act:

Register of providers of audiovisual on-demand media services

Section 46A provides that the Commission shall establish a register of media service providers that are under the jurisdiction of the State and publish the register on its website.

Duty of media service providers to notify Commission

Section 46B sets out the duty of a media service provider to notify the Commission that it should be included on the register, the minimum timeframes for notification, and the details which must be provided within a notification.

Duty of registered media service providers to notify changes

Section 46C provides that a media service provider shall notify the Commission of any changes to the information provided as part of a notification under section 46B.
Procedure where Commission notified under section 46B or 46C

Section 46D sets out the procedure that shall be followed by the Commission where it has received a notification under section 46B or 46C. The Commission may request further information from a media service provider in order to inform its decisions.

Review and correction of the register

Section 46E provides that the Commission shall, when it considers appropriate, review each entry in the register and, following appropriate consultation with the provider in question, amend the register if any information is incorrect or where a media service provider should not be subject to registration.

Failure to notify

Section 46F provides that the Commission may direct a provider to take any action to comply with section 46B, 46C, or a request for information under this Part, following a failure of that provider to comply. Prior to such a direction, the provider must be given an opportunity to make representations about the apparent failure to comply. The provider may also appeal a direction to the Circuit Court.

Removal of provider or service from register

Section 46G provides that if the Commission removes a media service provider from the register, it must include a statement of the reasons for the removal within the register and provide the relevant provider with the same.

Rules and guidelines

Section 46H provides that the Commission may make rules or issue guidelines with the intention of ensuring the efficient operation of the processes described under this Part.

Part 5

DUTIES, CODES, AND RULES APPLYING TO MEDIA SERVICE PROVIDERS

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

Section 9 amends the Principal Act by inserting a Part 3B before Part 4 of that Act, which provides for the duties of broadcasting and on-demand audiovisual media services and the power of the Commission to make codes and rules in respect of those media services. This has the effect of revising and extending the provisions of Part 3 of the Principal Act, which is repealed by section 71 of the Bill, which provides for duties, codes and rules applying to broadcasters. Part 3B incorporates the following chapters and sections:

Chapter 1

Interpretation

Interpretation: ‘relevant media service provider’

Section 46I sets out the meaning of “relevant media service provider” under this Part.
Chapter 2

Duties

Harm, offence, incitement, and authority of State

Section 46J provides that broadcasters and on-demand audiovisual media services shall not broadcast or make available certain material which may reasonably be regarded as causing harm or offence, as likely to promote, or incite to, crime, as conduct which advocates the commission of terrorist offences within the meaning of Article 5 of Directive (EU) 2017/541, as likely to incite to violence or hatred directed against a group of persons, or a member of a group, or as tending to undermine the authority of the State.

Privacy

Section 46K provides that broadcasters and on-demand audiovisual media services shall ensure that the privacy of any individual is not unreasonably encroached upon within their programmes or in the making of such programmes.

News and current affairs

Section 46L provides that broadcasters and on-demand audiovisual media services shall ensure that news and current affairs programmes are reported and presented in an objective and impartial manner. This requirement does not prevent the broadcast or making available of party political programmes, provided an unfair preference is not given to any particular party, nor where the news or current affairs issue in question relates to policy as regards broadcasting which is the subject of public debate and under consideration by the Government or the Minister. This section also requires a sound broadcasting service, unless the Commission authorises a derogation, to devote not less than 20% of broadcasting time to news and current affairs, and, in some cases, not less than two hours between 7:00 and 19:00 each day.

Advertising

Section 46M sets out the duties of broadcasters and on-demand audiovisual media services in respect of advertisements made available by them. The section also requires sound broadcasting services to ensure that the total daily time devoted to advertisements does not exceed 15 per cent of the total daily broadcasting time.

Chapter 3

Media service codes and media service rules

Media service codes

Section 46N provides that the Commission may make media service codes governing the standards and practices of broadcasters and providers of audiovisual on-demand media services. Such codes may provide for standards and practices to ensure that broadcasters and providers comply with the duties set out in Chapter 2, that in programme material audiences are protected from anything harmful or offensive, that commercial communications protect the interests of the audience and protect the interests of children having particular regard to the public health interests of children, and 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.
In particular, a media service code providing for the protection of the interests of children in respect of their public health may, following consultation by the Commission with the relevant public health authorities, prohibit commercial communications relating to food or beverages considered by the Commission to be a subject of public concern.

The section provides that the Commission shall make codes to provide for matters set out under a number of Articles of the revised Directive.

The section also sets out the matters to which the Commission shall have regard in making media service codes, including the degree of harm or offence likely to be caused and the likely size and composition of a potential audience. The failure to comply with a media service code shall be a contravention for the purposes of Part 8B of the amended Principal Act, which provides for investigations and sanctions by the Commission.

The section provides for a saving provision to ensure that the extant broadcasting codes made under Part 3 of the Principal Act, which is being repealed by section 71 of the Bill, remain in operation and continue to apply to broadcasters.

