

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

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LEGAL NOTICE NO. 107 OF 1995.

GIBRALTAR BROADCASTING CORPORATION ORDINANCE

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

**GIBRALTAR BROADCASTING CORPORATION ORDINANCE
(TELEVISION BROADCASTING ACTIVITIES) REGULATIONS**

1995

In exercise of the powers conferred on it by section 23 of the Interpretation and General Clauses Ordinance, and of all other enabling powers, and for the purpose of transposing into the national laws of Gibraltar Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in member States concerning the pursuit of television broadcasting activities, the Government has made the following regulations —

Title and commencement.

1. These regulations may be cited as the Gibraltar Broadcasting Corporation Ordinance (Television Broadcasting Activities) Regulations 1995 and shall come into effect on the 13th July 1995.

Amendment to section 2.

2. Section 2 of the Gibraltar Broadcasting Corporation Ordinance (hereinafter called “the Ordinance”) is amended by —

- (a) inserting after the definition of “radio communication” the following new definitions —

““sponsorship” means any contribution made by a public or private undertaking not engaged in television broadcasting activities or in the production of audio-visual works, to the financing of television programmes with a view to promoting its name, its trade mark, its image, its activities or its products;

“surreptitious advertising” 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 broadcaster to serve advertising and might mislead the public as to its nature and such representation is considered to be intentional, in particular, if it is done in return for payment or for similar consideration;”;

- (b) inserting after the definition of “television” the following new definitions —

““television advertising” means any form of announcement broadcast in return for payment or for similar consideration by a public or private undertaking 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 obligations, in return for payment but except for the purposes of Article 18, does not include direct offers to the public for the sale, purchase or rental of products or for the provision of services in return for payment;

“television broadcasting” means the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public and includes the communication of programmes between undertakings with a view to their being relayed to the public but does not include communication services providing items of information or other messages on individual demand such as telecopying, electronics data banks and other similar services;”.

Amendment to section 8.

3. Section 8 of the Ordinance is amended —

- (a) by inserting after sub-section (3) the following new sub-sections —

“ (3A) Directions by the Governor and policies adopted by the Corporation shall take account of the requirements of Council Directive 89/552/EEC.

(3B) The Board shall ensure that all television broadcasts transmitted by —

- (a) the Corporation;
- (b) any programme contractor, within the meaning given to that expression in section 9A;
- (c) broadcasters who, while not falling within paragraph (a) or (b), make use of a frequency or a satellite capacity granted by or a satellite up-link situated in, Gibraltar,

comply with the law applicable to broadcasts intended for the public in Gibraltar.

(3C) Sub-section (3B) shall not apply to broadcasts intended exclusively for reception in States other than member States, and which are not received directly or indirectly in one or more member States.”;

- (b) in sub-section (4) by inserting after the word “policy” the expression “or the duty under sub-section (3B)”.

New sections 10A to 10J.

4. The Ordinance is amended by inserting after section 10 the following new sections —

“Freedom of reception.

10A. (1) No person shall interfere with the freedom of reception in Gibraltar of television broadcasts from other member States for reasons which fall within the fields co-ordinated by Council Directive 89/552/EEC.

(2) Subject to sub-section (3) no person shall restrict retransmission in Gibraltar of television broadcasts from other member States for reasons which fall within the fields co-ordinated by Council Directive 89/552/EEC.

(3) The Board may provisionally suspend retransmissions of television broadcasts from other member States if the following conditions are fulfilled

- (a) a television broadcast coming from another member State which if it were a broadcast by the Corporation would be prohibited by section 10H;
- (b) during the previous 12 months, the broadcaster has infringed the same provision on at least two prior occasions;
- (c) the Board 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;
- (d) consultations with the transmitting 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.

(4) Without prejudice to the application of any procedure, remedy or sanction in respect of the infringement in question in the member State which has jurisdiction over the broadcaster concerned, the Commission may ask the Board to put an end to a suspension which is contrary to Community law, as a matter of urgency.

(5) This section shall not apply to broadcasts intended exclusively for reception in States other than member States, and which are not received directly or indirectly in one or more member States.

Promotion of distribution and production of television programmes.

10B. (1) The Board shall ensure where practicable and by appropriate means, that the Corporation and any programme contractors reserve for European works a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services.

(2) Having regard to any responsibilities of the Corporation or any programme contractor to its viewing public in respect of information, education, culture and entertainment, the proportion referred to in sub-section (1) shall be achieved progressively, on the basis of criteria judged suitable for this purpose by the Board.

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

(4) The Board shall ensure, where practicable and by appropriate means, that the Corporation and any programme contractors reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services, or alternatively, at the discretion of the Board, at least 10% of their programmes budget, for European works created by producers who are independent of the Corporation or any programme contractor.

