



Rialtas na hÉireann
Government of Ireland

Online Safety and Media Regulation Bill

General Scheme



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PART 1 – PRELIMINARY & GENERAL MATTERS

Head 1 – Short title

Repeals and replaces s.1 of the Broadcasting Act 2009

Related to the transposition of the AVMSD? No.

Associated policy paper? N/A

Provides that:

s. 1 of the Broadcasting Act 2009 is amended to substitute its present wording with the following:

1 - This Act may be cited as the Online Safety & Media Regulation Act 2019 (an Act to transpose the amended Audiovisual Media Services Directive [Directive (EU) 2018/1808] into Irish law; to dissolve the Broadcasting Authority of Ireland and to establish a Media Commission; to provide the Media Commission with functions relating to the regulation of audiovisual media services, including audiovisual broadcasting services, on-demand audiovisual media services, the regulation of sound media services, including sound broadcasting services, and the regulation of designated online services; to provide a framework for the regulation of designated online services, encompassing video sharing platform services as a category of designated online services, by the Media Commission, including through providing the Media Commission with the power to designate relevant online services and categories thereof, to power to make online safety codes, the power to assess the compliance of designated online services with online safety codes and directions by the Media Commission, and the power to apply dissuasive sanctions, including administrative financial sanctions, to non-compliant designated online services; and providing for appropriate guiding policies and principles to ensure that the Media Commission performs its functions with appropriate fair procedures and with the utmost regard to fundamental rights.)

Explanatory Note

To amend the s.1 of the Broadcasting Act 2009 to ensure that it is cited as the Online Safety & Media Regulation Act and to provide for the long title of this amending Bill.

Head 2 - Interpretation

Provide that:

Section 2 of the Act of 2009 is repealed and replaced as follows.

In this Act –

Media

“media service” means a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union where the principal purpose of the service is the making available of, or otherwise providing access to, content in order to inform, entertain or educate the general public; [derived from the definition of audiovisual media service in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“audiovisual media service” means (a) a media service which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks, and is either an audiovisual broadcasting service or an on-demand audiovisual media service, or (b) an audiovisual commercial communication; [adapted from the definition of audiovisual media service in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“audiovisual broadcasting service” means an audiovisual media service provided by a media service provider for simultaneous or quasi simultaneous viewing of programmes on the basis of a programme schedule; [adapted from the definition of television broadcasting service from S.I. 258/2010, which transposed elements of the original Audiovisual Media Services Directive (2010/13/EU)]

“on-demand audiovisual media service” means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at their individual request on the basis of a catalogue of programmes selected by the media service provider; [the definition of on-demand audiovisual media service in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“sound media service” means a media service which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks and is either a sound broadcasting service or an on-demand sound media service; [adapted from the definition of audiovisual media service in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“sound broadcasting service” means a sound media service provided by a media service provider for simultaneous or quasi simultaneous listening of

programmes on the basis of a programme schedule; [adapted from the definition of audiovisual media service in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808) and the definition of sound broadcasting service in the Broadcasting Act 2009]

“on-demand sound media service” means a sound media service provided by a media service provider for the listening of programmes at the moment chosen by the user and at their individual request on the basis of a catalogue of programmes selected by the media service provider; [adapted from the definition of on-demand audiovisual media service in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808) and the definition of sound broadcasting service in the Broadcasting Act 2009]

“video-sharing platform service” means a media service where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of an electronic communications network and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing." [adapted from the definition of video sharing platform service in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“relevant online service” means an information society service established in the State that [facilitates the dissemination of or access to] user-generated content via an electronic communications network; [refers to the definition of information society service from the eCommerce Directive 2000 (Directive 2000/31/EC) and a definition of user-generated content, which is adapted from the definition of user-generated video in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“designated online service” means a relevant online service designated by the Media Commission in accordance with Head 56; [self-explanatory]

Commercial Communications

“commercial communication” means information conveyed by a media service or relevant online service which is designed to promote, directly or indirectly, the goods, services or image of the natural or legal entity pursuing an economic activity. Forms of audiovisual commercial communication include, inter alia, advertising, sponsorship, teleshopping and product placement but does not include public service announcements and charity appeals made available without charge; [adapted from the definition of audiovisual commercial

communication in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“audiovisual commercial communication” means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity; such images accompany or are included in a programme or in a user-generated video in return for payment or for similar consideration or for self-promotional purposes; [adapted from the definition of audiovisual commercial communication in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“sound commercial communication” means audio which is designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity; such audio accompanies or is included in a programme or user-generated content in return for payment or for similar consideration or for self-promotional purposes; [adapted from the definition of audiovisual commercial communication in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“surreptitious commercial communication” means the representation of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration; [adapted from the definition of surreptitious audiovisual commercial communication in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“sponsorship” means any contribution made by a public or private undertaking or natural person not engaged in providing media services or in the production of content, to the financing of media services or content with a view to promoting its name, its trade mark, its image, its activities or its products; [adapted from the definition of sponsorship in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“product placement” means any form of commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme or user-generated content, in return for payment or for similar consideration; [adapted from the definition of product placement in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

Content

“content” means material created for the purpose of said material being made available, or access to said material being otherwise provided or facilitated, by a media service or relevant online service; [adapted from the definition of service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union and the definitions of programme and user-generated video in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“programme” means content constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider, including feature length films, video clips, sports events, situation comedies, documentaries, children’s programmes and original drama; [adapted from the definition of programme in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“programme material” means content and/or commercial communications; [adapted from the definition of programme material in the Broadcasting Act 2009]

“user-generated content” means content constituting an individual item, irrespective of its length, that is created by a user and uploaded to a relevant online service or media service by that user or any other user and does not include content uploaded to a relevant online service or media service by the provider of that service; [adapted from the definition of user-generated video in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“user-generated video” means user-generated content consisting of a set of moving images with or without sound constituting an individual item, irrespective of its length, that is created by a user and uploaded to a relevant online service or media service by that user or any other user and does not include content uploaded to a relevant online service or media service by the provider of that service; [adapted from the definition of user-generated video in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

Broadcasting

"broadcast" or “broadcasting” means the transmission, relaying or distribution by electronic communications network of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signal are actually received or not; [adapted from the definition of broadcast in the Broadcasting Act 2009]

"broadcaster" means a person who supplies a compilation of programme material for the purpose of its being broadcast as a broadcasting service (whether that person distributes that material as such a service or not); [adapted from the definition of broadcast in the Broadcasting Act 2009]

"broadcasting service" means a service which comprises a compilation of programme material of any description and which is broadcast by means of an electronic communications network, directly or indirectly for simultaneous or near-simultaneous reception by the general public, whether that material is actually received or not, and where the programmes are provided in a pre-scheduled and linear order, but does not include: (a) a service provided in a non-linear manner where each user of the service chooses a programme from a catalogue of programmes, or (b) other audio and audiovisual services provided by way of the Internet; [adapted from the definition of broadcasting service in the Broadcasting Act 2009]

"broadcasting contract" means a contract entered into under section x; [the definition of broadcasting contract in the Broadcasting Act 2009]

"broadcasting contractor" means a person holding a broadcasting contract; [the definition of broadcasting contractor in the Broadcasting Act 2009]

"content provision contract" has the meaning assigned to it in section x; [the definition of content provision contract in the Broadcasting Act 2009]

"provide a compilation of programme material" means to supply a compilation of programme material for the purpose of its being broadcast as a broadcasting service; [adapted from the definition of provide a broadcasting service in the Broadcasting Act 2009]

"television programme service" means a service which comprises a compilation of audio-visual programme material of any description and is broadcast by means of wireless telegraphy directly or indirectly for reception by the general public; [adapted from the definition of broadcasting service in the Broadcasting Act 2009]

"television programme service contract" and "television programme service contractor" have the same meaning as they have in section x; [the definition of television programme service contract in the Broadcasting Act 2009]

Editorial

“editorial responsibility” means the exercise of effective control both over the selection of the programmes and over their organisation. Editorial responsibility does not necessarily imply any legal liability for the content or the services provided; [adapted from the definition of editorial responsibility in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

"editorial decision" means a decision, which is taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of an audiovisual media service or sound media service; [adapted from the definition of editorial decision in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

“media service provider” means the natural or legal person who has editorial responsibility for the choice of the content of an audiovisual media service or sound media service and determines the manner in which it is organised; [adapted from the definition of media service provider in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

General

[All following definitions in this Head are unadapted definitions from the Broadcasting Act 2009 unless otherwise specified]

“Act of 1926” means Wireless Telegraphy Act 1926;

“Act of 1972” means Wireless Telegraphy Act 1972;

“Act of 1988” means Broadcasting and Wireless Telegraphy Act 1988;

“Act of 1998” means Referendum Act 1998;

“Act of 2001” means Broadcasting Act 2001;

“Act of 2009” means the Broadcasting Act 2009;

“Authority” means Broadcasting Authority of Ireland;

“BAI” means Broadcasting Authority of Ireland;

“BCC” means Broadcasting Complaints Commission;

“BCI” means Broadcasting Commission of Ireland;

“broadcaster” means a media service provider of television broadcasts;

“broadcasting code” means a code prepared under section x;

“broadcasting rules” means rules prepared under section x ;

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

“Communications Regulator” means Commission for Communications Regulation;

“communications media” means—

(a) the provision of an audiovisual service,

(b) the provision of a sound media service,

(c) the provision of a broadcasting service platform,

(d) the provision of a designated online service, or

(e) the publication of newspapers or periodicals consisting substantially of news and comment on current affairs [adapted from the definition of communications media from the Broadcasting Act 2009]

“community broadcaster” means a person holding a contract under [sections x of the Broadcasting Act 2009] ;

“community of interest” means a group of persons with a shared interest, association or bond;

“Contract Awards Committee” means the committee of the Authority established to undertake the functions set out in [section xx of the Broadcasting Act 2009];

“corporation” means RTÉ or TG4 or both, as the case may be;

“Directive” means Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities ;

“director general” means a person appointed as the director general of a corporation under [section x of the Broadcasting Act 2009] ;

“electronic communications network” means transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

[taken from the Electronic Communications Code [Directive (EU) 2018/1972], which updated the definition that’s in the Broadcasting Act 2009]

“EEA Agreement” has the meaning assigned to it in the European Communities (Amendment) Act 1993;

“electronic programme guide” has the meaning assigned to it by [section x of the Broadcasting Act 2009];

“electronic programme guide contract” has the meaning assigned to it by [section x of the Broadcasting Act 2009] ;

“employment” includes—

- (a) full-time employment,
- (b) part-time paid employment, where such employment is ongoing in the year of appointment or which arises in subsequent years,
- (c) temporary paid employment, being for a period of 16 weeks or more in the year of appointment or in subsequent years, or
- (d) being retained under contract, directly or indirectly, in any capacity as an adviser, consultant or lobbyist, or for the provision of services, by or in any business related to the functions of the public body concerned;

“establishment day” means the day appointed by the Minister under section x to be the establishment day for the purposes of x ;

“excepted person” means a person who is under the jurisdiction of another Member State and, for the purposes of this definition, the Council Directive applies for the purpose of determining the state under the jurisdiction of which the person falls;

“exploitation of commercial opportunities object” means an activity undertaken by a corporation in pursuance of x ;

“free-to-air service” means a broadcasting service for the reception of which no charge is made by the person providing the service;

“holder” means—

(a) in relation to a contract entered into under this Act, the person with whom the Authority has entered into the contract,

(b) in relation to a licence granted under this Act or any other enactment, the person to whom the licence has been granted;

“holding company” has the same meaning as in the Companies Act 2014;

“interests” includes—

(a) employment by or on behalf of—

(i) any business related to the functions of the public body concerned,

(ii) any organisation representative of any business related to the functions of the public body concerned,

(b) ownership of any business related to the functions of the public body concerned,

(c) shares in, bonds or debentures of, or other like investments in any business related to the functions of the public body concerned, where the aggregate of such holdings exceeds €13,000,

(d) a directorship or shadow directorship (within the meaning of the Companies Acts) in any business related to the functions of the public body concerned, held currently or during the previous two years, or

(e) gifts of travel, holidays, transport or other benefits (in excess of €650), including benefits from any beneficial interest in or connected with any business related to the functions of the public body concerned, during the previous two years which were received by the person concerned or by his or her spouse;

“interpersonal communications service” means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s) and does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service; [taken from the Electronic Communications Code [Directive (EU) 2018/1972]

“Joint Oireachtas Committee” means a Joint Committee of the Houses of the Oireachtas to which those Houses have assigned the role of examining matters relating to broadcasting;

“local community” means the community of a town or other urban or rural area;

“media literacy” means to bring about a better public understanding of:

(a) the nature and characteristics of published material,

(b) the processes by which such material is selected, or made available, for publication by media service providers,

(c) the processes by which individuals and communities can create and publish material, and

(d) the available systems by which access to material published by media service providers is or can be regulated;

[adapted from the definition of media literacy in the Broadcasting Act 2009]

“Member State” includes a state that is a contracting state to the EEA Agreement;

“Minister” means Minister for Communications, Climate Action and Environment;

“MMD system” means a multipoint microwave distribution system used for the transmission of broadcasting services on a point to multipoint basis;

“multiplex” has the meaning assigned to it by [section x of the Broadcasting Act 2009] ;

“multiplex contractor” means the holder of a contract entered into under [section x of the Broadcasting Act 2009] ;

“multiplex licence” has the meaning assigned to it by [section x of the Broadcasting Act 2009] ;

“national emergency” means an emergency declared under section 10 of the Act of 1926;

“ownership” includes any proprietary interest in any business related to the functions of the public body concerned, whether that interest is freehold, leasehold or beneficial, and applies where the interest—

(a) is held solely by the person concerned or shared with one or more persons, and

(b) has a value of €5,000 or more;

[“Private online storage service” means a service normally provided for remuneration that enables the non-local and non-temporary storage of information by a person via an electronic communications network and does not include (a) services which enable the non-local and non-temporary storage of information merely as a minor ancillary feature that is intrinsically linked to another service and (b) services that enable the non-local and non-temporary storage of information for the purpose of enabling the provision of other services;] [derived from multiple sources, including Article 13 of the eCommerce Directive (Directive 2000/31/EC) and the definition of interpersonal communications service in the Electronic Communications Code (Directive (EU) 2018/1972)]

“public service broadcaster” means RTÉ, TG4, the Houses of the Oireachtas Channel and the Irish Film Channel;

“public service broadcasting licence” means a licence issued under section x ;

“public service objects” shall mean an activity undertaken by a corporation in pursuance of xxx ;

“Raidió Teilifís Éireann” means the authority established under section 3 of the Broadcasting Authority Act 1960;

“RTÉ” means Raidió Teilifís Éireann;

“sectoral” means pertaining to the provision of broadcasting and broadcasting related services;

“subscription or pay-per-view basis”, in relation to the making available of a broadcasting service, means any basis for making a charge on a person in respect of the reception by him or her of a broadcasting service, and includes the basis of making such a charge by reference to the number of items of programme material viewed by him or her;

“subsidiary” has the same meaning as in the Companies Act 2014;

“superannuation benefits” means pensions, gratuities or other allowances payable on resignation, retirement or death;

“Teilifís na Gaeilge” means the body established by section 44 of the Act of 2001;

“TG4” means Teilifís na Gaeilge;

“teleshopping” means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment;

“television advertising” means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;

“television licence fees” means a fee paid on a licence granted under section xx in respect of a television set (within the meaning of section xxx);

“terrestrial means”, in relation to the transmission of a broadcasting service, means any means of transmitting such a service by wireless telegraphy, other than by means of a MMD system or a satellite device and “digital terrestrial means” shall be read accordingly;

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

“website” means a website maintained on the Internet;

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

Explanatory Notes

A provision to provide for certain definitions for the purposes of this Act.

These definitions include (a) new definitions adapted from EU legislation or provided for directly by the revised Audiovisual Media Services Directive (2018/1808), (b) restatement of existing definitions contained in the Broadcasting Act 2009 and S.I. 258/2010.

For ease of comprehension certain definitions in this draft head have been set out thematically rather than alphabetically in parts.

As the label for certain definitions used in the Broadcasting Act 2009 are altered in this head, the Act will need to be gone through to ensure all the definitional references align.

The vast majority of definitions which are marked as “adapted” from the revised Directive and the Broadcasting Act 2009 have not been changed in legal substance but merely clarified and contextualised within this proposed Bill. Further detail on these can be provided during detailed drafting.

Head 3 - Expenses

s. 4 of the Broadcasting Act 2009 is repealed and replaced as follows

Provide that:

The expenses incurred in respect of the Commission under this Act and expenses incurred by any Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Explanatory Notes

This is a standard provision.

Head 4 - Regulations and Orders

Provide that:

A regulation or order made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Explanatory Notes

This is a standard provision.

Head 5 - Repeals

Provide that:

[The relevant parts/sections of the Broadcasting Act 2009 and any other Acts are repealed. This head will be elaborated further at the detailed drafting stage.]

Explanatory Notes

This is a standard provision.

PART 2 – MEDIA COMMISSION

Part 2 of the Broadcasting Act 2009 is repealed and replaced as follows

Head 6 - Establishment day

Provide that:

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

Explanatory Note:

This head makes provision for an ‘establishment day’ order which would establish the Media Commission. The functions and staff of the BAI are to be subsumed into the Commission on this day.

This is a standard provision. It is intended that the BAI will be dissolved and that a new statutory entity named the Media Commission is created in its place. See Heads 41 and 42 which pertain to the dissolution of the BAI and the transfer of its functions to the Media Commission.

Head 7 - The Media Commission

Provide that:

1. On the establishment day there shall stand established a body to be known as An Coimisiún [insert translation] or, in the English language, the Media Commission (in this Act referred to as the “Commission”).)

2. The Commission –

(a) shall be a body corporate with perpetual succession and an official seal;

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

(c) may, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, have power to acquire, hold and dispose of land or any interest in land, and shall have power to acquire, hold and dispose of any other property.

3. The seal of the Commission may be authenticated by the signature of –

(a) a member; or

(b) a member of the staff of the Commission so authorised by the Commission.

4. Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Commission by a member of staff generally or specifically authorised for that purpose.

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

Explanatory note:

This head provides for the establishment of the Commission as a statutory body.

Drawn from sections 6 and 7 of the Broadcasting Act, 2009.

Head 8 - Independence

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulatory Structures and Functions: Paper 1

Provide that:

The Commission shall be independent in the performance of its functions

Explanatory note:

The revised Audiovisual Media Services Directive requires that the regulator must be independent in the exercise of its functions.

Drawn from section 24 of the Broadcasting Act, 2009.

Head 9 - Objectives

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulatory Structures and Functions: Paper 1

Provide that:

The Commission has the following objectives:

1. Ensure that democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression are upheld.
2. Ensure that the number and categories of public service media made available in the State serve the needs of the people of the island of Ireland, having regard to the following:
 - (a) linguistic, religious, ethical and cultural diversity
 - (b) accessibility of services to people with disabilities
3. Subject to the provisions of this Act, ensure that appropriate regulatory arrangements and systems are in place to address, where appropriate, illegal and harmful online, sound and audio-visual content.
4. Protect the interests of children taking into account the vulnerability of children to harmful content and undue commercial exploitation.
5. Provide a regulatory framework that takes account of the rapidly changing technological environment and that provides for rules to be applied in a proportionate, consistent and fair manner across all services regulated, having regard to the differing nature of those services.

Explanatory note:

A provision to assigned objectives to the Media Commission.

The Department is aware that certain parts of this head are interchangeable with the functions of the Media Commission set out in Head 10. It is not intended that this head will provide for a hierarchy of objectives/function but that it will provide for a high level statement of the purpose of the Media Commission.

Head 10 - Functions

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulatory Structures and Functions: Paper 1 & 2

To provide that:

- (1) The Commission has the following functions:
 - (i) Ensure the provision of open and pluralistic broadcasting and audio-visual media services;

- (ii) Promote and stimulate the development of Irish language content;
- (iii) Stimulate provision of high quality, diverse and innovative content from commercial, community and public service media providers and independent producers;
- (iv) Prepare and submit proposals to the Minister for a scheme or schemes for the granting of funds to support the production of audio-visual content and sound broadcasting content;
- (v) Promote and protect the interests of the public in relation to audio-visual, audio and online content;
- (vi) The Commission shall have all such powers as are necessary or expedient for the performance of its functions and shall ensure that its functions are performed effectively and efficiently;
- (vii) To carry out an investigation, either on its own initiative or in response to a complaint made to it by any person, into any suspected breach of the relevant statutory provisions;
- (viii) To enforce the relevant statutory provisions;
- (ix) To encourage compliance with the relevant statutory provisions, which may include the publication of notices containing practical guidance as to how those provisions may be complied with;
- (x) The Commission shall prepare or make codes and rules to be observed by entities operating in the following categories:
 - (a) Audiovisual media services
 - (b) Sound media services
 - (c) designated online services
- (xi) The Commission shall establish or facilitate, where appropriate, a complaints mechanism or mechanisms covering some or all of the following categories:
 - (a) Audiovisual media services
 - (b) sound media services

(c) designated online services

(xii) To promote, where appropriate, the development of alternative dispute resolution procedures as a means of resolving complaints;

(xiii) To promote public awareness, encourage research and conduct public information campaigns for the purpose of educating and providing information to the public in relation to:

(a) online safety;

(b) media literacy;

(xiv) Promote educational initiatives and activities relating to online safety and advise, when requested, the Minister or any other Minister of the Government, Departments of State or any public body whose activities are concerned with matters relating to any of the purposes of this Act, and any educational or training institution;

(xv) Conduct or commission research, studies and analysis on matters relating to the functions of the Commission and may publish, in the form and manner that the Commission thinks fit, such findings as it considers appropriate (which may consist of, or include, a study or analysis of any development outside the State);

(xvi) The Commission shall undertake media merger examinations in accordance with the provisions of the Competition Act 2002 (as amended);

(xvii) Promote diversity in control of media businesses operating in the State;

(xviii) Provide a regulatory environment that will sustain independent and impartial journalism;

(xix) Co-operate with other authorities whether in the State or elsewhere charged with responsibility for the enforcement of laws relating to (i) harmful online content; (ii) the protection of children; (iii) the allocation for the frequency range dedicated to sound and television broadcasting;

(xx) The Commission shall have a statutory role in relation to the following:

(a) reviewing existing online safety and media service related legislation and proposals for such legislation

(b) Undertaking a strategic review or reviews of the regulated sectors covering one or more of the following areas:

(I) sectoral funding

(II) technological and societal change

(III) the protection of children

(IV) other relevant strategic areas as directed by the Minister

(xxi) The Commission shall be responsible for the licensing of radio and television services (additional to those provided by RTÉ, TG4, the Houses of the Oireachtas Channel and the Irish Film Channel) operating in the State;

(xxii) The Commission shall impose a levy on [regulated media services and designated online services] to ensure it is sufficiently resourced to properly execute its statutory functions;

(xxiii) The Commission shall carry out other functions as may be assigned to it from time to time by or under any other enactment;

(xxiv) All functions that, immediately before the establishment day, were vested in the Broadcasting Authority of Ireland are now held by to the Commission;

(xxv) The Commission shall draw up a statement of strategy;

(xxvi) Ensure that appropriate systems and procedures are in place to achieve the Commission's strategic objectives and to take all reasonable steps available to it to achieve those objectives.