**Media service rules**

*Section 46O* provides that the Commission may make media service rules in relation to total daily times that shall be allowed for broadcasting commercial communications on a broadcasting service provided by a broadcasting contractor, which must specify the time allowed for broadcasting audiovisual commercial communications between 6:00 and 18:00, and between 18:00 and 24:00 each day, subject to the requirement that the time specified must not exceed 20 per cent of the time in each period.

The section provides that the Commission shall make media service rules requiring broadcasters and on-demand audiovisual media services to provide access to audiovisual programmes by making available a sign language service, subtitling, or audio description, and to take steps to promote the understanding and enjoyment of those programmes by persons who are deaf and have a hearing impairment, persons who are blind or partially sighted, and persons who have a hearing impairment and are partially sighted.

The section also provides for a saving provision to ensure the continuance in force of extant broadcasting rules. The failure to comply with a media service rule shall be a contravention for the purposes of Part 8B of the amended Principal Act, which provides for investigations and sanctions by the Commission.

**Chapter 4**

**Duty to retain copies of programme material**

**Retention of copies of programme material**

*Section 46P* provides that broadcasters and audiovisual on-demand media services shall retain a copy of all programme material broadcast or made available, for a duration determined by the Commission and that a failure to retain a copy shall be a contravention for the purposes of Part 8B of the amended Principal Act. The Commission may also, at any time, require the broadcaster or service to provide a copy of any retained programme material.
Chapter 5

 Procedures in relation to media service codes and media service rules

Consultation
Section 46Q provides that the Commission shall make a draft version of a media service code or rule available for inspection by any person and, before finalising that code or rule, have regard to any submissions it receives on the subject.

Laying of codes and rules
Section 46R provides that the Minister shall be advised of any making, amendment, or revocation of a media service code or rule and that such codes or rules be laid by the Commission before the Oireachtas and that they may be annulled by either House in certain circumstances.

Part 6

AMENDMENT OF PART 4 OF PRINCIPAL ACT

Amendment of section 47 of Principal Act
Section 10 amends section 47 of the Principal Act in order to insert references to a provider of an audiovisual on-demand media service as well as a broadcaster.

Complaints
Section 11 amends section 48 by substituting a new section which sets out the grounds by, and timeframes within, which a person may make a complaint to the Commission in respect of the failure of a broadcaster or audiovisual on-demand media service to comply with relevant sections of the amended Principal Act, such as those relating to media service codes and media service rules. Depending on the specific circumstances, the Commission may refer the complaint to the broadcaster or provider, dismiss the complaint, or refer it to an authorised officer for further investigation.

Amendment of section 49 of Principal Act
Section 12 amends section 49 of the Principal Act to ensure consistent and up-to-date wording is used across the amended Principal Act.

Part 7

AMENDMENT OF PART 5 OF PRINCIPAL ACT

Amendment of section 50 of Principal Act
Section 13 amends section 50 of the Principal Act, which relates to the investigation of a holder of a contract issued under the Principal Act, to take account of the dissolution of the Broadcasting Authority of Ireland and establishment of the Commission.

Amendment of section 51 of Principal Act
Section 14 amends section 51 of the Principal Act, which relates to the termination or suspension of a contract issued under the Act, to take account of the dissolution of the Broadcasting Authority of Ireland and establishment of the Commission in the Bill.

Amendment of section 57 of Principal Act
Section 15 amends section 57 of the Principal Act by deleting subsections (1) and (2) which set out the ways in which notification may be provided to a broadcaster or contractor for the purposes of Part 5 of the Principal Act, in light of such matters being addressed in section 6 of the Bill.
Part 8

AMENDMENT OF PART 6 OF PRINCIPAL ACT

Amendment of sections 58 and 59 of Principal Act
Section 16 and Section 17 provide for minor technical amendments to sections 58 and 59 of the Principal Act respectively.

Amendment of section 60 of Principal Act
Section 18 amends section 60 of the Principal Act by deleting subsection (4) and (5), which set out the ways in which notice may be provided to a broadcasting contractor in respect of variation of a broadcasting licence, in light of such matters being addressed in section 6 of the Bill.

Amendment of sections 62, 63 and 64 of Principal Act
Section 19, Section 20, and Section 21 provide for consequential amendments to sections 62, 63 and 64 of the Principal Act in order to reflect the dissolution of the Broadcasting Authority of Ireland and establishment of the Commission in the Bill.

Part 9

AMENDMENT OF PART 7 OF PRINCIPAL ACT

Amendment of section 86 of Principal Act
Section 31 amends section 86 of the Principal Act to refer to a Commissioner to reflect the dissolution of the Broadcasting Authority of Ireland and establishment of the Commission in the Bill.

Amendment of section 106 of Principal Act
Section 32 provides for a number of minor technical amendments to section 106 of the Principal Act and also provides that the Commission shall, with the approval of the Minister, set the time allowed for audiovisual broadcasting services under this Part to broadcast advertisements in the period between 6.00 and 18.00, and in the period between 18.00 and 24.00 each day. The section provides that the time fixed for these periods must not exceed 20 per cent of the time in each period. This is a requirement of the revised Directive.

