

**BROADCASTING ACT 2012****Principal Act**

<b>Act. No. 2012-12</b>	<i>Commencement (LN. 2012/157)</i>	8.11.2012
	<i>Assent</i>	11.10.2012

Amending enactments	Relevant current provisions	Commencement date
LN. 2013/054 <sup>1</sup>	ss. 57(2) & 60(1)(b)	8.11.2012

**Transposing:**

Directive 2007/65/EC

Directive 2010/13/EU

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<sup>1</sup> Notice of corrigenda

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## PART I

### PRELIMINARY

#### **Title and commencement.**

1. This Act may be cited as the Broadcasting Act 2012 and comes into operation on the day appointed by the Minister with responsibility for broadcasting and different days may be appointed for different provisions and for different purposes.

#### **Interpretation.**

2.(1) Interpretation.

“audio commercial communication” means sounds which are designed to promote, directly or indirectly, the goods or services or image of a natural or legal entity pursuing an economic activity and includes radio advertising and sponsorship;

“audio media service” means—

- (a) an audio 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 may be either a radio broadcast or an on demand audio media service, or
- (b) audio commercial communication;

“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 where such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes and includes television advertising, sponsorship, teleshopping and product placement;

“audiovisual media service” means–

- (a) a 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 may be either a television broadcast or an on demand audiovisual media service, or
- (b) audiovisual commercial communication;

“Authority” means the Gibraltar Regulatory Authority established under section 3(1) of the Gibraltar Regulatory Authority Act 2000 or such person or agency as the Minister may, from time to time, appoint;

“AVMS Directive” means Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, as amended from time to time;

“broadcast” 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 signals are actually received or not;

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

“broadcasting service” means a service which comprises a compilation of programme material of any description and which is transmitted, relayed or distributed 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;

“Commission” means the European Commission;

“DTT” means the national Digital Terrestrial Television network;

“editorial responsibility” means the exercise of effective control over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services, and, for the avoidance of doubt, editorial responsibility does not necessarily imply any legal liability for the content or services provided;

“electronic communications network” shall have the meaning assigned to it in the Communications Act 2006;

“European works” means the following—

- (a) works originating in Gibraltar or in a Member State;
- (b) works originating in European States outside the European Union which are party to the European Convention on Transfrontier Television of the Council of Europe and which fulfil the requirements set out in subsection (2)(b) below;
- (c) works co-produced within the framework of agreements related to the audiovisual sector concluded between the European Union and third countries and fulfilling the conditions set out in those agreements;

“GBC” means the Gibraltar Broadcasting Corporation;

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

- (a) the nature and characteristics of material published by means of broadcast and related electronic media;



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- (b) the processes by which such material is selected, or made available, for publication by broadcast and related electronic media;
- (c) the processes by which individuals and communities can create and publish audio or audio-visual material by means of broadcast and related electronic media; and
- (d) the available systems by which access to material published by means of broadcast and related electronic media is or can be regulated;

“media service provider” means the natural or legal person who has editorial responsibility for the choice of the audio content or audiovisual content, or both, of the audio or audiovisual media service (including but not limited to DTT service) and determines the manner in which it is organised;

“Minister” means the Minister with responsibility for broadcasting;

“national network” includes any network offered to substantially the whole of Gibraltar, whether free of charge, subscription, pay per view or otherwise, whether or not special steps need to be taken to connect the public to that network, providing that Gibraltar forms the principle target audience of that network and is not predominantly comprised of the relaying of another network;

“Non-European works” means works other than works within the definition of “European works”;

“on-demand media service” means a non-linear media service provided by a media service provider for the viewing or listening of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider;

“product placement” means any form of audiovisual commercial communication consisting of the inclusion or reference to a product, a service or a trademark so that it is featured within a programme, in return for payment or for similar consideration;

“programme” means a set of sounds or moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and whose form and content is comparable to the form and content of radio or television broadcasting;

“Public Service Broadcasting” means to–

- (a) provide a comprehensive range of programmes that reflects the cultural diversity of Gibraltar and include programmes that inform, educate and entertain, provide coverage of sporting, religious and cultural activities and cater for the expectations of the community generally as well as members of the community with special or minority interests and which, in every case, respect human dignity;
- (b) provide programmes of news and current affairs, including programmes that provide coverage of proceedings in Parliament; and
- (c) facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting;

to the extent required by the Authority;

“radio broadcasting” or “radio broadcast” means the transmission by wire or over the air, including that by satellite or via satellite uplinks, in unencoded or encoded form, of radio programmes intended for reception by the public, excluding the communication of programmes between undertakings with a view to their being relayed to the public;

“relevant turnover” means such gross revenues as each holder of a licence may have generated from activities under that licence in the previous financial year;

“sponsorship” means any contribution made by a public or private undertaking or natural person not engaged in providing audio media services or audiovisual media services, or both, or in the production of audio works or audiovisual works, or both, to the financing of audio media services or audiovisual media services, or both, or programmes with a view to promoting its name, its trade mark, its image, its activities or its products;

“surreptitious commercial communication” means the representation in words or pictures 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;

“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, or rights and obligation, in return for payment but except of the purposes of section 29, does not include direct offers to public for the sale, purchase or rental of products or for the provision of services in return for payment;

“television broadcasting” or “television broadcast” means a linear audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;

“TFEU” means the Treaty on the functioning of the European Union.

(1A) For the purposes of the definition of the term “European works” in subsection (1), the following provisions shall apply–

- (a) the application of the provisions in paragraphs (b) and (c) of the definition shall be conditional on works originating in the European Union not being subject to discriminatory measures in the third country concerned;
- (b) the works referred to in paragraphs (a) and (b) of the definition are works mainly made with authors and workers residing in one or more of the places referred to in those paragraphs provided that they comply with one of the following three conditions–
  - (i) they are made by one or more producers established in one or more of those places;
  - (ii) the production of the works is supervised and actually controlled by one or more producers established in one or more of those places;
  - (iii) the contribution of co-producers from those places to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those places;

- (c) works that are not European works but that are produced within the framework of bilateral co-production agreements concluded between Gibraltar or Member States and third countries shall be deemed to be European works provided that—
  - (i) the co-producers from the European Union supply a majority share of the total cost of production; and
  - (ii) the production is not controlled by one or more producers established outside the European Union.

(1B) All media service providers under Gibraltar jurisdiction shall comply with this Act and with all other laws in force in Gibraltar applicable to media services intended for the public.

(1C) For the purposes of this Act, the media service providers under Gibraltar jurisdiction are any of the following—

- (a) those established in Gibraltar in accordance with subsection (2);
- (b) those to whom subsections (3) or (4) apply.

(2) A media service provider shall be deemed to be established in Gibraltar in the following cases—

- (a) the media service provider has its head office in Gibraltar and the editorial decisions about the audiovisual media service are taken in Gibraltar;
- (b) if a media service provider has its head office in a Member State but editorial decisions on the audiovisual media service are taken in Gibraltar (or vice versa), it shall be deemed to be established in the place where a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in Gibraltar and a Member State, the media service provider shall be deemed to be established where it has its head office. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in neither Gibraltar nor a Member State, the media service provider shall be deemed to be established where it first began its activity in accordance with the local law, provided that it maintains a stable and effective link with the economy of that jurisdiction;

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- (c) if a media service provider has its head office in Gibraltar but decisions on the audiovisual media service are taken in a third country, or vice-versa, it shall be deemed to be established in Gibraltar, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in Gibraltar; or
- (d) if the media service provider is established in a third country and is licensed under the provisions of this Act (including where it has been licensed to provide a broadcasting service on DTT (which may include Non-European works)).

(3) Media service providers to whom the provisions of subsection (2) are not applicable shall be deemed to be under the jurisdiction of Gibraltar in the following cases–

- (a) they use a satellite up-link situated in Gibraltar;
- (b) although they do not use a satellite up-link situated in Gibraltar, they use satellite capacity appertaining to that of Gibraltar.

(4) If the question as to whether Gibraltar or a Member State has jurisdiction cannot be determined in accordance with subsections (2) and (3), the competent jurisdiction shall be that in which the media service provider is established within the meaning of the TFEU.

(5) Part IV (“Broadcasting standards”) and Part VI (“right to reply”) of this Act shall apply mutatis mutandis in respect of radio broadcasts.

- (6) This Act does not apply to audiovisual media services which–
  - (a) are intended exclusively for reception in third countries; and
  - (b) are not received with standard consumer equipment directly or indirectly by the public in Gibraltar or in one or more Member States.

(7) For the avoidance of doubt the GBC is a media service provider under Gibraltar jurisdiction within the meaning of this Act and as such is subject to the provisions of this Act subject to any exemptions included within this Act.

## PART II

### ADMINISTRATION, ETC

**Duty of the Minister and the Authority.**

3.(1) The Minister and the Authority shall each have a duty to perform the functions assigned to or conferred on them by or under this Act and regulations made under it.

(2) The Minister and the Authority may do anything that appears to them to be incidental or conducive to the carrying out of their duties.

**General functions of the Authority.**

4.(1) The Authority shall, together with such other functions as may be assigned to or conferred on it under this Act or regulations made under it, have the function of—

- (a) regulating, supervising and enforcing compliance with the conditions subject to which—
  - (i) a licence may be granted under this Act;
  - (ii) the rights contained in a licence granted under the Act may be exercised; or
  - (iii) a licence may be granted under this Act and the rights contained in a licence granted under this Act may be exercised;
- (b) without prejudice to paragraph (a), investigating any breach of any one or more of the following—
  - (i) this Act;
  - (ii) regulations made under this Act;
  - (iii) any condition subject to which a licence under this Act may have been granted;
  - (iv) any condition subject to which the exercise of the rights contained in a licence granted under this Act may have been authorised;
  - (v) any code of practice;
- (c) regulating such apparatus as may be or may be sought to be—
  - (i) connected to a broadcasting network;

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- (ii) used for the provision of or in connection with a broadcasting service; or
- (iii) connected as in paragraph (i) and used as in paragraph (ii);
- (d) controlling such standards and technical specifications in any matter relating to broadcasting, including the reception and access by consumers to signals, as may be mandatory under this Act or regulations made under it or any other provision of Gibraltar law or Community law.