(xxvii) The Commission may delegate the performance of any of its functions to any member of the Commission or to any member of its staff duly authorised in that behalf by the Commission.

(xxviii) Notwithstanding subsection (xxvii), the Commission may not delegate the performance of the following functions:

(a) imposition of sanctions under Head 55 (Online Safety), Head 61 (On Demand), and [Part 5 of the current Act which relates to sanctions for broadcasters]

(xxix) Subject to this Act, the Commission shall regulate its own procedures.

(2) (a) The Minister may, after consulting with the Commission and any other Minister of the Government who, in the Minister's opinion, is concerned, by order confer on the Commission such additional functions relating to

(i) the regulation of audiovisual media services, the regulation of sound media services, the regulation of designated services and the protection of minors, and connected with the functions conferred on it by [insert reference to section on functions already assigned under the Act] or any order made under this [section/subsection],

(ii) the implementation of any directive or regulation of the European Union concerning [audiovisual media services, online safety, digital services, the protection of minors], and

(iii) make such provisions as the Minister considers necessary or expedient in relation to matters ancillary to or arising out of the conferral of additional functions on the Commission.

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

(c) Nothing in this section shall be construed as restricting the power of any Minister of the Government to make regulations under section 3 of the European Communities Act 1972.

Explanatory note:

A provision to confer certain functions on the Media Commission.

Head 10(2)(a)(i) is modelled on section 11 (4)(a) of the Property Services (Regulation) Act, 2011. Head 10(2)(a)(ii) is included as per suggestion of external legal advisor.

In relation to subsections (xxvii) and (xxviii), it should be noted that it is intended that the Commission will formally delegate functions to Commissioners and staff as appropriate. While the delegation of functions is ultimately a matter for the Commission itself, this provision is desired from a policy perspective as the Minister wishes that individual Commissioners can take responsibility for clearly delegated functions. This is particularly relevant in the case of the Online Safety Commissioner.

Head 11 – Core Powers of the Media Commission

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

The Commission shall have all such powers as are necessary or expedient for the performance of its functions. Said powers shall include, but are not limited to;

1. the power to issue notices and warnings,
2. the power to devise, implement, monitor and review codes, including codes of practice,
3. the power to conduct investigations and inquiries, and for the necessary powers to be conferred on the Commission to conduct such investigations and inquiries,
4. the power to appoint authorised officers to carry out investigations and to confer such authorised officers such powers as are necessary to fulfil their duties,
5. the power to impose administrative financial sanctions, subject to court confirmation, and the power to enter into settlement arrangements,
6. the power to prosecute summary offences,
7. the power to convey licenses to television broadcasting services,
8. the power to operate a registration system for on demand audio-visual media services.

Explanatory Note

A provision to state a list of core powers provided by this Bill to the Media Commission. This is not a list of all powers afforded to the Media Commission by this Bill, nor a statement of any hierarchical relationship between the Media Commission's powers.

The Department is aware that this head may give rise to the impression that the Department wishes to create a hierarchy of objectives/functions/core powers/other powers in this Act. This is not the intention of this head, which is instead intended as a high level statement of certain core powers afforded to the Media Commission.

Head 12 – Compliance Notices and Warnings

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

(1) The Commission shall have the power to issue compliance notices to regulated entities where it appears to the Commission that there is or has been regulatory non-compliance. A compliance notice will outline the Commission's views on alleged regulatory non-compliance and the basis for those views.

(2) If, following [an appropriate period] the regulated entity does not provide to the Media Commission a satisfactory justification in relation to alleged regulatory non-compliance, or a satisfactory outline of its actions to bring itself into compliance, the Commission may issue a warning notice to the regulated entity.

(3) A warning notice will:

- state that the Commission is of the view that the regulated entity is in regulatory non-compliance,
- the basis for this view,
- outline the steps which the Commission deems necessary for the regulated entity to take to bring itself into compliance,
- provide a time scale in which those action must be taken, and
- outline the actions which will be taken if the regulated entity does not bring itself into compliance. Such action may include the initiation of proceedings or the imposition of an administrative sanction etc.

(4) in this section 'entity' and cognate words will include audiovisual media services, sound media services and designated online services.

Explanatory Note

A provision to confer on the Media Commission the power to issue notices and warnings to regulated entities to enforce compliance with regulatory obligations. How this power is exercised and the policies and principles governing its exercise are laid out in the relevant Heads, including Heads 53 and 59.

Head 13 – Codes of Practice

Existing provision – s. 42

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – **Regulatory Powers Policy Paper**

Provides that:

(1) The Commission shall have the power to devise and implement codes [including broadcasting codes] to govern standards and practice to be observed by regulated entities. Regulated entities will be required to provide periodic reports on their compliance or otherwise with codes. Codes shall be reviewed and if necessary revised on a regular basis. In devising and revising codes the Commission shall consult with relevant stakeholders.

(2) Where it is believed non-compliance is or has occurred the Commission shall engage with the regulated entity to bring it into compliance with relevant code(s) by means of the notice procedure, etc.

(3) in this section ‘entity’ and cognate words will include audiovisual media services, sound media services and designated online services.

Explanatory Note

A provision to confer on the Media Commission powers in relation to codes, their implementation and review. How this power is exercised and the policies and principles governing its exercise are laid out in the relevant heads, including Heads 50 and 62.

Head 14A – Investigation into affairs of broadcasting contractor

Existing Provision – s. 50 of the Broadcasting Act 2009

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

(1) The Commission may for any of the reasons specified in subsection (2) conduct an investigation into the operational, programming, financial, technical or other affairs of a holder of a contract under Part x (“contractor”).

(2) The Commission may conduct, by appointing as an investigator a member of the staff of the Commission or another person the Commission considers to be suitably qualified to conduct an investigation under this section if it has reasonable grounds for believing that a contractor is not providing a service in accordance with the terms of the contractor’s contract.

(3) The Commission shall notify the contractor concerned of the matter under investigation and afford the contractor an opportunity to respond, within 7 days of the date of the

notification, or such further period as the Commission allows, to the matter under investigation. It is the duty of the contractor to co-operate in the investigation.

(4) An investigator may for the purposes of an investigation under this section require the contractor concerned to—

(a) produce to the investigator such information or records in the contractor's possession or control relevant to the investigation,

(b) allow the investigator to enter the premises of the contractor to conduct such inspections and make such examinations of broadcasting equipment found there, and

(c) where appropriate, attend before the investigator for the purposes of the investigation.

(5) Where an investigator, having conducted an investigation under subsection (2), forms a view that a contractor is not providing the service referred to in that subsection in accordance with the terms of the contractor's contract, then he or she shall notify the finding to the contractor and afford that contractor an opportunity to make submissions in accordance with any rules made under subsection (8) at a hearing before the Commission in respect of the matter under investigation.

(6) The contractor concerned shall supply the Commission with such information and records the Commission considers necessary for the purposes of a hearing.

(7) After consideration of submissions (if any) made by the contractor concerned under subsection (5), the Commission may—

(a) make a finding that the contractor is not providing the service referred to in subsection (2) in accordance with the terms of the contractor's contract, or

(b) make such other finding as it considers appropriate in the circumstances.

(8) The Commission shall make rules providing for the conduct of a hearing under subsection (5). The rules shall provide for the period in which submissions under subsection (5) are to be made. The rules may include provision for an oral or other form of hearing, as appropriate.

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

Head 14B – Termination or suspension of contract under Part x

Existing Provision - s. 51 of the Broadcasting Act 2009

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

(1) Without prejudice to any specific provision of this Act, or of a contract made under it, the Commission may decide to terminate or suspend, for such period of suspension as the Commission considers reasonable and specifies in the recommendation, a contract entered into by the Commission under Part x –

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

(b) if the holder of the contract has, upon a finding by the Commission under Head 14A (7) , having regard to the investigation concerned under that section, failed on one or more occasions to comply with a term or condition of the contract and the nature of that failure is of such seriousness as, in the opinion of the Commission, warrants the termination or suspension of the contract,

the Commission shall—

(i) suspend the contract concerned for such period as the Commission decides, or

(ii) terminate the contract concerned.

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

(3) The Commission shall make rules providing for the conduct of a hearing under subsection (2). The rules shall provide for the period in which submissions under subsection (2) are to be made. The rules may include provision for an oral or other form of hearing, as appropriate.

(4) A decision to terminate or suspend a contract by the Commission under this section, any other provision of this Act or a provision of the contract, may be appealed by the holder of the contract to the Court.

(5) A contract terminated or suspended under this section, under any other provision of this Act or under a provision of the contract, shall—

(a) in case it is terminated, cease to have effect, and

(b) in case it is suspended, cease to have effect for the period for which it is suspended.

(6) In this section “Court” means the High Court.

Head 14C – Investigation into affairs of broadcaster

Existing Provision - ss. 53 of the Broadcasting Act 2009

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

(1) The Commission shall, subject to subsection (2), appoint a member of the staff of the Commission, or such other person as the Commission considers to be suitably qualified to be an investigating officer for the purposes of this Act where they are of the opinion that there are circumstances suggesting that it is appropriate to investigate and report on any apparent breach by a broadcaster of a requirement of sections xx or a broadcasting code or rule [or such other matter as may be specified].

(2) The terms of appointment of an investigating officer under this section shall relate to the particular apparent breach being investigated and may define the scope of his or her investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular circumstances.

(3) Where the Commission appoints an investigating officer to investigate and report on an apparent breach by a broadcaster, the investigating officer shall—

(a) notify the broadcaster (“broadcaster concerned”) of the matter under investigation,

(b) supply the broadcaster with copies of any documents relevant to the investigation, and

(c) afford to the broadcaster an opportunity to respond, within 7 days of the date of the notification, or such further period not exceeding 21 days as the Commission allows, to the matter under investigation.

(4) It is the duty of the broadcaster concerned to co-operate in any such investigation and provide the investigating officer with such information as he or she considers necessary for the purposes of the investigation.

(5) Where the Commission appoints an investigating officer to investigate and report on an apparent breach and either—

- (a) a person employed by the broadcaster concerned, or
- (b) if the making of any programme, the subject of such an investigation, was commissioned by the broadcaster concerned, the person commissioned to make that programme,

requests, for reasons specified by the person, that the Commission afford to him or her an opportunity to comment within 7 days, or such further period not exceeding 21 days as the Commission allows, on the matter under investigation, then the Commission shall, having considered the reasons so specified, require the investigating officer to afford to the person such an opportunity, if the Commission is satisfied that—

- (i) in the case of a person referred to in paragraph (a) , an interest of the person, which the Commission considers relevant to the person’s employment by the broadcaster concerned, is involved,
- (ii) in the case of a person referred to in paragraph (b) , the prospects of the person obtaining further commissions in respect of programmes from the broadcaster concerned, may, because of the matter under investigation, be adversely affected, or
- (iii) in the case of a person referred to in paragraph (a) or (b) , it is in the interests of fairness to do so, having regard to any potential consequences for the good name of the person.

(6) Where the Commission proposes to investigate non-compliance by a broadcaster with a broadcasting code which provides for any of the matters referred to in section xx, the investigating officer shall afford to the person employing such matter in a broadcasting service an opportunity to comment within 7 days of notification, or such further period not exceeding 21 days as the Commission allows, in relation to the matter under investigation.

(7) An investigating officer may for the purposes of this section require the broadcaster concerned to—

- (a) provide to the investigating officer such information or records in the broadcaster’s possession or control relevant to the investigation, and
- (b) where appropriate, attend before the investigating officer for the purposes of the investigation.

(8) In this section

“administrative financial sanction” has the meaning assigned to it under Head 16

“breach” means a serious or repeated failure by a broadcaster to comply with a requirement referred to in section (1);

“investigation” means an investigation by an investigating officer into any of the matters referred to in section xx;

“investigating officer” means a person appointed as such under section (1)

Head 14D – Report, findings, recommendations and procedures relating to outcome of investigation

Existing Provision - s. 54 of the Broadcasting Act 2009

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

(1) (a) Where an investigating officer forms the view that there has been a breach in respect of any matter which he or she is investigating or the broadcaster concerned has failed to co-operate with the investigation, the officer shall report this to the Commission.

(b) The report of an investigating officer in relation to an investigation to the Commission shall include—

(i) the investigating officer’s findings in relation to the matter,

(ii) any response received under Head 14C (3)(c) or comment received under Head 14C (5) or (6) ,

(iii) details of any failure by the broadcaster concerned to comply with Head 14C (7) , and

(iv) the recommendation of the investigating officer.

(2) Where an investigating officer forms a view that there has been a breach by the broadcaster concerned or that the broadcaster has not co-operated with the investigation, the broadcaster shall be afforded the opportunity of making a submission to the Commission within 10 days of being notified of the investigating officer’s views and recommendation.

(3) Where the Commission, having considered a report under subsection (1) and any submissions made under subsection (2), finds that—

(a) there has been a breach by the broadcaster concerned, or

(b) the broadcaster concerned has failed to co-operate in an investigation,

the Commission may decide to notify the broadcaster concerned in accordance with Head 16A .

(4) A notification under subsection (3) shall—

(a) set out the reasons for the notification,

(b) state that the Commission intends to apply to the Court for a determination that there has been a breach or a failure to co-operate with an investigation, unless the broadcaster concerned requests, in writing within 14 days of the date of the

notification or such further period as the Commission allows, that the Commission deal with the matter under Head 16D , and

(c) indicate the amount of the administrative financial sanction (not exceeding €xxx) that it proposes, if the matter is dealt with by the Commission under Head 16D ,

and the Commission may indicate in the notification the amount of the administrative financial sanction that it intends to recommend to the Court if the matter is dealt with by the Court under Head 16C .

(5) Where the broadcaster concerned fails to make a request under subsection (4)(b) within the period referred to in that paragraph or informs the Commission that no such request will be made, the Commission shall apply to the Court for a determination that there has been a breach or a failure to co-operate with an investigation by the broadcaster concerned.

(6) Where a broadcaster makes a request under subsection (4)(b), the Commission shall afford the broadcaster an opportunity to make submissions at a hearing before the Commission in respect of the matter.

(7) The Commission shall make rules providing for the conduct of a hearing under subsection (6). The rules may include provision for an oral or other form of hearing, as appropriate, and for the taking of evidence whether orally or otherwise, as appropriate, and the applicable rules of evidence.

(8) The Commission may not award costs or expenses to any party in relation to a hearing under subsection (6).

(9) In this section “Court” means the High Court.

Explanatory Note

An amendment of ss. 50 - 54 of the Broadcasting Act, 2009. The financial sanctions procedure under section 55 of the 2009 Act is removed and substituted with the AFS procedure envisaged under Heads 16A, B, C, D.

At present the power to conduct investigations in relation to broadcasting contractors and broadcasters is assigned to the BAI. For the exercise of its functions in relation to such entities it is appropriate such powers are conferred on the Media Commission. The provisions of s. 55 are substituted with the AFS procedure envisaged under Heads 16A, B, C, D. This ensures that there is a single process and provides clarity and consistency.

Head 15A – Investigation into affairs of a regulated entity by Authorised Officer

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

(1) The Commission may appoint such and so many members of its staff, and such and so many other suitably qualified persons, as it considers appropriate to be authorised officers for the purposes of this Act.

(2) A person appointed under subsection (1) shall, on his or her appointment, be furnished by the Commission with a certificate of his or her appointment and, when exercising a power conferred by this Act shall, on request by any person thereby affected, produce such certificate together with a form of personal identification to that person for inspection.

(3) An appointment shall cease—

(a) if the Commission revokes, in writing, the appointment,

(b) in the case of a person who at the time of his or her appointment was a member of staff of the Commission, upon the person ceasing to be such a member of staff, or

(c) in the case of an appointment for a fixed period, upon the expiry of that period.

(4) In this section, “suitably qualified person” means a person other than a member of staff of the Commission who, in the opinion of the Commission, has the expertise and experience necessary to perform the functions conferred on an authorised officer by this Act.

(5) In this section “authorised officer” means a person appointed as such under *subsection (1)*.

Head 15B – Powers of Authorised Officers

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

(1) For the purposes of this Act an authorised officer may—

(a) subject to subsection (6), enter, at any reasonable time, any place—

(i) where any activity connected with [a relevant regulated activity] takes place,

(ii) where the authorised officer has reasonable grounds for believing any activity connected with [a relevant regulated activity] takes place, or

(iii) at which the authorised officer has reasonable grounds for believing documents, records, statements or other information relating to [a relevant regulated activity] is being kept,

(b) search and inspect the place and any documents, records, statements or other information found there,

(c) require any person at the place, to produce to him or her any [relevant materials] which are in that person's power or control and, in the case of information in a non-legible form, to reproduce it in a legible form, and to give to the authorised officer such information as he or she may reasonably require in relation to any entries in such documents or records,

(d) secure for later inspection—

(i) any documents or records so provided or found and any data equipment, including any computer, in which those records may be held, or

(ii) any such place, or part thereof, in which—

(I) documents, records, statements or equipment are kept, or

(II) there are reasonable grounds for believing that such documents, records, statements or equipment are kept,

for such period as the authorised officer may reasonably consider necessary for the purposes of the performance of his or her functions or the functions of the Commission under this Act,

(e) inspect and take extracts from or make copies of any such documents or records (including, in the case of information in a non-legible form, a copy of or extract from such information in a permanent legible form),

(f) remove and retain such documents or records for such period as the authorised officer reasonably considers necessary for the purposes of the performance of his or her functions or the functions of the Commission under this Act, or require any person referred to in paragraph (c) to retain and maintain such documents or records for such period of time, as the authorised officer reasonably considers necessary for those purposes,

(g) if a person who is required under paragraph (c) to provide a particular record is unable to provide it, require the person to state, to the best of that person's knowledge and belief, where the record is located or from whom it may be obtained, and

(h) require any person referred to in paragraph (c) to give to the authorised officer any information relating to [a relevant regulated activity] that the officer may reasonably require for the purposes of the performance of his or her functions or the functions of the Commission under this Act, and to afford the officer all reasonable assistance in relation thereto.

(2) An authorised officer may, in the performance of his or her functions under this Act—

(a) operate any equipment, including any computer, or cause any such equipment or computer to be operated by a person accompanying the authorised officer, and

(b) require any person who appears to the authorised officer to be in a position to facilitate access to the documents or records stored in any equipment or computer or which can be accessed by the use of that equipment or computer to give the authorised officer all reasonable assistance in relation to the operation of the equipment or computer or access to the records stored in it, including by—

(i) providing the documents or records to the authorised officer in a form in which they can be taken and in which they are, or can be made, legible and comprehensible,

(ii) giving to the authorised officer any password necessary to make the documents or records concerned legible and comprehensible, or

(iii) otherwise enabling the authorised officer to examine the documents or records in a form in which they are legible and comprehensible.

(3) For the purposes of an investigation, an authorised officer may, if he or she thinks it proper to do so, of his or her own volition or at the request of the regulated entity to whom the investigation relates, conduct an oral hearing.

(4) The Commission shall make rules providing for the conduct of a hearing under *subsection (3)*.

(5) When performing a function under this Act, an authorised officer may, subject to any warrant under Head 15C, be accompanied by such and so many other authorised officers or members of An Garda Síochána as he or she considers appropriate.

(6) An authorised officer may require a person to provide him or her with his or her name and address where the authorised officer has reasonable grounds for requiring such information for the purpose of applying for a warrant under Head 15C.

(7) Where an authorised officer in the performance of his or her functions or the functions of the Commission under this Act, is prevented from entering any place, he or she may make an application under Head 15C for a warrant to authorise such entry.

(8) An authorised officer shall not enter a dwelling, other than—

(a) with the consent of the occupier, or

(b) in accordance with a warrant under Head 15C.

(9) A person who —

(a) obstructs, impedes or assaults an authorised officer in the performance of his or her functions under this Act,

(b) fails or refuses to comply with a requirement of an authorised officer under this section,

(c) alters, suppresses or destroys any documents, records, statements or other information which the person concerned has been required by an authorised officer to produce, or may reasonably expect to be so required to produce,

(d) in purported compliance with a requirement under this section, gives to an authorised officer information, documents or records which the person knows to be false or misleading in a material respect,

(e) falsely represents himself or herself to be an authorised officer, or

(f) procures or attempts to procure any action referred to in paragraphs (a) to (e).

shall be guilty of a category 2 offence.