The section also provides updated requirements for sound broadcasting services under this Part to ensure that the total daily time for broadcasting advertisements does not exceed 15 per cent of the total daily broadcasting time, and that the maximum period given to advertisements does not exceed 10 minutes in any hour.

Amendment of sections 114 and 118 of Principal Act
Section 33 and Section 34 amend sections 114 and 118 of the Principal Act respectively by substituting “audiovisual on-demand media services” for “non-broadcast non-linear audio-visual media services”.

Amendment of section 123 of Principal Act
Section 35 amends section 123 of the Principal Act to provide that the Minister may, with the approval of the Minister for Public Expenditure and Reform, allocate television license fee funding to the Commission in addition to RTÉ and TG4. The amount of funding to the Commission,
however, must not exceed 50 per cent of the estimate of the expenses of the Commission for the financial year in respect of the regulation of broadcasting services.

**Amendment of section 124 of Principal Act**

Section 36 amends section 124 of the Principal Act to take account of the dissolution of the Broadcasting Authority of Ireland and establishment of the Commission.

**Amendment of section 125 of Principal Act**

Section 37 amends section 125 of the Principal Act by deleting wording that is now encompassed under the definition of “advertisement” and “commercial communication”.

**Amendment of section 127 of Principal Act**

Section 38 amends section 127 of the Principal Act to bring this section in line with the updated maximum times allowed for the broadcasting of advertisements by an audiovisual broadcasting service under section 106 of the amended Principal Act.

**Availability and prominence of public service programmes and services**

Section 39 amends Part 7 of the Principal Act by inserting a Chapter 7 after Chapter 6. The following sections set out requirements for the prominence of public service programmes and services on interactive guides used to select services or programmes to view and provide for obligations that public service programmes and services must be carried on particular services:

**Chapter 7**

**Availability and prominence of public service programmes and services**

**Interpretation**

Section 128A provides for a number of definitions relevant to this Chapter, including “interactive guide”, “platform provider”, “public service provider”, and “public service programme”.

**Must-carry and must-offer obligations for platforms**

Section 128B provides that platform providers shall comply with a request from a public service provider to carry an audiovisual broadcasting service or audiovisual on-demand media service provided by the public service provider and that the public service provider must ensure at all times that its services are offered to platform providers in a way in which they can be re-transmitted or made available. The Commission may make rules for the purposes of ensuring compliance with such requirements and may also become involved in disputes in relation to the remuneration of a public service provider by a platform provider.

**Prominence on interactive guides**

Section 128C provides that the Commission may make rules which ensure the prominence of public service programmes, audiovisual broadcasting services, and audiovisual on-demand media services on a provider’s interactive guide. In respect of public service programmes, such rules may only apply to programmes which for example, relate to Irish culture, history, heritage, society, sport, or language.
Designation of public service audiovisual broadcasting or on-demand media services

Section 128D provides that the Minister may, on the recommendation of the Commission, make an order which designates a service as a public service audiovisual broadcasting service or on-demand media service for the purposes of the must-carry and must-offer rules set out in section 128B and prominence rules set out in section 128C of the amended Principal Act.

Consultation and laying

Section 128E provides that the rules or orders made under this Chapter must be laid by the Commission before the Oireachtas and that they may be annulled by either House of the Oireachtas under certain circumstances.

Part 10

AMENDMENT OF PART 8 OF PRINCIPAL ACT

Amendment of section 129 of Principal Act

Section 40 amends section 129 of the Principal Act by providing for a definition of a “listed simulcast service” and deleting the definition of a “television programme service contract”.

Amendment of sections 134, 136 and 138 of Principal Act

Sections 41, 42 and 43 provide for consequential amendments to sections 134, 136 and 138 of the Principal Act to take account of the dissolution of the Broadcasting Authority of Ireland and establishment of the Commission.

Part 11

ONLINE SAFETY

Online safety

Section 44 amends the Principal Act by inserting a Part 8A after Part 8. Part 8A is composed of the following sections which provide for a definition of harmful online content, the designation of online services for regulation, the making and application of online safety codes by the Commission, the issuance of guidance materials by the Commission, and the establishment of a scheme by the Commission through which nominated bodies may notify the Commission of concerns relating to the availability of harmful online content and compliance with the online safety codes:

Chapter 1

Interpretation: harmful online content and age-inappropriate online content

Harmful online content

Section 139A provides for the categories of online content that will fall under the definition of harmful online content. The first category relates to offence-specific online content which are set out in section 45 of the Bill. The other categories of online content which, subject to a risk test, may be considered harmful are online content by which a person bullies or humiliates another person, by which a person promotes or encourages eating or feeding disorders, by which a person promotes or encourages self-harm or suicide, and by which a person makes available knowledge of methods of self-harm or suicide.
To meet the relevant risk test non-offence specific online content must either give rise to a risk to a person’s life or to a risk of significant harm to a person’s physical or mental health, where the harm is reasonably foreseeable.