(2) The Authority shall—

- (a) keep under review the operation of this Act and regulations made under it;
- (b) make recommendations to the Minister regarding such amendments to this Act and regulations made under it as it considers necessary; and
- (c) give such information, advice and assistance to the Minister as the Minister considers appropriate on matters concerning broadcasting.

## **Publication of information and advice.**

5.(1) The Authority may arrange for the publication, in such form and in such manner as the Authority may consider appropriate, of such information and advice as it may appear to the Authority to be expedient to give to consumers, purchasers and other users of broadcasting services, or apparatus in Gibraltar. This shall include undertaking and encouraging measures and activities which are directed towards the promotion of media literacy including co-operation with broadcasters, educationalists and other relevant persons.

(2) In arranging for the publication of any of the information or advice referred to in subsection (1), the Authority shall have regard to the need for excluding, so far as is practicable—

- (a) any matter which relates to the private affairs of an individual where the publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of a particular body of persons where publication of that matter

would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that body.

**Power to require information etc.**

6.(1) The Authority may, for the purpose of performing the functions assigned to or conferred upon it by or under this Act, by notice—

- (a) require any person to produce, at a time and place specified in the notice, to the Authority, or to any person appointed by it for the purpose, any information which is specified or described in the notice and is in that person's custody or control; or
- (b) require any person carrying on any business to furnish to the Authority, such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished, but no person shall be compelled for any such purpose to produce any documents which he could not be compelled to produce in civil proceedings before the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

(2) A notice issued under subsection (1) shall—

- (a) be proportionate to the use to which the information is to be put in the carrying out of the Authority's functions; and
- (b) give the reasons justifying the requirement for the information, including a statement as to which of the Authority's functions gives rise to the request.

(3) A person served with a notice pursuant to subsection (1) must provide the information requested in the notice in such manner, detail and within such reasonable period as may be specified in the notice.

(4) A person who, without reasonable excuse, fails to do anything duly required of him by a notice under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) If a person makes default in complying with a notice under subsection (1), the court may, on the application of the Authority, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of, and incidental to, the



application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

- (6) The Minister may by regulations prescribe—
- (a) any further particulars which may apply in specific cases and circumstances to a requirement to provide information pursuant to this section; and
  - (b) the cases and circumstances under which a financial penalty may be imposed on a person who fails to comply with a notice issued under this section.

### **Making false or misleading statements.**

7.(1) A person who—

- (a) intentionally alters, suppresses or destroys any document, including a document in electronic form, which he has been required to produce by a notice under section 6(1);
- (b) by furnishing any estimate, return or other information required of him under a notice under section 6(1), or otherwise in purported compliance with a requirement under this Act, furnishes information or makes any statement which he knows to be false or misleading in a material particular, or recklessly furnishes information or makes a statement which is false or misleading in a material particular; or
- (c) with intent to avoid detection of an offence or liability to a penalty under this Act removes from Gibraltar, destroys, conceals or fraudulently alters any books or papers including any material held electronically,

commits an offence.

- (2) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

### **General restrictions on disclosure of information.**

8.(1) Subject to the following provisions of this section, no information with respect to a particular business which—

- (a) has been obtained under or by virtue of this Act; and
- (b) relates to the private affairs of any individual or to any particular business,

shall during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Subsection (1) does not apply to any disclosure of information which is made for any one or more of the following reasons—

- (a) for the purpose of facilitating the performance of any duties or functions assigned to or conferred on the Minister or the Authority by or under this Act;
- (b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (c) for the purpose of any civil proceedings brought under or by virtue of this Act;
- (d) to comply with directions of the Supreme Court;
- (e) in pursuance of a European Union obligation.

(3) Nothing in subsection (1) shall be construed as any one or more of the following—

- (a) limiting the matters which may be published under section 12 or which may be included in, or made public as part of, a report of the Minister or the Authority under this Act;
- (b) applying to any information which has been so published or has been made public as part of such a report;
- (c) limiting the matters which may be published under any regulations made under this Act.

(4) Any person who discloses any information in contravention of this section commits an offence and is liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale ; or

- (b) on conviction on indictment, to a fine.

## **Regulations.**

9.(1) The Minister may make regulations in respect of any matter and for any purpose relating to the application of this Act and for more effectually carrying into effect the objects of this Act, and without in any manner restricting the foregoing powers, such regulations may provide for the following—

- (a) for any matter or purpose concerning the full and proper implementation of the AVMS Directive; and
- (b) the procedure and principles for the imposition of financial penalties on a person who fails to comply with an obligation imposed on that person under, or pursuant to, this Act or with any other requirement as may be specified under, or pursuant to, this Act.

(2) Regulations made under this Act may, without prejudice to subsection (1),—

- (a) as far as the contravention of any one or more of those regulations is concerned, prescribe that a contravention is an offence;
- (b) as far as the liability of a person guilty of an offence of the nature referred to in paragraph (a) is concerned, prescribe any one or more of the following and whether jointly or in the alternative—
  - (i) on summary conviction to imprisonment for a term not exceeding six months;
  - (ii) on summary conviction to a fine not exceeding level 5 on the standard scale;
  - (iii) on conviction on indictment, to imprisonment for a term not exceeding two years;
  - (iv) on conviction on indictment, to a fine;
- (c) make different provision for different cases, including different provision in relation to different persons, services, circumstances or localities;

- (d) exempt any person, or provide for any person to be exempted, from any of the provisions of this Act.

(3) A regulation made under this Act which prescribes a period within which things are to be done may, without prejudice to its generality, provide for extending the period so prescribed.

(4) Any power conferred by this Act to make regulations includes power, by a subsequent regulation, to vary or revoke any regulation so made.

**Power to establish advisory bodies.**

10.(1) The Minister may establish an advisory body or bodies for the purpose of assisting him or the Authority or both in the performance of any of the functions assigned to or conferred on each or both of them, as the case may be, by or under this Act or regulations made under it.

(2) Each body established under subsection (1) shall consist of such members as the Minister may from time to time appoint.

(3) Each and every appointment under subsection (2) may be revoked by the Minister at any time.

(4) The Minister may establish rules of procedure for the bodies referred to in subsection (1).

(5) The Minister may, to such extent as may be approved by Parliament, defray or contribute towards the expenses of an advisory body established under this section.

**Annual reports.**

11. Every report made by the Authority under section 12 of the Gibraltar Regulatory Authority Act 2000 shall include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Authority's functions.

**Directions by the Authority.**

12. The Authority may issue directions to persons who are subject to the provisions of this Act, whether individually or generally, requiring them to do or refrain from doing anything which the Authority may consider necessary for such person to comply with any provision of, or any condition, obligation or other requirement applicable to such person pursuant to, this Act and such person shall give effect to any such direction.

**Administrative notices.**

13.(1) Without prejudice to sections 5 and 12, the Authority may cause to be published in the form of administrative notices statements setting out the criteria and any variation in the criteria from time to time by reference to which the Authority proposes to exercise its respective functions under this Act.

(2) Without prejudice to subsection (1), the Authority may publish in the form of administrative notices criteria to facilitate compliance in Gibraltar with any relevant European Union obligation.

### **The power of the Authority to issue notices.**

14. Without prejudice to sections 5, 12 and 13, the Authority may cause to be published in the form of notices any matter for which it is responsible under or pursuant to this Act including any European Union obligation with which the Authority is required to comply.

## **PART III**

### **LICENSING OF BROADCASTERS**

#### **General licensing powers.**

15.(1) A media service provider under Gibraltar jurisdiction shall require a licence issued by the Authority, except where that person is with respect to such broadcasts under the jurisdiction of a Member State for the purposes of Article 2 of the AVMS Directive, or any retransmissions of broadcasts under such jurisdiction.

(2) The Authority shall not grant a licence otherwise than in accordance with an application made and determined in accordance with this Act.

(3) Subsection (1) shall not apply to such broadcasting services as the Minister may, after consultation with the Authority, by regulation prescribe.

(4) Subsection (1) shall not apply to such persons as the Minister may, after consultation with the Authority, by regulation prescribe and shall not apply to such broadcasts made pursuant to this Act by the GBC.

(5) The licence shall be in the form approved by the Authority.

(6) The Minister shall by regulation prescribe the fees to be payable for licences under this section.

(7) The procedures for the grant under this Act of licences shall be open, non-discriminatory and transparent and shall, to this end, be applied equally

to every application for such a licence save where there is an objective reason to the contrary.

(8) A person who acts in contravention of subsection (1), commits an offence and is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceed two years or to a fine or both.

**Requirements of Communications Act 2006 unaffected.**

16.(1) The grant of a licence under this section does not relieve the person so licensed (or any person whose services the person so licensed may contract) of any requirement to hold a licence under Part VI of the Communications Act 2006 or any other licence required under this Act, the Communications Act 2006 or any other Act.

(2) For the avoidance of doubt, Part VI of the Communications Act 2006 shall apply to the GBC.

**Matters to be considered by the Authority.**

17. The Authority shall have regard to all the matters listed in Schedule 1 to this Act when granting licences under this Part.