(10) A statement or admission made by a person pursuant to a requirement under subsection (1), (2) or (3) shall not be admissible in evidence in proceedings for an offence (other than an offence under paragraph (b) of subsection (7)) brought against the person.

(9) In this section and Head 15C, “place” includes—

(a) a dwelling or a part thereof,

- (b) a building or a part thereof,
- (c) any other premises or part thereof, and
- (d) a vehicle, vessel, aircraft or any other means of transport.

Head 15C – Search Warrant

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

(1) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that information required by an authorised officer for the purpose of performing his or her functions under this Act is held at any place, the judge may issue a warrant authorising him or her, accompanied if the officer considers it necessary by such other person(s) or member(s) of the Garda Síochána, at any time or times from the date of issue of the warrant, on production, if so required, of the warrant, to enter, if need be by reasonable force, the place and exercise all or any of the powers conferred on an authorised officer under Head 15B.

(2) The period of validity of a warrant shall be 28 days from its date of issue, but that period of validity may be extended in accordance with subsections (3) and (4).

(3) The authorised officer may, during the period of validity of a warrant (including such period as previously extended under subsection (4)), apply to a judge of the District Court for an order extending the period of validity of the warrant and such an application shall be grounded upon information on oath laid by the authorised officer stating, by reference to the purpose or purposes for which the warrant was issued, the reasons why the authorised officer considers the extension to be necessary.

(4) If, on the making of an application under subsection (3), the judge of the District Court is satisfied that there are reasonable grounds for believing, having regard to that information so laid, that further time is needed so that the purpose or purposes for which the warrant was issued can be fulfilled, the judge may make an order extending the period of validity of the warrant by such period as, in the opinion of the judge, is appropriate and just; and where such an order is made, the judge shall cause the warrant to be suitably endorsed to indicate its extended period of validity.

(5) Nothing in subsections (1) to (4) prevents a judge of the District Court from issuing, on the making of a new application under subsection (1), a further search warrant under this section in relation to the same place.

Head 15D – Actions to be taken by authorised officer upon completion of investigation

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

(1) Subject to *subsection (3)*, where an authorised officer has completed an investigation, the authorised officer shall, as soon as is practicable after having considered, in so far as they are relevant to the investigation, any [material] provided under Head 15B to the authorised officer pursuant to any requirement under Head 15B or any statement or admission made by any person pursuant to any requirement under that Head, any submissions made and any evidence presented (whether at an oral hearing referred to in Head 15B(3) or otherwise)

(a) prepare a draft of the authorised officer investigation report [where more than one authorised officer has been appointed to conduct an investigation, the investigation report will be completed jointly], and

(b) give to the regulated entity whom the investigation relates —

(i) a copy of the draft of the authorised officer investigation report,

(ii) a copy of this section, and

(iii) a notice in writing stating that the regulated entity may, not later than 30 days from the date on which it received the notice, or such further period not exceeding 30 days as the authorised officer allows, make submissions in writing to the authorised officer on the draft of the investigation report.

(2) Subject to *subsection (3)*, an authorised officer who has complied with *subsection (1)* following the completion of an investigation shall, as soon as is practicable after —

(a) the expiration of the period referred to in *subsection (1)(b)(iii)*, and

(b) having —

(i) considered the submissions (if any) referred to in *subsection (1)(b)(iii)* made before the expiration of that period on the draft of the authorised officer investigation report concerned, and

(ii) made any revisions to the draft of the authorised officer investigation report which, in the opinion of the authorised officer are warranted following such consideration,

prepare the final form of the authorised officer investigation report and submit it to the Commission along with any such submissions annexed to the report.

(3) Where an authorised officer states, whether in a draft of the authorised officer investigation report or in the final form of the authorised officer investigation report, that he or she is satisfied that improper conduct by the regulated entity to whom the investigation relates has occurred or is occurring, the authorised officer shall not make any recommendation, or express any opinion, in the report as to any sanction that he or she thinks ought to be imposed on the specified body in respect of such improper conduct in the event that the Commission is also satisfied that improper conduct by the specified body has occurred or is occurring.

Head 15E – Actions to be taken by Commission on receipt of authorised officer investigation report

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

(1) On receipt of an authorised officer investigation report submitted to it by an authorised officer [or officers] in accordance with Head 15D (2), the Commission shall consider the report and any submissions annexed to it.

(2) Subject to *subsection (3)*, where the Commission has considered an authorised officer investigation report (and any submissions annexed to it) under *subsection (1)*, the Commission –

(a) if it is satisfied that improper conduct by the regulated entity to whom the investigation relates has occurred or is occurring, shall, subject to *subsection (6)* and Head 16C or Head 16D –

(i) impose a sanction pursuant to Head 12,

or

(ii) impose a sanction pursuant to Head 16A,

or

(iii) take no further action

as it thinks fit in the circumstances of the case,

(b) if it is not satisfied that improper conduct has occurred or is occurring but is of the opinion that a further investigation of the regulated entity is warranted, shall cause the further investigation to be carried out pursuant to its powers under Head 15A, or

(c) if it is not satisfied that improper conduct has occurred or is occurring and is not of the opinion that a further investigation of the specified body is warranted, shall take no further action.

(3) Where the Commission has considered an authorised officer investigation report (and any submissions annexed to it) in accordance with *subsection (1)*, the Commission may, if it considers it proper to do so for the purposes of assisting it to make a decision under *subsection (2)*, or for the purposes of observing fair procedures, for those purposes —

(a) conduct an oral hearing, or

(b) give to the regulated entity to whom the investigation concerned relates —

(i) a copy of the investigation report, and

(ii) a notice in writing stating that the regulated entity may, not later than 30 days from the date it received the notice, or such further period not exceeding 30 days as the Commission allows, make submissions in writing to the Commission on the investigation report.

(4) The Commission shall make rules providing for the conduct of a hearing under *subsection (3)*.

(5) The Commission shall, as soon as is practicable after making a decision under *subsection (2)*, give notice in writing of the decision and the reasons for the decision to the regulated

entity to whom the investigation concerned relates and, if *subsection (2)(a)* applies in the case of that regulated entity, set out in that notice —

(a) the sanction to be imposed on the regulated entity for the improper conduct specified in the notice in respect of which the Commission is satisfied as referred to in that subsection, and

(b) the reasons for the imposition of such a sanction, as the case may be.

(6) Where *subsection (2)(a)* applies in the case of a regulated entity the Commission shall, in deciding the sanction to be imposed on the specified body, take into consideration the matters referred to in Head 16A(1).

(7) The Commission may publish particulars, in such form and manner and for such period as it thinks fit, of any imposition of any sanction or sanctions, as the case may be, on a regulated entity pursuant to a decision confirmed or given under Head 16B, Head 16C and Head 16D.

Explanatory Note

Provisions to confer on the Media Commission, the power to appoint authorised officers with robust investigatory powers.

Heads 15A, B and C are derived from the Data Protection Act, 2018, while Heads 15D and E are adapted from the Electricity Regulation Act, 1999, as amended, which Act provides guidance on linking the authorised officer's report to decisions by the Commission to impose sanctions.

It is submitted that the focus of the Data Protection Act, 2018 on powers in relation to the processing and storing of data means that is a useful template for the powers which will be necessary for the Media Commission.

Head 16A – Administrative Financial Sanctions

New Provision

The approach to the imposition of administrative financial sanctions as outlined below is informed by:

- the principles as expressed by the Law Reform Commission *Report on Regulatory Powers and Corporate Offences* (see drafting note to Head 16B),
- the permissibility of administrative sanctions by regulators where such sanctions do not amount to an administration of justice (*Purcell v. Central Bank* [2016] IEHC 514) (see drafting note to Head 16B),

- the desire to create a regulatory system which is efficient and cost effective, (see drafting notes to Head 16C and D) and
- the extensive prior experience of the Department of Communications, Climate Action and Environment of the difficulties associated with the operation and constitution of *ad hoc* and standing regulatory appeal tribunals, and the use of litigation concerning such tribunals by regulated entities to frustrate the actions of regulatory bodies.

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

**Power of Commission to decide to impose an administrative financial sanction:
General**

“In Head 16A, B, C, and D –

“relevant undertaking” – is any person or undertaking which is subject to the investigatory and sanction powers of the Commission pursuant to the Act

(1) The Commission, in considering whether to make a decision to impose an administrative financial sanction, and where applicable, the amount of such an administrative financial sanction, shall act in accordance with this section and shall have regard (where appropriate) to-

(a) the need to ensure that any administrative financial sanction imposed—

(i) is appropriate and proportionate to the breach or the failure to co-operate with an investigation, and

(ii) will act as a sufficient incentive to ensure future compliance in respect of the [requirement/provision] breached,

(b) the seriousness of the breach,

(c) the turnover of the relevant undertaking in the financial year ending in the year previous to the breach and the ability of the relevant undertaking to pay the amount,

(d) the extent of any failure to co-operate with an investigation,

(e) any excuse or explanation by the relevant undertaking for the breach or failure to co-operate with an investigation,

(f) any gain (financial or otherwise) made by the relevant undertaking or by any person in which the relevant undertaking has a financial interest as a consequence of the breach,

(g) the appropriateness of the time when the programme material concerned was broadcast,

(h) the degree of harm caused or increased cost incurred by audiences, consumers or other sectoral or market participants as a consequence of the breach,

(i) audience expectations as to the nature of the programme material,

(j) the duration of the breach,

(k) repeated breaches by the relevant undertaking,

(l) continuation by the relevant undertaking of the breach,

(m) the extent to which—

(i) the management of the relevant undertaking knew, or ought to have known, that the breach was occurring or would occur, and

(ii) any breach was caused by a third party, or any relevant circumstances beyond the control of the relevant undertaking,

(n) the absence, ineffectiveness or repeated failure of internal mechanisms or procedures of the relevant undertaking intended to prevent breach by the relevant undertaking,

(o) the extent to which the relevant undertaking had taken steps in advance to identify and mitigate external factors that might result in a breach,

(p) the extent and timeliness of any steps taken to end the breach in question, and any steps taken for remedying the consequences of the breach,

(q) submissions by the relevant undertaking on the appropriate amount of an administrative financial sanction,

(r) whether an administrative financial sanction in respect of similar conduct has already been imposed on the relevant undertaking by the court or Commission, and

(s) any precedents set by the court or Commission in respect of previous breaches or failures to co-operate with an investigation.

(2) Where the Commission decides to impose an administrative financial sanction on a relevant undertaking the amount of the administrative financial sanction shall be up to €20,000,000 or, in the case of an undertaking, up to 10% of relevant turnover of the preceding financial year, whichever is higher.

(3) The Commission, as soon as practicable after—

(a) a decision to impose an administrative financial sanction is confirmed under section (2),

(b) the court decides, under Head 16B , to impose a different administrative financial sanction,

shall give the relevant undertaking concerned a notice in writing, requiring it to pay the amount of the administrative financial sanction concerned to the Commission within the period of 28 days commencing on the date of the notice.

(4) A relevant undertaking shall comply with a requirement referred to in subsection (3).

(5) All payments received by the Commission under this section shall be paid into or disposed for the benefit of the Exchequer in such manner as the Minister for [Finance] may direct.

Explanatory Note:

A provision to empower to Media Commission to impose administrative sanctions on regulated entities in serious breach of their obligations.

The wording of this Head is derived from s. 141 Data Protection Act, 2018, and is intended to link this provision to investigatory and sanction procedures. The criteria (a – s) which the Commission will have regard to in making a decision to impose an administrative financial sanction and the amount of such sanction are derived from s. 56 of the Broadcasting Act, 2009. It may be necessary to add to this list.

Section (2) is based on Article 83 of the GDPR which underpins the Data Protection Act, 2018. It may be noted that Head 4 of the Draft Scheme of Regulatory Powers Bill appended to the Law Reform Commission Report on Regulatory Powers and Corporate Offences

provides for a sanction of €10 million, or 10% of annual turnover in the case of a corporate body or €1 million in the case of an individual.

As noted in the drafting note to Head 14D, it is highly desirable that the processes whereby Financial Sanctions pursuant to section 55 of the 2009 Act and the imposition of Administrative Financial Sanctions under this Head be aligned. Such an approach is logical and removes a significant layer of complexity. A single approach also offers simplicity and transparency to both the regulator and regulated entities.

Head 16B – Appeal against administrative financial sanction

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

(1) A relevant undertaking that is the subject of a decision under Head 16A to impose an administrative financial sanction may, within 28 days from the date on which notice of the decision concerned was given to it under Head 16A(3) appeal to the court against the decision to impose an administrative financial sanction, the quantum of the sanction or both.

(2) The court, on hearing an appeal under subsection (1), may consider any evidence adduced or argument made by the relevant undertaking concerned, whether or not already adduced or made to an authorised officer or investigator or the Commission.

(3) Subject to subsections (4) and (5), the court may, on the hearing of an appeal under subsection (1)—

(a) confirm the decision the subject of the appeal,

(b) replace the decision with such other decision as the court considers just and appropriate, including a decision to impose a different administrative financial sanction or no administrative financial sanction, or

(c) annul the decision.

(4) The court shall, for the purposes of subsection (3), act in accordance with Head 16A(1)

(5) In this section, “court” means—

(a) the Circuit Court, where the amount of the administrative financial sanction the subject of the appeal does not exceed €75,000, or

(b) in any other case, the High Court.

Explanatory Note:

This Head provides for an appeal against an administrative financial sanction for an entity in receipt of a notice issued under Head 16A (3).

This Head is adapted from s. 142 of the Data Protection Act, 2018. This provides a formal means for a regulated entity to challenge a decision to impose an administrative financial sanction. Legislative basis is provided to the Court to confirm, vary or annul the decision. The definition of “court” in this section includes the High Court, or, where appropriate, the Circuit Court. This would ensure that the regulated entity (and the Commission) would not be subject to High Court costs and possible delays, in relation to a matter, the value of which may not be appropriate for that forum.

This approach which requires court approval of decisions to impose administrative financial sanctions is derived from the approach recommended by the Law Reform Commission Report: Regulatory Powers and Corporate Offences, which was informed by the judgement of the High Court (Hedigan J.) in *Purcell v. Central Bank of Ireland* [2016] IEHC 514. In this case the High Court held that an inquiry as part of the Central Bank’s administrative sanctions procedure does not constitute the administration of justice, in particular because it does not involve a final determination and is subject to court oversight. As such, it was found to be constitutionally permissible.

It was emphasised by the Law Reform Commission Report that administrative financial sanctions may be permissible where they do not constitute an administration of justice. Court oversight of the administrative financial sanction procedure is a key safeguard to ensure that these sanctions cannot be considered an administration of justice.

The inclusion of the Circuit Court as a venue for an appeal where an administrative financial sanction is within that court’s monetary jurisdiction reflects the desire to create a regulatory regime which provides for efficient and cost effective processes and also recognises that while some regulated entities may be large commercial undertakings with significant resources, this will not be so for all regulated entities.

This desire is consistent with the comments of the Supreme Court (MacMenamin J.) in *Tracey v. Burton* [2016] IESC 16 where it was noted that court resources are a scarce public resource and should be used efficiently, as well as the decision of the High Court (Twomey J.) in *Nestor v. Residential Tenancies Board* [2018] IEHC 321, where an Act was criticised for being inconsistent with the financial interests of the users in mind.

Head 16C – Circuit Court to confirm decision to impose administrative financial sanction

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

(1) Where a relevant undertaking does not appeal in accordance with Head16B against a decision by the Commission to impose an administrative financial sanction on the relevant undertaking, the Commission shall, as soon as is practicable after the expiration of the period referred to in that subsection, and on notice to the relevant undertaking concerned, make an application in a summary manner to the Circuit Court for confirmation of the decision.

(2) The Circuit Court shall, on the hearing of an application under subsection (1), confirm the decision the subject of the application unless the Court sees good reason not to do so.

Explanatory Note:

This Head provides for confirmation by the Circuit Court of a decision by the Commission to impose an administrative financial sanction where an entity does not appeal in accordance with Head 16B or to elect for the Commission to impose an administrative financial sanction without court confirmation under Head 16D.

This provision is derived from s. 143 of the Data Protection Act, 2018. It is deemed appropriate that the Circuit Court would be a suitable venue for such confirmation. Similar to the above Head 16B, this provision utilises the Circuit Court to ensure cost and time efficiencies. An application under this section would not be contentious and would not provide a venue for an alternative form of appeal, but it does provide for a decision to be subject to the oversight of the Court.

Head 16D – Regulated entities may elect for the Commission to impose an administrative financial sanction without court confirmation

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

A relevant undertaking that is the subject of a decision under Head 16A to impose an administrative financial sanction may, within 28 days from the date on which notice of the decision concerned was given to it under Head 16A (3), consent to the imposition of an administrative financial sanction by the Commission, without confirmation by the Court.”

Explanatory Note:

A provision to allow entities to elect for the Commission to impose an administrative financial sanction without court confirmation.

This Head is derived from s. 54(4)(b) Broadcasting Act, 2009, which provision has been utilised once to good effect. This provision reflects the desire to create a constructive engagement between the Commission and regulated entities.

Head 17 – Prosecution of Summary Offences by the Commission

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

(1) Summary proceedings for an offence under this Act may be brought and prosecuted by the Commission.

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be brought—

(a) at any time within [an appropriate period] from the date on which the offence was alleged to have been committed, or

(b) if, at the expiry of that period, the person against whom the proceedings are to be brought is outside the State, within 6 months of the date on which he or she next enters the State,

whichever is the later, provided that no such proceedings shall be commenced later than 5 years from the date on which the offence concerned was alleged to have been committed.

(3) Where a person is convicted of an offence under this Act, the court may, where it is satisfied that there are good reasons for so doing, order the person to pay the costs and expenses, measured by the court, incurred by the Commission in relation to the investigation, detection and prosecution of the offence, including the expenses of and incidental to an examination of any information provided to the Commission or an authorised officer.

(4) An order for costs and expenses under subsection (3) is in addition to and not instead of any fine or other penalty the court may impose.

Explanatory Note

The Commission may institute and prosecute summary offences specified under the revised Act.

The above provision is taken from the Data Protection Act, 2018, it is submitted that it represents a suitable approach for the OSMR Bill. This example is far simpler than other similar provisions such as s. 43 of the Communication regulation Act, 2002, which lists the provisions to which it applies (it may be desirable to exclude certain offences from the Commission's power to institute summary prosecutions). The provision to provide for the investigation costs of the Commission is an interesting proposition and would be of significant benefit to the Commission. The appropriate period from the date of the offence during which the summary prosecution could be brought will need to be assessed, most likely with the benefit of legal advice.

Timescales of comparators are as follows; Data Protection Act, 2018 – 3 years, Communications Regulation Act, 2002, as amended – 12 months, and Electricity Regulation Act, 1999, as amended – 2 years.

Head 18 – Categories 1 to 4 offences - penalties

Related to the transposition of the AVMSD? Yes.

Associated policy paper? n/a

Provide that:

(1) A person guilty of an offence under this Act that is stated to be a category 1 offence shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €xxx,xxx or imprisonment for a term not exceeding xx years or both.

(2) A person guilty of an offence under this Act that is stated to be a category 2 offence shall be liable-

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €xx,xxx or imprisonment for a term not exceeding x years or both.

(3) A person guilty of an offence under this Act that is stated to be a category 3 offence shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both.

(4) A person guilty of an offence under this Act that is stated to be a category 4 offence shall be liable, on summary conviction, to a class A fine.

(5) Further to the penalties provided for under subsections (1)(b) and (2)(b) the court shall retain discretion to make such orders as it deems appropriate in the circumstances of the case.

Explanatory Note

To provide a general template of penalties for offences under this Bill.

The above is derived from s. 871 of the Companies Act, 2018, as amended. As such, it is legally permissible and does not constitute an impingement of the role of the courts.

The word “person” is not defined with regard to that section. It may be noted that s. 18(c) of the Interpretation Act, 2005, defines “person” as follows:

“Person. “Person” shall be read as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual, and the subsequent use of any pronoun in place of a further use of “person” shall be read accordingly”.

It would be necessary for offences in the Act to be aligned with this section (i.e. to align the language with regard to offences in line with the category based system as envisaged in this head.)

Subsection (5) was included to ensure the Courts would not be unnecessarily circumscribed and to retain the spirit of the provision in Head 47 s. x(11) “and/or to comply with a remedy specified by the [High Court]”, which was lost when making provisions in relation to offences consistent with this Head.

It is the intention of the Department to engage with the Department of Justice and Equality to ensure this approach is consistent with that Department’s policy in relation to the prosecution of offences.

Head 19 - Membership of the Commission

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulatory Structures and Functions: Paper 1

Provide that:

1. The membership of the Commission shall consist of –

(a) a chairperson and such number of other whole-time members, not being less than 3 nor more than 6, as the Minister determines and appoints.

(b) in any case where it appears to the Minister that a member referred to in *paragraph (a)* is temporarily unable to discharge his or her duties, a whole-time member appointed by the Minister, for all or part of that period of inability, shall act in that member’s place.

2. Where it appears to the Minister that the chairperson of the Commission is temporarily unable to discharge his or her duties, the Minister may authorise another whole-time member to act, for all or part of that period of inability, in the chairperson’s place and for so long as such a member is so authorised and references in this Act to the chairperson of the Commission shall be construed as including references to that member.

3. Each member of the Commission shall be known as a Member of the Media Commission (In this Act referred to as a “Commissioner”).)

4. A Commissioner shall be appointed by the [Government/Minister] on the recommendation of the Public Appointments Service and the appointment shall be for a period of not more than 5 years from the date of his or her appointment.