**Power to specify other harmful online content**

Section 139B provides that the Minister may make an order to give effect to a proposal by the Commission to specify further categories of harmful online content to those which are listed in section 139A. Prior to making such a proposal, the Commission must be satisfied of certain matters and must also have regard to certain matters, including, for example the levels of risk of harm, in particular harm to children, from the availability of content or of exposure to it.

**Procedure for proposals and orders under section 139B**

Section 139C sets out the procedure that must be followed by the Commission when making a proposal under section 139B and by the Minister when considering such a proposal. The Commission may make a proposal only if, inter alia, the Commission has published a draft of the proposal and undertaken a public consultation.

On receiving a proposal from the Commission, the Minister shall consult with the Joint Oireachtas Committee and either accept the proposal for consideration of Government or request the Commission to reconsider the proposal. Subject to Government approval, the Minister may then lay a draft of the order giving effect to the proposal before each House of the Oireachtas. The order is only considered made if a resolution approving the draft order has been passed by each House.

**Age-inappropriate online content**

Section 139D provides for a definition of “age-inappropriate online content”, which includes, in particular, pornography and realistic representations of gross or gratuitous violence.

**Chapter 2**

**Designated online services**

**Designation of online services**

Section 139E provides that the Commission may designate a relevant online service as a service to which online safety codes may be applied under Chapter 3 of this Part. Under this section, the Commission may service notice of a designation in relation to a named service, or in relation to all services falling within a category of services described in the designation. In deciding whether or not to designate a service, the Commission shall have regard to a number of matters, including the nature and scale of the service and the levels of risk of exposure to harmful online content when using the service.

**Power to require information relevant to designation**

Section 139F provides that the Commission may, by notice, require a provider of a service to provide information relevant to the potential designation of that service.
Requirement to designate video-sharing platform services

Section 139G provides that the Commission, in fulfilment of the revised Directive, shall designate video-sharing platform services under the jurisdiction of the State as services to which online safety codes may be applied under Chapter 3 of this Part.

Procedure for designation of online services

Section 139H sets out the procedure involved in designating a relevant online service as a service to which online safety codes will be applied. Under this section, the Commission shall consult relevant providers, organisation representatives of relevant providers, relevant advisory committees established by the Commission, and any other parties the Commission considers appropriate prior to designation of a service. This section also sets out the requirements and timeframes for the designation of a service to take effect.

Revocation of designation

Section 139I provides that the Media Commission may revoke a designation of a relevant online service to which online safety codes apply at any time subject to the same procedures set out for the designation of that service.

Register of designated online services

Section 139J provides that the Media Commission shall maintain a register of designated online services, or categories of services, and make that register available to the public.

Chapter 3

Online safety codes

Online safety codes

Section 139K provides that the Commission may make online safety codes to apply to designated online services. Such codes may be made with the intention of ensuring that such services take appropriate measures to minimise the availability of harmful online content and the risks arising from the availability of and exposure to such content, that service providers take any other measures that are appropriate to protect users of their services from harmful online content, that service providers take any other measures appropriate to provide for protections set out in the revised AVMSD, and that service providers take any measures in relation to commercial communications on their services that are appropriate to protect the interests of users, particularly children.

Such codes may also provide for standards that services must meet, practices that providers must follow or measures that providers must take, standards, practices or measures relating to the moderation of content or how content is delivered, 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, the making of reports by service providers to the Commission, and the handling by service providers of communications from users raising complaints.

The section also provides that the Commission shall make an online safety code to apply to such designated online services as the Commission considers appropriate, requiring service providers to report to the Commission at intervals of not more than three months on the handling of complaints or other matters raised by users.
Application of online safety codes

Section 139L provides for the way in which an online safety code shall be applied to a designated online service. In the first instance, the Commission must determine that the relevant code should apply to a service and give notice of that determination to the service or provider in question. This section also provides that only an online safety code, or an element of such a code, which applies to the offence-specific category of harmful online content may be applied to an interpersonal communications service or a private online storage service.

Online safety codes: matters to be considered

Section 139M sets out the matters which must be considered by the Commission when preparing online safety codes, including the levels of availability of harmful online content on designated online services, and the levels of risk of exposure to harmful online content when using those services.

Online safety codes: procedure

Section 139N sets out the procedure that the Commission must follow before making an online safety code. First, there must be consultation with any advisory Committee established by the Commission and any other parties the Commission deems appropriate. Online safety codes must also be provided to the Minister and laid, by the Minister, before the Houses of the Oireachtas. The section also provides that the Commission shall, from time to time, review the operation of any online safety codes that it makes and that the Minister may request the Commission to carry out a review of an online safety code.

Compliance with online safety codes: information notices

Section 139O provides that the Commission may by notice require information from a provider of a designated online service relating to the compliance of the provider with an online safety code. The provider shall be guilty of an offence if it fails to comply with the notice or if it provides false information in respect of the notice, knowing it is false or being reckless as to whether it is false.