(5) Having regard to any responsibilities of the Corporation or any programme contractor to its viewing public in respect of information, education, culture and entertainment, the proportion referred to in sub-section (4), —

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

(6) From 3 October 1995 and in a prescribed manner the Board shall provide the Commission every two years with a report on the application of this section.

(7) The report required by sub-section (6) shall in particular include a statistical statement on the achievement of the proportions referred to in sub-sections (1) and (4) for each of the television programmes provided by the Corporation and by any programme contractors, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.

(8) In this section “European works” means the following —

- (a) works originating from member States
- (b) works originating from European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of sub-section (9);
- (c) works originating from other European third countries and fulfilling the conditions of sub-section (10).

(9) The works referred to in paragraph (a) and (b) of sub-section (8) are works mainly made with authors and workers residing in one or more States referred to in paragraph (a) and (b) of that sub-section provided that they comply with one of the following three conditions —

- (a) they are made by one or more producers established in one or more of those States; or
- (b) production of the works is supervised and actually controlled by one or more producers established in one or more of those States; or
- (c) the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

(10) The works referred to in paragraph (c) of sub-section (8) are works made exclusively or in co-production with producers established in one or more member State by producers established in one or more European third countries with which the Community will conclude agreements in accordance with the procedures of the Treaty, if those works are mainly made with authors and workers residing in one or more European States.

(11) Works which are not European works within the meaning of subsection (8), but made mainly with authors and workers residing in one or more member States, shall be considered to be European works to an extent corresponding to the proportion of the contribution of Community co-producers to the total production costs.

(12) This section shall not apply to broadcasts intended exclusively for reception in States other than member States, and which are not received directly or indirectly in one or more member States.

Prohibition on broadcasting cinematographic work.

10C. The Board shall ensure that the Corporation and any programme contractors do not broadcast any cinematographic work, unless otherwise agreed between its rights holders and the Corporation or the programme contractor, as the case may be, until, in the case of cinematographic works co-produced by the Corporation or the programme contractor, as the case may be, one year and in any other case, two years have elapsed since the work was first shown on cinemas in one of the member States of the Community.

Application and variation of section 10B and 10C.

10D. (1) Sections 10B and 10C shall not apply to local television broadcasts not forming part of a national network.

(2) Where the Government considers it necessary for purposes of language policy, the Governor, whilst observing Community law, may as regards some or all of the programmes of the Corporation or of programme contractors give directions laying down more detailed or stricter rules in respect of the areas falling within section 10B and 10C in particular on the basis of language criteria.

Television advertising.

10E. (1) The Corporation and any programme contractor shall ensure that in respect of television advertising —

- (a) advertising shall be readily recognizable as such and kept quite separate from other parts of a programme by optical and/or acoustic means;
- (b) isolated advertising spots are the exception;
- (c) subliminal techniques are not used;
- (d) surreptitious advertising does not occur;
- (e) advertisements only appear inserted between programmes:

Provided that where the provisions of sub-section (2) are satisfied, advertisements may also be inserted during programmes in such a way that the integrity and value of the programme, taking into account natural breaks in and the duration and nature of the programme, and the rights of the rights holders are not prejudiced.

(2) The provisions referred to in the proviso to paragraph (e) of sub-section (1) are —

- (a) in programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances comprising intervals, advertisements shall only be inserted between the parts or in the intervals;
- (b) the transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their programmed duration is more than 45 minutes, may be interrupted no more than once for each complete period of 45 minutes and where their programmed duration is at least 20 minutes longer than two or more complete periods of 45 minutes there may be a further interruption;
- (c) where programmes, other than those to which paragraph (a) applies, are interrupted by advertisements, a period of at least

20 minutes shall elapse between each successive advertising break within the programme;

- (d) advertisements shall not be inserted in any broadcast of a religious service;
 - (e) subject to paragraph (f), news and current affairs programmes, documentaries, religious programmes and children's programmes, when their programmed duration is less than 30 minutes shall not be interrupted by advertisements;
 - (f) if the programmed duration of a broadcast to which paragraph (e) applies is of 30 minutes or longer, the provisions of paragraphs (a) to (d) shall apply.
- (3) Television advertising shall not —
- (a) prejudice respect for human dignity;
 - (b) include any discrimination on grounds of race, sex 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.
 - (f) contain advertising for cigarettes and other tobacco products.
- (4) Television advertising for medicinal products and medical treatment available only on prescription is prohibited.
- (5) Television advertising for alcoholic beverages shall comply with the following criteria, that is to say it 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;
 - (f) place emphasis on high alcoholic content as being a positive quality of the beverages.
- (6) Television advertising 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 exhort 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;
 - (d) unreasonably show minors in dangerous situations.
- (7) The Board may, with due regard for Community law, lay down conditions other than those laid down in sub-section (2) in respect of broadcasts intended exclusively for reception in Gibraltar and which are not capable of being received, directly or indirectly, in one or more other member States.