**Restrictions on the holding of licences.**

18.(1) The Authority shall ensure that a person does not become or remain the holder of a licence if he is a disqualified person in relation to that licence by virtue of Schedule 2 to this Act.

(2) The Authority may accordingly—

- (a) require any applicant for a licence to provide it with such information as it may reasonably require for the purpose of determining—
  - (i) whether he is such a disqualified person as is mentioned in subsection (1), and
  - (ii) if so, what steps would be required to be taken by or in relation to him in order for any such requirements to be complied with;

- (b) revoke the award of a licence to a body where a relevant change takes place after the award, but before the grant, of the licence;
- (c) make the grant of a licence to any person conditional on the taking of any specified steps that appear to it to be required to be taken as mentioned in paragraph (a)(ii); and
- (d) impose conditions in any licence enabling it to require the licence holder, if a body corporate, to give to it advance notice of proposals affecting–
  - (i) shareholdings in the body, or
  - (ii) the directors of the body,where such proposals are known to the body;
- (e) impose conditions in a licence requiring the licence holder, if a body corporate, to give the Authority notice, after they have occurred and irrespective of whether proposals for them have fallen to be notified, of changes, transactions or events affecting–
  - (i) shareholdings in the body; or
  - (ii) the directors of the body; and
- (f) impose conditions in a licence enabling the Authority to require the licence holder to provide it with such information as it may reasonably require for determining whether the licence holder is a disqualified person in relation to that licence by virtue of Schedule 2.

(3) Where the Authority–

- (a) revokes the award of any licence in pursuance of subsection (2)(b), or
- (b) determines that any condition imposed by him in relation to any licence in pursuance of subsection (2)(c) has not been satisfied,

any provisions of this Part relating to the awarding of licences of the kind in question shall (subject to subsection (4)) have effect as if the person to

whom the licence was awarded or granted had not made an application for it.

(4) Those provisions shall not so have effect if the Authority decides that it would be desirable to publish a fresh notice under this Part in respect of the grant of a licence, or (as the case may be) a further licence, to provide the service in question.

(5) Every licence shall include such conditions as the Authority considers necessary or expedient to ensure that where—

- (a) the holder of the licence is a body; and
- (b) a relevant change takes place after the grant of the licence,

the Authority may revoke the licence by notice served on the holder of the licence and taking effect forthwith or on a date specified in the notice.

(6) The Authority shall not serve any such notice on the licence holder unless it has given him a reasonable opportunity of making representations to him about the matters complained of.

(7) In this section “relevant change”, in relation to a body to which a licence has been awarded or granted, means—

- (a) any change affecting the nature or characteristics of the body;  
or
- (b) any change in the persons having control over or interests in the body,

being (in either case) a change which is such that, if it fell to the Authority to determine whether to award the licence to the body in the new circumstances of the case, it would be induced by the change to refrain from so awarding it.

#### **Enforcement of licences.**

19.(1) If the Authority is satisfied that a licensee has failed to comply with any condition of the licence and that that failure can be appropriately remedied by the inclusion in a broadcast by the licensee of a correction or apology (or both) it may (subject to subsection (2)) direct the licensee to include in a broadcast a correction or an apology (or both) in such form, and at such time, or times as it may determine.



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(2) The Authority shall not give any licensee a direction under subsection (1) unless it has given the licensee a reasonable opportunity of making representations to it about the matters complained of.

(3) Where a licensee includes a correction or apology in its broadcasts in pursuance of a direction under subsection (1), the licensee may announce that it is doing so in pursuance of such a direction.

(4) For the avoidance of doubt, this section shall apply to the GBC.

## **Financial penalties.**

20.(1) If the Authority is satisfied that a licensee has failed to comply with any condition of the licence or with any direction given by the Authority under or by virtue of any provision of this Part, the Authority may (subject to the following provisions) serve on the licensee—

- (a) a notice requiring the licensee to pay, within a specified period, a specified financial penalty to the Government; or
- (b) a notice reducing the period for which the licence is to be in force by a specified period not exceeding two years.

(2) The amount of any financial penalty imposed on any licensee in pursuance of subsection (1)(a)—

- (a) shall, if such a penalty has not previously been so imposed on that licensee during any period for which the licence has been in force (“the relevant period”), not exceed 5 per cent of the relevant turnover for the licensee’s last complete accounting period; and
- (b) shall, in any other case, not exceed 10 per cent of the relevant turnover for that accounting period;

and in relation to a licensee whose first complete accounting period falling within the relevant period has not yet ended, paragraphs (a) and (b) above shall be construed as referring to 5, or (as the case may be) 10 percent of the amount which the Authority estimates to be the relevant turnover for that accounting period (as so determined).

(3) The Authority shall not serve on any licensee such a notice as is mentioned in subsection 1(a) or (b) unless it has given the licensee a reasonable opportunity of making representations to the Authority about the matter complained of.

(4) Where a licence is due to expire on a particular date by virtue of a notice served on any licensee under subsection 1(b), the Authority may, on the application of that licensee to the Authority, revoke that notice by a further notice served on the licensee before that date, if he is satisfied that, since the date of the earlier notice, the licensee's conduct in relation to the operation of its licence has been such as to justify the revocation of that notice.

(5) Any exercise by the Authority of its powers under subsection (1) of this section in respect of any failure to comply with any condition of a licence shall not preclude any exercise by the Authority of its powers under section 19 in respect of that failure.

(6) For the avoidance of doubt, subsections (1)(a), (2) and (3) shall apply to the GBC.

#### **Enforcement notices and licence revocation.**

21.(1) If the Authority is satisfied—

- (a) that a licensee is failing to comply with any condition of the licence or with any direction given by the Authority under or by virtue of this Part; and
- (b) failure is such that, if not remedied, it would justify the revocation of the licence,

it shall, (subject to subsection (8)) serve on the licensee a notice under subsection (2).

(2) A notice under this subsection is a notice—

- (a) stating that the Authority is satisfied as mentioned in subsection (1);
- (b) specifying the respects in which, in its opinion, the licensee is failing to comply with any such condition or direction as is there mentioned; and
- (c) stating that, unless the licensee takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, the Authority will revoke the licence under subsection (3).

(3) If at the end of the period specified in a notice under subsection (2) the Authority is satisfied—

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- (a) that the licensee on whom the notice was served has failed to take the steps specified in it, and
- (b) that it is necessary in the public interest to revoke the licence,

it shall (subject to subsection (8)) serve on the licensee a notice revoking the licence.

(4) If the Authority is satisfied—

- (a) that a licensee has ceased to provide the licensed service before the end of the period for which the licence is to continue in force; and
- (b) that it is appropriate for him to do so,

it shall (subject to subsection (8)) serve on the licensee a notice revoking the licence.

(5) If the Authority is satisfied—

- (a) that the licensee provided the Authority, in connection with the application for the licence, with information which was false in a material particular; or
- (b) that, in connection with the application for the licence, the holder of such a licence withheld any material information with the intention of causing it to be misled,

it may (subject to subsection (8)) serve on the licensee a notice revoking the licence.

(6) Subject to subsection (7), any notice served under subsections (3), (4) or (5) shall take effect as from the time when it is served on the licensee.

(7) If it appears to the Authority to be appropriate to do so for the purpose of preserving continuity in the provision of the service in question, it may provide in any such notice for it to take effect as from a date specified in it.

(8) The Authority shall not serve any notice on a licensee under this section unless it has given the licensee a reasonable opportunity of making representations to him about the matters complained of.

## PART IV

### BROADCASTING STANDARDS

**Codes of practice.**

22.(1) The Authority may from time to time with respect to any form of broadcasting or other audio media service or audiovisual media service, or both, issue codes of practice to broadcasters under Gibraltar jurisdiction which may address any issues with respect to broadcasting standards, taste, decency, accessibility to the disabled, the advertising of products to children, and such other issues as should from time to time appear important.

(2) If a licensee fails to comply with a code of practice, the provisions of section 20 shall apply as if the failure to comply with the code of practice were a failure to comply with a licence condition.

**Political broadcasting.**

23. Schedule 3 shall apply in respect of radio and television broadcasts, and any code of practice issued under that Schedule shall be deemed to have been issued under section 22 of this Act.

**Broadcasters' duties.**

24.(1) Every broadcaster shall ensure that—

- (a) all news broadcast by the broadcaster is reported and presented in an objective and impartial manner and without any expression of the broadcaster's own views; and
- (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 its own views.

(2) Nothing in subsection (1)(a) prevents a broadcaster from transmitting party political broadcasts in accordance with any code of practice issued by the Authority.

**Recording of broadcasts.**

25.(1) A broadcaster, by means of its own facilities and in a manner approved of for the purposes of this section by the Authority, shall record every broadcast made by the broadcaster.

(2) Recordings made in compliance with subsection (1), shall be retained by the broadcaster for such period as may be determined by the Authority for the purposes of this section.

(3) When a complaint is being investigated by the Authority under section 39, the recording of a broadcast to which the complaint relates, together with the recording, made and being retained under this section, of any other broadcast which in the opinion of the Authority is relevant to that broadcast, shall be supplied by the broadcaster to the Authority on a request made by the Authority at any time during such period.

## **Information in respect of providers of media services.**

26. Any provider of audio media services or audiovisual media services, or both, shall make easily, directly and permanently available to the recipients of the service—

- (a) the name of the media service provider;
- (b) the geographical address at which the media service provider is established;
- (c) the details of the media service provider, including his electronic mail address or website, which allow him to be contacted rapidly in a direct and effective manner; and
- (d) where applicable, the competent regulatory or supervisory bodies.

## **Prohibition on broadcasting cinematographic work.**

27. No audiovisual media service provider under Gibraltar jurisdiction shall broadcast or transmit any cinematographic works outside the periods which have agreed with the rights holders.