Audit of complaints and complaint handling

Section 139P provides that the Commission may appoint an independent person to carry out an audit of a designated online service’s complaints and complaints-handling process in order for the Commission to assess compliance with an online safety code relating to such matters and provide the Commission with information to identify trends in complaints or other matters. The Commission may by notice in writing require the provider of a designated online service to co-operate with the person appointed to carry out the audit. The provider shall be guilty of an offence if it fails to comply with the notice.

Enforcement of online safety codes

Section 139Q provides that a failure to comply with an online safety code will result in a contravention for the purposes of section 46 of the Bill and Part 8B of the amended Principal Act.
Chapter 4

Online safety guidance materials and advisory notices

Guidance materials and advisory notices

Section 139R provides that the Commission may issue guidance materials for providers of relevant online services on any matter for which provision may be made by an online safety code or on a matter related to protection from harmful online content and age-inappropriate online content. Advisory notices may also be issued by the Commission under this section where there is an urgent need to raise an issue with one or more providers of relevant online services. Appropriate consultation with any advisory committee appointed by the Commission is required before guidance materials or an advisory notice is issued.

Guidance materials and advisory notices: matters to be considered

Section 139S provides that the Commission must have regard to a number of matters when preparing guidance materials or advisory notices, including the levels of availability of any online content and of age-inappropriate online content, on relevant online services.

Guidance materials and advisory notices: procedure

Section 139T sets out the procedure that the Commission must follow in order to issue guidance materials or advisory notices.

Chapter 5

Ancillary matters

Scheme for notifications by nominated bodies

Section 139U provides that the Commission shall establish a scheme under which nominated bodies may notify the Commission of matters relevant to its functions under this Part, such as concerns arising from the availability of harmful online content on a designated online service, the compliance by a service with applicable online safety codes, the availability of age-inappropriate online content on a designated online service or measures taken by a service provider that are considered excessive having regard to users’ freedom of expression or other rights. The section also provides for procedures regarding the scheme including that the scheme must, among other things, include a process for applying and becoming a nominated body.

Duty of Commission to encourage use of mediation

Section 139V provides that the Commission must take appropriate steps to encourage the use of mediation where there are disputes between a user and provider of a service regarding an online safety code, guidance materials or an advisory notice.

Voluntary arrangements with providers in third countries

Section 139W provides that the Commission may enter into voluntary arrangements with the providers of services which would be a relevant online service if under the jurisdiction of the State. Such an arrangement involves the service in question agreeing to comply with one or more online safety codes and/or guidance materials issued by the Commission.
e-Commerce compliance strategy

Section 139X requires the Commission to prepare an e-Commerce compliance strategy which sets out its approach to ensuring adherence to EU laws regarding the legal framework for information society services including in relation to the general monitoring of information or content.

Harmful online content: offence-specific categories

Section 45 amends the Principal Act by inserting a Schedule 3 after Schedule 2 of the Act. The new schedule sets out each of the offences that shall fall under the offence-specific category of harmful online content, and includes relevant offences set out in, for example, the Harassment, Harmful Communications and Related Offences Act 2020.

Part 12

INVESTIGATIONS AND SANCTIONS

Investigations and sanctions

Section 46 amends the Principal Act by inserting a Part 8B before Part 9 of that Act. Part 8B incorporates the following sections which set out for the framework for investigations of and sanctions for any contravention under the amended Principal Act:

Chapter 1

Interpretation

Interpretation

Section 139Y sets out a number of definitions relevant to this Part, including “contravention”, which includes a failure to comply with a media service code, a media service rule, or an online safety code, “investigation”, and “authorised officer”.

Chapter 2

Authorised officers and investigations

Appointment of authorised officers

Section 139Z provides that the Commission may appoint an authorised officer, shall provide a certificate of such an appointment and may cause such an appointment to be revoked in certain circumstances.

Commencement and terms of investigation

Section 139ZA provides that a person authorised by the Commission may direct an authorised officer to carry out an investigation where there is reason to suspect that there has been a contravention. The authorised officer shall define the terms of the investigation in writing.

Notice of commencement of investigation

Section 139ZB provides that an authorised officer shall give the provider concerned a notice of the commencement of an investigation. Among other matters, the notice must include a statement of the nature and particulars of the suspected contravention, and allow for the provider to respond.

Powers of authorised officer

Section 139ZC sets out the powers of an authorised officer, including the abilities to enter and search a premises, require the production of relevant material, and conduct oral hearings.
Search warrant
Section 139ZD provides that a judge of the District Court may issue a warrant authorising an authorised officer to enter and search a place if the judge is satisfied that there are reasonable grounds for suspecting that relevant material is held at the place. Such a warrant will be valid for 28 days from the date of issue.

Report of authorised officer
Section 139ZE provides that the authorised officer shall prepare a draft report after the completion of an investigation. The officer must consider various matters in preparing the draft report and provide it, along with other relevant documents, to the provider in question who will then have 28 days to make submissions. Following any revisions to the draft report, it must be provided to the provider and submitted to the Commission.

