

# Online Safety and Media Regulation Bill 2022

Bill No. 6 of 2022

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21 February 2022

## Abstract

The *Online Safety and Media Regulation Bill 2022* proposes to establish a Media Commission in place of the Broadcasting Authority of Ireland. It also transposes the revised provisions of the Audiovisual Media Services Directive contained in Directive (EU) 2018/1808 and establishes a regulatory framework for online safety. It also extends provisions on broadcasting codes and rules to audiovisual on-demand media services and provides for an enforcement framework which includes more extensive provisions on administrative financial sanctions and a number of offences.



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This L&RS Bill Digest may be cited as:

Oireachtas Library & Research Service, 2022, *L&RS Bill Digest: Online Safety and Media Regulation Bill 2022. Bill No. 06 of 2022.*

## Acknowledgements

The authors wish to express their gratitude to Dr. Helen Kehoe, Senior Parliamentary Researcher (Law), Office of the Parliamentary Legal Advisers, for her assistance in analysing some of the technical elements of this Bill.

## Legal Disclaimer

No liability is accepted to any person arising out of any reliance on the contents of this paper. Nothing herein constitutes professional advice of any kind. This document contains a general summary of developments and is not complete or definitive. It has been prepared for distribution to Members to aid them in their parliamentary duties. Some papers, such as a Bill Digest, are prepared at very short notice. They are produced in the time available between the publication of a Bill and its scheduling for second stage debate. Authors are available to discuss the contents of these papers with Members and their staff but not with members of the general public.

## Summary

The Bill is intended to transpose the provisions of [Directive \(EU\) 2018/1808](#) (2018 Directive), which revises [Directive \(EU\) 2010/13](#) (2010 Directive), into Irish law. The 2010 Directive is also known as the Audiovisual Media Services Directive, or AVMSD. The Directive as revised in 2018 is referred to as the [revised AVMSD](#) throughout this Bill Digest and the supporting L&RS Note series. The Directive sets out provisions to be applied to broadcast and on-demand audiovisual media, and for video-sharing platform services. The Directive also includes more expansive requirements regarding the prominence of European works and permits Member States to require a financial contribution from media service providers (referenced in the General Scheme as a content levy).

At national level, the Bill proposes to dissolve the Broadcasting Authority of Ireland (BAI) and in its place establish a Media Commission (the Commission) with a wider remit, covering on-demand audiovisual media, visual sharing platforms and online safety. Within its structure, it is envisaged to have a Chairperson and separate Commissioners overseeing broadcast media, on-demand media and online safety, although this is not explicitly referenced in the General Scheme. The Bill also provides for additional powers for the Media Commission in relation to compliance and enforcement, including the power to impose administrative financial sanctions.

The Bill proposes extensive provisions around online safety and sets out a definition for harmful online content. This transposes requirements under the AVMSD with regard to video-sharing platforms. However, the Bill also proposes a definition of age-inappropriate online content and sets out procedures for addressing harmful online content. These procedures include the formulation of online safety codes by the Media Commission, addressed to designated online services.

## Glossary and abbreviations

Some abbreviations and terms are used throughout this Bill Digest, the meaning of which is set out in the below table.

**Table 1: Abbreviations and terms**

Term	Meaning
AVMSD	Audiovisual Media Services Directive ( <a href="#">Directive 2010/13/EU</a> )
BAI	Broadcasting Authority of Ireland
Commission	Coimisiún na Méan / Media Commission
Department	Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media
DOS	Designated Online Service
L&RS	Library & Research Service
Minister	Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media
MSP	Media Service Provider
OSMR / OSMR Bill	<a href="#">Online Safety and Media Regulation Bill 2022</a>
PLS	Pre-legislative Scrutiny
Principal Act / 2009 Act	<a href="#">Broadcasting Act 2009</a>
Revised AVMSD	Audiovisual Media Services Directive with amendments from <a href="#">Directive (EU) 2018/1808</a> .
VSP	Video-sharing platform provider

## Background

The [Online Safety and Media Regulation Bill 2022](#) (OSMR Bill) was initiated on 25 January 2022 and is due to be taken for Second Stage in Seanad Éireann on 22 February 2022. The OSMR Bill provides for the dissolution of the Broadcasting Authority of Ireland (BAI) and the establishment of **Coimisiún na Meán**, or the Media Commission, in its place. This Commission will have a wider remit, covering on-demand audiovisual media, visual sharing platforms and online safety.

### **L&RS Note series**

Given the expansive range of policy issues covered by the Bill, the L&RS has prepared an *L&RS Note* series entitled, 'Insights into the OSMR Bill'. This *L&RS Note* series is designed to be read as an accompaniment to this **Bill Digest**, as it discusses the policy context and background to key elements of the Bill. Consequently, this **Bill Digest** details the table of provisions and principal provisions of the Bill only, with the policy context and legislative background to the Bill covered in the *L&RS Note* series

The text box below provides an overview of the detailed consideration covered in each part of this *L&RS Note* series, with links provided also.

#### **L&RS Note series: Insights into the OSMR Bill**

An *L&RS Note* series, which has formed the backdrop to the L&RS's policy and legislative analysis work in respect of this piece of legislation, compliments this **Bill Digest**.

This series is structured as follows:

- [Part 1](#) provides an introduction to the OSMR Bill and the policy context underpinning its development.
- [Part 2](#) is intended as a resource for Members who wish to access detailed empirical data (both national and international) on various aspects of online usage.
- [Part 3](#) introduces key aspects of the current legal and regulatory framework.

It is envisaged that additional work in this series will be published to aid Members' scrutiny of the Bill as it passes through the Houses.

## Table of provisions

The provisions of the OSMR Bill are set out in the Table of Provisions below. Sections inserting new Parts into the Principal Act are set out in the Principal Provisions section below.

**Table 2: Table of Provisions of the Online Safety and Media Regulation Bill 2022**

Section	Title	Effect
<b>Part 1 – Preliminary and General</b>		
1	Short title, collective citation and commencement	<p>Provides that the Act shall be known as the Online Safety and Media Regulation Act 2022.</p> <p>Provides that the Act and the <i>Broadcasting Act 2009</i> shall be collectively cited as the Broadcasting and Other Media Regulation Acts 2009 and 2022.</p> <p>Provides for commencement of the Act in whole or in part. Different parts of the Bill can be commenced on different days.</p>
2	Definitions	<p>Sets out definitions for the following:</p> <ul style="list-style-type: none"> <li>• Authority;</li> <li>• Commission;</li> <li>• Compliance Committee;</li> <li>• Contract Awards Committee;</li> <li>• Establishment day;</li> <li>• Minister;</li> <li>• Principal Act; and</li> <li>• Statutory committees.</li> </ul>
<b>Part 2 – Amendment of Part 1 of the Principal Act (Preliminary and general matters)</b>		
3	Amendment to section 2 of the Principal Act (definitions)	This provides for the separating of section 2 of the 2009 Act into two subsections. It adds, amends and repeals a variety of definitions.
4	Meaning of “under the jurisdiction of the State”: media service providers	Adds a new section 2A to the Principal Act, which sets out the jurisdiction requirements for media service providers.
5	Meaning of “under the jurisdiction of the State”: providers of video-sharing platform services	Adds a new section 2B to the Principal Act, which sets out the jurisdiction requirements for video-sharing platform services.
6	Procedure for giving notices	Adds a new section 2C to the Principal Act, which sets out the procedure for giving notices.
<b>Part 3 – Coimisiún na Meán</b>		
7	Coimisiún na Meán	<p>This is a comprehensive amendment which replaces Part 2 (Broadcasting Authority of Ireland) of the Principal Act with a new set of provisions in relation to Coimisiún na Meán. These new provisions, as they would appear in the amended Act, are as follows:</p> <ul style="list-style-type: none"> <li>• Section 5: Establishment day</li> <li>• Section 6: Establishment of Commission</li> <li>• Section 7: Powers and functions of Commission</li> <li>• Section 8: Delegation of functions</li> <li>• Section 9: Conferral of additional functions</li> </ul>

Section	Title	Effect
		<ul style="list-style-type: none"> <li>• Section 10: Independence of the Commission</li> <li>• Section 11: Membership of Commission</li> <li>• Section 12: Conditions of office of Commission</li> <li>• Section 13: Appointment of Acting Commissioner</li> <li>• Section 14: Chairperson of Commission</li> <li>• Section 15: Eligibility of appointment as Commissioner or member of staff</li> <li>• Section 16: Meetings of Commission</li> <li>• Section 17: Staff of Commission</li> <li>• Section 18: Superannuation</li> <li>• Section 19: Committees</li> <li>• Section 20: Consultants and advisers</li> <li>• Section 21: Power to impose levies</li> <li>• Section 22: Levies under section 21: enforcement and procedure</li> <li>• Section 23: Grant to Commission</li> <li>• Section 24: Power to borrow</li> <li>• Section 25: Deposits and charges for services</li> <li>• Section 26: Estimates and accounts</li> <li>• Section 27: Accountability of chairperson to the Public Accounts Committee</li> <li>• Section 28: Accountability of Commissioner to Oireachtas committees</li> <li>• Section 29: Strategy statement and work programme</li> <li>• Section 30: Observations on legislative proposals and review of enactments</li> <li>• Section 31: Reporting by Commission</li> <li>• Section 32: Co-operation with other bodies</li> <li>• Section 33: Disclosure of personal data</li> <li>• Section 34: Co-operation with self-regulatory systems</li> <li>• Section 35: Policy communications</li> <li>• Section 36: Confidential information</li> <li>• Section 37: Disclosure of interests</li> <li>• Section 38: Judicial review</li> </ul>
<b>Part 4 – Register of Providers of Audiovisual On-Demand Media Services</b>		
8	Register of providers of audiovisual on-demand media services	<p>This provision is a comprehensive amendment to the Principal Act, which adds a new Part 3A, providing for a register of audiovisual on-demand media services. Its sections, as they would appear in the Act, are structured as follows:</p> <ul style="list-style-type: none"> <li>• Section 46A: Register of providers of audiovisual on-demand media services</li> <li>• Section 46B: Duty of media service providers to notify the Commission</li> <li>• Section 46C: Duty of registered media service providers to notify changes</li> <li>• Section 46D: Procedure where Commission notified under section 46B or 46C</li> <li>• Section 46E: Review and correction of register</li> <li>• Section 46F: Failure to notify or provider further information</li> <li>• Section 46G: Removal of provider or service from register</li> <li>• Section 46H: Rules and guidelines</li> </ul>

Section	Title	Effect
<b>Part 5 - Duties, codes, and rules applying to media service providers and sound broadcasters</b>		
9	Duties, codes, and rules applying to media service providers and sound broadcasters	<p>This provision is a comprehensive amendment to the Principal Act, which adds a new Part 3B, providing for duties, codes and rules applying to media service providers and sound broadcasters.</p> <p>Its sections, as they would appear in the Act, are structured as follows:</p> <p><b>Chapter 1 - Interpretation</b></p> <ul style="list-style-type: none"> <li>Section 46I: Interpretation: 'relevant media service provider'</li> </ul> <p><b>Chapter 2 - Duties</b></p> <ul style="list-style-type: none"> <li>Section 46J: Harm, offence, incitement, and authority of State</li> <li>Section 46K: Privacy</li> <li>Section 46L: News and current affairs</li> <li>Section 46M: Advertising</li> </ul> <p><b>Chapter 3 – Media service codes and media service rules</b></p> <ul style="list-style-type: none"> <li>Section 46N: Media service codes</li> <li>Section 46O: Media service rules</li> </ul> <p><b>Chapter 4 – Retention of copies of programme material</b></p> <ul style="list-style-type: none"> <li>Section 46P: Retention of copies of programme material</li> <li>Section 46Q: Consultation</li> <li>Section 46R: Laying of codes and rules</li> </ul>
<b>Part 6 – Amendment of Part 4 of the Principal Act (Redress)</b>		
10	Amendment of section 47 of Principal Act	This provision consists of technical amendments to section 47 of the Principal Act, concerning the code of practice for complaints handling. These amendments account for the addition of on-demand media services to the Principal Act's provisions.
11	Complaints	This provision replaces section 48 of the Principal Act, which concerns the complaints process.
12	Amendment of section 49 of Principal Act	This provision consists of a series of technical amendments to section 49 of the Principal Act, which concerns the right of reply of broadcasters to correct inaccurate or misleading information. These amendments account for the Commission assuming the role of the Compliance Committee and the Authority in this process.
<b>Part 7 – Amendment of Part 5 of the Principal Act (Enforcement)</b>		
13	Amendment of section 50 of Principal Act	This provision makes a series of technical amendments to section 50 of the Principal Act, which concerns investigations into the affairs of contractors, to account for the Commission assuming the role of the Compliance Committee.
14	Amendment of section 51 of Principal Act	This provision makes a series of amendments to section 51 of the Principal Act, which addresses the termination or suspension of contracts entered into by the BAI under Part 6



Section	Title	Effect
		and 8 of the Act to account for the Commission assuming the role of the Compliance Committee and the Authority.
15	Amendment of section 57 of Principal Act	This provision deletes sections 57(1) and 57(2) of the Principal Act, which respectively set out the requirements for notifications of enforcements to broadcasters and contractors by the BAI and the treatment of residence for companies, bodies corporate and incorporated bodies.
<b>Part 8 – Amendment of Part 6 of the Principal Act (Broadcasting Contracts and Content Provision Contracts —Commercial and Community Broadcasters)</b>		
16	Amendment of section 58 of Principal Act	This amends section 58 of the Principal Act to remove the definition of a television programme service contract.
17	Amendment of section 59 of Principal Act	This amends section 59(4) of the Principal Act to remove the word “registered”.
18	Amendment of section 60 of Principal Act	This deletes sections 60(4) and 60(5) of the Principal Act.
19	Amendment of section 62 of Principal Act	This is a technical amendment to section 62 of the Principal Act, which relates to the restriction on award of sound broadcasting contracts, to account for the dissolution of the Contract Awards Committee.
20	Amendment of section 63 of Principal Act	This is a technical amendment to section 63 of the Principal Act, which relates to sound broadcasting contracts, to account for the dissolution of the Contract Awards Committee.
21	Amendment of section 64 of Principal Act	This is a technical amendment to section 64 of the Principal Act, which relates to community sound broadcasting contracts, to account for the dissolution of the Contract Awards Committee.
22	Amendment of section 65 of Principal Act	This makes technical amendments to section 65 of the Principal Act, which relates to applications for sound broadcasting contracts, to account for the dissolution of the Contract Awards Committee.
23	Amendment of section 66 of Principal Act	This makes technical amendments to section 66 of the Principal Act, which relates to the determination of applications for award of sound broadcasting contracts and television programme service contracts, to account for the dissolution of the Contract Awards Committee.
24	Amendment of section 67 of Principal Act	This makes technical amendments to section 67 of the Principal Act, which relates to fast-track application process for award of sound broadcasting contracts, to account for the dissolution of the Contract Awards Committee. A further amendment is made to account for the repeal of Part 3 of the Principal Act.
25	Amendment of section 68 of Principal Act	This makes technical amendments to section 68 of the Principal Act, which relates to sound broadcasting contracts for temporary or institutional sound broadcasting services, to account for the dissolution of the Contract Awards Committee. A minor amendment is also made to account for the insertion of section 46L(5) to, and the repeal of Part 3 from, the Principal Act.