5. An appointment of a Member shall not be made unless the person who the [Minister/Government] proposes to appoint possesses, in the opinion of the [Minister/Government], sufficient expertise in, or experience of, one or more of the following areas, namely, [specify areas]
6. The term of office of a member of the Commission shall not exceed 5 years.
7. A member of the Commission whose term of office expires by the effluxion of time shall be eligible for reappointment to the Commission.
8. A member of the Commission who has served 2 terms of office shall not be eligible for reappointment to the Commission
9. Each member of the Commission shall hold office on such conditions as may be fixed by the Minister after consultation with the Minister for PER.
10. A member of the Commission may be paid such remuneration, if any, as the Minister with the consent of the Minister for PER determines.
11. If a member of the Commission is personally interested in a particular matter with which the Commission is dealing, he or she shall inform the Minister accordingly and shall not act as a member during the consideration of the matter.
12. The [Minister/Government] may remove from office a member of the Commission who has become incapable through ill-health of performing efficiently his or her duties as such member or whose removal appears to the [Minister/Government] to be necessary in the interests of the effective and economical performance of the functions of the Commission.
13. Where the [Minister/Government] removes a member of the Commission from office, he or she shall lay before each House of the Oireachtas a statement in writing of the reasons for such removal.
14. A member of the Commission may resign from the Commission by letter addressed to the [Minister/Government] and the resignation shall take effect on the date specified in the letter, or the date on which the [Minister/Government] receives the letter, whichever is the later.
15. A person shall be disqualified from holding and shall cease to hold office as a member of the Commission if he or she—
 - (a) is adjudicated bankrupt,
 - (b) makes a composition or arrangement with his or her creditors,

(c) is convicted of an indictable offence in relation to a company,

(d) is convicted of an offence involving fraud or dishonesty, whether or not in connection with a company

Explanatory note:

A provision which sets the maximum number of Commissioners at 6 members and to address related matters pertaining to the appointment and removal of Commissioners.

Based on section 12 of the Competition and Consumer Protection Act, 2014.

Head 20 - Acting Membership of Commission

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulatory Structures and Functions: Paper 1

Provide that:

1. the [Minister/Government] may appoint a person to be an Acting Member of the Commission to perform the functions of a Member during –
 - (a) a period, or during all periods, when a Member is absent from duty or from the State or is, for any other reason, unable to perform the functions of the Member,
 - (b) any suspension from the office of the Member, or
 - (c) a vacancy in the office of Member.
2. A person shall not be appointed an Acting Member for a continuous period of more than 6 months. This period can be extended for an additional 6 months provided that justification for the extension is provided.
3. The [Minister/Government] may, at any time, terminate an appointment under this section.

Explanatory note:

The purpose of this Head is to ensure that a vacancy in the membership of the Commission can be temporarily fulfilled. It also adds the possibility for the [Minister/Government] to extend the acting Member's appointment for an additional 6-month period. This is to allow the [Minister/Government] flexibility in situations where 6 months is not sufficient time.

Based on section 18 of the Data Protection Act, 2018.

Head 21 - Functions of Chairperson

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulatory Structures and Functions: Paper 1

Provide that:

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

Explanatory note:

This head provides that the chairperson is generally responsible for the staff, administration and business of the Commission and sets out the high level functions of the chairperson.

Based on section 14 of the Competition and Consumer Protection Act, 2014.

Head 22 - Exclusions from membership of the Commission

Related to the transposition of the AVMSD? Yes

Associated policy paper? Regulatory Structures and Functions: Paper 1

Provide that:

1. A member of the Commission or a member of staff of the Commission shall cease to be a member or member of staff of the Commission if they are -

(a) nominated as a member of Seanad Éireann,

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

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

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

2. Any person who holds employment or an interest in a media undertaking (linear broadcasting and newspapers) shall be disqualified from becoming a member of the Commission.

Explanatory Note

This is a standard provision.

Similar provision to the above will have to be made for social media/tech companies. This will need further detailed consideration.

Based on section 12 of the Broadcasting Act, 2009.

Head 23 - Staff of Commission

Related to the transposition of the AVMSD? Yes

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

1. The Commission may, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, appoint such and so many persons to be members of the staff of the Commission as it may from time to time determine.
2. The terms and conditions of service of a member of the staff of the Commission shall, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, be such as may be determined from time to time by the Commission.
3. There shall be paid by the Commission to the members of its staff such remuneration and allowances as, from time to time, the Commission, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, determines.

Explanatory note:

This head provides that the Commission may appoint persons to be members of staff of the Authority and may determine the grades and numbers of such staff and their terms and conditions subject to the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.

Provision drawn from section 28 of the Competition and Consumer Protection Act, 2014.

Head 24 - Superannuation

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

The Commission shall make a scheme or schemes granting of superannuation benefits to or in respect of:

- (a) Relevant members of the Commission
- (b) Relevant members of staff of the Commission

A scheme prepared and submitted under this section shall not provide for the granting of superannuation benefits to or in respect of any person where the Single Public Service Pension Scheme applies to that person

Explanatory note:

This Head is to provide for a superannuation scheme for the relevant members and staff of the commission who are not members of the Single Public Service Pension Scheme. This encompasses staff transferred from the BAI that would have been members of the BAI superannuation scheme and staff that joined the public service prior to 2013.

Based on section 16 of the Broadcasting Act, 2009.

Head 25 - Power to borrow

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

To provide that:

The Commission may borrow money (including money in a currency other than the currency of the State) for the purpose of performing any of the functions of the Commission, subject to the consent of the Minister and the Minister for PER and any conditions they may determine.

Explanatory Note

This head provides that the Commission may, subject to the consent of the Minister and the Minister for PER, borrow money for the purpose of performing any of its functions.

This head is a simplification of section 35 of the Broadcasting Act 2009.

Head 26 - Accountability of Chairperson to Committee of Public Accounts

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

(1) The chairperson is the accounting officer for the Commission.

(2) The chairperson of the Commission shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee in relation to matters including the regularity and propriety of transactions, the economy and effectiveness in the use of expended funds and related matters.

Explanatory note:

Accountability to an Oireachtas Committee, rather than to the Minister and Department, will serve to underpin the independence of the Commission while ensuring adequate financial control.

Based on section 19 of the Broadcasting Act, 2009.

Head 27 - Accountability of Commissioner to other Oireachtas Committees

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

(1) A Commissioner shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Commission.

(2) The Commissioner shall not be required to give account before a Committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal.

(3) Where the Commissioner is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which subsection (2) applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the Commissioner is before it, the information shall be so conveyed in writing.

(4) Where the Commissioner has informed a Committee of his or her opinion in accordance with subsection (3) and the Committee does not withdraw the request referred to in subsection (2) in so far as it relates to a matter the subject of that opinion—

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

(b) the Chairperson of the Committee may, on behalf of the Committee, make such an application,

and the High Court shall determine the matter.

(5) Pending the determination of an application under subsection (4), the Commissioner shall not attend before the Committee to give account for the matter the subject of the application.

(6) If the High Court determines that the matter concerned is one to which subsection (3) applies, the Committee shall withdraw the request referred to in subsection (2), but if the High Court determines that subsection (3) does not apply, the Commissioner shall attend before the Committee and give account for the matter.

(7) In this section, a reference to “Commissioner” shall be taken to be a reference to any member of the Commission.

Explanatory note:

Provide that any Commissioner can be called before an Oireachtas Committee. Given the diverse range of activities likely carried out by the Commission, it is considered appropriate that any Commissioner, not just the Chairperson, can be called to answer before an Oireachtas Committee.

Based on section 19 of Data Protection Act, 2018.

Head 28 - Strategy statement and work programme

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

To provide that:

(1) As soon as practicable after the establishment day, and thereafter at least 3 months before each third anniversary of the establishment day, the Commission shall prepare and submit to the Minister a strategy statement for the following 3 year period.

(2) A strategy statement shall –

- a. specify the key objectives, outputs and related strategies (including the use of resources) of the Commission.
- b. have regard to the need to ensure the most beneficial, effective and efficient use of the Commission's resources,
- c. except for the first strategy statement, include a review of the outcomes and effectiveness of the preceding strategy statement,
- d. specify the manner in which the Commission proposes to assess its performance in respect of the objectives referred to in paragraph (a), taking account of relevant performance indicators (financial and non-financial),
- e. include the Commission's plans as to the number, nature and scope of contracts that it proposes to enter into during the period covered by the statement
- f. be prepared in the form and manner that the Minister may from time to time direct, and
- g. include any other matters that the Minister may from time to time direct.

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

(4) Prior to the adoption of a strategy statement and its presentation to the Minister, the Commission shall undertake a public consultation process on a draft of the strategy statement

(5) As soon as practicable after a strategy statement has been submitted to the Minister under subhead (1), the Minister shall cause a copy of the strategy statement to be laid before each House of the Oireachtas and the strategy statement shall be published in the form and manner that the Commission considers appropriate

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

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

(b) the priorities of the Commission for that year, having regard to those objectives and its available resources, and

(c) any other matters that the Minister may from time to time specify when issuing directions or guidelines under subhead (6).

(6) The Minister may, from time to time, issue directions or guidelines to the Commission concerning the preparation of the work programme and the Commission shall comply with those directions and prepare the work programme in accordance with those guidelines

Explanatory note:

This head provides for the Commission to prepare a statement of strategy and a work programme.

Based on section 30 of the Competition and Consumer Protection Act, 2014.

Head 29 - Cooperation with other bodies

Related to the transposition of the AVMSD? Yes

Associated policy paper? Regulatory Structures and Functions: Paper 2

To provide that:

(1) The Commission, in the interests of the effective discharge of its functions, may enter into cooperation agreements with other bodies as it sees fit.

(2) The Minister shall be furnished by the Commission with a copy of any agreement made under this section and any variation thereof.

Explanatory Note:

This head provides for the Commission to enter into cooperation agreements with other bodies as it sees fit.

Chapter 6 of the Law Reform Commission's recent report on Regulatory Powers and Corporate Offences highlights the benefits of cooperation agreements for regulatory bodies. Given the wide range of services likely to fall under the Commission's remit, it appears appropriate to give the Commission the power to enter into cooperation agreements as it sees fit.

Head 30 - Grants to Commission

Related to the transposition of the AVMSD? Yes

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

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

Explanatory Note

This head simplifies section 34 of the Broadcasting Act 2009 and provides that the Minister may, with the consent of the Minister for PER, advance monies to the Authority for the performance of its functions.

Text of head is based on section 21 of the Competition and Consumer Protection Act 2014.

Head 31 - Accounts of Commission

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

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

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

(a) all monies received or expended by the Commission, and

(b) all property, assets and liabilities of the Commission,

including an income and expenditure account and a balance sheet and, in particular, shall keep such special accounts (if any) as the Minister may from time to time direct.

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

(4) Accounts kept in pursuance of this head, signed by the chairperson and one other member or in the absence of the chairperson by two members of the Commission, shall be submitted by the Commission to the Comptroller and Auditor General for audit as soon as practicable, but not later than 3 months, after the end of the financial year to which the accounts relate.

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

(6) The financial year of the Commission shall be the period of 12 months ending on 31 December in any year, and for the purposes of this section the period commencing on the establishment day and ending on the following 31 December is deemed to be a financial year.

(7) The Commission shall publish, with the consent of the Minister and the Minister for PER, on a website maintained by the Commission, such estimates of income and expenditure as are required to be prepared under subsection (1) or a summary of them.

Explanatory note:

This is a standard provision for legislation of this kind. A provision for the Commission to produce estimates of its income and expenditure is included.

This head is based on section 37 of the Broadcasting Act 2009.

Head 32 - Committees

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 1

To provide that:

The Commission may establish committees to assist and advise the Commission on matters relating to any of its functions or on such matters as the Commission may from time to time determine.

Explanatory Note

This head provides that the Commission may establish committees to assist and advise the Commission on matters relating to any of its functions or on such matters as the Commission may from time to time determine.

Based on section 17 of the Broadcasting Act, 2009.

Head 33 - Review of legislation

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 1

To provide that:

(1) The Minister may consult the Commission regarding proposals for legislation relating to online safety or media services.

(2) The Commission shall—

(a) keep under review the relevant statutory provisions,

(b) submit, from time to time, to the Minister or such other Minister of the Government having responsibility for any other statutory provisions relating to, or which impact on, online safety or media services, any proposals that it considers appropriate relating to any of the relevant statutory provisions or any other statutory provisions or for making or revoking any instruments under those provisions,

(c) undertake such reviews of the relevant statutory provisions as the Minister may direct, and

(d) assist in the preparation of such draft legislation as the Minister may direct.

(3) Before submitting proposals to the Minister or any other Minister of the Government, as the case may be, the Commission may consult any other person who, it appears to the Commission, is appropriate in the circumstances to be consulted or whom the Minister or the other Minister of Government, as the case may be, directs is to be consulted.

Explanatory Note:

This head is to provide the Commission with a statutory role in relation to reviewing existing online safety and media related legislation and proposals for such legislation.

Based on section 17 of the Competition and Consumer Protection Act, 2014.

Head 34 - External cooperation function

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulatory Structures and Functions: Paper 1 & 2

To provide that:

The Commission may cooperate and enter into cooperation agreements with other bodies outside the State which perform similar functions to the Commission, including members of the European Regulators Group for Audiovisual Media Services.

Explanatory note

To provide the Media Commission with the power to cooperate with entities outside the State which perform similar functions to the Commission. Within the European Union these includes members of the European Regulators Group for Audiovisual Media Services.

Based on section 26 (2)(f) of the Broadcasting Act, 2009.

Head 35 – Reporting by Commission

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

To provide that:

(1) The Commission shall not later than 30 June in each year prepare and submit to the Minister a report on its activities in the immediately preceding year (in this section referred

to as the “annual report”), and the Minister shall, as soon as may be after receiving the annual report, cause copies of the annual report to be laid before each House of the Oireachtas.

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

(3) An annual report shall include details of any scheme approved under Part 10 [of the current Broadcasting Act i.e. relating to the Broadcasting Fund].

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

(5) The Commission may from time to time furnish to the Minister such information or reports about the performance of its functions as it considers appropriate.

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

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

Explanatory Note:

This is a standard provision for legislation of this kind.

Based on section 38 of the Broadcasting Act, 2009.

Head 36 – Prohibition on unauthorised disclosure of confidential information

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

To provide that:

Provision - Prohibition on unauthorised disclosure of confidential information

(1) A relevant person shall not disclose confidential information obtained by him or her while performing functions under this Act unless he or she is required or permitted by law, or duly authorised by the Commission, to do so.

(2) Subsection (1) shall not operate to prevent the disclosure by a relevant person of information—

(a) in a report to the Commission or a Commissioner,

(b) to a Minister of the Government, and

(c) to a public authority, whether in the State or otherwise, for the purposes of facilitating cooperation between the Commission and such authority in the performance of their respective functions.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a class A fine.

(4) In this section—

“confidential information” includes information that is expressed by the Commission to be confidential either as regards particular information or as regards information of a particular class or description;

“relevant person” means—

(a) a Commissioner,

(b) a member of staff of the Commission,

(c) an authorised officer,

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

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

Explanatory Note:

Given the nature of the information that staff of the Commission are likely to be exposed to, it is prudent to include an explicit provision to prohibit disclosure of confidential

information. This will provide assurance to regulated entities that procedures are in place to prevent the release of commercially sensitive information and trade secrets.

Based on section 26 of the Data Protection Act, 2018.

Head 37 – Disclosure of interests

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

To provide that:

(1) Where a member of the staff of the Commission, a member of the Commission, or a consultant or adviser engaged under section [insert section pertaining to engagement of consultation and advisors], in a category specified before engagement by the Commission, has an interest, otherwise than in his or her capacity as such, in any contract, or any proposed contract to which the Commission is or is proposed to be a party, or in any agreement or arrangement or proposed agreement or arrangement to which the Commission is or is proposed to be a party, that person—

(a) shall disclose to the Commission his or her interest and the nature of it,

(b) shall take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by members of the Commission or the committee or members of the staff of the Commission in relation to it,

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

(d) shall not make any recommendation in relation to the contract, agreement or arrangement.

(2) Subsection (1) does not apply to a person as regards a contract or proposed contract of employment of that person as a member of the staff of the Commission.

(3) Subsection (1) does not apply to a person as regards a contract or proposed contract for services in respect of that person.

(4) Where a person to whom subsection (1) applies fails to comply with a requirement of this section, the Commission shall decide the appropriate action (including removal from office or termination of contract) to be taken.

Explanatory Note:

This head provides that staff and Commissioners are obliged to disclose certain interests to the Commission in relation to any actual or proposed contract, arrangement or agreement entered into by the Commission.

This head is based on sections 21 and 22 of the Broadcasting Act, 2009.

Head 38 – Policy Communications

Related to the transposition of the AVMSD? No.

Associated policy paper? Regulatory Structures and Functions: Paper 2

To provide that:

(1) In the interests of the proper and effective regulation of [insert regulated sectors] and the formulation of policy applicable to such proper and effective regulation, the Minister may, without prejudice to the provisions of Head 8, issue such policy communications to the Commission as he or she considers appropriate to be followed by the Commission in the performance of its functions. The Commission in performing its functions shall have regard to any such communications.

(2) Before issuing a communication, the Minister shall give to the Commission and publish a draft of the proposed communication and—

(a) give the reasons for it, and

(b) specify the period (being not less than 21 days from the date of giving it to the Commission or such publication, whichever is the later) within which representations relating to the proposal may be made by interested parties.

(3) The Minister, having considered any representations made under subsection (2), may issue the communication with or without amendment.

(4) Where the Minister proposes to prepare a communication which, in the opinion of the Minister, has or may relate to the functions of another Minister of the Government, the Minister shall not issue to the Commission or publish a draft of the proposal under subsection (2) without prior consultation with that other Minister of the Government.

(5) The Minister shall not issue a communication in respect of the performance of the functions of the Commission in respect of individual undertakings or persons.

(6) The Minister shall not issue a communication under subsection (1) in respect of the performance of the functions of the Commission in relation to [insert sections/parts of Act pertaining to enforcement and contracting activities].

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

(8) In this section “communication” means a policy communication under this section.

Explanatory Note:

This head enables the Minister to issue general policy communications to the Commission.

This head is drawn from s. 30 of the Broadcasting Act 2009

Head 39 – Consultants and Advisors

Related to the transposition of the AVMSD? No.

Associated policy paper? Regulatory Structures and Functions: Paper 2

To provide that:

(1) The Commission may from time to time engage such consultants or advisers as it may consider necessary for the performance of the functions of the Commission, and any fees due to a consultant or adviser engaged under this section shall be paid by the Commission out of monies at its disposal.

(2) The Commission shall have regard to, but shall not be bound by, the advice of any consultant or adviser under this section.

Explanatory Note:

This provision allows the Commission to engage consultants and advisers as it deems necessary for the performance of its function.

This head is based on section 18 of the Broadcasting Act, 2009.

Head 40 – Levy

(1) The Commission shall make regulations prescribing a levy be paid by regulated entities, to meet the expenses properly incurred by the Commission in the discharge of its functions under this Act.

(2) Whenever a levy order is made under subsection (1) there shall be paid to the Commission by each regulated entity to which the levy order applies such amount as shall be appropriate having regard to the terms of the levy order.

(3) The Commission may make separate levy orders, as it sees fit, in respect of different classes or categories of regulated entities obliged by subsection (1) to pay a levy.

(4) A regulation made under this section may be amended or revoked by the Commission.

(5) In particular, regulations under subsection (1) may provide for any of the following matters:

(a) the regulated entities, or classes of regulated entities, who are required to pay specified kinds of levies;

(b) the amounts of the levies to be imposed on particular regulated entities or classes of regulated entities;

(c) the means by which levies are to be calculated;

(d) the periods for which, or the dates by which, specified levies are to be paid

(e) procedures to be taken where a regulated entity has under paid in respect of their levy obligation(s);

(f) penalties payable by a regulated entity who does not pay a levy on time;

(g) the keeping of records, and the making of returns to the Commission, by regulated entities who are liable to pay a specified levy;

(h) matters relating to exemptions from, or deferrals of payment of, the levy or payment of a reduced levy, and the application process for exemptions, deferrals, refunds or reduced levy;

(i) matters relating to the refund of the whole or a part of a levy paid or payable under regulations in force under this section;

(j) matters relating to the appeal by a regulated entity of the levy obligation specified in a notice received pursuant to subsection (11);

(k) thresholds below which regulated entities will be obliged to pay a nil amount or a minimal contribution.

(6) The Commission shall ensure that where levy obligations are based on multiple classes or categories of regulated entities it will ensure that expenses in respect of such classes or categories will be assessed separately.

(7) Entities subject to levy obligations shall provide to the Commission the information required by the Commission to calculate the liability of each regulated entity obliged to pay the levy referred to in subsection (1).

(8) The Commission may recalculate the levy payable by a regulated entity liable to pay the levy where further information, referred to in subsection (7) or other information which is relevant to the calculation of the levy, is provided to it by that regulated entity.

(9) A levy shall be payable to the Commission in the manner or form prescribed having regard to the terms of the regulations.

(10) Any surplus of levy income which remains at the end of a financial year after the working capital requirements of the Commission and the expenses properly incurred by the Commission in the performance of its functions in that financial year have been met, shall, as the Commission considers appropriate—

(a) be retained by the Commission to be offset against any liability to pay the levy imposed on a regulated entity, or

(b) be refunded proportionately to the regulated entities on whom the levy has been imposed.

(11) The Commission shall serve a notice on each regulated entity liable to pay a levy stating—

(a) that a levy is payable,

(b) the amount of the levy,

(c) the date by which the levy shall be paid, or, where a levy may be paid by instalments, the number of instalments, the amount of each instalment and the date on which each instalment is to be paid.

(12) The Commission may, by proceedings in a court of competent jurisdiction, recover as a simple contract debt an amount of levy payable under regulations in force under this section.

(13) In this section ‘regulated entity’ and cognate words will include all persons or undertakings who are subject to regulation under this Act and relevant Statutory Instruments.”

Explanatory note:

A provision to grant the Media Commission the power to impose on regulated entities levies to provide for the cost of exercising the Commission's functions.