## **Prohibition on incitement to hatred.**

28. No audio media service or audiovisual media service shall contain any incitement to hatred at all whether based on race, sex, age, sexual orientation, religion, nationality or otherwise.

## **Accessibility.**

28A. The Authority shall encourage media service providers under Gibraltar jurisdiction to ensure that their services are progressively made accessible to people with disabilities affecting their sight or hearing or both.

## **Audiovisual commercial communications.**

29.(1) The following are prohibited in Gibraltar—

- (a) surreptitious audiovisual commercial communication;
- (b) all forms of audiovisual commercial communications for cigarettes and other tobacco products;
- (c) all forms of audiovisual commercial communications for medicinal products and medical treatment available only on prescription.

(2) Media service providers under Gibraltar jurisdiction shall ensure that the audiovisual commercial communications they provide–

- (a) are readily recognisable as such;
- (b) do not use subliminal techniques;
- (c) do not–
  - (i) prejudice respect for human dignity;
  - (ii) include or promote any discrimination on grounds of sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
  - (iii) encourage behaviour prejudicial to health or to safety;
  - (iv) encourage behaviour prejudicial to the protection of the environment.

(3) Audiovisual commercial communications for alcoholic beverages shall comply, in addition to subsection (2), with the following criteria, that is to say, they shall not–

- (a) be aimed specifically at minors;
- (b) encourage immoderate consumption of alcoholic beverages.

(4) Audiovisual commercial communications shall not cause moral or physical detriment to minors, and shall therefore comply with the following criteria for their protection, that is to say, they shall not–

- (a) directly exhort minors to buy or hire a product or a service by exploiting their inexperience or credulity;
- (b) directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;

- (c) exploit the special trust minors place in parents, teachers or other persons;
- (d) unreasonably show minors in dangerous situations.

(5) The Authority shall encourage media service providers under Gibraltar jurisdiction to develop codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, excessive intakes of which in the overall diet are not recommended, and such nutrients and substances shall include, in particular, fat, trans-fatty acids, salt/sodium and sugars.

## **Basic requirements on television advertising and teleshopping.**

29A.(1) Television advertising and teleshopping shall–

- (a) be readily recognisable and distinguishable from editorial content; and
- (b) without prejudice to the use of new advertising techniques, be kept quite distinct from other parts of the programme by optical, acoustic or spatial means or any combination of those means.

(2) Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.

## **Insertion during programmes.**

29B.(1) Television advertising and teleshopping may be inserted during a programme provided that they are inserted in such a way that–

- (a) the integrity of the programme, taking into account natural breaks in and the duration and nature of the programme; and
- (b) the rights of the rights holders,

are not prejudiced.

(2) The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising or teleshopping once for each scheduled period of at least thirty minutes.

(3) The transmission of children's programmes may be interrupted by television advertising or teleshopping once for each scheduled period of at least thirty minutes, provided that the scheduled duration of the programme is greater than thirty minutes.

(4) No television advertising or teleshopping shall be inserted during religious services.

**Teleshopping for medicinal products or treatment.**

29C. Teleshopping for medicinal products which are subject to a market authorisation within the meaning of Directive 2001/83/EC of 6 November 2001 on the Community Code relating to medicinal products for human use, as the same may be amended from time to time, as well as teleshopping for medicinal treatment, shall be prohibited.

**Television advertising and teleshopping for alcoholic beverages.**

29D. Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria, that is to say, they shall not—

- (a) be aimed specifically at minors or, in particular, depict minors consuming these beverages;
- (b) link the consumption of alcohol to enhanced physical performance or to driving;
- (c) create the impression that the consumption of alcohol contributes towards social or sexual success;
- (d) claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
- (e) encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light; and
- (f) place emphasis on high alcoholic content as being a positive quality of the beverages.

**Advertising and teleshopping time as a percentage of transmission time.**

30.(1) The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20%.

(2) Subsection (1) shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products



directly derived from those programmes, sponsorship announcements and product placements.

## **Teleshopping windows.**

30A. Teleshopping windows shall be clearly identified as such by optical and acoustic means and shall be of a minimum uninterrupted duration of 15 minutes.

## **Television broadcasts intended only for Gibraltar.**

30B. Without prejudice to section 72B, and with due regard for European Union law, the Authority may lay down conditions other than those laid down in section 29B(2) to (4) and section 30 in respect of television broadcasts intended exclusively for reception in Gibraltar and which are not capable of being received, directly or indirectly, in one or more Member States.

## **Sponsored television programmes.**

31.(1) Audiovisual media services or programmes that are sponsored shall meet the following requirements—

- (a) the content and, in the case of television broadcasting, scheduling shall not be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the media service provider;
- (aa) viewers shall be clearly informed of the existence of a sponsorship agreement;
- (b) they shall be clearly identified as a sponsored programme by the name or logo of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning or the end of the programme;
- (c) they shall not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services.

(2) Audiovisual media services or programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

(3) The sponsorship of audiovisual media services by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

(4) News and current affairs programmes shall not be sponsored.

### **Product placement.**

32.(1) The following section applies only in respect of programmes produced after 19 December 2009.

(2) Product placement shall be prohibited except in—

- (a) cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, or
- (b) where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme,

provided always that sub-paragraph (a) shall not apply in respect of children's programmes.

(3) Programmes that contain product placement permitted by virtue of subsection (2) shall meet the following requirements—

- (a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;
- (b) shall not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services;
- (c) they shall not give undue prominence to the product; and
- (d) except where the programme was produced by someone other than the media service provider itself or an affiliate thereof, viewers shall be clearly informed of the existence of product placement, at both—
  - (i) the start of the programme; and

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- (ii) where the programme resumes after an advertising break, when the programme resumes.

(4) Programmes shall not contain product placement of–

- (a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products ; or
- (b) specific medicinal products or medical treatments available only on prescription in the jurisdiction which the media service provider falls under.

### **Teleshopping and self-promotion channels.**

33.(1) The provisions of this Act shall apply mutatis mutandis to–

- (a) channels exclusively devoted to teleshopping and advertising;  
and
- (b) channels exclusively devoted to self-promotion.

(2) Subsections 29B(2), (3) and (4), section 30 and section 30A shall not apply to these channels.

### **Advertising in audio media services.**

34.(1) No audio commercial communications shall be inserted during religious services.

(2) Audio commercial communications shall not–

- (a) prejudice respect for human dignity;
- (b) include any discrimination on grounds of race, sex, age, disability, sexual orientation or nationality;
- (c) be offensive to religious or political beliefs;
- (d) encourage behaviour prejudicial to health or to safety;
- (e) encourage behaviour prejudicial to the protection of the environment; or
- (f) contain advertising for cigarettes and other tobacco products.

(3) Audio commercial communications for medicinal products and medical treatment available only on prescription are prohibited.

(4) Audio commercial communications in respect of alcoholic beverages shall comply with the following criteria, that is to say they shall not—

- (a) be aimed specifically at minors or, in particular, depict minors consuming these beverages;
- (b) link the consumption of alcohol to enhanced physical performance or to driving;
- (c) create the impression that the consumption of alcohol contributes towards social or sexual success;
- (d) claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
- (e) encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light; or
- (f) place emphasis on high alcoholic content as being a positive quality of the beverages.

(5) Audio commercial communications shall not cause moral or physical detriment to minors, and shall therefore comply with the following criteria for their protection, that is to say it shall not—

- (a) directly encourage minors to buy a product or a service by exploiting their inexperience or credulity;
- (b) directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
- (c) exploit the special trust minors place in parents, teachers or other persons; or
- (d) unreasonably show minors in dangerous situations.

**Protection of minors.**

35.(1) Television and radio broadcasts provided by any person under Gibraltar jurisdiction shall not include any programme which involves pornography or gratuitous violence.

(2) Television or radio broadcasts and on-demand media services, provided they are under Gibraltar jurisdiction, shall not include any

programme which might, other than by virtue of the matters referred to in subsection (1), seriously impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts or such on-demand services.

(3) When such programmes are in unencoded form, the media service provider in Gibraltar shall ensure that they are preceded by an acoustic warning or are identified in the presence of a visual symbol throughout their duration.

## **Broadcasts aimed primarily outside of Gibraltar.**

36.(1). This section applies where—

- (a) a media service provider under the jurisdiction of Gibraltar provides a television broadcast which is wholly or mostly directed towards a Member State;
- (b) media service providers within that Member State are subject to more detailed and stricter rules of general public interest than those required by the AVMS Directive; and
- (c) the Authority is contacted by the Member State concerned under the procedure set out in Article 3 of the AVMS Directive.

(2) The Authority shall request the broadcaster to comply with the rules of general public interest in question, and shall enforce such rules as if they were provided for under this Act.

## **Proportion of distribution and production of television programmes.**

36A.(1) Broadcasters under Gibraltar jurisdiction shall ensure, where practicable and by appropriate means, that they reserve for European works a majority proportion of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping.

(2) Having regard to any responsibilities of broadcasters under Gibraltar jurisdiction to its viewing public in respect of information, education, culture and entertainment, the proportion referred to in subsection (1) shall be achieved progressively, on the basis of criteria judged suitable for this purpose.

(3) Where the proportion referred to in subsection (1) cannot be attained, the proportion of transmission time, as defined in subsection (1), reserved for European works shall not be lower than the average for 1988.

(4) Broadcasters under Gibraltar jurisdiction shall ensure, where practicable and by appropriate means, that they reserve at least 10% of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping, or alternatively, at the discretion of the Authority, at least 10% of their programmes budget, for European works created by producers who are independent of broadcasters.