Section	Title	Effect
26	Amendment of section 69 of Principal Act	This makes technical amendments to section 69 of the Principal Act, which relates to the terms and conditions of broadcasting contracts, to account for the dissolution of the Contract Awards Committee.
27	Amendment of section 70 of Principal Act	This makes a technical amendment to section 70, which relates to television programme service contracts, to account for the dissolution of the Contract Awards Committee.
28	Amendment of section 71 of Principal Act	This makes several amendments to section 71, which relates to content provision contracts. It deletes the term “MMD system” and amends the exemptions from the requirement to hold a content provision contract to include holders of free-to-air television programme service contracts prior to the entry into force of section 28 of the Bill. It also makes amendments to account for requirements regarding age-inappropriate content, provisions relating to levies and inserts a definition for “excepted person”.
29	Amendment of section 72 of Principal Act	This makes consequential amendments to section 72, which relates to community content provision contracts, to remove reference to MMD systems from the section and to account for the repeal of Part 3 of the Principal Act.
30	Amendment of section 78 of Principal Act	This amends section 78, which relates to offences, to remove as an offence the contravention of the requirement under section 74(2) of the 2009 Act to not prepare or make available an electronic programme guide without an electronic programme guide contract.
<b>Part 9 – Amendment of Part 7 of the Principal Act (Public service broadcasting)</b>		
31	Amendment of section 86 of Principal Act	This amends section 86, which relates to exclusions from board membership, to account for the dissolution of the BAI, Contract Awards Committee and Compliance Committee.
32	Amendment of section 106 of Principal Act	<p>This specifically amends section 106(3) of the Act, which relates to advertising on public service broadcasting corporations, to provide for revised time limits for the broadcast of advertisements. It removes reference to section 41(2) of the Act, instead making the limits subject to the requirements of two new subsections; 106(3A) and 106(3B), which set these time limits as follows:</p> <ul style="list-style-type: none"> <li>• Sound broadcasting services: 15 percent of total daily broadcasting time and 10 minutes of any hour;</li> <li>• Audiovisual broadcasting services: 20 percent of time between 6am and 6pm and between 6pm and midnight.</li> </ul> <p>An additional subsection 106(3C) is also added, providing that failure to comply with these requirements is a contravention under the proposed Part 8B of the Act.</p>
33	Amendment of section 114 of Principal Act	This amends section 114, which relates to principal objects and associated powers of RTE, to substitute “audiovisual on-demand media services” for “non-broadcast non-linear audio-visual media services”.
34	Amendment of section 118 of Principal Act	This amends section 118, which relates to principal objects and associated powers of TG4, to substitute “audiovisual on-demand

Section	Title	Effect
		media services” for “non-broadcast non-linear audio-visual media services”.
35	Amendment of section 123 of Principal Act	This amends section 123, which relates to the allocation of public funding, to add the Commission to the bodies which may be funded from a portion of receipts from television licence fees. This is currently apportioned to RTÉ and TG4. This provision also caps the amount which may be paid to the Commission at 50% of its previous year’s expenses.
36	Amendment of section 124 of Principal Act	This amends section 124, which relates to recommendations as to changes to public funding, to remove reference to the Compliance Committee.
37	Amendment of section 125 of Principal Act	This amends provisions in section 125 with regard to advertising on the Houses of the Oireachtas Channel. This is a technical amendment to reflect changes in the definition of “advertisement” and “commercial communication”
38	Amendment of section 127 of Principal Act	This amends provisions in section 127 on the allotted time which may be fixed for advertisements on the Irish Film Channel. It also makes a failure to comply with these provisions a contravention for the purposes of Part 8B, which relates to investigations and sanctions.
39	Availability and prominence of public service programmes and services	This provision inserts a new Chapter 7 into the existing Part 7 of the Principal Act, regarding the availability and prominence of public service programmes and services. It consists of five new sections: <ul style="list-style-type: none"> <li>• Section 128A: Interpretation</li> <li>• Section 128B: Must-carry and must-offer obligations for platforms</li> <li>• Section 128C: Prominence on interactive guides</li> <li>• Section 128D: Designation of public service audiovisual broadcasting or on-demand media services</li> <li>• Section 128E: Consultation and laying</li> </ul>
<b>Part 10 – Amendment of Part 8 of the Principal Act (Digital Broadcasting and Analogue Switch-Off)</b>		
40	Amendment of section 129 of Principal Act	This adds a new definition for ‘listed simulcast licence’ and deletes the definition of a ‘television programme service contract’.
41	Amendment of section 134 of Principal Act	This amends section 134, which relates to the amendment of sound broadcasting contracts for listed simulcast services, by replacing subsections 134(1) to 134(6) with three new subsections. These are consequential amendments which account for the dissolution of the BAI and the establishment of the Commission.
42	Amendment of section 136 of Principal Act	This amends section 136, which relates to applications for multiplex contracts, by amending subsections 136(1), (2) and (7). These are consequential amendments which account for the dissolution of the BAI and the establishment of the Commission.
43	Amendment of section 138 of Principal Act	This amends section 138, which relates to terms and conditions of multiplex contracts, by amending subsections 138(4) and (5). These are consequential amendments which account for the dissolution of the BAI and the establishment of the Commission.

Section	Title	Effect
<b>Part 11 – Online Safety</b>		
44	<b>Online Safety</b>	<p>This section provides for a comprehensive series of new sections that would comprise a new Part 8A of the Principal Act. These new sections set out the legislative measures regarding online safety. The sections in Part 8A, as they would appear in the Act, are structured as follows:</p> <p><b>Chapter 1 – Interpretation: harmful online content and age-inappropriate online content</b></p> <ul style="list-style-type: none"> <li>• Section 139A: Harmful online content</li> <li>• Section 139B: Power to specify other harmful online content</li> <li>• Section 139C: Procedure for proposals and orders under section 139B</li> <li>• Section 139D: Age-inappropriate online content</li> </ul> <p><b>Chapter 2 – Designated online services</b></p> <ul style="list-style-type: none"> <li>• Section 139E: Designation of online services</li> <li>• Section 139F: Power to require information relevant to designation</li> <li>• Section 139G: Requirement to designate video-sharing platform services</li> <li>• Section 139H: Procedure for designation of online services</li> <li>• Section 139I: Revocation of designation</li> <li>• Section 139J: Register of designated online services</li> </ul> <p><b>Chapter 3 – Online safety codes</b></p> <ul style="list-style-type: none"> <li>• Section 139K: Online safety codes</li> <li>• Section 139L: Application of online safety codes</li> <li>• Section 139M: Online safety codes: matters to be considered</li> <li>• Section 139N: Online safety codes: procedure</li> <li>• Section 139O: Compliance with online safety codes: information notices</li> <li>• Section 139P: Audit of complaints and complaints handling</li> <li>• Section 139Q: Enforcement of online safety codes</li> </ul> <p><b>Chapter 4 – Online safety guidance materials and advisory notices</b></p> <ul style="list-style-type: none"> <li>• Section 139R: Guidance materials and advisory notices</li> <li>• Section 139S: Guidance materials and advisory notices: matters to be considered</li> <li>• Section 139T: Guidance materials and advisory notices: procedure</li> </ul> <p><b>Chapter 5 – Ancillary matters</b></p> <ul style="list-style-type: none"> <li>• Section 139U: Scheme for notifications by nominated bodies</li> <li>• Section 139V: Duty of Commission to encourage use of mediation</li> <li>• Section 139W: Voluntary arrangements with providers in third countries</li> <li>• Section 139X: e-Commerce compliance strategy</li> </ul>
45	Harmful online content: offence-specific categories	This provision inserts a new Schedule 3 into the Principal Act, which sets out a list of offence specific categories of harmful

Section	Title	Effect
		<p>online content referenced in the proposed Section 139A(1)(b). The Schedule references offences under the following Acts:</p> <ul style="list-style-type: none"> <li>• <i>Offences Against the State Act 1939</i></li> <li>• <i>Criminal Law (Rape) Act 1981</i></li> <li>• <i>Prohibition of Incitement to Hatred Act 1989</i></li> <li>• <i>Criminal Justice Act 1993</i></li> <li>• <i>Criminal Law (Suicide) Act 1993</i></li> <li>• <i>Criminal Justice (Drug Trafficking) Act 1996</i></li> <li>• <i>Bail Act 1997</i></li> <li>• <i>Non-Fatal Offences against the Person Act 1997</i></li> <li>• <i>Child Trafficking and Pornography Act 1998</i></li> <li>• <i>Children Act 2001</i></li> <li>• <i>Criminal Justice (Terrorist) Offences Act 2005</i></li> <li>• <i>Criminal Justice (Insanity) Act 2006</i></li> <li>• <i>Criminal Justice Act 2006</i></li> <li>• <i>Criminal Justice Act 2007</i></li> <li>• <i>Criminal Law (Human Trafficking) Act 2008</i></li> <li>• <i>Criminal Procedure Act 2010</i></li> <li>• <i>Criminal Justice (Female Genital Mutilation) Act 2012</i></li> <li>• <i>International Protection Act 2015</i></li> <li>• <i>Criminal Law (Sexual Offences) Act 2017</i></li> <li>• <i>Domestic Violence Act 2018</i></li> <li>• <i>Harassment, Harmful Communications and Related Offences Act 2020</i></li> <li>• <i>Criminal Procedure Act 2021</i></li> </ul>
<b>Part 12 – Investigations and Sanctions</b>		
46	Investigations and sanctions	<p>This provision inserts a new Part 8B to the Principal Act, which sets out the procedure for investigations and sanctions. The proposed sanctions in Part 8B are as follows:</p> <p><b>Chapter 1 – Interpretation</b></p> <ul style="list-style-type: none"> <li>• Section 139Y: Interpretation</li> </ul> <p><b>Chapter 2 – Authorised officers and investigations</b></p> <ul style="list-style-type: none"> <li>• Section 139Z: Appointment of authorised officers</li> <li>• Section 139ZA: Commencement and terms of investigation</li> <li>• Section 139ZB: Notice of commencement of investigation</li> <li>• Section 139ZC: Powers of authorised officer</li> <li>• Section 139ZD: Search warrant</li> <li>• Section 139ZE: Report of authorised officer</li> <li>• Section 139ZF: Rules</li> <li>• Section 139ZG: Guidelines</li> <li>• Section 139ZH: Conduct of investigations</li> </ul> <p><b>Chapter 3 – Decision of Commission</b></p> <ul style="list-style-type: none"> <li>• Section 139ZI: Division of Commission</li> <li>• Section 139ZJ: Action by Commission after receiving report</li> <li>• Section 139ZK: Decision by Commission</li> <li>• Section 139ZL: Notice and publication of decision of Commission</li> </ul> <p><b>Chapter 4 – Administrative financial sanctions</b></p>

Section	Title	Effect
		<ul style="list-style-type: none"> <li>Section 139ZM: Submissions and requests for information</li> <li>Section 139ZN: Determination of amount of administrative financial sanction</li> <li>Section 139ZO: Limitations on amount of administrative financial sanction</li> <li>Section 139ZP: Appeal against decision</li> <li>Section 139ZQ: Circuit Court confirmation of decision</li> <li>Section 139ZR: Treatment of amounts paid in respect of administrative financial sanctions</li> <li>Section 139ZS: Reference on point of law to High Court</li> </ul> <p><b>Chapter 5 – Notice to end contravention</b></p> <ul style="list-style-type: none"> <li>Section 139ZT: Notice to end contravention</li> </ul> <p><b>Chapter 6 – Access blocking order</b></p> <ul style="list-style-type: none"> <li>Section 139ZU: Access blocking order</li> </ul> <p><b>Chapter 7 – Content limitation notice</b></p> <ul style="list-style-type: none"> <li>Section 139ZV: Content limitation notice</li> <li>Section 139ZW: Procedure in relation to content limitation notice</li> <li>Section 139ZX: Appeal</li> <li>Section 139ZY: Publication of content limitation notice</li> </ul> <p><b>Chapter 8 – Offences</b></p> <ul style="list-style-type: none"> <li>Section 139ZZ: Categories of offences</li> <li>Section 139ZZA: Summary prosecution and costs</li> </ul>
47	Oral hearings	This provision inserts a new Schedule 4 into the Principal Act, which sets out the procedure for holding oral hearings by an authorised officer under section 139ZC, or the Commission under section 139ZL or 139ZM.
<b>Part 13 – Amendment of Part 10 of the Principal Act (Broadcasting Fund)</b>		
48	Amendment of section 153 of Principal Act	This amends section 153 of the Act, which relates to definitions applied in Part 10 of the Act (Broadcasting Fund). It adds a definition for ‘community sound broadcaster’ and amends the definition of a ‘scheme’ to account for the additional of section 155A below.
49	Amendment of section 154 of Principal Act	This amends section 154 of the Act, which relates to the broadcasting funding scheme, to delete reference to ‘MMD system’ and the deletion of a transitional provision, 154(11), relating to schemes approved under section 2 of the <i>Broadcasting (Funding) Act 2003</i> .
50	Scheme for professional journalistic practices in community sound broadcasting	This inserts a new provision, section 155A, into the Act, which provides for the establishment of a scheme for professional journalistic practices in community sound broadcasting.
51	Amendment of section 157 of Principal Act	This is a technical amendment to section 157, which relates to the broadcasting fund, allowing for the continuation of the fund. It also extends references to schemes under that section to schemes made under section 155A.
52	Amendment of section 159 of Principal Act	This amends section 159, which relates to the winding-up and dissolution of a scheme, to extend the applicability of dissolution

Section	Title	Effect
		orders made under that section to schemes made under section 155A.
<b>Part 14 – European Works</b>		
53	European Works	<p>Provides for the insertion of a new Part 10A into the Principal Act, which transposes EU provisions relating to the share and prominence of EU works, and provides for a European works levy and scheme. The new provisions include the following new sections of the Principal Act:</p> <ul style="list-style-type: none"> <li>• Section 159A: Interpretation of European works</li> <li>• Section 159B: Share of European works</li> <li>• Section 159C: Prominence of European works</li> <li>• Section 159D: Reporting</li> <li>• Section 159E: European works levy</li> <li>• Section 159F: European works scheme</li> <li>• Section 159G: Procedure for making schemes under 159F</li> <li>• Section 159H: Exemptions for particular services</li> <li>• Section 159I: Laying of rules, orders and schemes.</li> </ul>
<b>Part 15 – Amendment of Part 11 of the Principal Act (major events television coverage)</b>		
54	Amendment of section 160 of Principal Act	This is a technical amendment to section 160 of the Principal Act, which relates to definitions, to provide for the revised AVMSD.
55	Amendment of section 163 of Principal Act	This is a technical amendment to section 163 of the Principal Act, which relates to consultation, to provide for the revised AVMSD.
56	Amendment of section 165 of Principal Act	This is a technical amendment to section 165 of the Principal Act, which relates to broadcaster duties with respect to Member State events, to provide for the revised AVMSD.
57	Amendment of section 170 of Principal Act	This is a technical amendment to section 170 of the Principal Act, which relates to the criteria for determining reasonable market rates, to provide for the revised AVMSD.
<b>Part 16 – Dissolution and Transitional Provisions</b>		
58	Dissolution of Authority and statutory committees	This provides for the dissolution of the BAI and its statutory Committees on the day the Media Commission is established.
59	Transfer of functions	This provides for the transfer of functions to the BAI. It further provides that references to the BAI in Acts of the Oireachtas and any instrument made under an Act of the Oireachtas shall be construed as references to the Media Commission. These provisions come into effect on the day the Media Commission is established.
60	Transfer of staff	This provides for the transfer of all members of staff in the BAI to the Media Commission. It also provides that save in accordance with a collective agreement, this transfer is not subject to less favourable terms and conditions and that previous service with the BAI is reckonable for the purposes of employment legislation set out in the provision. It also provides that the superannuation scheme under section 16 of the 2009 Act shall remain in force.



Section	Title	Effect
61	Transfer of land and other property	<p>This provides for the following to be transferred from the BAI to the Media Commission:</p> <ul style="list-style-type: none"> <li>all lands, and all rights, powers and privileges related to or connected with such lands. This transfer is envisaged to take place without any conveyance or assignment, with all trusts or equities affecting the lands continuing to subsist and be capable of being performed.</li> <li>It provides for the transfer of all other property, including choses-in-action<sup>1</sup>, without any assignment, and continuing to be capable of being sued on, recovered, or enforced by the Media Commission in its own name.</li> </ul> <p>It also includes provision that any levy income paid to the BAI under section 33 of the 2009 Act, that is surplus to the expenses incurred by the BAI and transferred to the Media Commission, can only be used to discharge the Commission's functions in relation to broadcasting.</p>
62	Transfer of rights and liabilities	<p>This provides for the transfer of all rights and liabilities arising from any contract or commitment entered into by the BAI, and all obligations imposed on the BAI by virtue of court or tribunal order, to the Media Commission. It also provides that such rights and liabilities may be sued on, recovered or enforced by the Media Commission in its own name. It also further provides that every lease, licence, wayleave or permission granted by the BAI in relation to land or other property vested in the Media Commission under this Act shall continue to remain in force as if granted by the Media Commission.</p>
63	Liability for loss incurring before establishment day	<p>This relates to claims against the BAI, legal proceedings to which it is party, settlements and judgments yet to be enforced against yet, and any claim made or yet to be made by the BAI in respect of any loss or injury arising from the act or default of any person. It provides that the liability or claim undertaken by the BAI may be made against, or pursued by and sued for the Media Commission, after the establishment day.</p>
64	Provisions consequent upon transfer of functions, assets and liabilities to Commission	<p>This provides for consequential elements regarding the transfer of functions, assets and liabilities from the BAI to the Commission, which includes the following:</p> <ul style="list-style-type: none"> <li>Anything started but not completed before establishment day, either by or under the authority of the BAI (or its statutory committees), as it relates to a function transferred to the Media Commission, may be carried or finished by the Media Commission.</li> <li>Every instrument made under an enactment, and every document granted or made, in carrying out a function transferred to the Media Commission by this Act, shall</li> </ul>

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<sup>1</sup> According to Murdoch and Hunt, a "*chose in action*" is a right of proceeding in law to procure the payment of a sum of money or to recover pecuniary damages for a wrong inflicted or the non-performance of a contract".