The above provision incorporates matters that, while not deemed legally necessary, do provide significant principles and policies to guide the Media Commission in the creation of regulations.

This approach will not interfere with the legal justification for or application of the broadcasting levy, which is currently levied by the Broadcasting Authority of Ireland on public service broadcasters and broadcasting contractors to pay for the cost of their regulation. The sole difference is that this levy order will be drawn up by the Media Commission rather than the Authority, which is to be dissolved.

PART 3 - TRANSITIONAL PROVISIONS

Head 41 - Dissolution of the Broadcasting Authority of Ireland

Related to the transposition of the AVMSD? Yes

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

The Broadcasting Authority of Ireland and statutory committees of the Authority are dissolved on the establishment day of the Media Commission.

Notwithstanding any of the conditions of their appointment, the term of a member of the Authority or a member of the statutory committees of the Authority terminates on the establishment day.

Explanatory note:

This head provides that the BAI is dissolved. Terms of members of the Authority and the Statutory Committees therefore expire on the establishment day of the Commission as a result.

Based on section 174 of the Broadcasting Act, 2009.

Head 42 - Transfer of Functions to the Commission

Related to the transposition of the AVMSD? Yes

Associated policy paper? Regulatory Structures and Functions: Paper 2

(1) All functions that, immediately before the establishment day, were vested in the Broadcasting Authority of Ireland and the statutory committees of the Authority are transferred to the Commission.

(2) References in any Act of the Oireachtas passed before the establishment day or in any instrument made before that day under an Act of the Oireachtas to the Broadcasting Authority of Ireland shall, on and after that day, be construed as references to the Commission.

(3) The section shall come into operation on the establishment day.

Explanatory Note:

This head provides that the relevant functions of the BAI are transferred to the Commission on the establishment day.

Based on section 14 of the Data Protection Act, 2018.

Head 43 - Transfer of staff to Commission

Related to the transposition of the AVMSD? Yes

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

(1) Save in accordance with a collective agreement negotiated with a recognised trade union or staff association, the Commission shall accept into its employment on the establishment day each person (other than the Chief Executive of the Broadcasting Authority of Ireland) who immediately before that day was a member of the staff of the Broadcasting Authority of Ireland on such terms and conditions of service relating to remuneration as are not less favourable than the terms and conditions of service relating to remuneration to which the person was subject immediately before that day.

Explanatory Note:

This head provides that staff of the BAI will be transferred to the employment of the Commission on the same terms and conditions as their previous employment.

Based on section 15 of the Broadcasting Act, 2009.

Head 44 - Transfer of land and other property

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

(1) On the establishment day, all lands that, immediately before that day, were vested in a dissolved body and all rights, powers and privileges relating to or connected with such lands shall, without any conveyance or assignment, stand vested in the Commission for all the estate or interest therein that, immediately before the establishment day, were vested in the dissolved body, but subject to all trusts and equities affecting the lands continuing to subsist and being capable of being performed.

(2) On the establishment day all property (other than land), including choses-in-action, that immediately before that day, was vested in a dissolved body shall stand vested in the Commission without any assignment.

(3) Every chose-in-action vested in the Commission by virtue of subsection (2) may, on and from the establishment day, be sued on, recovered or enforced by the Commission in its own name, and it shall not be necessary for the Commission, or the dissolved body, to give notice to any person bound by the chose-in-action of the vesting effected by that subsection.

Explanatory Note:

This is a standard provision pertaining to the transfer of functions from a dissolved body.

Based on section 41 of the Competition and Consumer Protection Act, 2014.

Head 45 - Transfer of rights and liabilities, and continuation of leases, licences and permissions granted by Broadcasting Authority of Ireland

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

(1) All rights and liabilities of BAI arising by virtue of any contract or commitment (expressed or implied) entered into by it before the establishment day shall on that day stand transferred to the Commission.

(2) Every right and liability transferred by subsection (1) to the Commission may, on and after the establishment day, be sued on, recovered or enforced by or against the Commission in its own name, and it shall not be necessary for the Commission, or BAI, to give notice to the person whose right or liability is transferred by that subsection of such transfer.

(3) Every lease, licence, wayleave or permission granted by BAI in relation to land or other property vested in the Commission by or under this Act, and in force immediately before the establishment day, shall continue in force as if granted by the Commission.

Explanatory Note:

This is a standard provision pertaining to the transfer of functions from a dissolved body. It ensure that contracts or licences awards by BAI will remain in force.

Based on section 42 of the Competition and Consumer Protection Act, 2014.

Head 46 - Liability for loss occurring before establishment day

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

(1) A claim in respect of any loss or injury alleged to have been suffered by any person arising out of the performance before the establishment day of any of the functions of the BAI shall on and after that day, lie against the Commission and not against the dissolved body.

(2) Any legal proceedings pending immediately before the establishment day to which BAI is a party, shall be continued, with the substitution in the proceedings of the Commission in so far as they so relate, for the BAI.

(3) Where, before the establishment day, agreement has been reached between the parties concerned in settlement of a claim to which subsection (1) relates, the terms of which have not been implemented, or judgment in such a claim has been given in favour of a person but has not been enforced, the terms of the agreement or judgment, as the case may be, shall, in so far as they are enforceable against the BAI, be enforceable against the Commission and not the BAI.

(4) Any claim made or proper to be made by the BAI in respect of any loss or injury arising from the act or default of any person before the establishment day shall be regarded as having been made by or proper to be made by the Commission and may be pursued and sued for by the Commission as if the loss or injury had been suffered by the Commission.

Explanatory Note:

This is a standard provision pertaining to the transfer of functions from a dissolved body.

Based on section 43 of the Competition and Consumer Protection Act, 2014.

Head 47 - Provisions consequent upon transfer of functions, assets and liabilities to Commission

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

(1) With effect from the establishment day the following are transferred to the Commission:

(a) all rights and property and rights relating to such property held or enjoyed immediately before that day by the Broadcasting Authority of Ireland, and

(b) all liabilities incurred before that day by the Broadcasting Authority of Ireland which had not been discharged before that day,

and, accordingly, without any further conveyance, transfer or assignment

(i) the said property, real and personal, shall, on that day, vest in the Authority for all the estate, term or interest for which, immediately before that day, it was so vested in the Broadcasting Authority of Ireland, but subject to all trusts and equities affecting the property and capable of being performed,

(ii) those rights shall, on and from that day, be enjoyed by the Commission, and

(iii) those liabilities shall, on and from that day, be liabilities of the Commission

(2) All moneys, stocks, shares and securities transferred to the Commission by this head which, immediately before the establishment day, are in the name of the Broadcasting Authority of Ireland, shall be transferred into the Commission's name on the establishment day.

(3) Every right and liability transferred to the Commission by this head may, on or after the establishment day, be sued on, recovered or enforced by or against the Commission in its own name and it shall not be necessary for the Commission to give notice of the transfer to the person whose right or liability is transferred by this head.

(4) The Commission shall not, without the consent of the Minister, dispose of any part of any land or any interest therein transferred to or vested in the Commission under this head

Explanatory Note:

This is a standard provision pertaining to the transfer of functions from a dissolved body.

Based on section 44 of the Competition and Consumer Protection Act, 2014.

Head 48 - Final accounts and final annual report of Broadcasting Authority of Ireland

Provide that:

(1) Final accounts of the Broadcasting Authority of Ireland shall be drawn up by the Commission as soon as may be after the establishment day but not later than 6 months thereafter in such form as may be approved of by the Minister, in respect of the accounting year or part of the accounting year Broadcasting Authority of Ireland.

(2) Accounts prepared pursuant to this head shall be submitted as soon as may be by the Authority to the Comptroller and Auditor General for audit, and, immediately after the audit, a copy of the income and expenditure account and of the balance sheet and of such other (if any) of the accounts as the Minister may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

Explanatory Note:

This head refers to the final accounts of the Broadcasting Authority of Ireland and how they should be drawn up and in such form so they may be approved of by the Minister in respect of the accounting year or part of an accounting year of the Broadcasting Authority of Ireland ending immediately before the establishment day.

Based on section 178 of the Broadcasting Act, 2009.

Part 4 – ONLINE SAFETY

Head 49A – Categories of harmful online content

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Defining harmful online content

Provides that:

“harmful online content” includes –

- (a) material which it is a criminal offence to disseminate under Irish [or Union law],
- (b) material which is likely to have the effect of intimidating, threatening, humiliating or persecuting a person to which it pertains and which a reasonable person would conclude was the intention of its dissemination,
- (c) material which is likely to encourage or promote eating disorders and which a reasonable person would conclude was the intention of its dissemination, and,
- (d) material which is likely to encourage or promote [self-harm or suicide] or provides instructions on how to do so and which a reasonable person would conclude was: (i) the intention of its dissemination and (ii) that the intention of its dissemination was not to form part of philosophical, medical and political discourse.

but does not include –

- (a) material [containing or comprising] a defamatory statement,
- (b) material that violates [data protection or privacy law],
- (c) material that violates [consumer protection law], and
- (d) material that violates [copyright law];

Explanatory note:

It is not proposed to define harmful online content as a singular concept. Instead it is proposed to enumerate definitions of categories of material that are considered to be harmful online content.

The included category of “*material which it is a criminal offence to disseminate*” refers to a wide range of materials, including:

- Child sexual abuse material,
- Content containing or comprising incitement to violence or hatred, and,
- Public provocation to commit a terrorist offence.

The wording of this category would also incorporate any future changes to criminal law in this area, making it adaptable and futureproof.

The other included categories of material refer to cyberbullying material pertaining to any person, which includes all kinds of cyberbullying material, material promoting self-harm and suicide and material promoting eating disorders.

The excluded categories of material are excluded as they are explicitly dealt with by other areas of law and existing regulatory bodies, for example data protection and privacy law and the Data Protection Commission.

It is not proposed to define harmful online content as a singular concept as it has not been possible to arrive at a suitable, broad, and principle based description of the meaning of this phrase. Instead, it is proposed to enumerate definitions of categories of material that are considered to be harmful online content.

In deciding on this policy approach the Department has had regard to a number of other considerations of similar matters, especially that of the Law Reform Commission in their Report on Harmful Communications and Digital Safety and the UK’s Online Harms White Paper. Neither of these attempted to define harmful online content or online harm and instead approach this issue by enumerating categories of material or behaviour that they consider to fall within the scope of the notion of harmful online content or online harm. This is indicative of enumeration being a preferred approach to this issue. Further to this, it is worthwhile noting that we have not located a jurisdiction that has attempted to define harmful online content or online harm in their law.

Therefore, the Department is of the view that this is an appropriate approach to this issue.

In relation to the enumerated categories of harmful online content, these can all be seen as having an Union legal base derived from the revised AVMSD (Directive 2018/1808/EU), particularly Article 28b or from existing domestic legislation.

In relation to the category of “*material which it is a criminal offence to disseminate under Irish or Union law*”, this has a base in Article 28b(1)(c) of the revised Directive which

concerns material that it is a criminal offence to disseminate under Union law and in relation to any aspect of Irish criminal law which concerns offences regarding the dissemination of material. This category is intended to automatically incorporate any future changes to criminal law in this regard.

The second category of material included under harmful online content is intended to encapsulate the notion of cyberbullying. This category has a base in Article 28b(1)(a) and (b) of the revised Directive. Subparagraph (a) concerns material which may “*impair the physical, mental or moral development of minors*” and subparagraph (b) concerns the “*incitement to violence or hatred... based on any grounds referred to in Article 21 of the Charter*”

The grounds listed in Article 21 of the Charter of Fundamental Rights of the European Union are “*sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation or nationality*”.

It is difficult to conceive of any reasonable concept of cyberbullying which would not fall within the margin of discretion afforded to Member States in interpreting these two references when applying the revised Directive in their national law. Therefore, the proposed definition of cyberbullying as a category of harmful online content is legally clear in its constituent elements and can be legally attributed to Article 28b(1)(a) and (b) as appropriate.

The third category of material included under harmful online content is intended to encapsulate the encouragement and promotion of eating disorders. It is first important to note that eating disorders is a well understood term in the medical and psychiatric and mental health fields and its meaning should be interpreted in accordance with its use in those fields.

Similarly to the category of cyberbullying material, this category has a base in Article 28b(1) and (b) for similar reasons. In relation to subparagraph (b), incitement to hatred or violence, in this specific context of content regulation, can be interpreted as encompassing self-hatred and self-violence along any of the grounds listed in the Charter. As such, the encouragement or promotion of eating disorders, which are necessarily predicated on encouraging or promoting self-hatred and self-violence, can be seen as having a base in this subparagraph.

It is difficult to conceive of any reasonable concept of the encouragement or promotion of eating disorders which would not fall within the margin of discretion afforded to Member States in interpreting these two references when applying the revised Directive in their national law. Therefore, the proposed definition of the encouragement or promotion of eating disorders as a category of harmful online content is legally clear in its constituent elements and can be legally attributed to Article 28b(1)(a) and (b) as appropriate.

The fourth and final category of material included under harmful online content is intended to encapsulate the encouragement, promotion of self-harm or suicide or the provision of instructions on how to engage in self-harm or suicide. However, this definition contains derogation for material that is dissemination as part of philosophical, medical or political debate.

Similarly to the preceding two categories, this category has a base in Article 28b(1) and (b) for similar reasons. It is difficult to conceive of any reasonable concept of this category which would not fall within the margin of discretion afforded to Member States in interpreting these two references when applying the revised Directive in their national law. Therefore, the proposed definition of the encouragement or promotion of eating disorders as a category of harmful online content is legally clear in its constituent elements and can be legally attributed to Article 28b(1)(a) and (b) as appropriate.

In relation to the enumerated categories of material not considered to be harmful online content, matters relating to these materials are governed by their own applicable law and statute and it is not intended that the provisions of Part 4 of this Bill will apply to these categories.

Head 49B – Provision for further categories of harmful online content

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Defining harmful online content

Provides that:

- (1) The Media Commission may propose to include or exclude further categories of material from the definition of harmful online content.
- (2) the Commission may publish such proposals and invite submissions from interested parties, [including members of... advisory committees], and shall consider any submissions it receives and may amend proposals as it deems warranted.
- (3) the Commission may bring proposals to the Minister and recommend they be adopted by the Government.
- (4) the Minister shall consider proposals brought to them by the Commission and shall consult with the Joint Oireachtas Committee as part of this consideration.
- (5) having considered a proposal, the Minister may:

(a) return the proposal to the Media Commission for further examination, or

(b) submit the proposal to the Government.

(6) when submitting a proposal to Government in accordance with subsection (5) (b) the Minister may not vary the proposal from that provided by the Commission.

(7) if a proposal submitted to the Government by the Minister in accordance with subsection (5) (b) is adopted then the Minister may, by regulation, include or exclude from the categories considered to be harmful online content the categories of material contained within the proposal.

(8) in making such regulations the Minister shall have regard to:

(a) the changing nature and prevalence of certain harmful material available online,

(b) the protection of minors and the general public from harmful material,

(c) the risk posed by harmful material to the users of relevant online services whereon it may be disseminated,

(d) the impact that the nature and prevalence of certain harmful material available online may have on users of relevant online services and the general public,

(e) the general public interest,

(f) the impact of automated decision making in relation to [content delivery and content moderation] by relevant online services, and,

(g) the [fundamental rights] of users and operators of relevant online services.

(9) every regulation made under this section shall be laid before the Houses of the Oireachtas as soon as may be after it is made, whereupon either House may pass a resolution approving the order within 21 sitting days from the day on which the order was laid before it.

(10) any regulation made under this section shall not come into effect unless a resolution has been passed in accordance with subsection (9).

Explanatory note:

In order to complement the non-exhaustive nature of the list of categories of harmful online content a procedure by which it can be amended by order is included in this head. This procedure is intended to draw upon the expertise of the regulator, be broadly consultative

and contain a number of checks and balances in order to account for the challenges in balancing fundamental rights in this area.

The purpose of this section is to provide the Minister with the power to take into account the changing nature and prevalence of harmful material available online and the general public interest and protect minors and the general public from such harmful material, including in relation to matters arising in relation to Directive 2018/1808/EU and other Union instruments. In this regard, the word “harmful” should be interpreted in its ordinary meaning.

The list of matters to which the Minister shall have regard to under subsection (9) includes matters which are directly derived from the revised Directive, including “*the nature and prevalence of certain harmful material*”, the protection of “*minors and the general public from such harmful material*” and “*the general public interest*”.

Head 49C – Definition of age inappropriate online content

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Defining harmful online content

Provides that:

“age inappropriate online content” means material which may be unsuitable for exposure to minors and that they should not normally see or hear and which may impair their development, taking into account the best interests of minors, their evolving capacities and their full array of rights, and includes:

- (a) material containing or comprising gross or gratuitous violence,
- (b) material containing or comprising cruelty, including mutilation and torture, towards humans or animals, and,
- (c) material containing or comprising pornography.

Explanatory Note:

It is considered that there are a number of categories of material that may not be necessarily harmful but are likely inappropriate for a minor to be exposed to. A definition of inappropriate online content is included in this head on that basis to facilitate the regulator issuing online safety guidance materials, as provided for in Head 51, in relation to content rating and age-gating.

This definition is substantially based on wording derived from Articles 28b(1) and 6(1) of the revised Directive and contains elements from the Video Recording Act 1989 and Council of Europe Recommendation of the Rights of the Child in the Digital Environment [CM/Rec(2018)7].

The revised Directive uses the phrase “may impair the physical, mental or moral development of minors”. As can be seen, aspects of this concept are covered by the categories of material enumerated under the concept of “harmful online content”. Furthermore, the definition of “age-inappropriate online content” under this head encompasses this concept and provides further guiding policies and principles as to its meaning. As noted above, these guiding policies and principles are derived from the revised Directive, relevant Council of Europe instruments and existing domestic legislation. It is considered that this approach is clearer and more appropriate than simply lifting the wording from the revised Directive and not providing any guiding principles.

Head 50A – Online safety codes

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulating harmful online content

Provides that:

(1) The Media Commission shall prepare, and from time to time revise, online safety codes governing standards and practices that shall be observed by designated online services or categories thereof.

(2) the online safety codes [may] provide for matters relating to [content delivery and content moderation] by designated online services, including:

(a) measures that [may] be taken by designated online services or categories thereof to minimise the availability of harmful online content on their services,

(b) measures that [may] be taken by designated online services or categories thereof in relation to [commercial communications] available on their services,

(c) user complaint and/or issues handling mechanisms operated by designated online services or categories thereof,

(d) risk and impact assessments that [may] be taken by designated online services or categories thereof in relation to the availability of harmful online content on their services, and,

(e) reporting obligations for designated online services or categories thereof.

(3) in preparing online safety codes the Media Commission shall have regard to, [amongst other relevant issues], each of the following matters:

(a) the categories of harmful online content in s. X,

(b) article 28b of Directive (EU) 2018/1808, which sets out the minimum rules and standards for video sharing platform services established in the Union,

(c) articles 12-15 of Directive (EC) 2000/31, which sets out the legal liability regime for designated online services established in the Union and sets limits on measures that such services can be required to take,

(d) the nature and scale of designated online services or categories thereof,

(e) the necessity for transparency of decision making in respect of [content delivery and content moderation] by designated online services,

(f) the impact of automated decision making in relation to [content delivery and content moderation] by designated online services,

(g) the nature and prevalence of harmful online content,

(h) the protection of minors and the general public from harmful online content,

(i) the risk posed by harmful online content to the users of designated online services whereon it may be disseminated,

(j) the likelihood of users of designated online services being unintentionally exposed, by their own actions, to harmful online content,

(k) the impact that the nature and prevalence of harmful online content may have on users of designated online services, minors and the general public,

(l) the role of [public figures] in the public discourse, and,

(m) the [fundamental rights] of users and operators of designated online services.

(4) in preparing online safety codes the Media Commission may consult with any persons or bodies it sees fit, including members of advisory committees established in accordance with Head 32.

(5) a copy of any online safety code prepared under this section shall be presented to the Minister as soon as may be after it is made.

(6) [the Minister shall cause copies of any online safety code received by them to be laid before the Houses of the Oireachtas as soon as may be.

(7) the Minister may request in writing that the Media Commission review the operation of any online safety code, whereupon the Media Commission shall furnish a report to the Minister as soon as may be.

Explanatory note:

This provision provides that the Media Commission shall issue online safety codes and that these codes may provide for a wide range of matters, including measures to be taken by designated online services in relation to harmful online content and user complaints and issues handling.

This provision also provides a list of matters that the Commission shall have regard to in preparing online safety codes, including matters relating to EU law, the nature and scale of services, transparency and fundamental rights.

The matters that the Commission shall have regard to in drafting online safety codes are extensive. They include, among other things,

- Extensive consideration of Union law, particularly related to the revised Directive and the legal liability regime for online services provided for by the eCommerce Directive (Directive (EC) 2000/31),
- A requirement for consideration of proportionality in relation to the nature and scale of designated online services, which is key given the diverse range of services that may fall to be designated,
- Consideration of risk posed by harmful online content to users of designated online services and the impact that such content may have on users of such services, minors and the general public, and,
- Considerations of the fundamental rights of users and operators of designated online services, whether these rights be constitutionally enumerated or derived or arising from treaties to which Ireland is a party, for example the Charter of Fundamental Rights of the European Union or the European Convention on Human Rights.

In relation to the first point, Article 28b(1) of the revised Directive requires that Member States ensure that video sharing platform services take appropriate measures to protect

minors from material which may impair their physical, mental or moral development and the general public from incitement to hatred or violence and from material which it is a criminal offence to disseminate under Union law. It is appropriate within the Irish legal framework that Ireland ensures that such services take such measures through the application of regulatory codes as it will provide the necessary flexibility for the regime to evolve in a fast-changing sector.

Further to this, Article 28b(2) and (3) of the revised Directive enumerates potential measures for video sharing platform services to take to meet the protective obligation set out in subsection (1) of that article. It's intended that the Media Commission shall have regard to these in in creating online safety codes, assessing the compliance of designated online services with said codes and in directing compliance through notices.