(5) Having regard to any responsibilities of broadcasters under Gibraltar jurisdiction to its viewing public in respect of information, education, culture and entertainment, the proportion referred to in subsection (4) shall be achieved—

- (a) progressively, on the basis of criteria judged suitable for this purpose by the Authority;
- (b) by earmarking an adequate proportion for recent works, that is to say, works transmitted within five years of their production.

#### **Reporting to the Commission.**

36B.(1) Notwithstanding the repeal of section 10B(6) of the Gibraltar Broadcasting Corporation Act, the Authority shall continue to ensure that the Commission is provided every two years with a report on the application of section 36A.

(2) The report required by subsection (1) shall include, in particular, a statistical statement on the achievement of the proportions referred to in sections 36A(1) and (4) for each of the television programmes provided by broadcasters under Gibraltar jurisdiction, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.

### **PART V**

#### **EXCLUSIVE RIGHTS AND SHORT NEWS REPORTS IN TELEVISION BROADCASTING**

##### **Exclusive rights to major events.**

37.(1) The Minister may draw up a designated list of events (“the list”) which he considers to be of major importance for Gibraltar and which shall not be broadcast on an exclusive basis in such a way as to deprive the public

in Gibraltar of the possibility of following such events by live coverage or deferred coverage on free television.

(2) The Minister may prescribe that events on the list shall be made available by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.

(3) The list shall be drawn up in a clear, transparent and timely manner.

(4) The Minister shall ensure that the Commission is immediately notified of the list and of any additions or amendments thereto, and, subject to any legal challenge, shall revoke such elements in the list, including listed events and any additions or amendments to the list, as the Commission rules to be incompatible with European Union law.

## **Short news reports.**

38.(1) A broadcaster established in a Member State shall have access on a fair, reasonable and non-discriminatory basis to short news reports of events of high interest to the public which are transmitted on an exclusive basis by a broadcaster under the jurisdiction of Gibraltar. This section applies where—

- (a) a Gibraltar broadcaster (“the transmitting broadcaster”) has exclusive rights to that event; and
- (b) another broadcaster (“the requesting broadcaster”) within Gibraltar, or a Member State wishes to use extracts of that event for short news reports.

(2) The requesting broadcaster shall have access on a fair, reasonable and non-discriminatory basis, to the events referred to in subsection (1).

(3) The requesting broadcaster may freely select short extracts from the transmitting broadcaster’s signal with, unless impossible for practical reasons, at least the identification of the source, and use such extracts in short news reports.

(4) The requesting broadcaster—

- (a) shall use the short extracts solely for general news programmes;
- (b) may use the short extracts in on-demand audiovisual services but only if it offers the same programme on a deferred basis.

(5) The transmitting broadcaster shall be entitled to compensation from the requesting broadcaster in the amount of the additional costs directly incurred in providing access.

(6) Where a broadcaster under Gibraltar jurisdiction makes a similar request from a transmitting broadcaster in a Member State, the Authority shall, if requested, ensure that the equivalent rights of the transmitting broadcaster under Article 15 of the Audiovisual Media Services Directive are upheld.

(7) The Authority may issue guidelines regulating access conditions for the purposes of this section and such guidelines shall cover the following matters—

- (a) the establishment of a procedure, other than the one set out in this section, which achieves access on a fair, reasonable and non-discriminatory basis;
- (b) the modalities and conditions for the provision of short extracts, including—
  - (i) compensation arrangements;
  - (ii) the maximum length of short extracts;
  - (iii) time limits regarding the transmission of short extracts.

## PART VI

### RIGHT OF REPLY

#### **Right of reply.**

39.(1) All broadcasters under Gibraltar jurisdiction shall provide to any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme, a right of reply or a remedy judged by the Authority to be an equivalent remedy to a right of reply.

(2) Where a person (in this section referred to as “the complainant”) is of the view that he is entitled, by virtue of subsection (1), to a right of reply or equivalent remedy, the complainant may require the broadcaster to make the arrangements necessary for that right to be exercised.

(3) The arrangements referred to in subsection (2)—



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- (a) shall be at no cost to the complainant; and
- (b) shall not be of such a nature as to hinder the actual exercise of the right of reply, or equivalent remedy, notably, by the imposition of unreasonable terms or conditions.

(4) Where the request for a right of reply or equivalent remedy is justified, the broadcaster concerned shall transmit the reply within a reasonable time after the request was substantiated and at a time and in a manner appropriate to the broadcast to which the request relates.

(5) The broadcaster may refuse to provide a right of reply or an equivalent remedy if such a reply—

- (a) is not justified by reference to the provisions of subsection (1);
- (b) would render the broadcaster liable to prosecution;
- (c) would render the broadcaster liable to civil proceedings; or
- (d) would transgress standards of public decency.

(6) Where—

- (a) the broadcaster refuses to give a right of reply; or
- (b) the complainant is dissatisfied with the arrangements in respect of the exercise of his right of reply,

the complainant may, within 28 days of the broadcast or the failure of arrangements, as the case may be, about which he is complaining refer the matter in writing to the Authority who shall itself or, in the event that it is unable to meet in the required time, by three persons appointed by the Authority for this purpose, consider any written representations made by the complainant and by the broadcaster.

(7) The complainant, at the time that he makes a complaint to the Authority, shall pass a copy of the complaint and any materials attached thereto to the broadcaster and the broadcaster shall provide any written representations it wishes to make to the Authority within 14 days of having received the complaint.

(8) The decision of the Authority shall be given and conveyed in writing to the complainant and to the broadcaster within 14 days of the receipt by the Authority of the written representation from the broadcaster or within 28 days of the receipt by the Authority of the complaint, whichever is the sooner.

(9) The broadcaster shall comply with the decision of the Authority within 14 days of the receipt of that decision.

(10) The provisions as to time set out in subsections (5) to (9) may be varied by the Authority where it is satisfied that it is appropriate to do so in order to give an effective right of reply to persons resident or established in a Member State.

(11) The Authority may require the broadcaster to provide a right of reply or a remedy equivalent thereto in respect of material broadcast by a programme contractor where in the opinion of the Authority such action is the only effective way to provide a right of reply and in such case the provisions of this section shall apply by substituting the broadcaster for the programme maker.

## PART VII

### REGULATION OF EUROPEAN UNION BROADCASTS

#### European Union broadcasts.

40.(1) Subject to this section and section 41, no person shall interfere with the freedom of reception in Gibraltar of television broadcasts and of other audiovisual media services from a Member State for reasons which fall within the fields co-ordinated by the AVMS Directive.

(2) The Authority shall have the power to take measures provisionally derogating from subsection (1) in respect of television broadcasts from Member States if the following conditions are fulfilled—

- (a) in the judgment of the Authority the broadcast includes—
  - (i) any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence;
  - (ii) any programmes which in the opinion of the Authority are likely to impair the physical, mental or moral development of minors, except where the Authority is satisfied that by means of the time of the programme concerned or by any technical measure, including any acoustic warning or visual identification, minors will not normally hear or see such programmes;

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- (iii) no incitement to hatred at all whether on grounds of race, sex, age, sexual orientation, religion, nationality or otherwise;
  - (b) during the previous 12 months, the broadcaster has infringed paragraph (a) on at least two prior occasions;
  - (c) the Authority has notified the broadcaster and the Commission in writing of the alleged infringement and of its intention to restrict retransmission should any such infringement occur again; and
  - (d) consultations with the transmitting Member State and the Commission have not produced an amicable settlement within 15 days of the notification provided for in paragraph (c), and the alleged infringement persists.
- (3) The measures that the Authority may adopt pursuant to subsection (2) shall include the provisional suspension of retransmissions of television broadcasts or any restrictions on such retransmissions.
- (4) The Authority shall, as a matter of urgency, put an end to any measure it adopts pursuant to subsection (2) if the Commission informs it, in accordance with Article 3 (2) of the AVMS Directive, that the measure is contrary to European Union law.
- (5) Any person who continues to retransmit broadcasts contrary to a measure adopted by the Authority pursuant to subsection (2) commits an offence.
- (6) A person who commits an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or both.

## **Special provisions in respect of on-demand audiovisual media services.**

41.(1) Subject to the provisions of this section, no person shall interfere with the freedom of reception in Gibraltar of on-demand audiovisual media services from Member States for reasons which fall within the fields coordinated by the AVMS Directive.

(2) The Authority shall have the power to take measures provisionally derogating from subsection (1) in respect of a given on-demand audiovisual media service if the following conditions are fulfilled–

- (a) the measure is necessary for one of the following reasons–
  - (i) public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, age, religion, nationality and violations of human dignity concerning individual persons;
  - (ii) the protection of public health;
  - (iii) public security, including the safeguarding of the security and defence of Gibraltar;
  - (iv) the protection of consumers, including investors;
- (b) taken against an on-demand audiovisual media service which prejudices the objectives referred to in paragraph (a) or which presents a serious and grave risk of prejudice to those objectives; and
- (c) is proportionate to those objectives.

(3) The measures that the Authority may adopt pursuant to subsection (2) shall include the immediate cessation of the service or its cessation within a stated time frame.

(4) Subject to subsection (5), the Authority shall take a measure pursuant to subsection (2) where the following conditions are satisfied–

- (a) the Member State under whose jurisdiction the provider falls has been asked to take measures and that Member State has not taken such measures, or, if it has, they were inadequate;
- (b) the Commission and the Member State under whose jurisdiction the provider falls have been informed of the Authority's intention to take such measures;
- (c) where the reason for the intended adoption of a measure is the safeguarding of the internal security or defence of Gibraltar and is of such a nature as to fall within the Governor's constitutional responsibilities and the Governor has informed

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the Minister that the measure needs to be taken who so directs the Authority.