Section	Title	Effect
		<p>have effect on and after establishment day as it granted/made by the Media Commission.</p> <ul style="list-style-type: none"> <li>Any references to the BAI in the memorandum or articles of association of the company and relating to a transferred function under this Act, are to be construed as references to the Media Commission.</li> <li>All moneys, stocks, shares and securities transferred from the BAI to the Media Commission are transferred into the name of the Media Commission on the establishment day.</li> </ul> <p>It also provides that a certificate signed by the Minister that any property, right or liability has or has not vested in the BAI under this Act will be sufficient evidence</p>
65	Final accounts and final annual report of Authority	This is a standard provision on the preparation of final accounts and the final annual report of the BAI. It provides that these are drawn up by the Media Commission as soon as possible after establishment day but no later than 6 months. It also includes provisions for the submission of the accounts for audit to the Comptroller and Auditor General (C&AG), and the presentation of the final accounts and C&AG report to the Minister, which are in turn laid before the Houses of the Oireachtas.
66	Transfer of records	This provides that every record held by the BAI prior to establishment day shall transfer to the Media Commission and thereafter be regarded as the property of, and as being held by, the Media Commission.
67	Complaints under section 48 of the Principal Act	This provides that complaints that are still in existence prior to the coming into operation of sections 10 and 11 of the Bill are to be treated by the Media Commission as if sections 10 and 11 are not in operation, subject to some modifications.
68	Investigation under section 50 of Principal Act.	This provides that any ongoing investigations under section 50 of the 2009 Act which are unresolved prior to section 13 of the Bill coming into operation are considered to be ongoing investigations. This is subject to certain modifications accounting for the appointment of investigators and submissions made by a contractor prior to section 13 of the Bill being commenced.
69	Termination or suspension of contract under section 51 of Principal Act.	This makes provision for the role of the BAI following the issue of notifications, receipt of submissions or making of recommendations under section 51 of the 2009 Act to be assumed by the Commission.
70	Procedures under Chapter 2 of Part 5 of Principal Act.	This makes provision for investigations undertaken by the BAI under Chapter 2 of Part 5 of the 2009 Act to be continued by the Commission. It makes a number of modifications to ensure that the procedure is continued in line with the provisions of Chapter 2 of Part 5 to the 2009 Act prior to its repeal by the Bill.
71	Repeals.	<p>This lists the provisions of the Broadcasting Act 2009 that are to be repealed:</p> <ul style="list-style-type: none"> <li>a) Part 3 (Broadcasters – Duties, Codes and Rules);</li> <li>b) Chapter 2 of Part 5 (Financial Sanctions);</li> <li>c) section 74 (Electronic programme guides);</li> <li>d) section 75 (Rules with respect to programme guide contracts);</li> </ul>

Section	Title	Effect
		<ul style="list-style-type: none"> <li>e) section 76 (Transmission of broadcasting services by MMD system);</li> <li>f) section 77(1)(c) and 77(14) (relating to MMD systems and electronic programme guides); and</li> <li>g) Part 12 (Transitional Provisions).</li> </ul>
<b>Part 17 – Amendments and Other Enactments</b>		
72	Amendment of Referendum Act 1998	This makes a consequential amendment to section 5(1) of the Referendum Act 1998 to account for the repeal of Part 3 of the 2009 Act, which relates to broadcasting duties, codes and rule, and the enactment of the new Part 3B.
73	Repeal of certain provisions of Copyright and Related Rights Act 2000	This repeals sections 103 and 251 of the <i>Copyright and Related Rights Act 2000</i> , which relate to copyright and performer's rights regarding the reception and retransmission of broadcasts in cable programme services.
74	Amendment of Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010	<p>This makes consequential amendments to sections 3 and 7 of the <i>Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010</i>.</p> <p>In section 3, it amends the meaning of 'broadcasting service' to expressly exclude any audio or audiovisual services provided by way of the internet.</p> <p>In section 7, it amends section 7(4) so it is in reference to the 2009 Act instead of Council Directive 89/552/EEC and deletes the definition referencing this Directive.</p>
75	Amendment of Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013	This makes a consequential amendment to section 9 of the <i>Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013</i> , which relates to the power of Oireachtas Committees to inquire into the removal of certain officeholders, to account for the replacement of Part 2 of the 2009 Act by section 7 of the Bill.
76	Amendment of Irish Sign Language Act 2017	This provides for a consequential amendment to section 8 of the Irish Sign Language Act 2017 to account for the repeal of Part 3 of the 2009 Act, which relates to broadcasting duties, codes and rule, and the enactment of the new Part 3B.
77	Amendment of Criminal Justice (Corruption Offences) Act 2018	This provides for consequential amendments to sections 14 and 17 of the <i>Criminal Justice (Corruption Offences) Act 2018</i> , which respectively relate to the presumption of corrupt gift, consideration or advantage (section 14) and to penalties (section 17). These amendments have the effect of extending their application to the Commission.





## PLS of the General Scheme of the Bill

This section of the Digest seeks to assess the extent to which the Committee's recommendations have been addressed **in the Bill, as presented for Second Stage**. To do this, a traffic light system is used by the L&RS, indicating whether a key issue is accepted and reflected in the Bill, whether a consistent or unclear approach is used, and whether the recommendation has not been accepted or is not reflected in the Bill. This traffic light approach represents the L&RS' own, independent analysis of the Bill.





In relation to this Bill, the Department has indicated that some recommendations may not require legislative provision or may be subject to upcoming legislation, including legislation at EU level. The account for this, the L&RS traffic light analysis uses a fourth category within its three-colour scale to indicate that the recommendation has not been implemented in the Bill, but there are additional considerations of which Members are made aware.





The L&RS is grateful to the Departmental officials for providing their assessment of the actions taken and comments in relation to the PLS recommendations. These are replicated in the right-hand column of the table and were derived from a separate analysis provided by the Department to the Joint Committee.






**Table 3: Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations**




L&RS categorisation of the Department's response in the Bill to the Committee's recommendation	Traffic light dashboard used in the Table to highlight impact of the Committee's PLS conclusion
Recommendation has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the recommendation or the impact of the key issue is unclear.	
Recommendation has not been accepted or implemented in the Bill.	
Recommendation has not been implemented in the Bill, but additional considerations are present.	

**Table 4: Traffic light dashboard comparing the Bill as published with Committee PLS recommendations**




Commentary as per Committee report		Whether addressed (either in whole or in part) in the Bill
		L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)
Content Levy		
1. The Committee recommends that specific provisions are made within the Bill for the means of collecting the levy, the party responsible for the collection of the levy, the percentage value of the levy, and the providers liable to pay the levy.		<p><i>Action(s) Taken:</i> This recommendation has not been taken forward.</p> <p><i>Comment:</i> The approach of setting out exact levy percentages and processes in legislation appears inflexible and it is crucial that the Media Commission, as an independent body, should have the power to design and enforce the levy and to change it over time. It is for this reason that it is considered essential that the Media Commission is enabled to complete independent research to assess the benefits and risks and inform the design of any potential levy.</p>
2. The Committee recommends that content levy-funded schemes be: (a), contestable, and, (b), contestable exclusively among independent producers.		<p><i>Action(s) Taken:</i> Part (a) of this recommendation is addressed in the Bill - a content levy scheme may provide for applications for a grant of funding.</p> <p><i>Comment:</i> It is the intention that any content levy scheme is contestable and this has been appropriately provided for in legislation.</p>
		<p><i>Action(s) Taken:</i> This recommendation (2(b)) has not been taken forward.</p> <p><i>Comment:</i> The legal basis behind the levy is an explicit provision in EU law which states that levies can be imposed to support the production of European works. As such, access to funding must be open to all producers. In any case, State Aid rules dictate that those who contribute to a levy scheme should be able to apply for funding from that same scheme.</p>
3. The Committee recommends the removal of restrictions on applications for funding on the part of audiovisual programming produced primarily for news or current affairs, as is contained within Head 77.2(c)		<p><i>Action(s) Taken:</i> This recommendation is addressed in the Bill - restrictions on applications for funding of news or current affairs programming have been removed.</p> <p><i>Comment:</i> The Bill now explicitly provides that funds under a European Works Scheme may be granted to new</p>

Commentary as per Committee report		Whether addressed (either in whole or in part) in the Bill
		L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)
		audiovisual programmes relating to news, current affairs, and international affairs.
<b>Complaints Mechanisms</b>		
4. The Committee recommends that provisions be made for an individual complaints scheme within the General Scheme of the Bill.		<p><i>Action(s) Taken:</i> The potential for an individual complaints mechanism is being considered by an expert advisory group established by the Minister.</p> <p><i>Comment:</i> A Committee Stage amendment may be brought forward in respect of this recommendation, subject to the recommendations of the expert advisory group. The group will have its first meeting on 31 January 2022 and will be expected to report to the Minister within the following 90 days.</p>
5. The Committee recommends that, where provisions are made for an individual complaints scheme, these provisions be responsive to the needs and protection of children and other vulnerable groups, and that these include effective takedown procedures and other appropriate measures		<p><i>Action(s) Taken:</i> The potential for an individual complaints mechanism is being considered by an expert advisory group established by the Minister.</p> <p><i>Comment:</i> A Committee Stage amendment may be brought forward in respect of this recommendation, subject to the recommendations of the expert advisory group. The group will have its first meeting on 31 January 2022 and will be expected to report to the Minister within the following 90 days.</p>
6. The Committee recommends that Head 52A of the General Scheme of the Bill be amended to add a requirement that online social media platforms provide a quarterly report to the Media Commission on their complaints handling.		<p><i>Action(s) Taken:</i> This recommendation is addressed in the Bill - such a requirement will be included as part of the Media Commission's online safety codes.</p> <p><i>Comment:</i> To note, the Bill will also allow the Commission to require that a designated online service completes, on an ad-hoc or periodic basis, an audit of the complaints or complaints-handling process being operated by that service.</p>
<b>Regulating Illegal and Harmful Content</b>		
7. The Committee recommends that the Bill be altered to remove exclusions of defamatory content, as well as of violations of data protection, privacy, consumer protection, and copyright law.		<p><i>Action(s) Taken:</i> This recommendation is addressed in the Bill - it no longer excludes any particular content from the definition of harmful online content.</p> <p><i>Comment:</i> To note, the Media Commission must still, if proposing a new category of harmful online</p>




Commentary as per Committee report		Whether addressed (either in whole or in part) in the Bill  L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)
		content, consider whether or not that content is appropriately addressed by other means.
8. The Committee recommends that all reference to intention be excluded from definitions of categories of online harmful content.		<p><i>Action(s) Taken:</i> This recommendation is addressed in the Bill - there are no references to intention in relation to the definition of harmful online content.</p> <p><i>Comment:</i> This matter was addressed with the Office of the Attorney General during the detailed drafting process.</p>
9. The Committee recommends that disinformation be included as a category of harmful online content.		<p><i>Action(s) Taken:</i> This recommendation is not addressed in the Bill but is being addressed at EU level, including through legislation</p> <p><i>Comment:</i> Disinformation is primarily being dealt with an EU level, including through the Code of Practice on Tackling Disinformation, which is to be linked to implementation of the Digital Services Act in the coming period.</p>
10. The Committee recommends that financial harm be included as a category of harmful online content, to include such content as gambling.		<p><i>Action(s) Taken:</i> This recommendation has not been taken forward.</p> <p><i>Comment:</i> Financial harm is not content which is required to be regulated under the revised Audiovisual Media Services Directive. Moreover, it is not the intention to bring gambling within the scope of the Bill as the regulation of such is being dealt with by the Department of Justice and is set out in the General Scheme of the Gambling Regulations Bill. Other forms of financial harm are already subject to regulatory and criminal law.</p>
11. The Committee recommends that, where content such as pornography and gross or gratuitous violence are defined, these definitions are highly specific so as to avoid subjective interpretation or potential loopholes.		<p><i>Action(s) Taken:</i> This recommendation was addressed through detailed drafting of the Bill - the Office of the Attorney General reviewed every definition for clarity, consistency, and legal robustness.</p> <p><i>Comment:</i> The Office of the Attorney General was satisfied that these terms are appropriately used in the Bill.</p>
12. The Committee recommends that explicit reference be made to prevalence and placement of online content in considerations of harmful content.		<p><i>Action(s) Taken:</i> This relevant provisions take account of this recommendation.</p> <p><i>Comment:</i></p>





Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill  L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)	
		The Media Commission must, when considering designating a service, have regard to the level of availability of harmful online content on the service. The Commission must also consider the risk of a user being exposed to such content while using the service. These matters must also be a consideration of the Media Commission in the preparation of online safety codes and the application of such to designated online services.
13. The Committee recommends that Head 49C of the General Scheme be amended to indicate a minimum age for a child to be permitted to create an account with designated online services.		<p><i>Action(s) Taken:</i> This recommendation is not addressed in the Bill though may be considered for provision in separate legislation.</p> <p><i>Comment:</i> There are a number of privacy and data protection matters, which the Department of Justice and the Data Protection Commission lead on, which would need to be resolved before this recommendation could be effectively implemented.</p> <p>To note, an EU-funded pilot called 'euCONSENT' is in development. It aims to deliver a system for online age-verification and parental consent which balances the rights of children and the need for protection from online harm and age-inappropriate content. The outcome of the pilot will inform the approach to this issue at an EU and national level.</p>
The Media Commission and the Online Safety Commissioner		
14. The Committee recommends that Head 19 of the General Scheme of the Bill is amended to include the position of the Online Safety Commissioner.		<p><i>Action(s) Taken:</i> There are a number of drafting issues to resolve but it is the intention to bring forward an appropriate Committee Stage amendment to provide for this recommendation.</p> <p><i>Comment:</i> Among the issues to be resolved, is the restricted flexibility that could arise by providing for this recommendation. It is important, for example, that there be the possibility for there to be multiple online safety commissioners in the future if deemed necessary.</p>
15. The Committee recommends that the Media Commission and the Online Safety Commissioner are satisfactorily resourced, with the level of staffing and expertise adequate to allow optimal operational capacity and enforcement.		<p><i>Action(s) Taken:</i> This is a recommendation which does not require legislative provision.</p> <p><i>Comment:</i> There has been good engagement with the Department of Public Expenditure and Reform on this issue. As a result, €5.5m in start-up funding</p>









Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill  L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)	
		for the Media Commission was allocated as part of Budget 2022.
16. The Committee recommends that any provision allowing for the removal of commissioners, either by the Minister or by the Department, be removed from the General Scheme of the Bill.		<p><i>Action(s) Taken:</i> This recommendation is addressed in the Bill - only the Government will have the ability to remove a Commissioner.</p> <p><i>Comment:</i> The Government may only remove a Commissioner, if, for instance, there has been serious case of misconduct. An appropriate procedure for such removal must be followed, and includes the right of reply for the Commissioner concerned. This approach will avoid any potential infringement of the independence of the Media Commission while also ensuring appropriate accountability.</p>
17. The Committee recommends that the Joint Committee on Tourism, Culture, Arts, Sport and Media have a role in recommending persons to be nominated for appointment to the Media Commission in line with its existing role in respect of the Broadcasting Authority of Ireland.		<p><i>Action(s) Taken:</i> This recommendation has not been taken forward.</p> <p><i>Comment:</i> The Bill does not propose to allow nominations in relation to the appointment of Commissioners. Rather, recommendations will be provided to the Minister by the Public Appointments Service following the completion of an open recruitment competition.</p> <p>Commissioners are to be full-time public servants, i.e. employees, and their role is more akin to that of Chief Executive of the Broadcasting Authority of Ireland, a position in which the Committee had no role in terms of appointment, than it is to that of a member of a Board or Authority. In addition, other legislation which provides for processes for the appointment of Commissioners, does not set out a role for the relevant Joint Committee as part of that process.</p>
18. The Committee recommends that, within the legislative package, no possible source of infringement of independence should be placed upon the Media Commission or upon the Online Safety Commissioner.		<p><i>Action(s) Taken:</i> This recommendation is addressed in the Bill - the Media Commission will be independent in the performance of its functions.</p> <p><i>Comment:</i> The independence of the Media Commission is a requirement under the revised Audiovisual Media Services Directive and the Office of the Attorney General is satisfied that this requirement is met under the Bill.</p>



Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill  L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)	
<p>19. The Committee recommends that there is a pluralistic and diverse-oriented approach taken during the legislative process for the present Bill and during the regular work of the Media Commission and the Online Safety Commissioner, with full participation sought from all sects of Irish society, including liaising with vulnerable groups to ensure that their lived experience is reflected.</p>		<p><i>Action(s) Taken:</i> This is a recommendation which does not require legislative provision.</p> <p><i>Comment:</i> Stakeholder and public consultation is a key, sometimes mandatory, element of the work of the Media Commission, for example, when proposing an additional category of harmful online content. Also, any such proposal must be approved by the Minister, Government, and each House of the Oireachtas, thereby ensuring appropriate legislative oversight.</p> <p>In addition, extensive stakeholder engagement and public consultation took place during the development of the General Scheme of the Bill, and continues to take place with various stakeholders.</p>
<p>20. The Committee recommends that highly precise detail is given as to the roles and responsibilities of the Media Commission and of the Online Safety Commissioner.</p>		<p><i>Action(s) Taken:</i> There are a number of drafting issues to resolve but it is the intention to bring forward an appropriate Committee Stage amendment to provide for this recommendation.</p> <p><i>Comment:</i> Firstly, the precise roles and responsibilities of the Media Commission are detailed throughout the Bill and the Office of the Attorney General is satisfied, from a legal perspective, that sufficient detail in this regard is provided.</p> <p>As mentioned under recommendation 14, there are a number of drafting issues to resolve in relation to explicitly providing for an Online Safety Commissioner. However, it is the intention to bring forward an amendment at Committee Stage.</p>
<p>21. The Committee recommends that a regulatory role in online safety education is explicitly included within the legislation for the Online Safety Commissioner.</p>		<p><i>Action(s) Taken:</i> This recommendation is addressed in the Bill - the Media Commission is provided a function relating to the endorsement of educational initiatives connected to its functions.</p> <p><i>Comment:</i> S.7 of the Bill provides that the Commission shall "encourage research, promote or endorse educational initiatives and activities and co-operate for that purpose with educational bodies, and otherwise promote public awareness, knowledge and understanding, in relation to matters connected to its functions".</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill  L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)	
22. The Committee recommends that, in addition to the obligation on regulated entities to provide periodic reports on compliance with any codes that the Commission develops, there should be obligation on regulated entities to provide any kind of granular information the Commission deems necessary to fulfil its supervisory tasks		<p><i>Action(s) Taken:</i> This recommendation is addressed in the Bill - the Commission will have the power to request information from regulated entities for a wide range of purposes.</p> <p><i>Comment:</i> The Media Commission may request information from regulated entities including in order to assess the compliance of a designated online service with one or more online safety codes. Failures to comply with certain requests to provide information may lead to an offence and, on conviction, to a fine.</p>
23. The Committee recommends that provision be made in the legislation to enable public interest research based on data provided by regulated platforms		<p><i>Action(s) Taken:</i> This recommendation is not addressed in the Bill though may be considered for provision in separate legislation.</p> <p><i>Comment:</i> This matter is addressed in the Digital Services Act.</p>
<b>Advertising Standards</b>		
24. The Committee recommends a ban on advertising to children online, including, at the very minimum, advertisements of junk food, alcohol, high fat/salt/sugar (HFSS) foods, and gambling.		<p><i>Action(s) Taken:</i> This recommendation is not addressed in the Bill though may be considered for provision in separate legislation.</p> <p><i>Comment:</i> The Bill will provide the Media Commission with a role in regulating commercial advertising on certain online services through its online safety codes. The Commission will engage with health experts and others in developing these codes, which will reflect public policy.</p> <p>Food and alcohol advertising are policy areas under the Department of Agriculture, Food and the Marine and the Department of Health. Moreover, the regulation of gambling advertising is set out in the recently published General Scheme of the Gambling Regulation Bill under the Department of Justice.</p>
25. The Committee recommends a moratorium on advertising infant formula products online		<p><i>Action(s) Taken:</i> This recommendation is not addressed in the Bill though may be considered for provision in separate legislation.</p> <p><i>Comment:</i></p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill  L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)	
		<p>As set out above, the Commission will have a role in regulating commercial advertising and, in this context, will reflect medical and health advertising policy developed by relevant Government Departments and bodies.</p> <p>A moratorium on advertising infant formula products will not be included in the Bill as advertising standards in relation to such products are primarily set down at a European Union level. The implementation of those standards here in Ireland is overseen by the Food Safety Authority of Ireland.</p>
26. The Committee recommends the prohibition of any form of profiling or tracking children's data.		<p><i>Action(s) Taken:</i> This recommendation is not addressed in the Bill though may be considered for provision in separate legislation.</p> <p><i>Comment:</i> This is a matter for the Department of Justice and the Data Protection Commission.</p>
27. The Committee recommends that self-regulation, or other non-statutory mechanisms, are not included as part of the advertising regulatory framework		<p><i>Action(s) Taken:</i> This recommendation is addressed in the Bill - the regulation provided for is purely statutory.</p> <p><i>Comment:</i> The Bill does not provide for self-regulation or non-statutory mechanisms. It does, however, in line with the requirements of revised Audiovisual Media Services Directive, allow for co-operation with self-regulatory systems. This will ensure continued collaboration with bodies such as the Advertising Standards Authority of Ireland and the Press Council.</p>
<b>Integration of the Broadcasting (Amendment) Bill 2019</b>		
28. The Committee recommends that Head 3 (6) (d), of the additional Heads to be integrated from the Broadcasting (Amendment) Bill 2019 into the Online Safety and Media Regulation Bill, be reworded as follows: "the likely expectation of the audience as to the nature of public service content, with particular regard to Irish language speakers."		<p><i>Action(s) Taken:</i> This recommendation is addressed in the Bill - appropriate wording has been included within the relevant section of the Bill.</p> <p><i>Comment:</i> In the course of detailed drafting of the Bill by the Office of the Attorney General, recommendations 28 and 29 have been addressed together at S.128C(2)(c) of the amended Act.</p>
29. The Committee recommends that Head 3 (6) (f), of the additional Heads to be integrated from the Broadcasting (Amendment) Bill 2019 into the Online Safety and Media		<p><i>Action(s) Taken:</i> This recommendation is addressed in the Bill - appropriate wording has been included within the relevant section of the Bill.</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)
Regulation Bill, be reworded as follows: “the fundamental rights of the audience and operators of services providing access to audiovisual media services, with particular regard to Irish language speakers and Irish language media.”		<p><i>Comment:</i></p> <p>In the course of detailed drafting of the Bill by the Office of the Attorney General, recommendations 28 and 29 have been addressed together at S.128C(2)(c) of the amended Act.</p>
<b>Transposition of the European Audiovisual Media Services Directive 2018/1808</b>		
30. The Committee recommends that prominence of public service media content is specifically protected on a legislative basis within the present Bill.		<p><i>Action(s) Taken:</i></p> <p>This recommendation is addressed in the Bill - provision is made for the protection of public service content including through must-carry and must-offer obligations.</p> <p><i>Comment:</i></p> <p>As well as providing for must-carry and must-offer obligations, the Bill also allows the Media Commission to create and apply prominence rules to the interactive guides made available by certain providers. These rules seek to ensure the prominence of public service programmes, broadcasting services, and audiovisual on-demand services, and promote access to them by the widest possible audience.</p>
31. The Committee recommends that Ireland introduce a mandatory production quota for the production of European and/or Irish works.		<p><i>Action(s) Taken:</i></p> <p>This recommendation is not addressed in the Bill though may be considered for provision in separate legislation.</p> <p><i>Comment:</i></p> <p>The introduction of a quota as recommended by the Committee within the Bill would not be appropriate at this time as it is not something which is provided for in the revised Audiovisual Media Services Directive. Further extensive analysis would be required to determine how such a quota would work in practice.</p> <p>The Bill already provides for a number of measures to increase the availability of European works on audiovisual media services, including:</p> <ul style="list-style-type: none"> <li>- A requirement that video on demand services carry at least a 30% share of European works on their catalogues; and,</li> <li>- A content production levy to fund the production of European works.</li> </ul> <p>The introduction of the levy will be subject to the Media Commission carrying out an assessment of the benefits and risks of such a measure.</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill  L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)	
<p>32. The Committee recommends that provisions be made for consultations with broadcasters and content providers during the process of defining relevant audiovisual media services and delineating the operations of the relevant Heads within Parts 5 and 6 of the Bill.</p>		<p><i>Action(s) Taken:</i> This is a recommendation which does not require legislative provision.</p> <p><i>Comment:</i> The Bill does not contain a process of defining relevant audiovisual media services. A definition for such services is explicitly provided, based on one contained in the revised Audiovisual Media Services Directive.</p> <p>It may be that this recommendation seeks to provide the Media Commission with greater flexibility to apply media codes and rules to different types of audiovisual media services. This flexibility is inherent in the relevant provisions of the Bill and will be available to the Commission.</p>
<b>The European Digital Services Act and Digital Markets Act</b>		
<p>33. The Committee recommends that a full review is conducted of the potential areas for overlap between the Online Safety and Media Regulation Bill and the Digital Services Act, including, but not limited to: terminology, complaints mechanisms, and affected services.</p>		<p><i>Action(s) Taken:</i> This is a recommendation which does not require legislative provision.</p> <p><i>Comment:</i> There is agreement that it will be essential to review the areas of cross-over between the Bill and the Digital Services Act, once it is finalised at a European level. At present, the systemic approaches contained in these pieces of legislation appear broadly aligned.</p>

Source: The L&RS is grateful to the Department of Tourism, Culture, Arts, Sport and Media for providing their analysis of how it has responded to the Committee's recommendations. The traffic light analysis represents the analysis of the L&RS.

## Principal provisions of the Bill

This section of the Bill Digest examines the main provisions of the Bill, which contains 17 Parts, 77 sections and is 142 pages long. Due to the length and complexity of the Bill, each provision is not analysed in detail here. Rather, this is an overview of the principal provisions of the Bill, which **is not exhaustive**.

The principal provisions are those that are aligned with the main aims and changes proposed by the Bill and those consequential provisions, including those that garnered the most comment at the PLS stage. References to new sections that are proposed to be inserted into the 2009 Act are italicised in this section to differentiate them from sections of the Bill.

### Part 2: Amendment of Part 1 (Preliminary and General matters) of the Principal Act

#### Definitions

**Section 3** of the Bill provides for a series of amendments to [section 2 of the 2009 Act](#) regarding the definitions used in the Act. It renumbers the existing subsection (2) as subsection (1) and the definitions provided for in that subsection include a definition for 'relevant online service'. Section 3 of the Bill also adds two new subsections to provide for a definition of 'video-sharing platform service'. It also includes definitions for other terms including 'communications media', 'editorial responsibility', 'media literacy' and 'transmission'.

#### Jurisdiction Rules – Media Service Providers

**Section 4** of the Bill transposes the jurisdiction provisions of Article 2 of the revised AVMSD. It provides for a new **section 2A** of the 2009 Act, which sets out the rules for determining the Member State with jurisdiction over a media service provider. This is referred to as the country-of-origin principle, allowing for the rules of one Member State to apply to a media service provider, rather than 27 different sets of rules.

Jurisdiction is applied in first instance where a media service provider has its head office and takes editorial decisions in the same Member State. If the head office and taking of editorial decisions take place in different Member States, then the Member State with jurisdiction is determined on the basis of where a significant part of the workforce involved in the pursuit of programme-related audiovisual activity operates, in the following order:

- The Member State where the head office is based;
- If the head office provision does not apply, the Member State where editorial decisions are taken;
- If the editorial decisions provision does not apply, the Member State where a provider first began its activity in accordance with the law of that Member State. The provider must maintain a stable and effective economic link with that Member State for this provision to apply.

If the head office and taking of editorial decisions occur in different states, one a Member State and one a non-Member State, then the Member State has jurisdiction. If the above does not apply to a media service provider, then a Member State may have jurisdiction if the provider situates a satellite linkup to, or uses the satellite capacity, of that Member State. *Section 2A* also sets out definitions of 'audiovisual media service activity' and 'relevant editorial decisions'.

## Jurisdiction Rules – Video-Sharing Platform Services

**Section 5** of the Bill transposes the jurisdiction provisions in Article 28A of the revised AVMSD. It provides for a new **section 2B** of the 2009 Act, which sets out the rules for determining the Member State with jurisdiction over a video-sharing platform service. Jurisdiction is applied in the first instance by the Member State where a video-sharing platform provider (VSPP) is established. In cases where the VSPP is established in more than one Member State, additional considerations determine the Member State with jurisdiction in the following order:

- The Member State where the parent undertaking of a video-sharing platform provider is established.
- If there is no parent undertaking in the Member States but a subsidiary undertaking, then the Member State where the subsidiary undertaking is established,
- If there is no subsidiary, then a Member State where another undertaking in the group is established.

In the case of subsidiaries and parts of a group, if they are established in more than one Member State, then the Member State where they were first established has jurisdiction, provided the VSPP maintains a stable and effective economic link with that Member State. *Section 2B* also sets out definitions for ‘established’, ‘parent undertaking’, ‘subsidiary undertaking’ and ‘group’.

Articles 2 and 28a of the revised AVMSD also require Member States to maintain a list of media service providers and a list of video-sharing platform providers respectively. These requirements are transposed by Parts 4 and 11 of the Bill, which respectively include provision for a register of audiovisual on-demand media service providers and designated online services, the latter of which encompasses video-sharing platform services. It may also be noteworthy that Part 6 of the 2009 Act maintains a licensing and contract system for linear and sound broadcasters, which contains provision for broadcasting licences and contracts to be inspected.

## Part 3: Coimisiún na Meán

**Section 7** of the Bill amends the Principal Act by substituting Part 2 of that Act for a new **Part 2** which for a range of matters in respect of the establishment, powers, functions and operations of the Coimisiún na Meán (or ‘the Commission’). Please note that the principal provisions of this part are outlined below – please see the Department’s [Explanatory Memorandum](#) for details of sections not covered.

### Powers and functions of Commission

**Section 7** of this new Part 2 provides that the Commission will have all such powers as are necessary for the Commission perform its functions effectively and efficiently. In the performance of its duties, the section establishes that the Commission will endeavor to ensure that, amongst other things:

- the democratic values enshrined in the Constitution, particularly those relating to the rightful liberty of expression, are upheld,
- the interests of the public, particularly children, are protected,
- the broadcasting services and audiovisual on-demand media service available in the State are open and pluralistic,
- the Commission’s policies in respect of these services best serve the needs of people on the island of Ireland, bearing in mind their language and traditions, their experiences (and



those of Irish ancestry living abroad), their diversity, and accessibility requirements in respect of people with disabilities, and

- regulatory arrangements:
  - address programme material, user generated videos and other content that is harmful or illegal,
  - take account of change, both societal and technological,
  - and operate fairly, proportionally and consistently.

Further, this section obliges the Commission to, amongst other things:

- stimulate the provision of high quality, diverse and innovative programmes by broadcasting services and audiovisual on-demand media services,
- provide a regulatory environment which will sustain independent and impartial journalism,
- promote and stimulate the development of Irish language programming and programmes relating to climate change and environmental sustainability,
- promote and encourage environmental sustainability in the policies and practices of providers,
- encourage research and promote educational initiatives and activities, and
- have regard to the policies of the Government and the Minister for the Environment, Climate and Communications in respect of climate change and environmental sustainability.

In terms of its functions, this section establishes that the Commission will, amongst other things:

- provide advice on matters related to its functions if requested to do so by a Government Minister, educational or training institution, or relevant public body,
- give effect to any arrangements entered into with the Minister to stimulate the provision of high quality, diverse and innovate news and current affairs commentary by relevant entities,
- conduct or commission research on matters related to its functions, as well as publish the findings of such research as it considers appropriate, and
- undertake strategic reviews of the broadcasting services sector, audiovisual on-demand media services sector and relevant online services sector.

**Section 8** provides that the Commission may delegate the performance of its functions (though some functions are expressly excluded) to an individual Commissioner or a member of staff of the Commission, whilst **Section 9** establishes that the Minister may confer, by order, additional functions (connected with its existing functions) on the Commission, following appropriate consultation with the Commissioner and any other Government Minister. Such an order must be laid by the Minister before the Houses of the Oireachtas (annullable if a resolution is passed by either House within 21 sitting days of its laying). **Section 10** provides that the Commission will be independent in the performance of its functions.

### Membership of Commission

**Section 11** establishes that the membership of the Commission will consist of a chairperson and between 3 and 6 other Commissioners, with each member (including the chairperson) to be appointed by the Minister on the recommendation of the Public Appointments Service. It provides that the term of office for a commissioner will not exceed 5 years, with Commissioners eligible for reappointment for 1 additional term (i.e. max of 2 terms). Further, this section establishes that the Chief Executive Officer of the BAI may be appointed as a Commissioner by the Minister for a period of no more than one year from the establishment of the Commission and following this, remains eligible for the maximum of two terms of office as a Commissioner.



**Section 12** sets out the conditions under which a Commissioner shall hold office, as well as establishing the procedures by which a Government may remove a Commissioner from office for various specified reasons (e.g. ill-health, serious misconduct, conflict of interest). In addition, it establishes the various specified reasons resulting in a person ceasing to hold the office of Commissioner including, amongst other things, being adjudicated bankrupt, convicted of an offence involving fraud or dishonesty, elected to the Oireachtas or a member of the European Parliament, acquiring a relevant interest in a provider of communications media or entering into employment with such a provider or organisation representative of same.

### **Funding of the Commission**

**Section 21** provides that the Commission may make a levy order imposing a levy on providers of audiovisual media services (broadcast and on-demand), sound broadcasting services and designated online services. The levy order must specify the period for which a levy is imposed and such periods must run successively and be the same for all levies imposed. The Commission must seek to ensure that all levies imposed are sufficient to meet its expenses properly incurred and working capital requirements for the levy period for which they are imposed.

The section sets out provisions on the calculation of levies, requires that the levy order provides for the collection, payment and administration of the levy. Provision is also made for the exemption of community broadcasting services from the levy. The Commission is also required to account for certain factors when calculating a levy, including the financing of a provider (including any public funding, the desirability of promoting new or innovative services, the nature and scale of a provider's services or any other factors that may affect the exercise by the Commission of functions relating to the provider (including, in relation to designated online services (DOS), the availability, risk of exposure to, and risk of harm from harmful online content)).

The section also allows levy orders to make different provisions for different providers, including providers within the same paragraph, or falling into more than one paragraph, of *section 21(1)*. Provision is also made for the offset or refund of surplus income from levies.

**Section 22** sets out provisions on the recovery of any payable levy as a simple contract debt and the laying of levy orders before the Houses of the Oireachtas, with either House enabled to annul the order by resolution within 21 sitting days. Provision is also made for a category 2<sup>2</sup> offence where a person knowingly provides false or misleading information to the Commission in purported compliance with a levy order requirement.

**Section 23** empowers the Minister to advance a grant to the Commission from public funds, subject to the approval of the Minister of Public Expenditure and Reform.

**Section 24** provides that the Commission may borrow funds in Euro or any other currency for the purpose of performing any of its functions. This must be approved by the Minister and the Minister for Public Expenditure and Reform.

**Section 25** provides for the payment of a deposit in relation to the application for a broadcasting contract and empowers the Commission to charge for services or facilities it provides. Provision is

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<sup>2</sup> A person guilty of a category 2 offence is liable (a) on summary conviction, to a class A fine (a maximum of €5,000) 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.

also made for surplus funds from such charges to be paid into the central fund and allows for the Commission to recover any money owed to it under the section as a simple contract debt.

**Section 26** provides that the Commission must submit estimates of income and expenditure accounts to the Minister, as well as proposals and future plans relating to its functions. The Commission is also required to keep copies of accounts, which must include income and expenditure accounts and a balance sheet. The Minister may appoint persons to examine the books of account and the accounts are also subject to audit by the Comptroller and Auditor General. Provisions are also made for the submission of final audited accounts to the Minister, the laying of the accounts before the Houses of the Oireachtas and the publication of estimates and accounts.

### Judicial Review

**Section 38** sets out the provisions in relation to judicial review. It expressly excludes decisions under *section 139ZK* from being granted leave for judicial review. Applications to review any other decision of the Commission cannot be granted unless they are made to the High Court within 28 days of the decision / act, or the High Court extends this period if there is good and sufficient reason to do so and the circumstances causing the delay were outside the applicant's control. Provision is also made for the Commission to apply to the High Court to stay judicial review proceedings if the matter is pending decision by the Commission, to which the High Court may stay proceedings as it sees fit.

The section provides that there is no leave to appeal to the Court of Appeal, unless the High Court is satisfied that the decision involves a point of law of exceptional public importance, and it is desirable for an appeal to proceed. Such an appeal is limited only to the point of law on which it is made.

## Part 4: Register of Providers of Audiovisual On-Demand Media Services

This Part of the Bill consists of one provision, **Section 8**, which proposes to insert a new **Part 3A** into the 2019 Act. The Proposed Part 3A contains a total of 8 new sections.