Another issue arising from the first point is the legal liability regime for online services established by the eCommerce Directive. Broadly speaking, this Directive provides that online services are not legally liable for material that they transmit or host as long as they expeditiously remove illegal material once it is brought to their attention. It further provides that Member States cannot impose "*general monitoring*" obligations on online services, which would require them to actively monitor all or most information transmitted through or hosted by their services. It's intended that the Media Commission shall have regard to this liability regime in creating online safety codes, assessing the compliance of designated online services with said codes and in directing compliance through notices.

In relation to the second point, it's envisaged that a wide range of online services may fall to be designated by the Media Commission and be required to abide by such codes as the Commission deems appropriate. In order to ensure proportionality, it's important that the Commission be required to consider the nature and scale of designated online services in its activities under this Part, including in relation to the creation of online safety codes.

In relation to the third point, it's envisaged that the Media Commission shall have regard to the nature of harmful online content and its prevalence on designated online services in its activities, including when creating online safety codes. This is in line with revised Directive which refers to appropriate measures being determined with reference to the "*nature and prevalence of certain harmful material*".

Further to this, it's also envisaged that the Media Commission shall have regard to the risks to, the impact on, and the experience of users and the general public more broadly posed by harmful online content available online in its activities and in the creation of online safety codes. This provides for an element of proportionality and focus as the Media Commission will be required to hone in those areas of most potential harm, which underlines the risk based approach to regulation taken in this Bill.

Lastly and in relation to the fourth point, considerations of fundamental rights are highly likely to arise in many aspects of the Media Commission’s activities under this Part, including the creation of online safety codes. It’s considered prudent to require the Media Commission to have regard to such matters in relation to the creation of online safety codes.

Further to this, Article 28b(3) of the revised Directive provides that “*the appropriate measures shall be determined in light of the nature of the content in question, the harm it may cause, the characteristics of the category of persons to be protected as well as the rights and legitimate interests at stake, including those of the video sharing platform providers and the users having created or uploaded the content as well as the general public interest.*”

From this it can be seen that the revised Directive foresees ongoing rights balancing exercises taking place in the regulatory regimes entrusted with the application of this Directive by Member States. It also follows from this that the fundamental rights in question do not arise just from the Irish Constitution but also from related Union instruments such as the Charter of Fundamental Rights of the European Union.

Head 50B – Compliance assessments

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulating harmful online content

Provides that:

(1) The Media Commission may request information from any designated online service regarding their compliance with any online safety code and may require any designated online service to report to them regarding their compliance with any online safety code on a periodic basis.

(2) designated online services shall comply with information requests from the Media Commission.

(3) a designated online service which contravenes subsection (2) shall be guilty of a category 1 offence.

(4) the Media Commission may examine the compliance of designated online services with online safety codes on the basis of the information requests specified in subsection (1) and other information that Commission considers relevant, including matters brought to the attention of the Commission by a nominated body under Head 53B or other interested parties such as members of the European Regulators Group for Audiovisual Media Services.

(5) the Media Commission may appoint authorised officers, in accordance with the procedure specified in Head 15, to examine the compliance of any designated online service with any online safety code.

(6) upon completion of an examination the Media Commission may issue a compliance notice in accordance with Head 53 to a designated online service concerned specifying steps that the designated online service shall take to comply with any online safety code, including the removal or restoration of material.

Explanatory note

This provision provides the Media Commission with the power to request information from designated online services in relation to their compliance with any online safety code and that it is an offence for a designated online service not to comply with such a request

This provision also provides that the Media Commission may examine the compliance of designated online services and may appoint authorised officers in this regard. On foot of such an examination the Commission may issue a compliance notice to the designated online service in question in accordance with the procedure for compliance notices set out in Head 53.

In overall terms, it's important to note that the Media Commission would develop, in the first instance, high level principle based codes governing standards and practices. Designated online services are then required to develop measures to meet the principles set out in the high level codes that apply to them. The Media Commission can then assess whether these measures are working in practice through information requests, investigations and audits. On the basis of these the Media Commission can then issue directions, through compliance and warning notices, to online services mandating them to take specific steps to improve their compliance with the high level codes.

This approach provides for the Media Commission, through learned experience, to develop more detailed and tailored codes in certain discrete areas as standardised best practices emerge. It also provides for a quasi-continuous process of improving measures taken by online services to meet the requirements of the high level codes through ongoing engagement and assessment by the Media Commission.

Head 51A – Online safety guidance materials

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulating harmful online content

Provides that:

(1) The Media Commission may issue guidance materials in matters relevant to harmful online content and age-inappropriate online content.

(2) relevant and designated online services shall have regard to these guidance materials in their operations as appropriate.

(3) in preparing guidance materials the Media Commission shall have regard to, [amongst other relevant issues], each of the following matters:

(a) the definition of harmful online content in s. X,

(b) the definition of age inappropriate online content in s. Y,

(c) article 28b of Directive (EU) 2018/1808, which sets out the minimum rules and standards for video sharing platform services established in the Union,

(d) articles 12-15 of Directive (EC) 2000/31, which sets out the legal liability regime for designated online services established in the Union and sets limits on measures that such services can be required to take,

(e) the nature and scale of relevant online services or categories thereof,

(f) the necessity for transparency of decision making in respect of [content delivery and content moderation] by relevant online services,

(g) the impact of automated decision making in relation to [content delivery and content moderation] by relevant online services,

(h) the nature and prevalence of harmful online content and age inappropriate online content,

(i) the protection of minors and the general public from harmful online content and age inappropriate online content,

(j) the risk posed by harmful online content or age inappropriate online content to the users of relevant online services whereon it may be disseminated,

(k) the likelihood of users of relevant online services being unintentionally exposed, by their own actions, to harmful online content or age inappropriate online content,

(l) the impact that the nature and prevalence of harmful online content and inappropriate online content may have on users of relevant online services, minors and the general public,

(m) the role of [public figures] in the public discourse, and,

(n) the [fundamental rights] of users and operators of relevant online services.

(4) in preparing online safety guidance materials the Media Commission may consult with any persons or bodies it sees fit, including members of advisory committees established in accordance with Head 32.

(5) a copy of any guidance materials prepared under this section shall be presented to the Minister as soon as may be after it is made.

(6) the Minister may request in writing that the Media Commission review any guidance materials produced by the Media Commission under this section, whereupon the Media Commission shall furnish a report to the Minister as soon as may be.

Explanatory note:

This head provides that the Media Commission may issue guidance materials in matters relevant to harmful online content and inappropriate online content and relevant online services and designated online services shall have regard to these guidance materials in their operations as appropriate.

This head also provides a list of matters that the Media Commission shall have regard to in preparing guidance materials, including matters relating to EU law, the nature and scale of services, transparency and fundamental rights. This is similar to the list of matters that the Media Commission shall have regard to in creating online safety codes.

Head 51B – Advisory notices

Related to the transposition of the AVMSD? Yes.

Associated policy paper? N/A

Provides that:

(1) The Media Commission may issue advisory notices to relevant online services and designated online services in matters relevant to harmful online content and age inappropriate online content.

(2) advisory notices shall contain advice to relevant online services and designated online services regarding discrete or topical matters relevant to harmful online content and age inappropriate online content.

(3) in preparing advisory notices, the Media Commission shall have regard to the matters provided for by subsection 3 of head 51.

(4) in preparing advisory notices the Media Commission may consult with any persons or bodies it sees fit, including members of advisory committees established in accordance with Head 32.

(5) the Media Commission may revoke or revise advisory notices issued under this section at any time.

(6) a copy of any advisory notice issued under this section shall be presented to the Minister as soon as may be after it is made.

Explanatory note

The purpose of this provision is to explicitly provide the Media Commission with the power to provide advice to relevant and designated online services on discrete or topical matters relevant to harmful online content and age inappropriate online content. This will provide the Media Commission with greater flexibility in dealing with certain distinct or new issues than if it only had the powers to make online safety guidance materials or online safety codes.

In preparing advisory notices the Media Commission is required to have regard to the same range of matters, as pertinent to the issue at hand, as it is required to have regard to when making online safety guidance materials.

The intention of this provision is provide for the creation and ongoing renewal of a body of advisory notices on discrete or topical issues similar to that provided by the Office of the Press Ombudsman.

Head 52A – Auditing complaints handling

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulating harmful online content

Provides that:

(1) The Media Commission may audit user complaint and/or issues handling mechanisms operated by designated online services or categories thereof on a periodic or ad-hoc basis.

(2) upon completion of an audit the Media Commission may issue a compliance notice, in accordance with Head 53, to a designated online service concerned specifying steps that the designated online service shall take to improve or otherwise alter the operation of their user complaint and/or issues handling mechanisms.

(3) the Media Commission may appoint authorised officers, in accordance with the procedure specified in Head 15, to carry out the audits referred to in subsection (1).

Explanatory note

This provision provides the Media Commission with the power to audit any user complaints and issues handling systems operated by designated online services and to direct a designated online service to take specified actions, including to remove or restore individual pieces of content and to make changes to the operation of their systems. This work could take place on a periodic or ad-hoc basis as necessary.

Head 52B – Systemic complaints scheme

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulating harmful online content

Provides that:

(1) The Media Commission shall establish a scheme wherein it can receive notice of systemic issues with relevant and designated online services from nominated bodies.

(2) the Media Commission shall outline the functioning of such a scheme, including the process for nominating bodies, the process for removing such nominations and the process to be followed and standards to be met by nominated bodies in notifying the Commission of systemic issues with relevant and designated online services.

(3) in outlining the functioning of the scheme provided for under subsection (1), the Media Commission shall provide for:

(a) the form in which it will receive notices,

(b) the timeline in which it will respond to notices,

(c) the criteria for nomination,

- (d) the process through which a body can apply for nomination,
- (e) the process through which a body's nominated status can be revoked by the Media Commission, and,
- (f) the criteria for revocation of a body's nominated status.

(4) in responding to notices, the Commission shall provide reasons for any action, if any, they propose to take on foot on the notice and may publish these reasons.

(5) on foot of a notice received from a nominated body under this section, the Commission may examine the compliance of a designated online service with any online safety code in accordance with Head 50B and may initiate an audit of any user complaint and/or issues handling mechanisms operated by a designated online service in accordance with Head 52A.

(6) on foot of a notice received from a nominated body under this section, the Commission may consider designating a relevant online service in accordance with Head 56.

Explanatory note

This provision provides the Media Commission with the power to devise and operate a so-called “*super complaints*”. This is where nominated bodies, for example expert NGOs or members of the European Regulators Group for Audiovisual Media Services, would have a channel to bring issues they have identified with a relevant or designated online service to the Commission's attention.

The Commission would have the power to devise the nomination process and the functioning of the scheme, which is required to contain certain key elements set out in the head.

Head 52C – Obligation to consider mediation

Related to the transposition of the AVMSD? Yes.

Associated policy paper? N/A

To provide that:

(1) Where there is a dispute between a designated online service and a user, or group of users, however represented, of that designated online service, both parties shall consider mediation as a method of reaching a mutually acceptable agreement to resolve the dispute.

(2) Subsection 1 shall not prevent a user of a designated online service, or any other party, bringing relevant matters or a dispute with a designated online service to the attention of the Media Commission.

(3) The Media Commission may, in accordance with Head 50b, examine the compliance of a designated online service with online safety codes on the basis of information relating to any dispute between a user, or group of users, and a designated online service.

(4) The Media Commission may, in accordance with Head 52b, initiate an audit of the user complaint and/or issues handling mechanisms operated by a designated online service on the basis of information relating to any dispute between a user, or group of users, and a designated online service.

(5) “mediation” means a facilitative and voluntary process in which parties to a dispute, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve the dispute.

(6) “mediator” means a person, persons, or organisation, who or which assists the parties to a dispute in reaching a mutually acceptable agreement to resolve the dispute;

Explanatory note

This provision introduces an obligation, where there is a dispute between, a designated online service and a user, or group of users, of that designated online service, for the parties in question to consider mediation. Mediation services may be provided by a person, person or organisation and the costs of mediation may be borne by one or both parties, or another party, as agreed by the parties to the dispute.

This provision does not prevent a user of a designated online service or any other person bringing relevant matters concerning a designated online service or services to the attention of the Media Commission, nor does it prevent the Media Commission from exercising its investigatory, auditing or other relevant powers, including compliance and sanction powers, in relation to such matters.

Head 53 – Compliance and warning notices

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulating harmful online content

Provides that:

(1) If the Media Commission is of the view that, following an assessment of compliance under Head 50B or an audit under Head 50A, that a designated online service is not in compliance with an online safety code or a direction of the Commission made under this Part, they may issue a compliance notice.

(2) if the steps to be specified in a compliance notice concern the removal or restoration of material the Commission may, in advance of issuing a compliance notice, may engage with the designated online service in question with a view to inviting submissions from the uploader of said material or from a person who made a complaint to the designated online service about the material.

(3) such a compliance notice may state the view of the Commission, and how they formed that view, that the designated online service was or is not in compliance and may,

(a) invite a response from the designated online service,

(b) outline the steps expected to be taken by the designated online service to remedy its non-compliance, including the removal or restoration of material.

(4) if following an appropriate period to be determined by the Media Commission the designated online service does not provide to the Media Commission a satisfactory justification in relation to the alleged non-compliance or a satisfactory outline of its actions to bring itself into compliance the Media Commission may issue a warning notice to the designated online service.

(5) such a warning notice will outline the view of the Media Commission regarding the alleged non-compliance and outline the steps that the Commission will take if the alleged non-compliance is not remedied.

(6) a warning notice will outline the steps which the Media Commission deems necessary for the designated online service to take to bring itself into compliance and the timescale in which those steps must be taken.

(7) the designated online service shall comply with the steps outlined in a warning notice issued by the Media Commission

(8) the Media Commission shall forward the any warning notice issued under this section to the Minister.

(9) the Media Commission may publish details relating to any warning notice it issues under this section.

(10) following a warning issued by the Media Commission under subsection (4) regarding alleged non-compliance by a designated online service and the expiry of the timescale specified in accordance with subsection (5), the Commission may take the view that the alleged non-compliance has not been remedied.

(11) a designated online service which contravenes subsection (7) shall be guilty of a category 1 offence.

(12) notwithstanding subsection (11), should the Media Commission take the view that the alleged non-compliance has not been remedied, the Commission may determine that the designated online service concerned be subject to a sanction in accordance with Head 54.

Explanatory note:

This head provides for the procedure by which the Media Commission may issue compliance and warning notices to a designated online service.

The Commission may issue compliance notices if it is of the view that a designated online service is not in compliance with an online safety code or a direction of the Commission. If the compliance notice is not adhered to and the designated online service in question does not provide a satisfactory justification for not adhering to the compliance notice to the Commission, the Commission may then issue a warning notice. A designated online service that doesn't comply with the steps outlined in a warning notice issued to it by the Commission shall be guilty of an offence. Notwithstanding this, the Media Commission may pursue a sanction against the designated online service in question in accordance with Head 54A.

Both compliance and warning notices will outline the steps the Media Commission deems necessary for the designated online service to take to bring itself into compliance and the timescale in which those steps must be taken. If the steps to be specified in a compliance notice are about the removal or restoration of material the Commission may invite submissions from the uploader and complainant before it issues the notice.

Head 54A – Sanctions for non-compliance

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulating harmful online content

Provides that:

(1) If the Commission is of the view that a designated online service be subject to a sanction for failing to comply with a warning notice from the Media Commission under Head 53, the Commission shall notify the designated online service of its intention to apply a sanction.

(2) the Commission shall specify in its notice to the designated online service of its intention to apply a sanction of the nature of the sanction.

(3) the Commission may publish details relating to any notice of intention to apply a sanction it issues under this section.

(4) the Commission shall forward any notice of intention to apply a sanction it issues under this section to the Minister.

(5) the Commission may seek to apply any of the following sanctions:

(a) an administrative financial sanction in accordance with the procedure set out in Head 16.

(b) to seek leave of the High Court to compel a designated online service subject to a warning notice under this section to take such steps that the Commission deems warranted to bring said service into a state of compliance, or,

(c) to seek leave of the High Court to compel internet service providers to block access to a designated online service in the State.

(6) the Commission shall publish the outcome of any sanction sought in accordance with subsection (5) and shall forward this information to the Minister.

Explanatory note:

This head provides for the range of sanctions that the Media Commission may seek to apply to a designated online service where it is of the view that service has failed to comply with a warning notice issued by the Commission and the procedure for the application of such sanctions.

These sanctions include:

- an administrative financial sanction,
- compelling compliance, or
- the blocking of access to the designated online service in Ireland.

The application of each of these sanctions requires court approval whereupon the designated online service in question will have the opportunity to dispute its application. The procedure for administrative financial sanctions is set out in Head 16.

The Media Commission shall have the discretion to determine the sanction it may seek under this section having regard to the nature of the non-compliance of the designated online service.

As these sanctions may constitute the administration of justice, they require the involvement of the court system. The procedure for administrative financial sanctions is set out in Head 16.

Head 54B – Senior management liability

Related to the transposition of the AVMSD? Yes.

Associated policy paper? N/A

To provide that:

(1) Where –

(a) an offence under s. 11 of Head 53 of this Act has been committed by a designated online service, and

(b) the offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect/wilful neglect on the part of a person who was either:

i. a director, manager, secretary or other agent of the designated online service, or

I. a parent undertaking of the designated online service,

II. a subsidiary or affiliate undertaking of the designated online service, or

III. an undertaking which is subsidiary or affiliate undertaking of the parent undertaking of the designated online service,

or

ii. a person purporting to act in any such capacity,

that person, as well as the designated online service, is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the offence committed by the corporate body.

(2) Any proceedings, including summary proceedings, under this section shall not be instituted except by or with the consent of the Director of Public Prosecutions.

Explanatory note

The offence detailed above is a form of secondary or derivative liability, whereby an agent of a corporate body liable for an offence is also liable for that offence subject to a particular burden of proof being met.

In this instance, the model of derivative liability is the “consent, connivance or neglect” model, whereby the agent in question must be shown to have engaged in such behaviours in order to be liable for the same offence as the corporate body. The form of the model as drafted here hews closely to that described by Chapter 9 of the 2018 Law Reform Commission Report on Regulatory Powers and Corporate Offences.

However, three key elements are introduced in order to appropriately embed the offence within the regulatory framework for online safety. These are as follows:

- That the offence in question is engaged by the failure of a designated online service to comply with a warning notice of the Media Commission,
- That the organisational scope of potential liability takes in the potential influence of agents of undertakings related to the offending designated online service, be these parents undertakings or undertakings within the same corporate group, and,
- That the nature of the liability in question is a category 1 offence as described in Head 18(1).

The scope of the persons potentially liable for this offence is described, as is typical for such provisions, in terms of organisational titles. However, the extent of potential liability falls in general on influential position holders who were involved in the offending conduct, according to the test set down by *The People (DPP) v Hegarty* [2011] IESC 32.

This offence, even in summary terms, may not be prosecuted except by or with the consent of the Director of Public Prosecutions.

Head 55 – Voluntary arrangements

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulating harmful online content

Provides that:

(1) The Media Commission may enter into voluntary arrangements with any relevant online service not established in the State.

(2) these voluntary arrangements shall specify the extent to which a relevant online service agrees to comply with any online safety code and/or online safety guidance materials issued by the Media Commission in accordance with Head 50A/Head 51 and any reporting requirements.

(3) the Media Commission shall notify the Minister of any arrangements entered into under this section.

(4) the Media Commission shall publish the details of any relevant online service that enters into an arrangement under this section and the nature of the arrangement.

(5) the Media Commission may request information from a relevant online service which has entered into an arrangement under this section regarding their compliance with the specifics of the arrangement and may request such services to report to them regarding their compliance on a periodic basis.

(6) if the Media Commission is of the view that, following an information request under subsection (5), that a relevant online service party to an arrangement under this section is not in compliance, or that the a relevant online service has not complied with an information request made under subsection (5), they may publish this fact.

(7) if the Media Commission is of the view that, following an information request under subsection (5), that a relevant online service party to an arrangement under this section is not in compliance, they may revoke the arrangement.

(8) arrangements made under this section shall be reviewed on a periodic basis.

(9) any arrangements entered into by the Media Commission under this section shall be compatible with the jurisdiction rules for video sharing platform services under article 28a of Directive (EU) 2018/1808.

Explanatory note:

This head provides for the Media Commission to enter into voluntary arrangements with any relevant online service not established in the State. These arrangements would be public and

specify the extent to which the any relevant online services agree to comply with online safety codes issued by the Commission.

The Media Commission may request information and determine reporting schedules for services that enter into such arrangements. The Media Commission may also make findings of non-compliance and publish the fact of these findings and to revoke arrangements if deemed necessary.

This head provides for the voluntary extra-jurisdictional application of the regulatory regime for online safety while respecting the practical and constitutional limitations of such application.

Head 56 – Designation of relevant online services

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Services covered by Strands 1 & 2

Provides that:

- (1) The Media Commission shall, from time to time, designate relevant online services or categories thereof.
- (2) in designating relevant online services or categories thereof the Media Commission shall have regard to:
 - (a) the definition of a video sharing platform service in Head 2,
 - (b) guidelines issued by the European Commission in respect of the practical application of the essential functionality criterion within the definition of a video sharing platform service,
 - (c) the jurisdiction rules for video sharing platform services under article 28a of Directive (EU) 2018/1808,
 - (d) articles 12-15 of Directive (EC) 2000/31, which sets out the legal liability regime for relevant online services established in the Union and sets limits on measures that such services can be required to take,
 - (e) the nature and scale of relevant online services or categories thereof,
 - (f) the necessity for transparency of decision making in respect of [content delivery and content moderation] by relevant online services,

(g) the impact of automated decision making in relation to [content delivery and content moderation] by relevant online services,

(h) the likely prevalence of harmful online content the relevant online services or categories thereof in question facilitate the dissemination of or access to,

(i) the protection of minors and the general public from harmful online content,

(j) the risk posed by harmful online content to the users of relevant online services whereon it may be disseminated,

(k) the likelihood of users of relevant online services being unintentionally exposed, by their own actions, to harmful online content,

(m) the [fundamental rights] of users and operators of relevant online services.