(5) The Authority may take a measure pursuant to subsection (2) without complying with the requirements of subsection (4) (a) and (b) where it deems the matter to be of urgency, but shall, in such cases, ensure that the Commission and the relevant Member State, are notified as soon as practicable of the measure taken, and indicate the reasons for the urgency.

(6) The Authority shall—

- (a) put an end, as a matter of urgency, to any measure it adopts pursuant to subsection (2);
- (b) refrain from adopting a proposed measure pursuant to subsection (2),

where the Commission informs it, in accordance with Article 3(6) of the AVMS Directive, that the measure, or proposed measure, is contrary to European Union law.

(7) Where an on-demand audiovisual media service provider under Gibraltar jurisdiction is in breach of a legislative or administrative provision in a Member State which is equivalent to subsection (2) above, that on-demand audiovisual media service provider commits an offence under this Act.

(8) Any person who continues to provide an on-demand audiovisual media service contrary to a measure adopted by the Authority pursuant to subsection (2) commits an offence.

(9) A person who commits an offence under subsections (7) or (8) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or both.

## **European works (on-demand audiovisual services).**

41A.(1) On-demand audiovisual media services provided by media service providers under Gibraltar jurisdiction shall promote, where practicable and by appropriate means, the production of and access to European works.

(2) The promotion referred to in subsection (1) may relate, in particular, to the financial contribution made by such services to the production and rights acquisition of European works or to the share or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.

(3) The Authority shall ensure that reports are sent to the Commission in accordance with the AVMS Directive on the implementation of this section.

**Special provisions concerning broadcasts from outside Gibraltar.**

42.(1) This section applies where—

- (a) by reason of this Act or any power possessed by the Government or the Minister, media service providers within the jurisdiction of Gibraltar are subject to more detailed and stricter rules of general public interest than those required by the AVMS Directive; and
- (b) a media service provider under the jurisdiction of a Member State provides a television broadcast which is wholly or mostly directed towards Gibraltar.

(2) Where subsection (1) applies, the Authority may contact the Member State having jurisdiction over the media service provider concerned with a view to achieving a mutually satisfactory solution to any problems posed by the difference in rules and regulations.

(3) Where the Authority assesses—

- (a) that the results achieved through the application of subsection (2) are not satisfactory; and
- (b) that the media service provider in question has established itself in the Member State having jurisdiction in order to circumvent stricter rules, in the fields co-ordinated by the AVMS Directive, which would be applicable to it if it were established in Gibraltar,

it may adopt appropriate measures against the broadcaster concerned.

(4) Measures adopted under subsection (3) shall—

- (a) be objectively necessary;
- (b) be applied in a non-discriminatory manner;

- (c) be proportionate to the objectives being pursued; and
- (d) be approved by the Commission as compatible with European law.

## **Miscellaneous.**

44. Any broadcast made under the jurisdiction of a Member State under the AVMS Directive is not a broadcast authorised by or under this Act.

## **PART IX**

### **CONTINUANCE AND CONSTITUTION OF THE GBC**

#### **Continuance of the Gibraltar Broadcasting Corporation and appointment of Board.**

47.(1) The Gibraltar Broadcasting Corporation, established under the Gibraltar Broadcasting Act, continues in being.

(2) Subject to this Act, the operations of the GBC shall be controlled and governed by a Board which shall consist of a Chairman and not more than nine other members appointed by the Chief Minister, after consultation with the Leader of the Opposition, by notice in the Gazette.

(3) The Board may appoint a secretary.

#### **Tenure and vacation of membership.**

48.(1) The Chairman or any member of the Board shall hold office for such period as may be specified in the instrument appointing him:

Provided that, if the Minister is satisfied that the Chairman or any member—

- (a) has been absent from meetings of the Board for a period longer than three consecutive months without the permission of the Board; or
- (b) has become bankrupt; or
- (c) is incapacitated by physical or mental illness; or
- (d) is otherwise unable or unfit to discharge the functions of Chairman or member,

the Minister may by notice in the Gazette declare his office as Chairman or a member of the Board to be vacant and thereupon his office shall become vacant.

(2) Notwithstanding the foregoing provisions of this section the Chairman or any member may resign his office by giving written notice to the Minister.

(3) The Chairman or any member of the Board who ceases to be a member shall be eligible for re-appointment.

#### **Meetings and proceedings.**

49.(1) The quorum at all meetings of the Board shall be four voting members including the Chairman or other person presiding.

(2) At all meetings of the Board the Chairman or, in his absence, such member as the Board may select shall preside.

(3) All questions coming or arising before a meeting of the Board shall be decided by a majority of the persons present qualified to vote and voting thereon at the meeting, and, in the case of an equality of votes, the person presiding shall have a second or casting vote.

(4) The Board may appoint committees and, subject as aforesaid, may make rules governing their own procedure and that of their committees.

(5) All orders and directions of the Board shall be made or given under the hand of the Chairman or secretary of the Board.

#### **GBC to be body corporate.**

50.(1) The GBC shall be a body corporate under the name of the Gibraltar Broadcasting Corporation with perpetual succession and a common seal which shall be officially and judicially noticed and with power to acquire and hold land. The seal shall be authenticated by the signature of the Chairman and one other member of the Board authorised either generally or specially by the Board to act in that behalf.

(2) The GBC may sue and be sued in its corporate name. Service of any process or notice on the GBC may be effected by leaving the same at the office of the GBC, with the Chairman or secretary of the Board.

#### **No personal liability to attach to members.**

51. Subject to the provisions of Part XII of this Act no personal liability shall attach to any member of the Board in respect of anything done or



suffered in good faith and without negligence under the provisions of this Act.

## PART X

### FUNCTIONS OF THE GBC

#### Duties and powers of the GBC.

52.(1) It shall be the duty of the GBC to establish, maintain and operate a radio and television broadcasting service which shall have the character of a public service, be free-to-air and be made available to the whole community in Gibraltar as a means of information, education and entertainment and to develop the service to the best advantage and interest of Gibraltar.

(2) The GBC shall have power to provide radio and television programmes to the public.

(3) Subject to any directions of the Authority, the Board shall be responsible for the policy to be adopted by the GBC in the provision of such services.

(4) Policies adopted by the GBC shall take account of the requirements of this Act.

#### Powers of the GBC.

53.(1) Subject to the provisions of this Act the GBC may do all things necessary and convenient for the carrying out of its duties under this Act.

(2) Without prejudice to the generality of the provision of subsection (1) the GBC may—

- (a) purchase or otherwise acquire and hold any personal property required for the purposes of this Act and may dispose of any such personal property no longer required for such purpose;
- (b) purchase or otherwise acquire and hold and may take on lease any real property and any interest therein required for the purposes of this Act;
- (c) provide to, and receive from, other persons, material to be broadcast;
- (d) organise, provide and subsidise public entertainment for broadcasting;

- (e) collect news and information in or from any part of the world and in any manner that may be thought fit and establish and subscribe to news agencies;
- (f) acquire or sell copyright;
- (g) erect, equip and maintain plant, buildings, stations and equipment necessary for broadcasting;
- (h) employ, remunerate and terminate the appointment of a manager and such other servants as it may deem requisite;
- (i) provide for persons in its employ or their dependants by means of insurance, pension or provident fund or otherwise, pecuniary benefits upon retirement, death or termination of service or in the event of illness;
- (j) contract with any person or Government for the supply of services essential to broadcasting;
- (k) provide broadcasting facilities for commercial, social or recreational organisations including the broadcasting of advertisements and make charges therefore;
- (l) compile and prepare, print, publish, issue, circulate and distribute, whether gratis or otherwise, such papers, magazines, periodicals, books and other literary matter as may seem conducive to the objects of the GBC or enter into a contract with any person for that purpose;
- (m) make payments to the Chairman and members of the Board in respect of expenses incurred by them with the authority of the Board;
- (n) borrow money for the purposes of the GBC in any way, including the issuing of bonds or debentures as it shall think fit;
- (o) form such corporation or partnership as subsidiaries of the GBC as the Chief Executive may advise, subject to approval of the Board.

**Appointment of Chief Executive.**

54.(1) The Board shall appoint a person to be the Chief Executive of the GBC.

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(2) The Chief Executive shall be appointed for such term and may be re-appointed for such additional terms as the Board may determine.

(3) The Chief Executive shall perform such functions, and exercise such powers as are from time to time conferred upon him by this or any other Act or regulation or are delegated to him by the Board.

(4) The Chief Executive shall, with the approval of the Board, additionally be responsible for drawing up and implementing codes for regulating the terms of service, discipline and training of all persons employed by the GBC.

(5) In the event of the absence from Gibraltar of the Chief Executive for a period in excess of four days, the Chief Executive shall appoint an officer of the GBC to act as Chief Executive for a period of time not exceeding one month.

(6) If the Board is satisfied that the Chief Executive—

- (a) has been absent from three consecutive meetings of the Board without the permission of the Board.
- (b) has become bankrupt;
- (c) has been convicted of a criminal offence punishable by a term of imprisonment of 3 months or more;
- (d) is incapacitated by physical or mental illness;
- (e) is in material breach of the terms under which he was appointed; or
- (f) is otherwise unable or unfit to discharge the functions of the Chief Executive,

the Board may declare his office to be vacant.

## **Delegation of functions.**

55.(1) Subject to any express provision to the contrary contained in this or any other Act, the Board may delegate the discharge of any of its functions to the Chief Executive or to such other person or persons as the Board may propose.

(2) The delegation by the Board of any of its functions shall not affect the exercise by the Board of such functions.

**PART XI****ACCOUNTS****Establishment and operation of general fund.**

56. The GBC shall establish a general fund—

- (a) into which all moneys received by the GBC shall be paid; and
- (b) out of which all payments made by the GBC shall be paid.