### Register of providers of audiovisual on-demand media services

**Section 46A** provides that the Commission will establish and maintain a register of media service providers under the jurisdiction of the State. It establishes that this register must include a range of information, including the name of the media service provider and the name of each audiovisual on-demand media service provided by the provider. Further, it provides that the Commission will provide a copy of this register to the Minister on annual basis (or on the request of the Minister), as well as it publishing on its website (though potentially omitting information as it deems appropriate).

### Duty of media service providers to notify Commission

**Section 46B** establishes that a media service provider subject to registration on the coming into operation of this part of the Bill will notify the Commission prior to the ending of the transitional period (3 months from the date of this part coming into operation), whilst one that becomes subject to registration during the transitional period will notify the Commission either prior to the ending of the transitional period or 10 working days after it becomes subject to registration (if later). In the case of a media service provider that becomes subject to registration after the transitional period, this section establishes that it will notify the Commission not later than 10 working days from the date it becomes subject to registration. This section sets out the details which must be included in this notification including, amongst other things:

- the name and contact details of the media service provider,
- the name of each audiovisual on-demand media service provided by the provider,
- a description of the nature of each service, as well as the nature of content provided by the service,
- a statement of the basis under which the media service provider considers itself to be under the jurisdiction of the State.

### **Duty of registered media service providers to notify changes**

**Section 46C** provides that a media service provider on the register will notify the Commission of any change in respect of the information provided under *Section 46B(5)*, with this notification to be provided not later than 10 working days from the date on which the change occurs.

### **Procedure where Commission notified under section 46B or 46C**

**Section 46D** sets out the procedures that apply if Commission receives a notification under *Sections 46B/46C*. It establishes that the Commission may request further information from the media service provider in order to inform its decisions. In the case of a notification under *Section 46B*, the section establishes that the Commission will decide as soon as possible if the media service provider is subject to registration and, in the event that it is, make the appropriate entry into the register. In respect of a notification under *Section 46C*, the Commission is obliged to make any appropriate amendment to the register as soon as practicable. Further this section provides that the Commission will, amongst other things, provide the media service provider with a statement of its decisions, as well as a copy of the register entry or amended entry. In the event that the Commission decides that the provider is not subject to registration, the section obliges that the Commission will provide the provider with a statement outlining the reason for this decision.

### **Review and correction of register**

**Section 46E** provides that the Commission will periodically review each entry in the register, amending the register if it is satisfied either that the relevant provider is not subject to register or that the information included in the register is incorrect. The section obliges the Commission to consult with the relevant provider in advance of making an amendment if it is practicable to do so. Further, it also establishes that the Commission may request further information from the provider in order to inform its decision. Finally, the section obliges the Commission to give the relevant provider a written statement of any amendment made.

### **Failure to notify or to provide further information**

**Section 46F** provides that in the event that it appears to the Commission that a media service provider has failed to comply with *Sections 46B, 46C*, or a request under *46D(2)* or *46E(4)*, the Commission may by written notice direct the provider to take any action to comply with the relevant section (providing it has first given the provider an opportunity to make representation about this apparent failure). This section provides that a direction will indicate the reasons for it being issued and the time period within which the provider must comply with it. In the event that the direction indicates that the provider has failed to comply with *Sections 46B* or *46C*, the provider may appeal to the Circuit Court within 28 days of receipt of this direction. On hearing such an appeal, this section establishes that the Circuit Court may either affirm the direction or order that the direction be withdrawn in the event that it is satisfied that the Commission (a) was irrational/erroneous in its reasoning for issuing the direction, (b) failed to comply with fair procedures, or (c) made any other clear error of law. A person who fails to comply with a direction (without reasonable excuse) is deemed guilty of a category 2 offence.

## Removal of provider or service from register

**Section 46G** provides that if the Commission removes a media service provider (or reference to an audiovisual on-demand media service) from the register the Commission will enter a statement to that effect (plus a statement of the reasons for this removal) into the register. Further, it establishes that the Commission will provide the provider with a copy of any such statement.

## Rules and guidelines

**Section 46H** establishes that, with a view to ensuring the efficiency of the registration process and the requirement to maintain an up-to-date register, the Commission may make rules or issue guidance on matters set out in this section.

## Part 5: Duties, Codes and Rules Applying to Media Service Providers and Sound Broadcasters

This Part of the Bill consists of one provision, **section 9**, which proposes to insert a new **Part 3B** into the 2009 Act. The proposed Part 3B consists of five chapters containing a total of 10 new sections.

**Table 5: Structure of Part 3B**

Chapter	Section
1 – Interpretation	46I – Interpretation: ‘relevant media service provider’
2 – Duties	46J – Harm, offence, incitement, and authority of State 46K – Privacy 46L – News and current affairs 46M – Advertising
3 – Media service codes and media service rules	46N – Media service codes 46O – Media service rules
4 – Retention of copies of programme material	46P – Retention of copies of programme material
5 - Procedures in relation to media service codes and media service rules	46Q – Consultation 46R – Laying of codes and rules

## Interpretation

**Section 46I** provides for a definition of a ‘relevant media service provider’ which is applied as a term in the Bill in relation to broadcasters and providers focused on news and current affairs. The term is defined as being either a corporation (or a subsidiary of a corporation), a broadcasting contractor or a person who means one or more of the conditions set out in *section 46I(2)* with annual sales from such activities exceeding €2 million. These activities are:

- The person or a related person publishes a newspaper or periodical consisting substantially of news and comment on current affairs;
- The person or a related person is a broadcaster;
- The person or a related person provides programme material consisting substantially of news and comment on current affairs to a broadcaster; or
- 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 and under their editorial control.

## Duties

It is important to note that the provisions on duties retain much of the existing [section 39 of the 2009 Act](#), with the main effect the extending certain provisions to audiovisual on-demand media

service providers and adding an additional provision that failure to comply with the below duties shall be a contravention for the purposes of *Part 8B*.

**Section 46J** provides for a duty on broadcasters and audiovisual on-demand media services to not include specific forms of content on their services. This content includes anything that may be reasonably regarded as:

- Causing harm or offence;
- Likely to promote, or incite to, crime;
- Public provocation to commit a terrorist offence under Article 5 of [Directive \(EU\) 2017/541](#) (new provision);
- Likely to incite to violence or hatred directed against a group of persons, or member of a group of persons, on any grounds referred to in Article 21 of the [Charter on Fundamental Rights of the European Union](#) (new provision); or
- Tending to undermine the authority of the State.

A failure to comply with the above is a contravention for the purposes of *Part 8B*.

**Section 46K** provides for a duty on broadcasters and audiovisual on-demand media services to ensure that programmes on their services, and the means of making such programmes, do not unreasonably encroach upon the privacy of any individuals. The failure to comply with this duty is a contravention for the purposes of *Part 8B*.

**Section 46L** sets out a series of duties on broadcasters and audiovisual on-demand media services in relation to news and current affairs programmes on the services. These duties include:

- To ensure that news is reported and presented in an objective and impartial manner and without any expression of the broadcaster's / provider's views; and
- That the treatment of current affairs, including matters that are the subject of public controversy or current public debate, is fair to all concerned and the matter is presented objectively and impartially with no expression of the broadcaster's / provider's views.

In the case of current affairs, where it is impracticable to adhere to the above duty in one programme, the broadcaster or provider is permitted to treat the material over more than one programme provided the programmes are broadcast or made available within a reasonable period of each other. The section retains provisions from the 2009 Act on party political broadcasts and the allocation of broadcast time for news and current affairs on sound broadcasting services. Provisions on the treatment of news or current affairs regarding a broadcasting policy proposal which is the subject of public controversy or current public debate and being considered by the Government or a Minister are also retained. A failure to comply with the section is a contravention for the purposes of *Part 8B*.

**Section 46M** provides for duties in relation to advertising. Broadcasters and audiovisual on-demand media services are permitted to insert advertisements into their programmes.

However, it provides that broadcasters and relevant media service providers are prohibited from including advertisements directed towards a political end or in relation to an industrial dispute, or advertisements which address the merits or otherwise of adhering to any religious faith or belief or becoming a member of any religion or religious organisation. The section also provides for a maximum period of advertising time on sound broadcasting services, which is set at 15 percent of the total daily broadcasting time. Failure to comply with both of these provisions is a contravention for the purposes of *Part 8B*.

The section allows broadcasters and relevant media service providers to broadcast / make available party political programmes provided that unfair preference is not given to any political



party and also allows the broadcast / making available of advertisements by a broadcasters / relevant media service provider at the request of the Referendum Commission on matters under [section 3 of the Referendum Act 1998](#).

### **Media service codes and media service rules**

**Section 46N** provides that the Commission may make media service codes governing the standards and practices of broadcasters and audiovisual on-demand media service providers. Such codes may provide for standards and practices to ensure that:

- broadcasters and providers comply with duties on harm, offence, incitement and authority of the State (*section 46J*) and privacy (*section 46K*);
- broadcasters and relevant media service providers comply with duties on objectivity and impartiality in news and current affairs and on party political programmes (*sections 46L(1) to 46L(3)*);
- programme material audiences are protected from anything that is harmful or offensive, and in particular that programme material relating to gratuitous violence or sexual conduct is presented with due sensitivity to the convictions and feelings of the audience and in such a way that children will not hear or see anything that would harm their physical, mental or moral development;
- That commercial communications protect the interests of the audience and in particular, where they are 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;
- That the provision of a broadcasting service or audiovisual on-demand media service which promotes the interests of any organisation protects the interests of the audience.

The section also sets out a number of additional requirements of the Commission. It is required to make media service codes providing for matters set out in the revised AVMSD, except where provision is made by media service rules. It is also required to have regard to a number of matters when making or amending a media service code.

The section also contains a specific provision that allows the Commission to prohibit the inclusion in programmes of commercial communications relating to food or beverages that it considers to be subject of public concern in respect of the general public health interests of children. This provision makes particular reference to foods or beverages that contain fat, trans-fatty acids, salts or sugars. However, this is not a requirement of the Commission and may be provided for at its discretion. The Commission may also consult public health authorities on media service codes relating to general public health concerns (*section 46N(2)(d)(ii)*).

The Commission is enabled to amend or revoke a media service code and failure to comply with a media service code is a contravention for the purposes of Part 8B. Further provision is made for the retention of four broadcasting codes made under [section 42 of the 2009 Act](#), which will apply to broadcasters only unless amended or revoked by the Commission. The four codes to be retained are:

- The General Commercial Communications Code (1 July 2017);
- The Code of Fairness, Objectivity and Impartiality (1 July 2013);
- The Code of Programme Standards (1 March 2015); and
- The Children's Commercial Communications Code (2 September 2013).

**Section 46O** provides that the Commission may make media service rules for the purposes of that section. The Commission is empowered to make rules in relation to the total daily times that shall be allowed for broadcasting commercial communications on a broadcasting service. Such rules may be made for the period between 6am and 6pm, and between 6pm and midnight, and are

subject to a limit of 20 percent of the time in each period. In the case of sound broadcasters, this is subject to *section 46M(3)*, which sets a limit of 15 percent of the total daily broadcasting time for advertisements.

Under *section 46O(5)*, the Commission may also make rules requiring a broadcaster or audiovisual on-demand media service to take steps to promote the understanding and enjoyment of programmes they provide by:

- Persons who are deaf or have a hearing impairment;
- Persons who are blind or partially-sighted; and
- Persons who have a hearing impairment and are partially sighted.

Express provision is made in *section 46O(6)* for media service rules to require such steps including a sign language service, subtitling or audio description. *Section 46O(7)* also references specific considerations that media service rules would require media service providers to have regard to in making such facilities available. These considerations include, in the case of audiovisual broadcasting services, whether such facilities are provided:

- daily, or at other regular intervals
- at popular viewing times, as well as at other times; and
- for news and news related matters, as well as for other matters.

In the case of audiovisual on-demand media services, media service rules must require that these facilities are provided in an easily identifiable and easily accessible manner.

The section makes further provision for media service rules to require broadcasters to ensure a specified means of promoting the understanding and enjoyment of programmes broadcast during a specified period by persons referenced in *section 46O(5)*. The Commission is also required to report every three years to the Minister on the operation of media service rules made under *section 46O(5)*.

Media service rules are also required to provide for specified provisions of the revised AVMSD, except where provision is already made by media service codes. The Commission may amend or revoke media service rules and a failure to comply with a media service rule is a contravention for the purposes of *Part 8B*. Provision is also made for the retention of two broadcasting rules, the Access rules (28 January 2019) and Rules on Adverts and Teleshopping (28 July 2010), made under the 2009 Act and for these rules to apply to broadcasters only unless otherwise amended or revoked by the Commission.

### **Retention of copies of programme material**

**Section 46P** requires broadcasters and audiovisual on-demand media services to retain copies of programme material. This applies to programme material broadcast by a broadcaster, supplied by a broadcaster under a broadcasting contract or content provision contract and programme material made available in a catalogue of an audiovisual on-demand media service by a provider. It empowers the Commission to determine the duration for which such copies may be kept and publish this duration on its website. The Commission may also require a broadcaster or audiovisual on-demand media service provider to provide a copy of any programme material to which the section applies within a specified period. A failure to retain copies is a contravention under the proposed *Part 8B* of the Act, while a failure to provide programme material to the Commission is a category 2 offence. The provision expressly provides that the retention of copies of programme material is not a contravention of the [Copyright and Related Rights Act 2000](#).

## Procedures in relation to media service codes and media service rules

**Section 46Q** sets out consultation requirements that the Commission must adhere to when making a media service code or media service rule. It is required to make a draft available for inspection by any person and the section further provides that any person may make submissions to the Commission within a specified period. The Commission is further required to publish notice of the draft on its website and may also publish notice in a newspaper circulating in the State. Such a notice must state that a draft is available for inspection, where it may be inspected and the period for making submissions. The Commission is required to have regard to any submissions made when finalising a media service code or media service rule.

**Section 46R** sets out the requirements for notifying the Minister of the making, amendment or revocation of a media service code or media service rule. It also requires the Commission to lay a media service code or media service rule before the Houses of the Oireachtas. A resolution may be passed by either House within 21 sitting days annulling a code or rule. The Commission is also required to review media service codes or media service rules from time to time, or at the direction of the Minister, and prepare a report of the review for the Minister, who must also lay the report before the Houses of the Oireachtas as soon as practicable after receiving it.

## Part 6: Amendment of Part 4 of the Principal Act (Redress)

### Complaints

**Section 11** of the Bill amends the Principal Act by substituting a new section (**Section 48**) which establishes that grounds by which a person can 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 Principal Act, which amongst other things, cover media service codes and media service rules. It provides for specific timeframes associated with submitting complaints, setting out procedures in respect of a single broadcast (e.g. 30 days after the broadcast data), multiple broadcasts (e.g. 30 days after the broadcast of the latest of 2 or more related broadcasts) and material on an audio-visual on-demand media service (i.e. 30 days after the material ceases to be available on that service). This section also sets out various actions that the Commission may take in respect of submitted complaints, including:

- refer the complaint to the relevant broadcaster/provider of an audiovisual on-demand media service in the first instance;
- dismiss the claim as opposed to referring it to the relevant broadcaster/provider of an audiovisual on-demand media service if it is satisfied that:
  - the complaint is frivolous/vexatious/not made in good faith;
  - the subject matter of the complaint is trivial; and
  - the complaint does not comply with the relevant timeframe;

If the Commission does not refer a complaint to either the relevant broadcaster/provider of an audiovisual on-demand media service or dismiss the complaint, it is obliged to refer the complaint to an authorised person. Further, it is established that the Commission's action must take place within 60 working days from receipt of the complaint. The section further establishes that the Commission will notify the complainant as soon as practicable after either referring or dismissing the complaint, whilst also including a rationale for the dismissal of the complaint if that is the action taken.



## Part 9: Amendment of Part 7 of the Principal Act (Public Service Broadcasting)

### Public Service Programmes

**Section 39** of the Bill amends Part 7 of the Principal Act by inserting a **Chapter 7** after Chapter 6. This new chapter introduces a number of sections which set out requirements for the availability and prominence of public service programmes and services and the prominence of this material on interactive guides, as well as obligations that public service programmes and services must be carried on particular services.

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

*Chapter 7* of Part 7 includes a new **Section 128A** that provides for a number of definitions relevant to this section, including “interactive guide”, “public service audiovisual broadcasting service” and “public service programme”.

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

*Chapter 7* of Part 7 includes a new **Section 128B** that obliges a platform provider to comply with a request from a public service provider to carry a particular audiovisual broadcasting service or audiovisual on-demand media service provided by the public service provider on its platform. It establishes that a public service provider will ensure that any audiovisual broadcasting service or public service audiovisual on-demand media service is offered to platform providers in a manner that that it can be re-transmitted or made available on their platforms. The section does enable an agreement to be reached between the public service provider and the platform provider in respect of either the remuneration of the public service provider by the platform provider or the fair, reasonable and non-discriminatory use of public service audiovisual broadcasting service or audiovisual on-demand media service. In the event of a dispute between a platform provider and a public service provider in respect of the remuneration of the public service provider, the section stipulates that:

- the Commission will be notified of this by either party;
- the Commission will take the appropriate steps to encourage the use of mediation to resolve this; and
- if the dispute remains unresolved after a reasonable time period has elapsed, the Commission will, at the request of either party and following a reasonable opportunity for both parties to make submissions, make a determination.

Further, this section establishes that the Commission may make rules in respect of:

- the manner in which a platform provider may re-transmit or make available on its platform a particular audiovisual broadcasting service or audiovisual on-demand media service provided by the public service provider; and
- the manner in which these services may be made available by a public sector provider to ensure it is offered to platform providers in a manner that that it can be re-transmitted or made available on their platforms.