(3) video sharing platform services shall be a category of designated online services.

(5) the Media Commission shall not designate a relevant online service that is:

(a) an audiovisual media service, or,

(b) a sound media service.

(6) the Media Commission shall inform a relevant online service that it is considering designating of its considerations and may request information from said relevant online service to inform these considerations.

(7) relevant online services shall comply with information requests from the Media Commission made in accordance with subsection (6).

(8) a relevant online service which contravenes subsection (7) shall be guilty of a category 1 offence.

(9) if the Media Commission is considering designating a category of relevant online services it shall consult with services within said category and may issue information requests to said services in accordance with subsection (6).

(10) in designating relevant online services or categories thereof the Media Commission may consult with any persons or bodies it sees fit, [including members of... advisory committees].

(11) in designating relevant online services or categories thereof the Media Commission shall specify any online safety codes, prepared by the Commission in accordance with Head 50A,

that the designated online service or category of designated online services shall abide by, having regard to the matters specified in subsection (2).

(12) the Media Commission may vary, following any compliance procedures under this Part, consultation with any persons or bodies the Commission sees fit to consult, including members of advisory committees established in accordance with Head 32, and/or consultation with the designated online service or services within a category of designated online services, the online safety codes that said service or category of services shall abide by.

(13) the Media Commission may not oblige a designated online service or category thereof to abide by an online safety code that relates to material which it is not a criminal offence to disseminate if said service or services are:

(a) an interpersonal communications service, or,

(b) a private online storage service.

(14) the Media Commission shall maintain a readily accessible, publically available and up to date list of designated online services and categories thereof and the relevant online safety codes that apply to said services and shall periodically provide this list to the Minister.

(15) disputes between relevant online services and the Media Commission regarding the application of this section [may be brought to the High Court by either party] [and/or] the European Commission in the case of video sharing platform services.

Explanatory note:

This head provides for the following:

- Provides the Media Commission with the power to designate individual and categories of online services from a wider pool of relevant online services to abide by any online safety codes the Commission deems necessary.
- Provides that video sharing platform services be specified are a category of designated online services.
- Provides that services that are to be subject to other regulatory regimes under this Bill be excluded from the possibility of being designated, these being audiovisual media services and sound media services.
- Provides that the Media Commission's code making powers in relation to interpersonal communications services and private online (cloud) storage services be explicitly limited to matters relating to content which it is a criminal offence to

disseminate. This reflects the different balance of fundamental rights that arise in relation to these services than other relevant online services.

This approach would bring a wide range of services into scope for potential designation. However, importantly, this does not imply that such services should or will be designated. The designation of services will be a matter for the Media Commission, which will be required by law to have regard to the legal limits of liability, the nature and scale of services and the fundamental rights of users and operators of services. This is a substantive check against any potential inappropriate designation by the Commission and provides a strong basis for the Commission to take a proportionate risk based approach to designation.

Kinds of services that this approach brings into scope for potential designation includes, but is not limited to:

- Social media services,
- Public boards and forums,
- Online gaming services,
- Ecommerce services, where they facilitates the dissemination of or access to user-generated content,
- Private communication services,
- Private online (cloud) storage services,
- Press publications, where they facilitate the dissemination of or access to user-generated content,
- Online search engines, and,
- Internet service providers.

However, in relation to two examined categories, private communications services and private online storage services, it is provided that the Media Commission's code making powers in relation to these services be explicitly limited to matters relating to content which it is a criminal offence to disseminate. The reason for this is that these services raise particular rights balancing issues, especially regarding the right to privacy, which make it difficult to justify giving the Commission to power to require them to take measures in relation to non-criminal harmful online content.

The wider pool of “*relevant online services*” from which the Media Commission may designate services or categories thereof is defined on the basis of the definition of “*information society service*” from the eCommerce Directive qualified by a definition of “*user-generated content*” adapted from the revised AVMSD, as follows:

“relevant online service means an information society service established in the State that [facilitates the dissemination of or access to] user-generated content via an electronic communications network”

The following is definition of use-generated content, adapted from the definition of user-generated video in the revised Directive:

“user-generated content’ means content constituting an individual item, irrespective of its length, that is created by a user and uploaded to relevant online service by that user or any other user and does not include content uploaded to relevant online service by the provider of that service;”

The following is the truncated version of the definition of “*information society service*” from the eCommerce Directive:

“Any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service.”

This definition has the following characteristics, including:

- That it is wide ranging and brings into scope for potential designation a range of services that it may desirable to be subject to the regulatory regime for online safety at present and in the future,
- That it contains explicit exemptions for certain categories of service, for example television and radio broadcasting services,
- That it is technologically neutral and focuses the core aspect of the business model of the online services that it is sought be within the scope of the regulatory regime, i.e. facilitating the dissemination of or access to user-generated content, and,
- That it is legally certain, explicitly encompassing the definition of a Video Sharing Platform Service from the revised AVMSD, and that it is compliant with EU law more broadly.

The wording linking the “*information society services*” with “*user-generated content*” and the interaction between the latter and the linking wording will need to be examined in detail

during formal drafting to ensure that it is appropriate and doesn't inadvertently exclude ranges of services from the scope of the definition.

It may be appropriate to provide for a more detailed procedure where a relevant online service may dispute nomination by the Media Commission under this section. This procedure may ultimately lead to the referral of such disputes to the High Court or the European Commission in the case of video sharing platform services.

Part 5 – ON-DEMAND AUDIOVISUAL MEDIA SERVICES

Head 57 – Definition of a relevant on-demand audio visual media service

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) For the purposes of this Part, a relevant service is an on demand audiovisual media service operated by a media service provider established in the State.

Explanatory note:

This head provides that on demand audiovisual media services established in the State are relevant services for the purposes of this Part.

Head 58 – Registration of on-demand audio visual media services

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) The Commission shall, upon the commencement of this section, cause to be established and maintained, in such form as it considers appropriate (including electronic form) a register of relevant services.

(2) A media service provider established in the State that operates or intends to operate a relevant on-demand audiovisual media service, shall, in accordance with this section, apply to the Commission to register the relevant service in the register.

(3) Media service providers who, before the date of the commencement of this section, were providing a relevant on-demand audiovisual media service, shall, not later than [insert time period] after the commencement of this section, apply to the Commission to register the relevant service in the register.

(4) An application for the purposes of this section shall—

(a) be sent to the Commission in such form and manner as the Commission may require (including electronic form); and

(b) contain all such information as the Commission may require.

(5) The Commission shall, as soon as practicable after it receives a valid application in accordance with this section, grant the application and enter in the register—

[relevant information pertaining to the media service provider and the on-demand audiovisual media service]

and a relevant service shall stand registered for the purposes of this Act upon the performance by the Commission of its functions under this subsection in relation to the relevant service.

(6) The Commission shall refuse an application under this section unless it is satisfied that the applicant is a relevant service.

(7) Where the Commission makes a decision to grant an application under this section, it shall, as soon as may be thereafter, notify the applicant in writing (either by electronic means or otherwise) of the decision.

(8) Where the Commission makes a decision to refuse an application under this section, it shall, as soon as may be thereafter, notify the applicant in writing (either by electronic means or otherwise) of the decision and the reasons for the decision

(9) A media service provider who has registered under subsection (2) or (3) shall, before—

(a) making any significant alterations to the relevant service including changes to jurisdiction; or

(b) ceasing to provide it,

notify the Commission of the alterations or (as the case may be) of an intention to cease to provide the relevant service.

(10) Where it comes to the attention of the Commission that a relevant service has not registered, the Commission may direct an unregistered service to make an application to be registered in the register,

(11) It shall be an offence to fail to comply with a direction made by the Commission under subsection (10),

(12) Pursuant to subsection (4), the Commission shall publish guidelines regarding the registration process for relevant services not later than [insert time period] after the commencement of this section.

(13) The Commission may remove a relevant service from the register in accordance with Head 60.

(14) Where, in accordance with this section, a relevant service ceases to be registered, the Commission shall enter in the register a statement that the body has ceased to be registered and a statement of the reasons therefor.

(15) The Commission shall, from time to time, review each entry in the register and, if it becomes aware that any particular in the register is incorrect or has ceased to be correct, it shall make such alterations to the register as it considers necessary and notify the party concerned in writing (electronic or otherwise) of any such alteration.

(16) Summary proceedings in relation to an offence under this section may be brought by the Commission.

Explanatory note:

This head provides for a system of registration for relevant demand audiovisual media services. Services which are registered on the register will fall under the regulatory regime for demand audiovisual media services as set out in this Part. A relevant service may be removed from the register in accordance with the Head 60. This head provides that the Commission has the power to prosecute cases of non-registration, in instances where the Commission has directed a relevant service to register and that service has refused to comply. The intent is that the Commission shall have absolute discretion regarding the cases that it chooses to prosecute. In line with the principle of proportionality, the intent of the creation of an offence under this Head is to deter non-compliance where there is a clear risk of harm to the public interest. This could be in instances where, for example, a service with a large audience in the State knowingly and willingly refuses to register with the regulator. The overall intent of the registration system is to bring services within scope of the regulatory regime that could have an adverse impact on the public interest if left unregulated.

Accordingly, it is not intended to penalise individuals who unwittingly create small scale On-Demand Audiovisual Media Services (ODAVMS) where the risk of harm from such services remains low. Instead the regulator will take a risk based approach to the regulation of small scale services. For example, where an unregistered small scale ODAVMS comes to the attention of the Commission and it is apparent to the Commission that the service in question is providing content that is in contravention of the Commission's codes, then the Commission can take appropriate action to bring the service within the regulatory regime and consequently take appropriate enforcement measures against that service.

It should be noted that under the definition of ODAVMS set out in the Directive, there are potentially thousands of ODAVMS established in Ireland, ranging from large scale services such as RTÉ Player to small scale YouTube channels edited by private individuals. As it would be practically unworkable for the regulator to dedicate enough resources to ensure that each and every ODAVMS in the State is registered, it is therefore intended that the focus of the regulator will be on ensuring that large services and services which are providing content which may harm the public interest are registered. It is not intended that the regulator will pursue individuals or entities that are operating innocuous, small scale ODAVMS.

Head 59 – Compliance and Enforcement

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) If the Media Commission is of the view that, following [investigation] under [section x] that a relevant service is not in compliance with a [section or sections of a media code], it may issue a compliance notice.

(2) such a compliance notice may state the view of the Commission, and how they formed that view, that the relevant service was or is not in compliance and may,

(a) invite a response from the relevant service,

(b) outline the steps expected to be taken by the relevant service to remedy its non-compliance, including

(i) the removal of specified programme material

(ii) restriction of access to specified programme material

(iii) provision of additional information to users of the service prior to the selection of specified programme material by the user for viewing

(3) if following an appropriate period determined by the Media Commission the relevant service does not provide to the Media Commission a satisfactory justification in relation to the alleged non-compliance or a satisfactory outline of its actions to bring itself into compliance the Media Commission may issue a warning notice to the relevant service.

(4) such a warning notice will outline the view of the Media Commission regarding the alleged non-compliance and outline the steps that the Commission will take if the alleged non-compliance is not remedied.

(5) a warning notice will outline the steps which the Media Commission deems necessary for the relevant service to take to bring itself into compliance and the timescale in which those steps must be taken.

(6) the relevant service shall comply with the steps outlined in a warning notice issued by the Media Commission

(7) the Media Commission shall forward any warning notice issued under this section to the Minister.

(8) the Media Commission may publish details relating to any compliance notice or warning notice it issues under this section.

(9) following a warning issued by the Media Commission under subsection (3) regarding alleged non-compliance by a relevant service and the expiry of the timescale specified in accordance with subsection (5), the Commission may take the view that the alleged non-compliance has not been remedied.

(10) a relevant service which contravenes subsection (6) shall be guilty of a category [X] offence.

(11) notwithstanding subsection (10), should the Media Commission take the view that the alleged non-compliance has not been remedied, the Commission may determine that the relevant service concerned be subject to a sanction in accordance with Head 60.

Explanatory note:

This head provides for the procedure by which the Media Commission may issue compliance and warning notices to an on demand audiovisual media service.

The Commission may issue compliance notices if it is of the view that an on demand audiovisual media service is not in compliance with a media code. If the compliance notice is not adhered to the Commission may issue a warning notice. An on demand audiovisual media service that doesn't comply with the steps outlined in a warning notice issued to it by the Commission shall be guilty of an offence. Notwithstanding this, the Media Commission may pursue a sanction against the on demand audiovisual media service in question in accordance with Head 60.

Both compliance and warning notices will outline the steps the Media Commission deems necessary for the on demand audiovisual media service to take to bring itself into compliance and the timescale in which those steps must be taken.

Head 60 – Sanctions for non-compliance

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) If the Commission is of the view that a relevant service be subject to a sanction for failing to comply with a warning notice from the Media Commission under Head 59, the Commission shall notify the relevant service of its intention to apply a sanction.

(2) the Commission shall specify in its notice to the relevant service of its intention to apply a sanction and the nature of the sanction.

(3) the Commission may publish details relating to any notice of intention to apply a sanction it issues under this section.

(4) the Commission shall forward any notice of intention to apply a sanction it issues under this section to the Minister.

(5) the Commission may seek to apply any of the following sanctions:

(a) an administrative financial sanction in accordance with [the procedure set out in Head 16],

(b) to seek leave of the High Court to compel a relevant service subject to a warning notice under this section to take such steps that the Commission deems warranted to bring said service into a state of compliance,

(c) remove the relevant service from the register of relevant services, or

(d) to seek leave of the High Court to compel internet service providers to block access to an on-demand audiovisual media service in the State.

(6) the Commission shall publish the outcome of any sanction sought in accordance with subsection (5) and shall forward this information to the Minister.

Explanatory note:

This head provides for the range of sanctions that the Media Commission may seek to apply to on demand audiovisual media service where it is of the view that service has failed to comply with a warning notice issued by the Commission and the procedure for the application of such sanctions.

These sanctions include:

- an administrative financial sanction,
- compelling compliance, or
- removal of the service from the register of regulated services
- blocking access to an on-demand audiovisual media service

The application of each of these sanctions requires court approval whereupon the service in question will have the opportunity to dispute its application. The procedure for administrative financial sanctions is set out in Head 16.

The Media Commission shall have the discretion to determine the sanction it may seek under this section having regard to the nature of the non-compliance of the on demand audiovisual media service.

Part 6 – MISCELLANEOUS AVMSD PROVISIONS

Head 61 – Complaints in relation to media service providers

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) The Commission may carry out an investigation where it comes to its attention that

- (a) programme material provided by a media service provider may have failed to comply with any provision of a Media Code [made pursuant to the relevant sections of the Head on Media Codes],
 - (b) a media service provider may have failed to comply with one or more of the requirements of [Head on Duties of Media Service Providers]
 - (c) a media service provider may have failed to comply with one or more of the requirements of [Head on Media Rules]
- (2) The Commission may carry out an investigation under (1) either
- (a) Of its own volition, or
 - (b) On foot of a complaint.
- (3) In carrying out an investigation under (1), the Commission shall have regard, as it deems appropriate, to any relevant provisions of [a Code made under the Head on Media Codes], [Head on Duties of Media Service Providers], [Head on Media Rules]
- (4) Complaints shall be received by the Commission not more than 30 days after
- (a) in case the complaint relates to one broadcast, the date of the broadcast,
 - (b) in the case of 2 or more unrelated broadcasts, the date of the earlier or earliest, as the case may be, of those broadcasts, or
 - (c) in case the complaint relates to 2 or more related broadcasts of which at least 2 are made on different dates, the later or latest of those dates.
 - (d) in case the complaint relates to an on-demand service, the date the programme material ceased to be available.
- (5) The Commission, may, at its own discretion, refer the complaint in the first instance to the media service provider for consideration in accordance with a code of practice prepared under [Head on Code of Practice – Complaints Handling]
- (6) The Commission may decide not to investigate a complaint referred to in subsection (1), or to discontinue an investigation of a complaint, on the grounds that -
- (a) the complaint is frivolous or vexatious or was not made in good faith,
 - (b) the subject-matter of the complaint is trivial,

(7) The Commission may make preliminary inquiries for the purpose of deciding whether a complaint should be investigated and may in writing request the complainant or the media service provider to provide further information within a period specified by the Commission in the request.

(8) The Commission may decide not to continue to investigate a complaint if the complainant fails to comply with a request for further information within the time specified in the request under subsection (5).

(9) As soon as practicable after deciding not to investigate a complaint, or to discontinue an investigation of a complaint, the Commission shall notify the complainant in writing of the decision and the reasons for the decision.

(10) As soon as practicable after it decides on a complaint made under this section, the Commission shall notify the complainant and the media service provider in writing of the decision and the reasons for decision.

(11) The Commission may appoint authorised officers in accordance with Head 15A to carry out the investigations referred to in subsection (1).

(12) The Commission shall publish its decision not more than 60 working days after initiating an investigation under subsection (1).

(13) The Commission may deem a complaint made to a media service provider within the time periods specified in [Head 75 – Complaints Handling] as having been made within the time periods specified in subsection (2).

Explanatory note:

This Head provides for a common process for the investigation of suspected breaches of codes and rules for both linear broadcasting and on-demand audiovisual media services. The Head empowers the Media Commission to initiate an investigation either (a) on foot of a complaint or (b) of its own violation.

This Head sets out the procedure that the Media Commission must follow where it suspects that a code or rule has been breached. The Media Commission may appoint authorised officers to carry out investigations in accordance with the procedure set out in Head 15A.

The Head sets out a 60 day time limit for the Media Commission to publish its decision following the investigation of a complaint.

Head 62 – Media Codes

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) The Commission shall prepare, and from time to time as occasion requires, revise, in accordance with this section, a code or codes governing standards and practice (“media code”) to be observed by media service providers providing audiovisual media services and sound media services.

(2) Media codes shall provide—

(a) that all news broadcast by a media service provider is reported and presented in an objective and impartial manner and without any expression of the media service provider’s own views,

(b) that the broadcast treatment by media service providers of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the content is presented in an objective and impartial manner and without any expression of the media service provider’s own views,

(c) that anything being likely to

(i) promote, or incite to, crime, or as tending to undermine the authority of the State,

(ii) constitute incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter;

(iii) constitute a public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/54

is not provided by a media service provider,

(d) that in programmes provided by a media service provider, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon,

(e) that a media service provider does not, in the allocation of time for transmitting party political broadcasts, or in the positioning of party political content in an on-demand catalogue, give an unfair preference to any political party,

(f) that in respect of programme material provided by a media service provider that audiences are protected from harmful or offensive material, in particular, that programme material in respect of the portrayal of gratuitous violence and sexual conduct, shall be presented by a media service provider—

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

(ii) in a way as to ensure that children will not normally hear or see them, in order to mitigate the impact of such programming on the physical, mental or moral development of children

(g) that advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any audiovisual media or sound media service, in particular advertising and other such activities which relate to matters likely to be of direct or indirect interest to children, protect the interests of children having particular regard to the general public health interests of children,

(h) that advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any audiovisual media or sound media service, other than advertising and other activities as aforesaid falling within paragraph (g), protect the interests of the audience,

(i) that the provision of an audiovisual media service or sound media service which has, as one of its principal objectives, the promotion of the interests of any organisation, protects the interests of the audience,

(j) for the matters required to be provided for by Chapters [x to x] of the Council Directive

(3) In preparing or revising a media code, the Commission shall have regard to each of the following matters—

(a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description,

(b) the likely size and composition of the potential audience for programmes included in audiovisual media services and sound media services generally, or in audiovisual media services and sound media services of a particular description,

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

(d) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content,

(e) the desirability of securing that the content of an audiovisual media or sound media service identifies when there is a change affecting the nature of the service that is being watched or listened to and, in particular, a change that is relevant to the application of the codes set under this section, and

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

(4) A media code prepared by the Commission under subsection (2)(g) may prohibit the advertising in an audiovisual media or sound media service of a particular class or classes of foods and beverages considered by the Commission to be the subject of public concern in respect of the general public health interests of children, in particular those which contain fat, trans-fatty acids, salts or sugars.

(5) In preparing a media code under subsection (2) (g) the Commission may consult with the relevant public health authorities.

(6) Whenever the Commission prepares or revises a media code relating to the matter in question every media service provider shall comply with such media code and any revision of it.

(7) A copy of any media code shall be presented to the Minister as soon as may be after it is made.

(8) In this Head and Head 70 "teleshopping material" means material which, when transmitted, will constitute a direct offer to the public for the sale or supply to them of goods or other property (whether real or personal) or services.

(9) The following codes prepared under section 19 of the Act of 2001, namely—

(a) the Code of Programme Standards (10 April 2007),

(b) the Children's Advertising Code (1 January 2005), and

(c) the Advertising Code (10 April 2007),

if in force on the passing of this Act, continue in force as if made under the corresponding provision of this section and have effect accordingly.

Explanatory note:

This head is replaces section 42 of the Broadcasting Act 2009. This head gives the Commission the power to formulate media codes in line with the principles and policies set out in this head. Given that the revised Audiovisual Media Services Directive aligns the majority of the rules and requirements for Television Broadcasting Services and On-Demand Audiovisual Media Services, this provision covers both linear broadcasting and on-demand services. This head incorporates the additional requirements of the revised AVMSD in relation to incitement to hatred, terrorism and the protection of minors.

Head 63 - Definition of European works

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1). For the purposes of this Act “European works” means the following:

(a) works originating in the State or another Member State,

(b) works originating in European third states party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of section 2(2),

(c) works co-produced within the framework of agreements related to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements;

(2).