Advertising time as a percentage of transmission time

10F. (1) Subject to sub-section (3), the amount of transmission time which is advertising time shall not exceed 15% of the daily transmission time.

(2) Advertising time taken up with advertising which takes the form of direct offers to the public for the sale, purchase or rental of products or for the provision of services shall not exceed sixty minutes in any period of 24 hours.

(3) Subject to sub-section (2), the amount of advertising time as a percentage of daily transmission time may be increased to 20% where the advertising includes forms of advertisements such as direct offers to the public for the sale, purchase or rental of products or for the provision of services:

Provided the amount of advertising time which is spot advertising shall not exceed 15% of the daily transmission time.

(4) The amount of advertising time which is spot advertising shall not exceed 20% of the transmission time in any period of sixty minutes.

(5) Notwithstanding the provisions of sub-sections (1) to (4), where in the opinion of the Government it is appropriate to do so to reconcile demand for televised advertising with the public interest, taking account in particular of —

- (a) the role of television in providing information, education, culture and entertainment;
- (b) the protection of pluralism of information and of the media,

the Governor may make directions laying down stricter rules than those in those sub-sections.

(6) The Board may, with due regard for Community law, lay down conditions other than those laid down in sub-sections (1) to (4) in respect of broadcasts intended exclusively for reception in Gibraltar and which are not capable of being received, directly or indirectly, in one or more other member States.

Sponsored television programmes.

10G. (1) Where a television programme is sponsored the programme shall meet the following requirements, that is to say —

- (a) the content and scheduling shall not be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the Corporation or a programme contractor, as the case may be, in respect of the programme;
- (b) it shall be clearly identified as a sponsored programme by the name and/or logo of the sponsor at the beginning and/or the end of the programme;
- (c) it shall not encourage the purchase or rental of the products of services of the sponsor or a third party, in particular by making special promotional references to those products or services.

(2) Television programmes shall not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of products, or the provision of services, the advertising of which is prohibited by sub-section (3)(f) or (4) of section 10E.

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

Protection of minors.

10H. (1) Television broadcasts by the Corporation or by a programme contractor shall not include any programme which involves pornography or gratuitous violence.

(2) Television broadcasts by the Corporation or by a programme contractor shall not include any programme which might, other than by virtue of the matters referred to in sub-section (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.

(3) No broadcast by the Corporation or by a programme contractor shall contain any material which is an incitement to hatred on grounds of race, sex, religion or nationality.

Right of reply.

10J. (1) The Corporation and any programme contractor 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 Board to be an equivalent remedy.

(2) Where a person (in this section referred to as “the complainant”) is of the view that he is entitled by virtue of sub-section (1) to a right of reply he may require the Corporation, or the programme contractor, as the case may be, to make the arrangements necessary for that right to be exercised at no cost to the complainant.

(3) The Corporation or a programme contractor, as the case may, 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 sub-section (1);
- (b) would render the Corporation or the programme contractor liable to prosecution;
- (c) would render the Corporation or a programme contractor liable to civil proceedings; or
- (d) would transgress standards of public decency.

(4) Where —

- (a) the Corporation, or the programme contractor, as the case may be, 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 Board who shall itself or, in the event that it is unable to meet in the required time, by three persons appointed by the Board from amongst its members for this purpose, consider any written representations made by the complainant and by the Corporation, or the programme contractor, as the case may be.

(5) The complainant at the time that he makes a complaint to the Board shall pass a copy of the complaint and any materials attached thereto to the Corporation, or the programme contractor, as the case may be, and the corporation or the programme contractor shall provide any written representations it wishes to make to the Board within 14 days of the receipt by it of the complaint.

(6) The decision of the Board shall be given and conveyed in writing to the complainant and to the Corporation or the programme contractor, as the case may require, within 14 days of the receipt by the Board of the written representation from the Corporation or the programme contractor or within 28 days of the receipt by the Board of the complaint whichever is the sooner.

(7) The Corporation, or the programme contractor, as the case may be, shall comply with the decision of the Board within 14 days of the receipt of that decision by the Corporation or the programme contractor.

(8) The provisions as to time set out in sub-sections (4) to (7) may be varied by the Board 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 other member States.

(9) The Board may require the Corporation 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 Board 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 Corporation for the programme contractor.

(10) Notwithstanding the provisions of sub-sections (4) to (7), a complainant may make complaint to the Supreme Court praying such leave as may be necessary.”.

Dated this 13th day of July 1995

J. C. Perez
Minister for Government Services

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