### Prominence on interactive guides

*Chapter 7* of Part 7 includes a new **Section 128C** which provides that the Commission may make rules that require providers of interactive guides to ensure the prominence of public service programmes, public service audiovisual broadcasting services (or schedules of same) and public service audiovisual on-demand media services (or schedules of same) on such guides. In respect

of preparing these rules, the Commission is obliged to have regard to a range of matters including, amongst other things:

- the necessity of promoting access by the widest possible audience;
- the nature of providers of interactive guides; including technical ability of providers and the number of users of the guides;
- the rights of both providers and users of interactive guides, including the likely expectations of users as to the prominence on such guides (paying particular regard to rights and likely expectations concerning Irish language programming and services);
- contractual agreements potentially existing between public service providers and providers of interactive guides; and
- technological developments.

Further, this section stipulates that the Commission may only make these rules if it appears to the Commission that the relevant programmes:

- concern Irish culture, history, heritage, society, sport language or other matters of interest;
- involve impartial and independent journalism;
- relate to an event or issue of major importance to the people of the island of Ireland or people of Irish ancestry living abroad;
- relate to environmental sustainability and climate change;
- concern human rights; or
- relate to science or education.

The section establishes that a failure to comply with any rules constitutes a contravention for purposes of Part 8B.

### **Designation of public service audiovisual broadcasting or on-demand media services**

Chapter 7 of Part 7 includes a new **Section 128D** that provides that the Commission may recommend to the Minister the designation of a specific audiovisual broadcasting service or audiovisual on-demand media service provided by a media service provider under the jurisdiction of the State as a public service audiovisual broadcasting service for the purposes of *Sections 128B* or *128C*. Accordingly, the Minister may then make an order designating the service. However, the section does establish that the Commission will not make such a recommendation, nor the Minister make such an order, unless satisfied that the relevant service has the character of a public service.

### **Consultation and laying**

Chapter 7 of Part 7 includes a new **Section 128E** which establishes that the Commission may consult with those parties it deems appropriate in making the rules referenced in this chapter (i.e. *Sections 128B*, *128C* or *128D*). Further, this section provides that any rules (see *Sections 128B* or *128C*) made by the Commission, or any order made under *Section 128D*, will be laid by the Minister before the Houses of the Oireachtas. Such a rule/order may be annulled by either House by resolution within 21 sitting days of being laid before the Houses. However, if such a rule/order is annulled, this does not negate the validity of any actions relating to it which took place in advance of this annulment.

## **Part 11: Online Safety**

The OSMR Bill proposes a new regulatory framework for online safety, set out in Part 11 of the Bill. **Section 44** of the Bill proposes a new **Part 8A**, which is to be inserted into the 2009 Act. These provisions consist of the following:

## Harmful Online Content

*Chapter 1 of Part 8A* includes a new **Section 139A** which defines harmful online content and further provides for additional categories of harmful online content to be added to this definition. Such content may either:

- be offence-specific (involves an action which is an offence under an enactment);
- fall into other categories of harmful online content (including online content by which a person bullies/humiliates another person; online content in which a person promotes/encourages self-harm or suicide, or provides knowledge of methods re same; or online content in which a person promotes/encourages behaviour characteristic of an eating disorder); or
- meet a risk test, whereby online content gives rise to any risk to a person's life or a risk of significant (reasonably foreseeable) harm to a person's physical or mental health.

## Power to specify other harmful online content

*Chapter 1 of Part 8A* includes a new **Section 139B** which enables the Minister to specify a further category of online content for inclusion as per *Section 139A* if the Commission makes a proposal re same. In advance of making such proposal, the Commission is obliged under *Section 139B(4)* to be satisfied of certain matters, including that:

- giving effect to the proposal would enable the Commission to take action against significant risks posed by this category of online category;
- these risks are insufficiently addressable by available means; and
- it is in the public interest that effect is given to this proposed category on harmful online content (having regard to the protection of children and the public in general).

In advance of making such proposal, the Commission is obliged under *Section 139B(5)* to also have regard to certain matters, including, amongst other things,

- availability of any online content on relevant online services;
- exposure risk levels to any online content on these services;
- risk of harm (particularly to children) for availability of content or exposure to same;
- the impact of automated decision-making in respect of content delivery and content moderation; and
- the rights of both providers and users of designated online services.

## Procedure for proposals and orders under section 139B

*Chapter 1 of Part 8A* includes a new **Section 139C** that establishes the procedures which the Commission must follow if making a proposal under *section 139B*, as well as the procedures that the Minister must follow when considering any such proposal. For instance, it obliges the Commission to, amongst other things:

- publish a draft of the proposal;
- undertake a public consultation re same and consider any comments submitted;
- consult any advisory committee established (as per under *Section 19*); and
- conduct any other consultation it considers appropriate.

Further, it obliges the Minister to:

- consult with the relevant Joint Oireachtas Committee
- consider the proposal in light of that consultation, as well as an other consultation that the Minister deems appropriate; and

- respond within a reasonable time (unspecified).

In responding to the proposal, the Minister is obliged to either (a) accept the proposal for consideration by the Government or (b) request the Commission to reconsider the proposal.

The Minister may make an order under *Section 139B* giving effect to the proposal only if the Minister has accepted the proposal and the Government has approved the proposal, with both the Minister and Government obliged to be satisfied in respect of the matters set out in *Section 139B(4)* and *Section 139B(5)*. A draft order giving effect to the proposal must be laid before the Houses and a resolution approving the draft order must be passed by the Houses for the order to be considered made.

### Age-inappropriate online content

*Chapter 1 of Part 8A* includes a new ***Section 139D*** which provides for a definition “age-inappropriate online content” (i.e. online content which is unsuitable for children either generally or below a particular age), which references, in particular, pornography and realistic representation of (or the effects of) gross or gratuitous violence or acts of cruelty.

### Designation of online services

*Chapter 2 of Part 8A*, which provides for designated online services, includes a new ***Section 139E*** to empower the Commission to designate a relevant online service to which online safety codes (under *Chapter 3* of this part) may be applied. The Commission may designate a named service, or in relation to all services falling within a category of services described in the designation. In making a decision as to whether or not to designate a name service or category of services, the Commission is obliged under *Section 139E(3)* to regard to, amongst other things:

- nature and scale of the service/category of services;
- availability of, and levels of risk of exposure to, harmful online content on the service/category of services;
- levels of risk of harm (in particular to children) from the availability of harmful content (or exposure to it) on the service/category of services;
- the rights of both the users and the providers of the service/category of services.

### Power to require information relevant to designation

*Chapter 2 of Part 8A* includes a new ***Section 139F*** which empowers the Commission to require the provider of a relevant online service to provide information in respect of the service that the Commission believes to be relevant to the potential designation of that service or inclusion in the register under *Section 139J*. In addition, it establishes that a provider who fails to comply with this will be guilty of a category 1<sup>3</sup> offence.

### Requirement to designate video-sharing platform services

*Chapter 2 of Part 8A* includes a new ***Section 139G*** which provides that the Commission will designate the video-sharing platform services under the jurisdiction of the State as a category of services under *Section 139E* (i.e. services to which online safety codes may be applied), issuing a

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<sup>3</sup> A person guilty of a category 1 offence is liable, on summary conviction, to a class A fine (a maximum of €5,000 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.

notice under *Section 139F* requiring the provision of any information as deemed relevant by the Commission. Further, the Commission is obliged to have regard for any guidelines issued by the European Commission in respect of the Directive.

### Procedure for designation of online services

*Chapter 2 of Part 8A* includes a new **Section 139H**, which sets out the procedures involved in designating a relevant service. The Commission is obliged to consult:

- with the relevant provider of the service,
- in the event of a category of services,
  - with any organisation representatives of relevant providers; and
  - the providers of such services (as far as is possible);
- any advisory committee established by the Commission (as per under *Section 19*); and
- any other person deemed relevant by the Commission.

However, if the Commission is unable to undertake this consultation following it undertaking reasonable steps, these provision in respect of consultation do not apply.

This section also sets out the requirements and timeframes for the designation of a service to take effect, namely that the Commission gives the provider of the service written notice of the designation and that the designation takes place 28 days after the date on which the notice of designation is published on the Commission's website.

### Revocation of designation

*Chapter 2 of Part 8A* includes a new **Section 139I** provides that the Commission may revoke a designation under *Section 139E*, with such a revocation subject to the same procedures set out for the designation of that service, including the considerations set out in with *Section 139E(3)*.

### Register of designated online services

*Chapter 2 of Part 8A* includes a new **Section 139J** which establishes that the Commission will maintain a publicly available register of designated online services or categories of services, which includes amongst other things details of the provider of the service, the address of the provider and other contact information (as deemed appropriate by the Commission), any relevant designated category of services, and any online safety code applying to each named service or category of service.

### Online safety codes

*Chapter 3 of Part 8A*, which sets out the provisions for the making of online safety codes, includes a new **Section 139K** that enables the Commission to make online safety codes to apply to designated online services. These codes may make provisions with a view to ensuring that:

- service providers take appropriate measures to minimise the availability, and risks with availability of and exposure to, harmful online content;
- service providers take any other appropriate steps to protect service users from harmful online content;
- service providers take any measures appropriate to provide for protections as per the Directive; and
- service providers take measures in respect of commercial communications of their service that are appropriate to protect the interest of service users (particularly children).

In the case of video-sharing platform services, it establishes that the Commission will exercise its powers with a view to ensuring that service providers act in accordance with certain provisions under the Directive.

In addition, this Section provides that an online safety code may provide for, amongst other things:

- standards that services must meet, practices that service providers must follow, or measures that service providers must take, in particular those standards, practices or measures related to the moderation of content or delivery of content;
- assessment by service providers of the availability (or risk of same) of harmful online content on services, as well as the risk posed to users by this content;
- reporting by service providers to the Commission; and
- the handling by service providers of complaints and other matters from users.

Notwithstanding this, it also establishes that the Commission will make an online safety code to be applied to designated online services as it considers appropriate which requires providers of designated online services to report to the Commission at intervals (as specified in the code) of not more than 3 months on the handling of communications from users in respect of complaints or other matters raised.

### Application of online safety codes

*Chapter 3 of Part 8A* includes a new **Section 139L** which provides that 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/category of services, (b) the Commission has given notice in writing of this determination (with this published on the Commission's website in the case of a designated category of services), and the notice has taken effect, and (c) this determination has not been revoked.

In advance of making/revoking a determination, the Commission is obliged to have regard to a range of matters, including:

- the nature and scale of the service/services within the category;
- availability of, and levels of risk of exposure to, harmful online content on the service/category of services;
- levels of risk of harm (in particular to children) from the availability of harmful content (or exposure to it) on the service/category of services; and
- the rights of both the users and the providers of the service/category of services.

Further, the Commission is obliged to consult with the relevant provider of the service,

- with the relevant provider of the service;
- in the event of a category of services,
  - with any organisation representatives of relevant providers; and
  - the providers of such services (as far as is possible);
- any advisory committee established by the Commission (as per under Section 19); and
- any other person deemed relevant by the Commission.

In respect of an interpersonal communications service or a private online storage service (as defined), this section provides that an online safety code will apply only in so far as it relates to content falling within one of the offence-specific categories of online content as defined in *Section 139A(2)*.



### Online safety codes: matters to be considered

Chapter 3 of Part 8A includes a new **Section 139M** which establishes that the Commission will have regard to certain matters when preparing an online safety code, including:

- the desirability of services to have transparent decision-making processes in respect of both content delivery and content moderation;
- the impact of automated decision-making on these decision-making processes;
- the necessity for any provisions to be proportionate taking account of the nature and scale of the relevant services;
- availability of, and levels of risk of exposure to, harmful online content on the service/category of services;
- levels of risk of harm (in particular to children) from the availability of harmful content (or exposure to it) on the service/category of services;
- the rights of both the users and the providers of the service/category of services; and
- the e-Commerce compliance strategy (as per *Section 139X*).

### Online safety codes: procedure

Chapter 3 of Part 8A includes a new **Section 139N**, which sets out the procedures that the Commission must follow in advance of making an online safety code. For instance, it establishes that the Commission must consult with any advisory committee established by the Commission (as per under Section 19) and any other person the Commission deems appropriate. Further, as soon as practicable after making the code, the Commission must provide it to the Minister and, as soon as practicable after this, the Minister shall lay copies before the Houses. The Commission is empowered to amend or revoke a code (or any provision of same) at any time, with the previous provisions in this section applying to this process. The section also obliges the Commission to periodically review the operation of any online safety code that it makes, with provision also for the Minister to request (in writing) a review of the operation of an online safety code (providing a report to the Minister re same within a reasonable time).

### Compliance with online safety codes: information notices

Chapter 3 of Part 8A includes a new **Section 139O** that establishes that the Commission may, by written notice, require the provider of a designated online service to provide information in relation to its compliance with an online safety code. This written notice will identify the information to be provided and the period(s) it relates to (with extension possible to this) and indicates the timeframe for the provision of this information (though this must not be before 7 days have elapsed from receipt of the notice by the provider). The provider of a designated online service will be guilty of a category 1 offence if:

- the provider fails to comply with a notice without reasonable excuse; or
- the provider provides false information, either knowingly or being reckless as to whether it is false.

In the event that 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 is obliged to consider that matter in deciding whether to exercise its functions under this section.

### Audit of complaints and complaint handling

Chapter 3 of Part 8A includes a new **Section 139P** that provides that the Commission may appoint a person to conduct an audit (which may be periodic), requiring the provider of a designated online service to cooperate with any such person by written notice. This notice must, amongst other



things, identify the person appointed to conduct the audit, identify the provision of the online safety code that the audit is assessing compliance with, and indicating the cooperation required by the provider (including taking steps reasonably required to assist the carrying out of the audit). The purpose of such an audit is to (a) enable the Commission to assess compliance by the provider with provisions of an online safety code relating to the handling of complaints (or other matters) and complaints-handling processes and (b) provide information to the Commission for the identification of any trends in complaints or related matters. The section stipulates that the person appointed to conduct this audit must be independent of the provider and neither a Commissioner nor member of staff of the Commission. The person conducting the audit is obliged to provide the Commission with a report on the audit, which the Commission is then required to furnish to the provider concerned and to the Minister. The Commission is also obliged to publish this report on its website, with any redactions deemed necessary by the Commission due to the personal, confidential or commercially sensitive nature of any aspects of the report. In the event that 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 this audit, the Commission is obliged to consider that matter in deciding whether to exercise its functions under this section. In the event that a provider fails to comply with the notice in respect of this audit, the provider will be guilty of a category 1 offence.

### **Enforcement of online safety codes**

*Chapter 3 of Part 8A* includes a new **Section 139Q** that establishes that a failure by a provider of a designated online service to comply with an online safety code will constitute a contravention for the purposes of Part 8B of the amended Principal Act.

### **Guidance materials and advisory notices**

*Chapter 4 of Part 8A* includes a new **Section 139R** which provides that the Commission may issue guidance for providers of relevant online services on any matter provided for by an online safety code, as well as for the protection of minors and the general public from harmful online content and age-inappropriate online content. It also stipulates that the Commission will consult any advisory committee established by the Commission (as per under Section 19) and any other people deemed appropriate in advance of issuing guidance materials. In the event of an urgent need to raise an issue with a provider or providers of relevant online services, an online safety advisory notice may be issued by the Commission. Further, before issuing such an advisory notice, the section establishes that the Commission will consult any advisory committee established by the Commission (as per under Section 19) and any other people deemed appropriate in advance of issuing guidance materials.

### **Guidance materials and advisory notices: matters to be considered**

*Chapter 4 of Part 8A* includes a new **Section 139S** that establishes that in preparing guidance materials or advisory notices (as per *Section 139R*), the Commission will have regard to:

- Article 28b of the Directive
- the desirability of services to have transparent decision-making processes in respect of both content delivery and content moderation;
- the impact of automated decision-making on these decision-making processes;
- the necessity for any provisions to be proportionate taking account of the nature and scale of the relevant services;
- availability of, and levels of risk of exposure to, harmful online content and age-inappropriate online content on the relevant online services;

- levels of risk of harm (in particular to children) from the availability of, of exposure to, such content;
- the rights of both the users and the providers of relevant online services; and
- the e-Commerce compliance strategy (as per Section 139X).

### **Guidance materials and advisory notices: procedure**

*Chapter 4 of Part 8A* includes a new **Section 139T**, which sets out the procedures associated with the issuing of any guidance materials or advisory notices (as per *Section 139R*). It establishes that the Commission will publish any guidance materials or advisory notices in the manner it thinks appropriate, as well as take any other steps it considers appropriate to bring these to the attention of relevant providers or services. Further, it provides that a copy of these will be given to the Minister as soon as practicable after their issue. In the event of the Minister making a written request to the Commission to review guidance materials or an advisory notice, the Commission is obliged to conduct this review and provide a written report on the review to the Minister within a reasonable time. This section also establishes that the Commission may without guidance materials or an advisory notice at any time.

### **Scheme for notifications by nominated bodies**

*Chapter 5 of Part 8A* includes a new **Section 139U**, which provides that the Commission will establish a scheme under which nominated bodies can notify the Commission of matters relevant to its functions under this Part. If a nominated body notifies the Commission in accordance with a scheme, the section provides that the Commission will inform the nominated body of any action it takes as a result of the notification. The matters which may be notified to the Commission under a scheme will include a range of matters (though not be limited to):

- concerns arising from the way a designated online service complies with the online safety codes applying to it;
- concerns in respect of the availability of harmful online content on a designated/relevant online service;
- concerns regarding the availability of age-inappropriate online content on these services;
- measures taken by a service provider that are deemed excessive by the nominated body, taking into account users' freedom of expression or other rights, or for any other reason.