(a) The works referred to in subsection (1) (a) and (b) of the definition of “European works” are works mainly made with authors and workers residing in one or more of the States referred to in this section provided that they comply with one of the following 3 conditions:

(i) they are made by one or more producers established in one or more of those states,

(ii) production of the works is supervised and actually controlled by one or more producers established in one or more of those States, or

(iii) the contribution of co-producers of those states to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

(b) Works that are not European works within the meaning of the definition of “European works” but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the Union supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.

(c) The application of subsection (1) (b) and (c) of this section shall be conditional on works originating in the State or another Member State not being the subject of discriminatory measures in the third country concerned.

Explanatory note

This head provides for a definition of European Works. This definition is based on the definition of European Works in the Revised Audiovisual Media Services Directive.

Head 64 - European works quota

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) On-demand audiovisual media services provided by media service providers shall promote, where practicable and by appropriate means, production of and access to European works.

(2) On-demand audiovisual media services provided by media service providers shall ensure that a minimum of 30% of the works in their catalogues qualify as European works [as defined in Head 64]

(3) Subsection (1) and (2) shall not apply to media service providers with a low turnover or low audience

(4) The Commission shall prepare rules with respect to the application of subsection (3)

(5) In preparing rules under subsection (4), the Commission shall have regard to any relevant guidance produced by the European Commission

(6) A media service provider shall comply with the rules made under subsection (4)

(7) A media service provider that contravenes subsection (6) shall be guilty of a [category X offence]

Explanatory note

This head transposes the requirements of Article 13 of the Revised Audiovisual Media Services Directive. It provides that on-demand audiovisual media services provided by media service providers shall ensure that a minimum of 30% of the works in their catalogues qualify as European works.

Head 65 - Prominence of European works

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) On-demand audiovisual media services shall, in the interests of providing culturally diverse European content to the widest possible audience, ensure the prominence of European works on their service.

(2) The Commission shall prepare rules for media service providers in relation to the prominence of European works for the purposes of subsection (1)

(3) A media service provider shall comply with the rules made under subsection (2)

(4) Subsection (1) shall not apply to media service providers with a low turnover or low audience as defined by the rules made under Head 64(4)

(5) A media service provider which contravenes subsection (3) shall be guilty of an [category X] offence.

Explanatory note

This head transposes the requirements of Article 13 of the Revised Audiovisual Media Services Directive. It provides that the Commission shall prepare rules for media service providers in relation to the prominence of European works on their services.

Head 66 – Reporting

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) The Commission shall report to the Minister on an annual basis on the operation of [preceding sections on quotas and prominence]

(2) A report made under subsection (1) shall be in such form and manner as the Minister may specify.

Explanatory note

This head provides that the Commission shall report to the Minister on an annual basis on the operation of the preceding Heads on European Works quotas and prominence.

Head 67 – Duties of media service providers

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) Every media service provider shall ensure that—

(a) all news broadcast by the media service provider is reported and presented in an objective and impartial manner and without any expression of the broadcaster's own views,

(b) the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of his or her own views, except that should it prove impracticable in relation to a single broadcast to apply this paragraph, two or more related broadcasts may be considered as a whole, if the broadcasts are transmitted within a reasonable period of each other,

(c) in the case of sound broadcasters a minimum of—

(i) not less than 20 per cent of the broadcasting time, and

(ii) if the broadcasting service is provided for more than 12 hours in any one day, two hours of broadcasting time between 07.00 hours and 19.00 hours,

is devoted to the broadcasting of news and current affairs programmes, unless a derogation from this requirement is authorised by the Authority under subsection (3),

(d) anything which may reasonably be regarded as causing harm or offence, or as being likely to promote, or incite to, crime or as tending to undermine the authority of the State, is not broadcast by the broadcaster, and

(e) in programmes broadcast by the media service provider, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon.

(2) Nothing in subsection (1) (a) or (b) prevents a broadcaster from transmitting party political broadcasts provided that a broadcaster does not, in the allocation of time for such broadcasts, give an unfair preference to any political party.

(3) Notwithstanding subsection (1)(c), the Commission may authorise a derogation from the requirement in question in whole or in part in the case of a sound broadcasting service but only if it is satisfied that the authorisation of such a derogation would be beneficial to the listeners of the sound broadcasting service.

(4) The sound broadcasting services established and maintained by RTÉ are deemed to be one sound broadcasting service for the purposes of subsection (1)(c).

(5) A media service provider shall ensure that the broadcast treatment of any proposal, being a proposal concerning policy as regards broadcasting, which is of public controversy or the subject of current public debate, which is being considered by the Government or the Minister, shall be reported and presented in an objective and impartial manner.

(6) Paragraphs (a) and (b) of subsection (1), in so far as they require the media service provider not to express his or her own views, do not apply to any broadcast made under subsection (5).

(7) In the interests of ensuring that the public has access to fair, objective and impartial news and current affairs content on on-demand audiovisual media services and recognising that

certain media service providers have greater obligations in this respect due to their nature and audience reach, a media service provider which

- a) is a broadcasting corporation; or
- b) holds a broadcasting contract under [Part 6 of the current Act]; or
- c) is a media business for the purposes of the Part 3A of the Competition Act 2002 (as amended)

shall ensure that any news and current affairs content provided on any on-demand audiovisual media service operated by that media service provider adheres, as appropriate, to paragraphs (a) and (b) of subsection (1).

Explanatory Note

Updates section 39 of the 2009 Act to align with the OSMR Bill.

In light of the fact that on-demand audiovisual media services are now to be directly regulated, subsection (7) of this provision requires media service providers which are

- a) a broadcasting corporation; or
- b) hold a broadcasting contract under [Part 6 of the current Act]; or
- c) a media business for the purposes of the Part 3A of the Competition Act 2002 (as amended)

to ensure that any news and current affairs content provided on any on-demand audiovisual media service operated by that media service provider adhere to the same standards required of linear broadcasting services under paragraphs (a) and (b) of subsection (1).

The purpose of this requirement is to ensure that on-demand news and current affairs content provided by media service providers with public service characteristics, such as public service broadcasters or broadcasters that are subject to contractual conditions set out by the regulator comply with the same standards as linear broadcasting. More generally, operators of media business in the State as defined by the Competition Act 2002 (as amended) are also subject to these requirements as they play an important role in the dissemination of news and current affairs content to the public. Therefore, the policy intent of this section is to only capture news providers which are ‘professional’ in nature and that adhere to standard journalistic practices.

It is not desirable from a policy perspective to extend the ambit of this provision to cover ODAVMS more generally, as ODAVMS which do not meet the any of the criteria above are not likely to be run as ‘professional’ news outlets and will include services operated by individual citizens. Therefore, in line with the principle of proportionality and Article 40.6 of the Constitution which guarantees the right of individuals to “freely express their convictions and opinions”, it is not considered appropriate to extend the requirements beyond the 3 abovementioned categories.

Head 68 – Retention of programme material

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) A media service provider shall, for the purposes of addressing complaints or investigations made under Head 61 shall retain copies of all programme material for such period as shall be determined by the Commission after the programme material ceases to be available.

(2) The making or retaining of a recording in compliance with subsection (1) is not a contravention of the Copyright and Related Rights Act 2000.

Explanatory Note

Replaces section 40 of the 2009 Act. The scope of the section has been expanded to cover retention of material by on-demand audiovisual media services.

Head 69 – Advertising

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) A programme provided by a media service provider may include advertisements inserted in it.

(2) The total daily times for broadcasting advertisements in a sound broadcasting service must not exceed a maximum of 15 per cent of the total daily broadcasting time and the maximum time to be given to advertisements in any hour shall not exceed a maximum of 10 minutes.

(3) A media service provider shall not broadcast or make available an advertisement which is directed towards a political end or which has any relation to an industrial dispute.

(4) A media service provider shall not broadcast or make available an advertisement which addresses the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation.

(5) Nothing in *subsection (3)* is to be read as preventing the broadcasting of a party political broadcast provided that a media service provider does not, in the allocation of time for such broadcasts, give an unfair preference to any political party.

(6) *Subsection (3)* does not apply to advertisements broadcast or made available at the request of the Referendum Commission in relation to a matter referred to in section 3 of the Act of 1998 concerning a referendum.

(7) In this section, references to advertisements shall be read as including references to advertising matter contained in sponsored programmes, that is to say, in programmes supplied for advertising purposes by or on behalf of an advertiser.

Explanatory Note

Updates section 41 of the 2009 Act to align with the OSMR Bill. On-demand audiovisual media services are included under this section.

Head 70 – Media rules

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) The Commission shall, subject to the requirements of [*Head 69 – Advertising*] and, in accordance with *subsection (4)*, prepare, and from time to time as occasion requires, revise rules (“media rules”) with respect to—

(a) the total daily times that shall be allowed for the transmission of advertisements and teleshopping material on a broadcasting service, in respect of a contract under [Part 6 of the Broadcasting Act, 2009],

(b) the maximum period that shall be allowed within the period of 6.00 and 18:00 and the period of 18.00 and 24:00 for the transmission of advertisements and teleshopping material (within the meaning of [*Head on Media Codes*]) on such a

broadcasting service, and the Commission may make different such rules with respect to different classes of broadcasting service,

(c) the specific steps each media service provider is required to take to promote the understanding and enjoyment by—

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

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

(iii) persons who have a hearing impairment and are partially sighted,

of programmes transmitted on any broadcasting service provided by the media service provider.

(2) Without prejudice to the generality of *subsection (1)(c)*, media rules with respect to that paragraph shall require each provider of audio-visual material to take specified steps to provide access to that material by persons who are deaf or have a hearing impairment, persons who are blind or partially sighted, and persons who have a hearing impairment and are partially sighted by means of specified services such as—

(a) sign language,

(b) subtitling, and audio description, and

(c) with respect to broadcasting services, have regard to whether the foregoing material is being provided—

(i) daily or at other regular intervals,

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

(iii) for news and news-related matters as well as for other matters.

(d) with respect to on-demand audiovisual services, have regard to whether the foregoing material being provided is easily identifiable and accessible

(3) Rules under *subsection (1)(c)* may, in respect of any period specified in them beginning on or after the passing of this Act, require a media service provider to ensure that a specified percentage of programmes transmitted on a broadcasting service provided by him or her in that period employs specified means by which the understanding and enjoyment by persons referred to in *subparagraphs (i), (ii) and (iii)* of that paragraph of that percentage of programmes may be promoted.

(4) Media rules shall provide for the matters required to be provided for by Chapters [x to x] of the Council Directive.

(5) Whenever the Commission prepares or revises a media rule relating to the matter in question every media service provider shall comply as required with such rule and any revision of it.

(6) The Commission shall, from time to time, or as the Minister may direct,, review a media rule made under *subsection (1)(c)*.

(7) In carrying out a review under *subsection (6)* the Commission shall consider the quality of services provided by media service providers in endeavouring to comply with a media rule made under *subsection (1)(c)*.

(8) The Commission shall prepare a report for the Minister, in a form and manner that the Minister may specify, on the operation of this section not later than three years after the commencement of this section, and every three years thereafter.

(9) The following rules namely—

(a) Access Rules (1 January 2005) prepared under section 19 of the Act of 2001, and

(b) rules with respect to the maximum daily and hourly limits on advertising and teleshopping continued under section 19 of the Act of 2001,

if in force on the passing of this Act, continue in force as if made under the corresponding provision of this section and have effect accordingly.

Explanatory Note

Based on section 43 of the 2009 Act. The scope is widened to include on-demand services. Section 1 (b) has been updated to provide for the increased advertising minutage flexibility provided for in the revised AVMSD.

Head 71 – Inspection of draft media codes and rules

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) Before preparing a media code or making a media rule, the Commission shall make available for inspection on request by any person a draft of the media code it proposes to prepare or the media rule it proposes to make and shall have regard to any submissions made to it, within such period as it specifies for the purpose, by that person in relation to the draft before it prepares the media code or makes the media rule concerned.

(2) The Commission shall cause to be published on a website maintained by the Commission, and may cause to be published in a newspaper circulating in the State, notice of the fact that, under *subsection (1)*, a draft referred to in that subsection is available for inspection, of the place at which or the means by which the draft can be inspected and of the period specified by it under that subsection within which submissions may be made to it in relation to the draft.

Explanatory Note

Updates section 44 of the Broadcasting Act 2009 to align with the OSMR Bill.

Head 72 – Presentation of media codes and rules to Minister

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) A copy of any media code or rule shall be presented to the Minister as soon as may be after it is made.

(2) (a) The Minister shall, as soon as may be after the receipt by him or her of a copy of any media code or rule made, cause copies of it to be laid before both Houses of the Oireachtas.

(b) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which a media code or rule was laid before it in accordance with *paragraph (a)*, annul the code or rule.

(c) The annulment of a media code or rule under *paragraph (b)* takes effect immediately on the passing of the resolution concerned but does not affect anything that was done under the code or rule before the passing of the resolution.

(3) Subject to the requirements of Head 62, the Commission shall, review the effect of a media code or rule from time to time as it sees fit, and shall prepare a report in relation to that review and furnish the report to the Minister.

(4) The Minister may, from time to time, direct the Commission to undertake a review of the effect of a media code or rule and the Commission shall prepare a report in relation to the review and furnish a copy of the report to the Minister.

(5) The Minister shall, as soon as may be after the receipt by him or her of the report, cause copies of it to be laid before both Houses of the Oireachtas.

Explanatory Note

Updates section 45 of the 2009 Act to align with the OSMR Bill.

Head 73 – Cooperation with other parties – standards and self-regulation

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) In this section “self-regulatory system” means a system whereby the members of a group of persons with a shared interest voluntarily adhere to rules or code of conduct established by that group.

(2) The Commission may co-operate with or give assistance to one or more persons (whether residing or having their principal place of business in the State or elsewhere) in—

(a) the preparation by that person or those persons of standards, or

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

in respect of audiovisual or audio content or related electronic media.

Explanatory Note

Updates section 46 of the 2009 Act to align with the OSMR Bill.

Head 74 – Code of practice for complaints handling

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) A media service provider shall give due and adequate consideration to a complaint on one or more of the grounds specified in Head 61 in writing by a person in respect of an audiovisual media service provided by a media service provider which, in the opinion of the media service provider, has been made in good faith and is not of a frivolous or vexatious nature.

(2) A complaint under *subsection (1)* shall be made to the media service provider not more than 30 days after—

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

(b) in the case of 2 or more unrelated broadcasts, the date of the earlier or earliest, as the case may be, of those broadcasts, or

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

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

(3) A media service provider shall prepare and implement a code of practice for the handling of complaints made under *subsection (1)*. The code of practice shall make provision for the following matters—

(a) an initial point of contact for complainants, including an electronic-mail address,

(b) a time period within which the media service provider shall respond to complaints, and

(c) the procedures to be followed by the media service provider in the resolution of complaints.

(4) A media service provider shall publish on a website maintained by the media service provider, and generally make available, a copy of the code of practice prepared under *subsection (3)*.

(5) The Commission may prepare and publish guidance for media service providers for the purposes of ensuring compliance with *subsection (3)*.

(6) A media service provider shall supply the information required under *subsection (3)* to the Commission who shall cause such information to be published on a website maintained by the Commission.

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

(8) A media service provider shall, if directed by the Commission, make available for inspection by the Commission all records kept by the media service provider under *subsection (7)*.

Explanatory Note

Updates section 47 of the 2009 Act to align with the OSMR Bill. This provides that media service providers shall formulate codes of practice for complaints handling.

Head 75 – Right of reply

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

Provide that:

(1) Any references to the Authority or Statutory Committee in section 49 of the Broadcasting Act 2009 are replaced by a reference to the Commission.

Explanatory Note

This updates section 49 of the 2009 Act and replaces any reference the Authority or Statutory Committee with a reference to the Commission.

Head 76 – Content levy establishment

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) [The Commission shall make regulations prescribing a levy to be paid by audiovisual media service providers which are

(a) Established in the State, and

(b) Established in other Member States and wholly or mainly targeting audiences in the State

for the purposes of providing financial contributions to the production of European works.

(2) The amount of the levy referred to in subsection (1) shall be calculated in such manner that

(a) the levy imposed solely relates to revenues earned within the State;

(b) it shall not apply to entities with a low audience or low turnover as defined by the rules made under Head 64(4)

(3) In particular, regulations under subsection (1) may provide for any of the following matters:

(a) the activities, services or other matters for which specified kinds of levies are payable;

(b) the media service providers or classes of media service providers who are required to pay specified kinds of levies;

(c) the amounts of specified kinds of levies;

(d) the means by which specified kinds of levies are calculated;

(e) the periods for which, or the dates by which, specified levies are to be paid to the Commission;

(f) the information required to be provided to the Commission which it requires to calculate the liability of media service providers, or classes of media service providers;

(g) procedures to be taken where an media service providers has over paid in respect of their levy obligation(s);

(h) penalties payable by an media service providers who does not pay a levy on time;

(i) the keeping of records, and the making of returns to the Commission, by persons who are liable to pay a specified levy;

(j) matters relating to exemptions from, or deferrals of payment of, the levy or payment of a reduced levy, and the application process for exemptions, deferrals, refunds or reduced levy;

(k) matters relating to the refund of the whole or a part of a levy paid or payable under regulations in force under this section;

(l) the collection and recovery of levies.

(5) A levy shall be payable to the Commission in the [manner/form] prescribed having regard to the terms of the levy order.

(6)) The Commission may, by proceedings in a court of competent jurisdiction, recover as a simple contract debt an amount of levy payable under regulations in force under this section.

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

(8) Section 157 of the 2009 Act is amended by the insertion of a new subsection as follows:

(3) There shall be paid into the current account all monies paid to the Commission under [Head 76] and there shall be paid out of the current account all monies in respect of expenditure by the Commission for the purposes of grants under, and any administration of or reasonable expenses relating to, a scheme duly approved under [Head 77].

Explanatory note

To provide for the Commission to make regulations pertaining to the imposition of a content production levy on media services providers established in the State and target audiences in the State. This applies to providers of both linear and on-demand services. The legal basis for this provision is Article 13 of the revised AVMSD.

It is not intended to commence this section until the Media Commission has carried out a review of the viability of the establishment of a content levy. It is intended that the Minister will direct the Media Commission to carry out a review in line with the provisions of Head 33- Review of Legislation.

It is intended that the collection of the levy will be enforced by way of a liquidated sum debt. The levy sum owed shall be statutorily a liquidated sum debt. The Media Commission will be

able to collect the debt through well-established EU enforcement of foreign judgement procedures and European order for payment processes.

Head 77 – Content levy scheme

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Policy Paper – Regulation of audiovisual media services

Provides that:

(1) The Commission shall prepare and submit to the Minister for his or her approval a scheme or a number of schemes for the granting of funds to support all or any of the following—

(a) audiovisual programmes including feature films, animation and drama on Irish culture, heritage and experience, including—

(i) history (including history relating to particular areas, groups or aspects of experience, activity or influence),

(ii) historical buildings,

(iii) the natural environment,

(iv) folk, rural and vernacular heritage,

(v) traditional and contemporary arts,

(vi) the Irish language, and

(vii) the Irish experience in European and international contexts,

(b) new audiovisual programmes to improve adult or media literacy,

(c) new audiovisual or sound broadcasting programmes which raise public awareness and understanding of global issues impacting on the State and countries other than the State,

(d) programmes under paragraphs (a), (b) and (c) in the Irish language,

(e) the development of archiving of programme material produced in the State, and

(f) such ancillary measures as are necessary to support schemes prepared under paragraphs (a), (b), (c) or (d).

(2) A scheme—

(a) may only fund audiovisual programmes under subsection (1) which are provided—

(i) on an audiovisual media service established in the State or targeting audiences in the State, as the case may be.

(b) may provide funding for projects relating to matters such as research, needs assessments, analyses, feasibility studies and pilot projects in relation to subsection (1) including such projects undertaken by or on behalf of the Minister, and

(c) may not provide funding for programmes which are produced primarily for news or current affairs.

(3) A scheme may provide—

(a) for the making of applications by persons for funding under a scheme,

(b) general terms and conditions of funding, or

(c) that funding in a particular year will be directed at—

(i) particular classes of audiovisual programmes referred to in subsection (1) including but not limited to programmes of a specified nature or subject matter

(ii) particular classes of projects referred to in subsection (1) (e).

(4) The Commission may attach to any particular funding under a scheme such particular terms or conditions as it considers appropriate in the circumstances.

(5) The Commission in preparing a scheme, may have regard to the developmental needs of community broadcasters.

(6) The Commission, in preparing a scheme, shall have regard to the understanding and enjoyment of audiovisual programmes under the scheme by persons who are deaf or hard of hearing.

(7) The Minister may direct the Commission —

- (a) to prepare and submit to him or her a scheme relating to any matter in subsection (1), or
- (b) to amend or revoke a scheme.

The Commission shall comply with the direction.

(8) Any amendment or revocation of a scheme shall be submitted by the Commission to the Minister for his or her approval.

(9) A scheme shall, if approved of by the Minister, be—

- (a) published (including publication by electronic means capable of being read in legible form), and
- (b) carried out in accordance with its terms,

by the Commission.

(10) (a) A scheme shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is made.

(b) Either House of the Oireachtas may, within 21 sitting days after the day on which a scheme was laid before it in accordance with paragraph (a), pass a resolution annulling the scheme.

(c) The annulment under paragraph (b) of a scheme takes effect immediately on the passing of the resolution concerned but does not affect anything that was done under a scheme before the passing of the resolution.

Explanatory Note

The key difference between the draft head and section 154 is that the scope has been modified to include on-demand audiovisual media services. This provision provides for the creation of schemes that will be funded by any levies raised under Head 76.

As with Head 76, it is the intent to only commence this section once research has been carried out showing the viability of a content levy.