Rules
Section 139ZF provides that the Commission may make rules which provide for the conduct of investigations under Chapter 2 of this Part, and the conduct of subsequent proceedings under Chapters 3 and 4.

Guidelines
Section 139ZG provides that the Commission may also make guidelines with respect to the operation of Chapters 2, 3, and 4 of this Part, Schedule 4 and of any rules made under the previous section.

Conduct of investigations
Section 139ZH provides that an authorised officer may, subject to rules and guidelines made by the Commission regarding the conduct of investigations, follow such procedures for the conduct of an investigation as he or she considers appropriate. The officer must take reasonable steps to keep a relevant provider informed as to the progress of an investigation.

Chapter 3
Decision of the Commission

Division of Commission
Section 139ZI provides that the functions of the Commission under this Chapter must be exercised by an uneven number of the Commission, being no less than three. If a Commissioner directed that the investigation be carried out, he or she shall not exercise functions.

Action by Commission after receiving report
Section 139ZJ sets out the actions which must be taken by the Commission once it has received a report from an authorised officer. First, it must offer the provider in question the opportunity to make submissions on the final report. Following this, the Commission may conduct an oral hearing and request further information from the provider in line with this section.

Decision by Commission
Section 139ZK provides that the Commission shall decide whether or not there has been, on the balance of probabilities, a relevant contravention and, if so, whether or not it should pursue the imposition of an administrative financial sanction. In making
such decisions, the Commission must consider a range of evidence, including the final report of an authorised officer, and any submissions made.

**Notice and publication of decision of Commission**

Section 139ZL provides that the Commission shall provide appropriate notice of its decision to the provider in question and publish its decision on its website.

**Chapter 4**

**Administrative financial sanctions**

**Submissions and requests for information**

Section 139ZM provides that, where the Commission has made a decision to impose an administrative financial sanction, a provider may make submissions relating to the determination of the amount of the administrative financial sanction which is to apply.

**Determination of amount of administrative financial sanction**

Section 139ZN provides that, where the Commission has made a decision to impose an administrative financial sanction, it shall make a decision in relation to the amount of the administrative financial sanction. Notice of this determination must be provided to the provider in question and published on the Commission’s website.

**Limitations on amount of administrative financial sanction**

Section 139ZO sets out the upper limits with respect to administrative financial sanctions at €20,000,000 or 10% of the relevant turnover of a provider in the financial year preceding the date of the decision of the Commission to impose a sanction, whichever is higher. In determining the amount, the Commission shall have regard to certain matters, including the nature, gravity and duration of the contravention, and the degree of harm caused as a result. The section also provides that the amount must be proportionate to the nature of the contravention and set with a view to deterring the provider and other providers from committing a contravention.

**Appeal against decision**

Section 139ZP provides that a provider may appeal against a decision made by the Commission under this Part. Such an appeal may be made on the grounds that there was serious, or a series of, errors of law or fact, that there was insufficient fair procedures, or that the sanction imposed is not proportionate. This section also sets out the ways in which an appeal may be heard by the appropriate court, which may be the Circuit Court or High Court as determined by the quantum of administrative financial sanction.

**Circuit Court confirmation of decision**

Section 139ZQ provides that the Commission shall, where there is no appeal by a provider of a decision of the Commission to impose an administrative financial sanction, make an application to the Circuit Court for confirmation of the decision. This section also sets out provisions in relation to the potential decisions and actions of the Circuit Court in this context.
Treatment of amounts paid in respect of administrative financial sanctions

Section 139ZR provides that any payments related to a decision by the Commission to impose administrative financial sanctions must 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

Section 139ZS provides that the Commission, where a decision or determination under this Part has not yet been made, may decide to refer any questions of law arising under Chapter 3 or 4 to the High Court, which may grant leave to appeal to the Court of Appeal in certain circumstances.

Chapter 5

Notice to end a contravention

Notice to end contravention

Section 139ZT provides that the Commission may, following a decision that a contravention has occurred and where that contravention is continuing, direct the provider in question to end the contravention. A notice to do so must set out the steps necessary to end the contravention and the timeframe within which the provider should implement them. Senior management liability may apply to relevant individuals where there is a failure to comply with a notice under this section.

Chapter 6

Access blocking order

Access blocking order

Section 139ZU provides that the Media 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 audiovisual on-demand media service. When such an application is made by the Commission, notice must be provided to the relevant providers and services concerned. The High Court may make an access blocking order under this section provided certain criteria detailed in this section have been met.

Chapter 7

Content limitation notice

Content limitation notice

Section 139ZV provides that the Commission, where it becomes aware of the availability of an item of harmful online content on a designated online service, may issue a content limitation notice to the service requiring the service to remove or disable access to that content or to limit its availability.