In addition, this section stipulates that a scheme will provide for a range of matters, including:

- procedures for applying for nomination, as well as the nomination process;
- criteria for nomination;
- revocation of a nomination;
- matters of which nominated bodies may notify the Commission;
- the form and content of a notification, as well as the process by which this is communicated to the Commission and the manner it is acknowledged by the Commission;
- the process by which the Commission informs a nominated body of any action taken by the Commission arising from a notification.

Following making a scheme under this section, the Commission is obliged to give a copy to the Minister as soon as practicable. In the event of the Minister making a written request to the Commission to review a scheme, the Commission is obliged to conduct this review and provide a written report on the review to the Minister within a reasonable time. The section enables the Commission to amend or replace a scheme at any time (and subsequently providing a copy to the

Minister). It also provides that a scheme (and any amendment of same) will be laid the Commission before the Houses as soon as possible after it is made.

### **Duty of Commission to encourage use of mediation**

*Chapter 5 of Part 8A* includes a new **Section 139V** that establishes that the Commission is obliged to take appropriate steps to encourage both users and providers to use independent mediation to resolve any disputes in respect of users' complaints about a provider not taking any action in respect of (a) an online safety code or (b) guidance materials or an advisory notice (as per Section 139R).

### **Voluntary arrangements with providers in third countries**

*Chapter 5 of Part 8A* includes a new **Section 139W** provides that the Commission may enter into a voluntary arrangement with the provider of services which would be a relevant online service if under the jurisdiction of the State, notifying the Minister of any such arrangements and publishing details of any such arrangements on its website. A voluntary arrangement under this section constitutes an arrangement whereby the provider agrees, amongst other things:

- to comply with any specified online safety codes/guidance materials (to the extent specified);
- to comply with any request made by the Commission in respect of information regarding compliance with relevant online safety code(s)/guidance materials; and
- that the Commission may publish relevant information (including notice of the nature of any apparent failures by the provider to comply with an online safety code, guidance materials or a request for information concerning compliance with these).

The section also establishes that the Commission will keep any such voluntary arrangements under review. Further, it enables either the Commission or the provider to end, at any time, a voluntary arrangement by written notice.

### **e-Commerce compliance strategy**

*Chapter 5 of Part 8A* includes a new **Section 139X** that obliges the Commission to prepare (and potentially revise) an e-Commerce compliance strategy setting out its approach to ensuring adherence to EU laws in respect of information society services (e.g. the general monitoring of information or content). In advance of preparing such a strategy, this section establishes that the Commission will consult with any advisory committee established by the Commission (as per under *Section 19*), as well as any other parties that the Commission deems appropriate. Further, it obliges the Commission to publish this strategy on its website.

## **Part 12: Investigations and Sanctions**

**Part 12 of the Bill** proposes to insert a new **Part 8B** into the Principal Act, which sets out provisions in relation to investigations and sanctions that may be applied by the Commission for contraventions under the revised Act. It also proposes to insert a new Schedule into the Principal Act setting out the procedures for conducting oral hearings.

Under **section 46** of the Bill, the proposed **Part 8B** is split into eight Chapters, which address the following:

1. Interpretation
2. Authorised officers and investigations
3. Decision of Commission
4. Administrative financial sanctions

5. Notice to end contravention
6. Access blocking order
7. Content limitation notice
8. Offences

### Interpretation and Contraventions proposed by the OSMR Bill

**Chapter 1** of *Part 8B* consists of a single provision, **Section 139Y**, sets out interpretation for certain terms. Among its key terms is the interpretation of a contravention, which it defines as a failure to comply with specified sections of the Act, as amended by the Bill. These sections, and the areas they relate to, are summarised in the table below.

**Table 6: Contraventions as proposed under Part 12 of the OSMR Bill**

Failure to comply with	Area the contravention relates to
Section 46J	Media service providers' duties on harm, offence, incitement and the authority of the State
Section 46K	Media service providers' duties on privacy
Section 46L	Media service providers' duties on news and current affairs
Section 46M(2)	Media service providers' duties in relation to the broadcast of political and religious advertisements by broadcasters
Section 46M(3)	Limits on daily time for advertisements applicable to sound broadcasters
Media service codes	-
Media service rules	-
Section 46P(1) or (2)	Obligations on the retention of copies of programme material;
Section 106(3)	Fixing of the total daily time for broadcasting advertisements and the maximum period for advertisements per hour for broadcasting corporations
Section 127(6),	Fixing of the total daily time or broadcasting advertisements and the maximum period for advertisements per three-hour period for the Irish Film Channel. In a separate amendment, section 127(6) is proposed to have a further provision relating to the time allowed for advertisements between 6am and 6pm, and 6pm and 12 midnight.
Section 128B(1) & (2)	Retransmission of public service audiovisual broadcasting and on demand services.
Section 128C	Prominence of interactive guides
Online safety codes	-
Section 159B	Obligations regarding the share of European works Rules made by the Commission regarding the determination of this share and whether a media service provider has low audience or turnover
Section 159C	Obligations of media service providers of audiovisual on demand services on the prominence of European works Rules made by the Commission on steps to be taken to ensure such prominence.

*Section 139Y* also provides further definitions relating to an investigation for suspected contraventions, including definitions of the authorised officer, the provider and for relevant equipment and relevant material.

### Authorised Officers

**Chapter 2** of *Part 8B* sets out provisions governing the appointment of authorised officers and the procedures to be followed on investigations. It consists of nine new provisions, which are as follows:

**Section 139Z** sets out the provisions for the appointment of authorised officers by the Commission, requirements on the issue of a certificate of appointment and identification requirements when requested and circumstances where such an appointment may cease.

**Section 139ZA** provides for the circumstances when an investigation may commence. A Commissioner or member of staff authorised by the Commission may, if they believe a contravention has occurred, direct an authorised officer to carry out an investigation and define the terms of the investigation in writing.

**Section 139ZB** sets out the procedure for the giving of notice by an authorised officer to the provider being investigated. This must be in writing and include certain details specified by the section, including a statement and particulars of the suspected contravention and a copy of the terms of investigation and a copy of any material relied upon or a place where such material may be inspected or copied. The notice must give the provider 10 working days from the date the notice was received to respond, which may be extended by up to a further 10 working days if considered necessary by the authorised officer.

**Section 139ZC** sets out the powers of authorised officer, which include powers of entry and search of any place or vehicle, powers to require relevant material, the giving of information and the accessing of relevant equipment, and powers of inspection of any place and powers to remove and retain relevant material or equipment. It also sets out provisions that allow an authorised officer to set a reasonable period for compliance with certain requirements.

The section also empowers authorised officers to conduct oral hearings if they consider it necessary for the purposes of the investigation. They may also be accompanied, subject to the terms of a warrant, by such persons as they may consider appropriate, including members of An Garda Síochána. They may only enter a dwelling with the consent of the occupier or in accordance with a warrant. The section also provides that a person is guilty of a category 2 offence if they:

- Obstruct an authorised officer in the exercise of their powers without reasonable excuse;
- Fail to comply with a requirement of an authorised officer;
- Alter, hide or destroy any relevant material or relevant equipment with the intention of obstructing an investigation of an authorised officer;
- Knowing give an authorised officer materially false or misleading information in purported compliance with a requirement; or
- Falsely represent themselves as an authorised officer.

The section contains further provision for the Commission to indemnify authorised officers from all actions or claims in respect of their powers if they have used them in good faith. Further provisions are made on the admissibility of statements or admissions to authorised officers as evidence in proceedings other than proceedings for the above category 2 offences, and for the extension of the same immunities and privileges in respect of persons subject to requirements under subsection (1) as if they were a witness before the High Court.

**Section 139ZD** provides that the District Court may issue search warrants to authorised officers if they have reasonable grounds for believing that there is relevant material required by an authorised officer for the performance of their functions at any place. The warrant may permit the authorised officer to enter the place, if necessary by reasonable force, and may permit them to be accompanied by further persons (including members of An Garda Síochána) as they deem necessary. A warrant issued under the section is valid for 28 days from the date of issue.

**Section 139ZE** requires an authorised officer to prepare a draft report of an investigation as soon as possible after it is completed. In preparing the report the authorised officer is required to consider a number of matters insofar as they relate to the investigation, including:

- The terms of the investigation;



- The notice of commencement of an investigation and any response by the provider to that notice;
- Any relevant material or equipment obtained during an investigation;
- Any statement or admission by any person during an investigation pursuant to a requirement or during an oral hearing; and
- Any submissions made by any person during an oral hearing.

The authorised officer is required to give the provider a copy of the draft report, a copy of material relied upon in preparing the draft report, a copy of *section 139ZE* and notice in writing that the provider may make written submissions on the draft report within 28 days or such further period that the authorised officer considers necessary. An authorised officer is required to make any necessary revisions and finalise the report as soon as practicable after the expiration of this period. However, they are prohibited from making any recommendation or opinion on whether an administrative financial sanction should be imposed or the amount of such a sanction.

The authorised officer is further required to give a copy of the final report to the provider and a copy of the final report and any submissions to the Commission. They may also give a copy of the final report and any submissions to any other person they consider appropriate, but such persons are prohibited from disclosing the existence of or content of the report to any other person. Disclosing this material without reasonable excuse is a category 1 offence.

**Section 139ZF** provides that the Commission may make rules for the conducting of investigations and the conducting of its proceedings in making a decision and applying administrative financial sanctions. **Section 139ZG** further provides that the Commission may make guidelines on the conducting of investigations, the conducting of proceedings for a decision or application of administrative financial sanctions or the conducting of oral hearings under Schedule 4. It must publish such guidelines on its website. **Section 139ZH** makes provision for authorised officers to follow rules and guidelines as they consider appropriate and to keep providers informed of the progress of an investigation.

### Divisions of the Commission

**Chapter 3** of *Part 8B* sets out provisions regarding the decision of the Commission. **Section 139ZI** provides that the Commission must sit in uneven divisions of at least 3 members, unless otherwise stated, when exercising its functions under:

- *Chapter 3* (making a decision),
- *Chapter 4* (administrative financial sanctions) with the exception of applying for Circuit Court confirmation, the payment of administrative financial sanctions to the Exchequer and the reference of points of law to the High Court, and
- *Schedule 4* (oral hearing).

The section makes further provision for the exclusion of a Commissioner from a division in circumstances where that Commissioner directed the original investigation.

### Actions of the Commission on receiving the final report

**Section 139ZJ** provides for the actions of the Commission after it receives a copy of a report from an authorised officer. Unless the Commission holds an oral hearing at which the provider may make submissions on the final report, it must give a provider a copy of *section 139ZJ* and a notice that it may make written submissions to the Commission on the final report within 28 days of receiving the notice or such further period as the Commission may allow. The Commission is required to hold an oral hearing if it considers it necessary for the procedures under *Part 8B* to operate fairly. The Commission may, if it considers it necessary to resolve an issue of fact or

otherwise enable it to make a decision, request further information from the provider or from any other person. The Commission may also conduct an oral hearing for this purpose.

Where it requests information from any other person, it may provide that person with a copy of the final report with any necessary redactions. However, it must also inform the provider of such a request and give them with a copy of the information on which the provider may make submissions within 20 working days (or such further period as the Commission may allow). A person who receives a copy of the report is prohibited from disclosing the existence or content of the report without prior authorisation.

The section makes further provision for category 2 offences where a request for information is not complied with, a person who has received the final report has disclosed its existence or content without authorisation, or where a provider or person gives materially false or misleading information. Unless applicable to the latter offence, statements or admissions made by a person pursuant to a request for information are not admissible in any other proceedings against the person for an offence.

### Decision of the Commission

**Section 139ZK** provides that the Commission is required to decide whether a provider that is subject to a report of an authorised officer has committed a contravention to which the investigated relates and if so, whether to impose an administrative financial sanction. The standard of proof is on the balance of probabilities, which is the civil standard of proof. The sanction does not take effect until it is confirmed on appeal (*section 139ZP*) or on summary application (*section 139ZQ*). The Commission is also required to consider:

- The final report of the authorised officer and any submissions provided with it;
- Any evidence adduced or submissions made during an oral hearing;
- Any information provided following a request for information under *section 139ZJ(4)*; and
- Any submissions made by the provider in response to a notice of the report, or notice of information received from another person (*sections 139ZJ(1) and (6)*).

The section also provides that in decided whether to apply an administrative financial sanction, the Commission must have regard to the matters outlined in *section 139ZO(3)*, excluding the consideration of previous decisions in respect of the provider.

**Section 139ZL** sets out the procedures for giving notice of and publishing a decision under *section 139ZK*. It requires that notice of the decision to the provider must be made in writing and as soon as practicable after the decision is made. If the decision finds that a contravention has occurred, the notice must state this is subject to confirmation and, if there is no appeal, that summary application for confirmation will be made once the period for making an appeal expires. If administrative financial sanctions are to be imposed, the notice must also state that the provider may make submissions in relation to the determination of the amount of the sanction. The Commission is also required to publish the notice on its website, with that publication including the name of the provider, the nature of the suspected contravention that was investigated, the reasons for the decision and such other information as the Commission considers appropriate. The Commission may also provide the notice to any person it considers appropriate, but provision is also made to prohibition disclosure of the notice before publication or the disclosure of redacted material (which may be material considered by the Commission to be commercially sensitive or relating to the commission of an offence). Disclosure of such material without reasonable excuse is a category 2 offence.



## Administrative Financial Sanctions

**Chapter 4** related to the administrative financial sanctions that may be applied by the Commission following a decision under *section 139ZK*. **Section 139ZM** sets out provisions in relation to submissions and requests for information. Such submissions, by the provider, relate to the application of *section 139ZO* to the determination of the amount of the sanction. The Commission may hold oral hearings or request further information in writing. Failure to comply with a request for further information without reasonable excuse is a category 2 offence.

**Section 139ZN** provides that the Commission may determine the amount of administrative financial sanction in accordance with the limits set out in *section 139ZO*. The Commission is required to make this determination as soon as practicable after the date of an oral hearing or the expiry of the period for written submissions or further information. As soon as practicable after a determination is made, the Commission is also required to give the provider notice in writing of the determination and the reasons for it, which it is also required to publish on its website with any redactions of particulars that are commercially sensitive or relate to the commission of an offence.

**Section 139ZO** sets the limitations on the amount of an administrative financial sanction imposed by the Commission as part of a decision. This is set at:

- €20 million if the provider is an individual; or
- The greater of €20 million or 10% of relevant turnover in the previous financial year if the provider is not an individual. Relevant turnover is defined as the turnover of the provider attributable to the service which gave rise to the contravention.

The section sets out a series of matters to which the Commission must have regard to when determining the amount of an administrative financial sanction. The sanction must be proportionate and set with a view to deterring providers of a broadcasting service, audiovisual media on-demand service or DOS from committing a contravention. The section further provides that an administrative financial sanction must not be such that it would likely cause an individual to become bankrupt, or likely cause a provider that is not an individual from ceasing trading.

## Appeals and Summary Confirmation of *Section 139ZK* Decisions

**Section 139ZP** provides for an appeal mechanism against a decision made by the Commission under *section 139ZK*. The appeal must be made to the appropriate court within 28 days of receiving the decision, or where an administrative financial sanction is imposed, within 28 days of receiving the notice of the determination of the sanction. An appropriate court is as follows:

- Circuit Court: For decisions where no administrative financial sanction is imposed, or the amount does not exceed €75,000 or such other sum specified in the court's jurisdiction in tort; and
- High Court: For all other cases.

Appeals may only be made on grounds that would have been grounds for judicial review (which is prohibited in respect of decisions under *section 139ZK*) and / or that the sanction imposed was not proportionate. The appropriate court may extend the period for making an appeal if there is good and sufficient reason for doing so, the circumstances resulting in failure to bring an appeal were outside the control of the provider and an application for confirmation has not been determined.

In considering an appeal, the appropriate court is required to consider the record of the decision, and where it considers necessary for the fair and proper determination of the appeal, consider any evidence or submission from the provider regardless of whether this is already provided to an authorised officer. On hearing the appeal, the court may either confirm the decision or where it is

satisfied that a serious and significant error, or a series of minor errors which amount to a serious and significant error, has been made by the Commission, do either of the following:

- Set aside the decision;
- Set aside the decision and replace it with a decision the court considers just and appropriate to make, including decisions to not impose, or change the amount of, an administrative financial sanction; or
- Remit the decision to the Commission for reconsideration subject to directions as the court considers appropriate.

The section further provides that the matters that the Commission must consider when determining an amount of an administrative financial sanction also apply to the appropriate court. It also clarifies that the Circuit Court may make such interlocutory or interim orders as it considers appropriate in appeal proceedings under *section 139ZP(1)* or applications to extend timeframes under *section 139ZP(3)*. The appropriate court may make a direction on costs.

**Section 139ZQ** provides that where a provider does not appeal against a decision under *section 139ZK*, the Commission may make a summary application to the Circuit Court for confirmation of that decision. The Circuit Court is required to confirm the decision unless it is satisfied that the Commission made an error of law that is manifest from the decision and so fundamental to leave the decision without basis, or the administrative financial sanction imposed is manifestly disproportionate. Where it does not confirm the decision, it may either annul it or remit it to the Commission for reconsideration with such directions it considers appropriate.

The section also provides that as soon as practicable after receiving notice of the Commission's application to confirm a decision, the provider may inform the Commission that it does not intend to appear at or make submissions to the hearing. Further provision is made on allowing the staying any application for confirmation where an application or order to extend the appeal period is made under *section 139ZP(3)*. The Circuit Court may also make such interim or interlocutory orders it considers appropriate and direct how the costs of an application are to be borne.

**Section 139ZR** provides that administrative financial sanctions under a decision confirmed / made under *section 139ZP*, or confirmed under *section 139ZQ*, are to be paid into the Exchequer.