**Accounts and audit.**

57.(1) The GBC shall keep proper accounts and other records in relation thereto and shall prepare in respect of each financial year a statement of accounts.

(2) The accounts of the GBC shall be audited by a statutory auditor or audit firm registered under the provisions of the Financial Services (Auditors) Act 2009.

(3) The auditors shall, with reference to the accounts of the GBC, report—

- (a) whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of their audit;
- (b) whether, in their opinion, proper books of account have been kept by the GBC, so far as appears from their examination of those books;
- (c) whether the GBC's balance sheet and statement of income and expenditure are in agreement with the books of account;
- (d) whether, in their opinion, and to the best of their information and according to the explanations given them, those accounts give a true and fair view—
  - (i) in the case of the balance sheet, of the state of the GBC's affairs as at the end of its financial year; and
  - (ii) in the case of the statement of income and expenditure, of the income and expenditure for its financial year; and

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- (e) whether the provisions of this Act and any directions of the Authority, in so far as they relate to the accounts, have been complied with.

### **The GBC's powers with regard to receipt of money.**

58. The GBC is hereby empowered to receive and apply for the furtherance of its purposes—

- (a) all funds which may from time to time be voted by Parliament for the purposes of the GBC; and
- (b) revenue accruing television licences and advertisements; and
- (c) any money properly accruing to the GBC from any other source.

### **Financial year.**

59. The financial year of the GBC shall coincide with that of the Government.

### **Annual report and periodical returns.**

60.(1) The GBC shall within six months of the end of each financial year furnish to the Minister, and copied to the Authority—

- (a) a report dealing with the activities, policy and financial position of the corporation during that year; and
- (b) a copy of the GBC's accounts for that year audited in accordance with the provisions of section 57(3) together with the auditor's report thereon.

(2) The Minister shall, at the earliest available opportunity, lay a copy of every such annual report and audited accounts before Parliament.

(3) The GBC shall furnish to the Minister or the Authority such financial and statistical returns as they may from time to time require.

## **PART XII**

### **LEGAL PROCEEDINGS AGAINST THE GBC**

#### **Proceedings on failure of the GBC to comply with Act.**

61. If the GBC fails to comply with the requirements of this Act the Authority may apply to the Supreme Court for an order compelling the Board to remedy the default specified, and the Supreme Court may make such order on the application as it thinks fit, including an order as to costs. Any such order may be positive or negative in its terms, and the Chairman and every member of the Board shall be personally liable for compliance therewith to the best of his ability.

**Complaints in respect of broadcasting matters.**

62. The exercise of any discretionary power with respect to broadcasting content made by the GBC shall not be challenged except by way of a complaint to the Authority.

**No suit against the GBC without prior written notice.**

63.(1) No civil suit shall be commenced against the GBC before the expiry of one month after written notice of intention to commence such suit shall have been served upon the GBC by or on behalf of the intending claimant.

(2) A notice of intention issued under subsection (1) shall be served as soon as practicable after the accrual of the cause of action and shall clearly and explicitly state—

- (a) the cause of action;
- (b) full particulars of the claim;
- (c) the name and physical address of the intending claimant; and
- (d) the relief claimed.

**Service of documents.**

64. A notice of intention issued under the provisions of section 63 and any summons, notice or other document required or authorized to be served upon the GBC under the provisions of this Act or of any other written law may, unless there is in any case specific provision to the contrary, be served by delivering the same to the Chairman or the Secretary of the Board, or by sending it by registered post to the secretary at the principal office of the GBC.

**Restriction on execution.**

65.(1) No execution by attachment of property or process in the nature thereof shall be issued against the GBC in any suit against the GBC.

(2) Any sum of money which may by judgment of any court be awarded against the GBC shall, subject to any direction given by the court where notice of appeal has been given by the GBC in respect of such judgment, be met from the funds of the GBC.

## PART XIII

### EMERGENCY POWERS

#### Provisions applicable in miscellaneous conditions.

66.(1) If at any time the Governor is satisfied that it is necessary for the preservation of internal security that the Government should have control over broadcasting in Gibraltar, he may declare that the provisions of this section shall come into operation and thereupon he or any person authorised by him in writing may—

- (a) take possession of any transmitting station, apparatus or equipment owned or operated by any broadcaster, and use such station, apparatus or equipment for official purposes; or
- (b) place any person in control of such station, apparatus or equipment; or
- (c) direct the broadcaster to submit to him all or any communication or matter tendered for broadcasting; or
- (d) stop or delay or direct the broadcaster to stop or delay the broadcasting or delivery of any such matter or communication or to deliver them to him; or
- (e) direct the broadcaster to comply with all such directions as he may think fit to give with reference to broadcasting.

in this subsection, “broadcasting” means any broadcasting services to which this Act applies.

(2) If and whenever the Governor exercises the powers conferred upon him by subsection (1) the broadcaster shall be entitled to receive from the Government—

- (a) compensation for any damage done to the property of the broadcaster, being damage directly attributable to the exercise of any such powers; and
- (b) such sums as are required to defray any expenses or meet any liabilities which, regard being had to the nature of the

circumstances, have been properly and necessarily incurred by the broadcaster in respect thereof.

(3) In any case of dispute as to the amount of compensation payable under this section, the amount of the compensation shall be determined by reference to a single arbitrator and any such reference shall be deemed to be a submission for the purposes of the Arbitration Act and shall be dealt with in accordance with the provisions of that Act.

#### PART XIV

#### LEGAL CHALLENGES TO THE POWERS EXERCISED UNDER THIS ACT

##### Appeals.

67.(1). This section shall apply to the following decisions of the Authority, taken on or after the date when this section shall have come into effect—

- (a) a decision to grant or renew, or refuse to grant or renew, a licence;
- (b) a decision to include within a licence particular terms, provisions or limitations;
- (c) a decision with regard to the variation of any term, provision or limitation in a licence;
- (d) a decision to revoke a licence;
- (e) any decision to suspend retransmissions made pursuant to sections Part VII of this Act;
- (f) any decision giving rise to a complaint under section 39(10) of this Act.

(2) Subject to subsection (5), a person aggrieved by a decision to which this section applies may appeal against the decision to the Supreme Court on any one or more of the following grounds—

- (a) that a material error as to the facts has been made;
- (b) that there was a material procedural error;
- (c) that a material error of law has been made;
- (d) that there was some other material illegality.



(3) An appeal of the nature referred to in subsection (2) lies to the Supreme Court.

(4) The Supreme Court determining an appeal of the nature referred to in subsection (2) may–

- (a) dismiss the appeal; or
- (b) quash the decision and may refer the matter to the Authority with a direction to reconsider it and reach a decision in accordance with the findings of the Supreme Court.

(5) No appeal under this section shall be brought unless the leave of the Supreme Court has been obtained in accordance with such rules as may be made under paragraph (a) of subsection (11).

(6) An appeal under this section shall be brought as soon as reasonably practicable and in any event not later than three months from the date on which the Authority made its decision or within such other period as may be specified in such rules as may be made under paragraph (b) of subsection (11).

(7) The bringing of an appeal under this section shall not operate to suspend the effect of the decision appealed against saving that the Court may award such interim relief as it sees fit.

(8) Except as provided by this section, the validity of a decision to which this section applies shall not be questioned in any legal proceedings whatsoever.

(9) If by reason of any default on the part of the person who has instituted an appeal in accordance with this section, the appeal has not been determined by the Supreme Court within three months of the date of the notice of appeal or application by which the appeal was instituted, the Authority may apply to the Supreme Court, by a summons served on the person who has instituted the appeal in accordance with this section, to show cause why the appeal should not be dismissed for want of prosecution, and upon the making of such an application the Supreme Court may dismiss the appeal or make such other order as it considers just.

(10) A decision of the Supreme Court under this section shall be final as to any question of fact, but an appeal shall lie to the Court of Appeal on any question of law.

(11) The Chief Justice may make rules prescribing any one or more of the following–

- (a) a procedure for obtaining the leave referred to in subsection (5);
- (b) the other period referred to in subsection (6);
- (c) the court fees payable in making an appeal of the nature referred to in subsection (2);
- (d) the forms and the procedure for such appeals.

## PART XV

### MISCELLANEOUS

#### **Acquisition of lands.**

68. It is hereby declared for the avoidance of doubt that for purposes of the Land (Acquisition) Act the provision and maintenance of sound and television services by broadcasting or wired circuits shall be deemed to be public purposes.

#### **Offences.**

69.(1) It is an offence for any person to be responsible for any act or omission contrary to the provisions of this Act or required to be done by the Authority pursuant to the provisions of this Act.

(2) Any person found guilty of an offence contrary to subsection (1) is punishable on summary conviction to a fine not exceeding twice level 5 on the standard scale.

#### **Offences by corporate bodies.**

70.(1) Where a corporate body is guilty of an offence under this Act or regulations made under it or both and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the corporate body or any person who was purporting to act in any such capacity he, as well as the corporate body, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a corporate body are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the corporate body.

## **Continuation of the offence.**

70A. Without prejudice to the right to bring separate proceedings for contraventions of this Act taking place on separate occasions, a person who is convicted of an offence under this Act shall, where the offence continues after the conviction—

- (a) be deemed to commit a separate offence in respect of every day on which the offence so continues; and
- (b) be liable on summary conviction or on conviction on indictment as the case may be, together with such liability as may be stipulated in this Act, to a fine not exceeding level 5 on the standard scale for each such day.

## **Summary proceedings.**

71.(1) Where a corporate body commits an offence under this Act or regulations made under it or both and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the corporate body or any person who was purporting to act in any such capacity he, as well as the corporate body, shall commit an offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a corporate body are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the corporate body.