This section also sets out certain matters that the Commission must have regard to when issuing a notice under this section, including the technical capacity of the provider concerned and the rights of persons to which the content may pertain.
Procedure in relation to content limitation notice

Section 139ZW sets out the procedure in relation to the issuing of a content limitation notice. First, the notice is required to contain specified information, including the category of harmful online content in which the content in question falls and the action required to be taken.

This section also provides that the provider shall, where it has received a content limitation notice in relation to user-generated content, take all reasonable steps to notify the uploader. Where successfully notified, the uploader and provider are provided the opportunity to make submissions to the Commission as to whether the content which is the subject of the content limitation notice is harmful online content and the nature of the limitations set out in the notice. The Commission shall, after considering such submissions, confirm the notice with or without amendments or revoke the notice. The section also provides that failure to comply with the notice is an offence.

Appeal

Section 139ZX provides that the provider or uploader of content to which a content limitation notice applies may appeal the application of a notice to the Circuit Court.

Publication of content limitation notice

Section 139ZY provides that the Commission shall publish on its website a notice which has been confirmed or otherwise by the Circuit Court.

Chapter 8

Offences

Categories of offences

Section 139ZZ sets out the upper limits of fines and terms of imprisonment with respect to the three categories of offences which may be prosecuted under the amended Principal Act.

Summary prosecution and costs

Section 139ZZA provides that summary proceedings for an offence under the amended Principal Act may be brought and prosecuted by the Commission.

Oral hearings

Section 47 amends the Principal Act by inserting a Schedule 4 after Schedule 3, which sets out the process which must be applied in the conduction of oral hearings under the relevant sections of this Part.

Part 13

AMENDMENT OF PART 10 OF PRINCIPAL ACT

Amendment of section 153 of Principal Act

Section 48 amends section 153 of the Principal Act by the insertion of a definition for “community sound broadcaster”, and by providing for a new definition of a “scheme” to take account of the provision in section 50 of the Bill for a scheme which provides for the making of grants by the Commission to community sound broadcasters.
Amendment of section 154 of Principal Act

Section 49 removes, at section 154 of the Principal Act, reference to an "MMD System", as this is a system (multipoint microwave distribution system) which is no longer in use, and deletes a transitional provision which was in place to ensure an appropriate transition from the Broadcasting Commission of Ireland to the Broadcasting Authority of Ireland.

Scheme for professional journalistic practices in community sound broadcasting

Section 50 amends the Principal Act by inserting a section 155A after section 155 to provide that the Commission shall submit a scheme to the Minister which provides for the making of grants to community sound broadcasters for the purposes of supporting and promoting good professional journalistic practices and standards. Under this scheme, a community sound broadcaster may be required co-fund the appropriate training or professional development opportunities. This section also provides that the Minister must lay such a scheme before the Houses of the Oireachtas.

Amendment of section 157 and 159 of Principal Act

Section 51 and Section 52 provide for minor technical amendments to sections 157 and 159 of the Principal Act respectively.

Part 14

EUROPEAN WORKS

European works

Section 53 amends the Principal Act by inserting a Part 10A after Part 10. Part 10A incorporates the following sections which provide that the catalogues of audiovisual on-demand media services contain at least a 30% share of European works and for the imposition of a European works levy and making of a European works scheme out of which funds from the levy may be granted by the Commission:

Interpretation of European works

Section 159A sets out a definition of “European works”.

Share of European works

Section 159B provides that audiovisual on-demand media services must, excepting those exempted under section 159H or those with low audiences or turnover, ensure that their catalogue contains at least a 30% share of European works. This section also provides that the Commission must make rules for determining whether an audiovisual on-demand media service has a catalogue in which the share of European works is less than 30% and whether a media service provider has a low audience or turnover.

Prominence of European works

Section 159C provides that the Commission shall make rules which ensure the prominence of European works in the catalogue of an audiovisual on-demand media service. As in section 159B, such rules will not apply to a media service provider with a low turnover or a low audience or those exempted under rules made under section 159H. The rules made by the Commission may relate to, for example, the visibility and presentation of European works within a catalogue, or the accessibility of European works within a catalogue.
Reporting

Section 159D provides that the Commission shall report to the Minister once annually on the operation of sections 159B and 159C relating to the share and prominence of European works.

European works levy

Section 159E provides that the Media Commission may impose a levy (the ‘European works levy’) on media service providers under the jurisdiction of the State, or those under the jurisdiction of another Member State and targeting audiences in the State. The same services as exempted under sections 159B and 159C will again be exempted.

European works scheme

Section 159F provides that the Commission may make a scheme (the ‘European works scheme’) out of which funds from the European works levy may be granted to provide support for the production of European works to media service providers which are under the jurisdiction of the State, or target audiences in the State and are established in another Member State. The section specifies the type of programming that may be supported, which includes programmes relating to Irish culture, history, heritage, society and sport, or new audiovisual programmes to improve adult literacy or improve media literacy. The section also provides that at least 25% of the annual funds under this scheme be granted to certain programmes in the Irish language.

Under the section, the Commission shall prepare a scheme if the Minister directs it to.