**Section 139ZS** makes provision for the reference of a point of law to the High Court by the Commission. Such a reference does not include an appeal to the Court of Appeal unless the High Court certifies that the point of law is of exceptional public importance and an appeal is desirable in the public interest.

### Notice to end contravention

**Chapter 5 of Part 8B** contains a single provision, **Section 139ZT**, which sets out the process where the Commission may issue a notice to end a contravention. Where the Commission has made a decision under *section 139ZK* that it is satisfied that a contravention has occurred, and this is confirmed by the Circuit Court or confirmed / replaced on appeal, the Commission may issue a notice to the provider concerned to end the contravention if it views the contravention as continuing. This notice must contain the steps to be taken by the provider and the period in which these must be completed and must be issued as soon as practicable after the confirmation or replacement of the decision. Failure to comply with such a notice is a category 1 offence.

Where the provider is a DOS that is a body corporate, the section makes further provision to extend offences to the director, manager, secretary or other officer of the body corporate, where it is proven that an offence by the provider has been committed with the consent, connivance or

negligence of the person concerned. However, proceedings such persons cannot be instituted without the consent of the DPP.

### Access blocking order

**Chapter 6 of Part 8B** contains a single provision, **Section 139ZU**, which sets out the procedure where the Commission may apply to the High Court for an access blocking order. This is an order requiring an internet service provider, or the provider of an application store service, to block access in the State to a relevant online service or an audiovisual on-demand media service. The application is made on notice to both the internet service provider and the relevant online service / audiovisual on-demand service concerned. The provision sets out a number of requirements that must be satisfied before an access blocking order may be granted.

**Table 7: Requirements for granting an access blocking order by service**

Service	Requirements
Relevant online service	<p>Where the service is a DOS, the content is in contravention of an online safety code and the provider has been convicted of an offence for failure to comply with a notice to end the contravention.</p> <p>Where the service is designated, but this has yet to take effect, the content would be a contravention of an online safety code and the failure to service of the designation of the provider is the fault of the provider.</p>
Audiovisual on-demand media service	<p>Where the audiovisual on-demand media service provider has actual knowledge that it is making content available that may be reasonably regarded as:</p> <ul style="list-style-type: none"> <li>likely to promote or incite to crime,</li> <li>provocation of commit a terrorist offence (Article 5 of Directive (EU) 2017/541) or</li> <li>likely to incite violence or hatred against a person / group of persons based on any of the grounds in Article 21 of the Charter on Fundamental Rights of the EU,</li> </ul> <p>and the provider has been convicted of an offence for failure to comply with a notice to end the contravention.</p>

The order must be made as soon as practicable after the applicable conviction / failure in the above table is satisfied and must not be disproportionate. The Court may apply such conditions to the order as it considers necessary, and the section sets out further provisions on the discharge of an access blocking order.

### Content limitation notice

**Chapter 7 of Part 8B** sets out the provisions for the issue of a content limitation notice by the Commission.

**Section 139ZV** empowers the Commission to issue a written notice called a content limitation notice to a DOS provider where it appears to it that content available on the DOS is harmful online content. Where the content is defined by *section 139A(2)*, i.e. offence specific harmful online content, the notice requires the provider to either remove it or disable access to it. In all other cases, the provider must either remove the content, disable access to it or limit its availability.

Where there is an investigation, the Commission cannot issue a notice before it has made a decision on the investigation (under *section 139ZK*). If it decides a contravention has occurred, cannot issue a notice under the decision is confirmed on application of the Commission or on appeal, or replaced with a decision of similar effect on appeal.

The Commission must also have regard to a number of matters when issuing a notice including the nature and scale of the services provided by a DOS provider, the technical capacity of the DOS provider, the risk of harm (in particular of harm to children), the rights of users of a DOS and the uploader of the content, the rights of persons to whom the content may pertain, and the proportionality of any requirement in the notice on these matters. The section also provides for requirements that may be contained in a notice to limit the availability of content. Finally, the section prohibits a notice from obliging a DOS provider to monitor content (which is prohibited by Article 15 of the e-Commerce Directive).

**Section 139ZW** provides for the procedure to be followed when issuing a content limitation notice. It sets out the information that must be contained in a notice, requires a DOS provider that receives a notice on content that is user-generated to take all reasonable steps to provide a copy of the notice to the uploader within 2 days. The provider is also required to inform the Commission of these steps on which the Commission may direct further steps if it considers them necessary. The provider or (where they receive a copy) the uploader may make submissions to the Commission on whether the content is harmful online content and the requirements of the notice, after which the Commission may decide to confirm, amend or revoke the notice. On confirming a notice, the Commission must provide to the DOS provider or (if applicable) uploader a copy of the notice and a statement containing the reasons for confirmation / amendment, the period in which the notice must be complied with and stating the right of appeal. Finally, the section requires that a provider which fails to comply with a notice without reasonable excuse is guilty of a category 3<sup>4</sup> offence.

**Section 139ZX** provides that a DOS provider or the uploader of user-generated content may appeal a content limitation notice to the Circuit Court within 28 days of receiving it. If the court considers that the Commission issued the notice in error it may set aside the notice, replace it with such other notice that it considers appropriate or remit the notice to the Commission for reconsideration with such directions as the court considers appropriate.

**Section 139ZY** requires the Commission to publish content limitation notices on its website and makes further provision for the redaction of information from a notice and the publication of a summary of a notice where redaction would prevent it from being understood.

## Offences

**Chapter 8 of Part 8B** relates to offences. **Section 139ZZ** provides for three categories of offences that the Bill proposes may be applied under the 2009 Act as amended. The maximum sentences for each category of offence are summarised in the below table.

**Table 8: Maximum penalties under section 139ZZ**

Category	Summary	Indictment
1	Class A fine (a maximum of €5,000) and / or up to 12 months imprisonment	Maximum fine of €500,000 and / or up to 10 years imprisonment
2	Class A fine (a maximum of €5,000) and / or 12 months imprisonment	Maximum fine of €50,000 and / or up to 5 years imprisonment
3	Class A fine (a maximum of €5,000)	N/A

<sup>4</sup> A person guilty of a category 3 offence is liable, on summary conviction, to a class A fine (a maximum of €5,000).

**Section 139ZZA** provides that the Commission may bring and prosecute summary proceedings and sets out maximum periods in which proceedings may be brought as:

- 2 years from the date on which the offence was alleged to have been committed; or
- If the person against whom proceedings are being brought is outside the State, 6 months from when they next enter the State.

*Section 139ZZA* also makes provision for the award of the Commission's costs where a person is convicted.

#### **Schedule 4 – Oral Hearings**

**Section 47** of the Bill provides for a new **Schedule 4** to be added to the 2009 Act, which sets out the procedures for conducting oral hearings by authorised officers or the Commission. It provides that a 'conducting authority', which may be an authorised officer or the Commission depending on the context of the hearing, may require a person to attend or participate in a hearing to give evidence on any matter at issue, or produce any relevant material or equipment in the person's possession, control, or which the person is able to procure.

The Schedule further provides for evidence to be taken on oath or affirmation, which may include written statements, as well as for the conducting authority to be bound by rules of evidence (subject to exceptions to the rule against hearsay which may be provided for by the Commission as rules under *section 139ZF*). A person who knowingly gives false or misleading evidence on oath or affirmation is guilty of an offence, punishable on summary conviction to a class B fine (up to a maximum of €4,000) and / or imprisonment for up to 12 months, and on conviction on indictment to a fine of up to €100,000 and / or imprisonment for up to 10 years.

Where a person refuses to comply with a requirement to attend or participate in an oral hearing, the Commission may apply to the Circuit Court to require them to comply. A person who does not comply is guilty of a category 2 offence under the Schedule. Provision is however made to allow any person to refuse to disclose information on the grounds of legal professional privilege.

The conducting authority is also empowered in special circumstances to conduct an oral hearing in private or require that information is not disclosed in an oral hearing, published or reported where that information is commercially sensitive, may prejudice an ongoing investigation by the Commission, An Garda Síochána or any other public body, or is personal data. A person who fails to comply with the latter requirements on not disclosing, publishing or reporting material is guilty of a category 2 offence.

The conducting authority may also pay or reimburse reasonable travelling and subsistence expenses and hold oral hearings remotely. Finally, the Schedule provides that any statement or admission made by a person in the course of an oral hearing shall not be admissible against that person in proceedings, except for the offence of knowing giving false or misleading evidence on oath or affirmation above.

### **Part 13: Amendment of Part 10 of the Principal Act (Broadcasting Fund)**

This part of the Bill makes a number of amendments in relation to Part 10 of the 2009 Act, which concerns the Broadcasting Fund. **Section 48** amends [section 153 of the 2009 Act](#) to include a definition of a community sound broadcaster. It also extends the definition of a scheme in the 2009 Act as follows:



- For the purposes of sections 154 and 155, a **broadcasting funding scheme**;
- For the purposes of *section 155A*, a **scheme for professional journalistic practices in community sound broadcasting**; and
- For sections 156 to 159 either of the above two schemes.

**Section 49** deletes reference to MMD system (multipoint microwave distribution system) from [section 154 of the 2009 Act](#) as the technology is no longer in use.

**Section 50** inserts a new **section 155A** into the 2009 Act, which provides for a scheme for professional journalistic practices in community sound broadcasting. Under the proposed section, the Commission is required to prepare and submit such schemes to the Minister for approval. These schemes allow for the making of grants to community sound broadcasters for the purposes of promoting good professional journalistic practices. Such a scheme may provide for such matters as the number of grants made in a year, the application procedures, the amount awarded for each grant and the terms of conditions for such grants. A community broadcaster may be required to apply the grant to the costs of appropriate training and professional development and co-fund the costs of such training and professional development.

The Commission must have regard to its duty to provide a regulatory environment that will sustain independent and impartial journalism and may have regard to the development needs of community sound broadcasters. It may also be directed by the Minister to provide for practices and standards in a description of community sound broadcasting specified by the Minister, or to amend or revoke a scheme. Finally, *section 155A* includes provisions for the laying of schemes before the Oireachtas and the repayment of grants in certain circumstances.

**Sections 51** amends [section 157 of the 2009 Act](#) to continue the Broadcasting Fund and include schemes made under *section 155A*. **Section 52** extends provisions for the winding up and dissolution of a scheme under [section 159 of the 2009 Act](#) to schemes made under *section 155A*.

## Part 14: European Works

**Section 53** is the sole provision in this part of the Bill, which aims to insert a new **Part 10A** into the 2009 Act. This provides for the transposition of Article 13 of the revised AVMSD, establishing rules regarding the prominence of European works and providing for a “content levy” on audiovisual media service providers. The proposed Part 10A consists of nine new sections of the Act:

- Section 159A: Interpretation of European works
- Section 159B: Share of European works
- Section 159C: Prominence of European works
- Section 159D: Reporting
- Section 159E: European works levy
- Section 159F: European works scheme
- Section 159G: Procedure for making schemes under 159F
- Section 159H: Exemptions for particular services
- Section 159I: Laying of rules, orders and schemes.

The proposed **Section 159A** sets out what is meant by a European work, which may consist of one of four meanings set out in the Act, as set out in the below table.

**Table 9: Definitions of European works**

Definition	
a)	Works originating in Member States
b)	Works originating in third countries that are European states party to the European Convention on Transfrontier Television (ECTT) (Council of Europe)
c)	If not a) or b) above – Works not covered by a) or b), but are co-produced within the framework of agreements relating to the audiovisual sector concluded between the EU and third countries and fulfil the conditions defined in those agreements;
d)	If not a), b) or c) above – Works that are co-produced within the framework of agreements between Member States and third countries, provided two conditions are met; 1) the co-producers from the Member States supply the majority of the cost and 2) the production is not controlled by one or more co-producers established in a third country.

Section 159A also makes further stipulations for certain definitions:

- In the case of definitions b) and c) above do not apply where the third country applies discriminatory measures to works originating in Member States in that country.
- In the case of definitions a) and b) to apply (EU or ECTT states), the work must be mainly made by authors or workers residing in a Member State or a European state party to the ECTT and satisfies one of three conditions:
  - o The work is made by one or more producers established in the EU/ECTT states;
  - o The work is supervised or controlled by one or more producers established in one or more EU/ECTT states; or
  - o Where there are one or more co-producers from outside those states, the predominant contribution to the cost is from the EU/ECTT co-producers and the co-production is not controlled by a non-EU/ECTT co-producer.

### Share of European works

The proposed **Section 159B** sets a minimum threshold for the share of European works in an audiovisual on-demand media service's catalogue at 30%. However, it also exempts media service providers with a low turnover or low audience or exempted by rules under section 159H.

The Commission is required to make rules for:

1. determining whether a catalogue has a share of European works that is less than 30%; and
2. whether a media service provider has a low audience or low turnover. I

In making such rules, the Commission is required to have regard to guidelines issued by the European Commission and reports issued by the European Regulators Group for Audiovisual Media Services (ERGA). In relation to the latter, the Commission must also have regard to relevant market characteristics, including share of turnover and share or audience in the market.

### Prominence of European works

The proposed **Section 159C** sets out provisions in relation to the prominence of European works. It requires media service providers operating an on-demand audiovisual media service to comply with rules that are required to be made by the Commission under the section to ensure the prominence of European works. Again, media service providers with a low turnover or audience, or exempted under *section 159H*, are exempt from this provision.



The section sets out some aspects for which rules made by the Commission may relate to, including:

- visibility / presentation of European works within a catalogue;
- the inclusion of information on whether or not a work is a European work and the placement of that information;
- accessibility of European works within a catalogue;
- references to European works when advertising a service; or
- the promotion of minimum percentages of European works to the audience of a service and the means of promotion.

When making rules, the Commission is also required to have regard to:

- the objective of cultural diversity;
- the desirability of promoting European works to the widest possible audience;
- technological developments;
- developments in AVODMS media services markets; and
- reports of ERGA.

### **Records, Other Actions and Contraventions**

The Commission may also make rules regarding the records that a media service provider must keep and any other action a provider must keep to ensure the minimum threshold for European works in its catalogue. Finally, a failure to comply with the 30% threshold or with rules concerning records is a contravention for the purposes of the Bill's provisions on investigations and sanctions.

The Commission may also make rules on what records a provider must keep and any other action a provider must take to ensure compliance with the requirement to ensure prominence of European works. A failure to comply with either requirement is a contravention for the purposes of investigations and sanctions under Part 8B.

**Section 159D** would require the Commission to report to the Minister on the operation of *sections 159B and 159C* on the share and prominence of European works.

### **European works levy and schemes**

The legal basis for the European works levy arises from Article 13.2 of the revised AVMSD, which Member States to require a financial contribution from:

- MSPs under their jurisdiction; or
- MSPs established in other Member States but targeting audiences in their territories.

Such a levy is also required by Article 13.2 to comply with EU law, particularly state aid rules.

**Section 159E** provides that the Commission may issue an order imposing a levy for the purposes of funding a European works scheme on either of the above categories of MSP. It sets out provision for the collection, payment and administration of the levy and, in the case of MSPs under the jurisdiction of other Member States, take any financial contributions imposed by those Member States into account. MSPs that are low audience or low turnover, or exempted under section 159H, do not have to pay the levy. Finally, the section sets out provisions for unpaid levies and definitions.

**Section 159F** provides that the Commission may prepare European works schemes for funds to be granted from the proceeds of the levy to MSPs which are under the jurisdiction of the State, or established in another Member State but targeting audiences in the State. The purpose of the schemes is to fund the production of European works to be included in the schedule (broadcasts)

or catalogue (on-demand media) provided by the MSP. The section makes specific provision for the types of audiovisual programme that may be funded by the schemes, including new audiovisual programmes that relate to:

- Irish culture, language, history, heritage, society and sport;
- The experiences of the people of the island of Ireland, including the experiences of people of Irish ancestry living abroad;
- Environmental sustainability and climate change;
- Human rights, including equality, diversity and inclusion;
- News, current affairs and international affairs;
- Science; or
- Education

New audiovisual programmes to improve adult literacy and media literacy may also be funded, as well as incidental, supplemental or consequential measures relating to any of the above that appear necessary to the Commission.

The schemes may also cover research, needs assessments, feasibility studies or pilot projects relating to any of the above. *Section 159F* also allows for schemes to be more targeted and makes a specific provision that sets a threshold of at least 25% of funds from a scheme that may be allocated to eligible programmes in the Irish language. Finally, the section sets out provisions that allow the Minister to direct the Commission to prepare a scheme, allow a scheme to provide for applications, terms and conditions and records that a provider must keep, as well as factors that the Commission must have regard to when preparing schemes.

**Section 159G** provides for the procedure for making a European works scheme. It requires the Commission to submit a scheme to the Minister for approval. The Minister may approve, refuse to approve, or direct the Commission to reconsider or resubmit a scheme with amendments. Procedures relating to the administration and amendment of approved schemes by the Commission, or the direction to the Commission by the Minister to review or revoke a scheme are provided for. Finally, the Commission is obliged to comply with directions from the Minister made under the section.

### Particular Exemptions

**Section 159H** sets out provisions for allowing the Commission to make rules that exempt certain on-demand audiovisual media services from requirements on the 30% share threshold and prominence of European works, and certain MSPs from the application of the European works levy. This provision accounts for services where the application of these requirements may be impractical or unjustified by the nature of the service or the general theme of audiovisual programmes the service provides. The section requires the Commission, when making such rules, to have regard to whether the programmes deal with a narrow subject matter that is not of general interest, or may impair the physical, mental or moral development of children.

The final provision, **Section 159I**, requires any rules, orders or schemes made under the proposed *Part 10A* to be laid before the Houses of the Oireachtas and makes provision for resolutions which may annual them.

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