## **Civil proceedings.**

71A. Subject to Part XII, nothing in this Act shall limit any right of any person to bring civil proceedings in respect of any act or omission rendered unlawful by any provision of this Act, and, without prejudice to the generality of the preceding words, compliance with the provisions of this Act, contraventions of which are declared to be offences under this Act, shall be enforceable by civil proceedings by the Authority for an injunction or for any other appropriate relief.

## **Time limit for bringing proceedings.**

72. Proceedings for any offence under this Act or regulations made under it or both which is punishable on summary conviction may be commenced at any time within twelve months next after the commission of the offence.

**Regulatory co-operation.**

72A.(1) The Authority shall co-operate with the regulatory bodies in the Member States which are responsible for ensuring compliance with the AVMS Directive in their Member States, particularly when necessary–

- (a) to carry out its duties under this Act;
- (b) to assist the regulatory bodies in the Member States in the exercise of their duties pursuant to the AVMS Directive;
- (c) to provide each other with the information necessary for the application of the AVMS Directive and in particular Articles 2, 3 and 4 thereof.

(2) The Authority shall notify the Commission of any information it provides pursuant to paragraph (c) of subsection (1).

**Co-operation with Member States.**

72B.(1) Where the Authority–

- (a) receives, under Article 4 of the Audiovisual Media Services Directive, a request from a Member State relating to a relevant broadcaster, and
- (b) considers that the request is substantiated,

it must ask the broadcaster to comply with the rule identified in that request.

(2) The Authority shall enforce the rule referred in subsection (1) as if it were a rule provided for under this Act.

(3) In this section “relevant broadcaster” means a broadcaster who is under Gibraltar jurisdiction.

**Repeals and transitional provisions.**

73.(1) The Gibraltar Broadcasting Corporation Act is repealed.

(2) If it appears to the Minister requisite or expedient to do so in order to secure the operation of broadcasting whilst this Act comes into effect, he may prescribe different days for the repeal of different provisions of the Gibraltar Broadcasting Corporation Act.

(3) The Audiovisual Media Services Regulations 2011 are revoked.

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## **Application to the Crown.**

74.(1) This Act binds the Crown.

(2) For the purposes of this Act each Government department shall be treated as a person separate from any other Government department.

## **Force Majeure.**

75. Notwithstanding any provision herein, or in any regulations made hereunder to the contrary, neither the Minister nor the Authority shall have a duty or obligation to do, omit to do, ensure or prevent any act or thing, nor any other duty or obligation, which he or it, as the case may be, is prevented or impeded from doing, omitting, ensuring, or preventing in reasonable and usual manner and terms by the actions of a member State and circumstances outside the control of the Minister, the Authority or the Government.

**SCHEDULE 1**

**LIST OF MATTERS TO TAKE INTO ACCOUNT:**

1. The need to ensure where practicable compliance with Articles 4 and 5 of the AVMS Directive with respect to the transmission of European works;
2. Any failures to comply with any requirements of the Act;
3. Such need for Public Service Broadcasting as exists;
4. Codes of practice;
5. Any defaults by the broadcaster or applicant for a licence;
6. Any conduct by the broadcaster or applicant as is relevant to his fitness to act as broadcaster or to such conditions as need be imposed;
7. Insolvency proceedings of any form;
8. Defamation proceedings with respect to publications with which the broadcaster is associated.

## SCHEDULE 2

### RESTRICTION ON THE HOLDING OF LICENCES

1. The following persons are disqualified persons in relation to a licence granted by the Authority –

- (a) the Government of Gibraltar;
- (b) a body whose objects are wholly or mainly of a political nature;
- (c) a body affiliated to a body falling within paragraph (b);
- (d) an individual who is an officer of a body falling within paragraph (b) or (c);
- (e) a body corporate which is an associate of a body corporate falling within paragraph (b) or (c);
- (f) a body corporate in which a body falling within any of paragraphs (a) to (c) and (e) is a participant with more than a 5 per cent interest;
- (g) a body which is controlled by a body corporate falling within paragraph (f).

#### **Disqualification of religious bodies.**

2.(1) The following persons are disqualified persons in relation to a licence granted by the Authority–

- (a) body whose objects are wholly or mainly of a religious nature;
- (b) body which is controlled by a body falling within paragraph (a) or by two or more such bodies taken together;
- (c) body which controls a body falling within paragraph (a);
- (d) a body corporate which is an associate of a body corporate falling within paragraph (a) or (b);
- (e) a body corporate in which in which a body falling within any of paragraphs (a) to (c) is a participant with more than a 5 per cent interest;

- (f) an individual who is an officer of a body falling within paragraph (a); and
- (g) a body which is controlled by an individual falling within paragraph (e) or two or more such individuals taken together.

(2) If on an application made to it under this sub-paragraph the Authority is satisfied that it is appropriate for a person to hold a particular kind of licence, being a person who, apart from this sub-paragraph, would be a disqualified person in relation to any such licence by virtue of sub-paragraph (1), it shall make a determination to the effect that it are so satisfied; and so long as any such determination remains in force in relation to that person, sub-paragraph (1) shall not apply to him in relation to any such licence.

(3) The Authority shall publish, in such manner as it considers appropriate, general guidance to persons making applications to it under sub-paragraph (2) as to the principles to be applied by it in determining whether it is appropriate for such persons to hold licences falling within paragraph (a) or (as the case may be) paragraph (b) of that sub-paragraph.

#### **Disqualification of publicly-funded bodies.**

3. The following persons are disqualified persons in relation to any licence granted by the Authority other than a licence to provide a restricted service—

- (a) a body, other than the GBC, which has, in its last financial year, received more than half its income from public funds;
- (b) a body which is controlled by a body falling within paragraph (a) or by two or more such bodies taken together; and
- (c) a body corporate in which a body falling within paragraph (a) or (b) is a participant with more than a 5 per cent interest.

#### **General disqualification on grounds of undue influence.**

4.(1) A person is a disqualified person in relation to a licence granted by the Authority if in its opinion—

- (a) any relevant body is, by the giving of financial assistance or otherwise, exerting influence over the activities of that person, and
- (b) that influence has led, is leading or is likely to lead to results which are adverse to the public interest.



This version is out of date

(2) In sub-paragraph (1) “relevant body” means any body either falling within paragraph (1) above or controlled by one or more bodies falling within that paragraph.

## **General disqualification of advertising agencies.**

5. The following persons are disqualified persons in relation to a licence granted by the Authority –

- (a) an advertising agency;
- (b) an associate of an advertising agency;
- (c) any body which is controlled by a person falling within sub-paragraph (a) or (b) or by two or more such persons taken together;
- (d) any body corporate in which a person falling within any of sub-paragraphs (a) to (c) is a participant with more than a 5 per cent interest.

## **Restrictions applying where control of or by newspaper proprietor may operate against public interest.**

6. A licence may not be granted to a body corporate which is, or is connected with, the proprietor of a newspaper published in Gibraltar if the Authority determines that in all the circumstances the holding of the licence by that body corporate could be expected to operate against the public interest.

## SCHEDULE 3

## COVERAGE OF ANY ELECTION AND REFERENDUM

1.(1) The Authority shall set, and from time to time review and revise, a code of practice for the content of programmes to be included in television and radio services in Gibraltar in relation to any election or referendum.

(2) The standards referred to in sub-paragraph (1) shall secure that—

- (a) programmes, and in particular news, included in television and radio services shall be presented with due accuracy and impartiality in accordance with paragraph 2 below; and
- (b) advertising which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature, or an advertisement which is directed towards a political end, is not included in television or radio services.

(3) Broadcasters in Gibraltar shall comply with the code of practice set by the Gibraltar Regulatory Authority under sub-paragraph (1).

(4) For the purposes of this paragraph "news" means news in whatever form it is included in a service.

(5) For the purposes of this Act, "broadcaster" means the broadcaster of a television or radio service, or both, which is made available for reception by the public in Gibraltar.

**Due impartiality and undue prominence.**

2.(1) The code of practice shall require that television and radio services shall exclude all expressions of the views or opinions of the person providing the services on any of the following matters—

- (a) matters of political controversy; and
- (b) matters relating to public policy,

and shall preserve due impartiality on the part of the person providing the service as regards those matters.

(2) Programmes included in television and radio services shall not give undue prominence to the views and opinions of particular persons or bodies on any of those matters.

This version is out of date

(3) The requirements specified in sub-paragraph (1) may be satisfied by being satisfied in relation to a series of programmes taken as a whole.

(4) The requirement specified in sub-paragraph (2) is one that needs to be satisfied only in relation to all the programmes included in the service in question taken as a whole.

## **Objects of a political nature and political ends.**

3.(1) For the purposes of paragraph 1(2)(b), objects of a political nature and political ends include—

- (a) influencing the outcome of any election or referendum;
- (b) influencing public opinion on a matter which, in Gibraltar, is a matter of public controversy; and
- (c) promoting the interests of a party or other groups of persons, organized in Gibraltar or elsewhere, for political ends.

(2) However, subparagraph (1) is not to apply to, or to be construed as prohibiting, the inclusion in a television or radio service of a political broadcast under paragraph 4.

## **Political broadcasts.**

4.(1) Any broadcaster in Gibraltar shall include in its radio and television services political broadcasts made on behalf of—

- (a) political parties with candidates standing at the election; and
- (b) individual independent candidates.

(2) The standards referred to in paragraph 1(1) shall include conditions governing political broadcasts.

(3) The Authority may, in particular, include provision for determining, in relation to each political party and individual independent candidate on whose behalf such broadcasts may be made, the length and frequency of the broadcasts.