Procedure for making schemes under section 159F

Section 159G sets out the procedure by which the Commission shall submit a European works scheme to the Minister and by which the Minister shall consider a scheme. The Minister may approve or refuse a scheme, direct the Commission to reconsider a scheme, or direct the Commission to resubmit a scheme with amendments.

Exemptions for particular services

Section 159H provides that the Commission may make rules which ensure that certain services are exempted under sections 159B, 159C and 159E. It may be necessary to apply such rules where the Commission considers it impracticable or unjustified by reason of the nature of a service to impose the corresponding obligations on it.

Laying of rules, orders and schemes

Section 159I provides that any rule, order or scheme made under this Part shall be laid by the Commission before the Houses of the Oireachtas and may be annulled by either House in certain circumstances.

Part 15

AMENDMENT OF PART 11 OF PRINCIPAL ACT

Amendment of section 160, 163, 165 and 170 of the Principal Act

Sections 54 to 57 provide for minor consequential amendments to sections 160, 163, 165, and 170 of the Principal Act.
Part 16

DISSOLUTION AND TRANSITIONAL PROVISIONS

Dissolution of Authority and statutory committees

Section 58 provides for the dissolution of the Broadcasting Authority of Ireland and its statutory committees on the establishment day of the Commission.

Transfer of functions

Section 59 provides for the transfer of the functions of the Broadcasting Authority of Ireland and its statutory committees to the Commission on establishment day.

Transfer of staff

Section 60 provides for the transfer of staff of the Broadcasting Authority of Ireland to the staff of the Commission on establishment day. This section also provides for the continuation in force, after the transfer of staff, of any superannuation schemes in effect, that a transferring staff member shall not, except in accordance with a collective agreement, be subject to less favourable terms and conditions of service than he or she was subject to before establishment day, and that the previous service of transferring staff shall be reckonable for a range of specified legislative instruments.

Transfer of land, other property, rights and liabilities, and provisions consequent upon transfer of functions, assets and liabilities to Commission

Section 61 to Section 64 provide for standard transitional provisions, including provisions which ensure the transfer of land and other property, of outstanding liability for loss, and of anything commenced but not completed by the Broadcasting Authority of Ireland or its statutory committees to the Commission upon establishment.

Final accounts and final annual report of Authority

Section 65 provides that the Commission shall draw up the final accounts of the Broadcasting Authority of Ireland and submit a final annual report to the Minister within six months of establishment. The final accounts of the Broadcasting Authority of Ireland must be submitted to the Comptroller and Auditor General for audit, following which the relevant documents must be laid before the Houses of the Oireachtas.

Transfer of records

Section 66 provides for the transfer of all records held by the Broadcasting Authority of Ireland to the Commission upon establishment.

Complaints under section 48 of Principal Act

Section 67 provides that the Commission may continue with the consideration of a complaint made under section 48 of the Principal Act to the Broadcasting Authority of Ireland. This section also provides for modifications to section 48 of the Principal Act in order to allow the Commission to consider the complaint made in line with the provision of the Act, prior to its amendment by this Bill.

Investigation under section 50 of Principal Act

Section 68 provides that the Commission may continue an investigation which has been commenced by the Broadcasting Authority of Ireland under section 50 of the Principal Act. As in section 67, certain modifications are necessary to ensure that the investigation is completed in line with the legislation prior to amendment by this Bill.
Termination or suspension of contract under section 51 of Principal Act

Section 69 provides that the Commission may, where one has been commenced by the Broadcasting Authority of Ireland, continue with a process of terminating or suspending a contract under section 51 of the Principal Act.

Procedures under Chapter 2 of Part 5 of Principal Act

Section 70 provides for the continuation by the Commission of a procedure commenced by the Broadcasting Authority of Ireland under Chapter 2 of Part 5 of the Principal Act, which relates to investigations of breaches by broadcasters of, inter alia, a broadcasting rule or code. This section provides for modifications to the relevant sections of the Principal Act to ensure that such a procedure is continued in line with the provisions of the Principal Act prior to its amendment by this Bill.

Repeals

Section 71 sets out the provisions of the Principal Act which are to be repealed, in particular Part 3, which provided for the making of broadcasting rules and codes and is being replaced through this Bill by a new Part 3 providing for the making of media service rules and codes, reflecting the expanded scope of regulation being introduced through this Bill.

Part 17

AMENDMENTS TO OTHER ENACTMENTS

Amendments to other Acts

Section 72 to Section 77 provide for minor amendments to other Acts which are impacted by the amendments to the Principal Act proposed under this Bill.

Financial implications

Given the Commission will ultimately be funded by a levy on regulated entities provided for under section 21 of the amended Principal Act (as inserted by section 7 of the Bill), there will be no long-term implications for the Exchequer. However, in the immediate period following the establishment of the Commission there may be a requirement for the Minister to make a grant from the Exchequer to the Commission under section 23 of the amended Principal Act (as inserted by section 7 of the Bill).