

Subsidiary Legislation made under s. 23(g).

AUDIOVISUAL MEDIA SERVICES REGULATIONS 2011

Revoked by Act. 2012-12 as from 8.11.2012

(LN. 2011/207)

Commencement **20.10.2011**

Amending enactments	Relevant current provisions	Commencement date
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EU Legislation/International Agreements involved:
Directive 2010/13/EU

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In exercise of the powers conferred on it by section 23(g) of the Interpretation and General Clauses Act, and in order to transpose into the law of Gibraltar 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 the Member States concerning the provision of audiovisual media services, the Government has made the following Regulations—

PART I PRELIMINARY AND INTERPRETATION

Title and commencement.

1. These Regulations may be cited as the Audiovisual Media Services Regulations 2011 and come into effect on the day of publication.

Interpretation.

- 2.(1) In these Regulations, unless the context otherwise requires—

“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, as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, 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;

“Audiovisual Media Services Directive” or “AVMS Directive” means Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the co-ordination 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;

“Authority” shall be construed in accordance with regulation 32;

“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 media service provider that provides television broadcasts;

“Commission” means the European Commission;

“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 sub-regulation (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 established by section 3 of the Gibraltar Broadcasting Corporation Act;

“media service provider” means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;

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“Minister” means the Minister with responsibility for broadcasting;

“on-demand media service” (i.e., a non-linear audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at the user’s 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 or service or the trademark thereof, so that it is featured within a programme, in return for payment or for similar consideration;

“programme” means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of which are comparable to the form and content of television broadcasting, and examples of programmes include feature-length films, sports events, situation comedies, documentaries, children’s programmes and original drama;

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

“surreptitious audiovisual 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, and such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration;

“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 obligations, in return for payment;

“television broadcasting” or “television broadcast” (i.e., a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;

(2) For the purposes of the definition of the term “European works” in sub-regulation (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.

(3) Terms and expressions used but not defined in these Regulations shall have the same meaning in these Regulations as they have under the Audiovisual Media Services Directive.

PART II

GENERAL PROVISIONS

Application to GBC.

3. GBC is a media service provider under Gibraltar jurisdiction within the meaning of these Regulations and, as such, subject to the provisions of these Regulations.

Jurisdiction.

4.(1) All audiovisual media services transmitted by media service providers under Gibraltar jurisdiction shall comply with these Regulations and with all other laws in force in Gibraltar applicable to audiovisual media services intended for the public.

(2) For the purposes of these Regulations, the media service providers under Gibraltar jurisdiction are any of the following—

- (a) those established in Gibraltar in accordance with sub-regulation (3);
- (b) those to whom sub-regulations (4) or (5) apply.

(3) For the purposes of sub-regulation (2)(a), 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 Gibraltar when Gibraltar is the place where a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates, and—
 - (i) 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 in Gibraltar if Gibraltar is the place where the media service provider has its head office ;

(ii) if a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in neither Gibraltar or a Member State, the media service provider shall be deemed to be established in Gibraltar when Gibraltar is the place where it first began its activity in accordance with the law of Gibraltar, provided that it maintains a stable and effective link with the economy of Gibraltar; or

(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), the media service provider 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.

(4) Media service providers to whom the provisions of sub-regulation (3) are not applicable shall be deemed to be under Gibraltar jurisdiction where—

(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 Gibraltar.

(5) If the question as to whether Gibraltar or a Member State has jurisdiction cannot be determined in accordance with sub-regulations (3) and (4), the media service provider shall be under Gibraltar jurisdiction where Gibraltar is the place in which the media service provider is established within the meaning of Articles 49 to 55 of the Treaty on the Functioning of the European Union.

(6) These Regulations do 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.

European Union Broadcasts.

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5.(1) Subject to the provisions of this regulation and regulation 6, no person shall interfere with the freedom of reception in Gibraltar of audiovisual media services from Member States for reasons which fall within the fields co-ordinated by the Audiovisual Media Services Directive.

(2) The Authority shall have the power to take measures provisionally derogating from sub-regulation (1) in respect of television broadcasts from Member States only after obtaining the Minister's approval and if the following conditions are fulfilled—

- (a) in the judgment of the Authority the broadcast manifestly, seriously and gravely infringes regulations 9, 29 (1) or 29 (2);
- (b) during the previous 12 months, the broadcaster has infringed any of the regulations referred to in paragraph (a) on at least two prior occasions;
- (c) the broadcaster and the Commission have been notified in writing of the alleged infringement and of the measures the Authority intends to take 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 sub-regulation (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 sub-regulation (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) Where a media service provider under Gibraltar jurisdiction is in breach of a legislative or administrative provision in a Member State which is equivalent to sub-regulation (2) above, that media service provider commits an offence under these Regulations.

(6) Any person who continues to retransmit broadcasts contrary to a measure adopted by the Authority pursuant to sub-regulation (2) commits an offence.

(7) A person who commits an offence under sub-regulations (5) or (6) 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.

(8) This regulation is without prejudice to section 20 of the Gibraltar Broadcasting Corporation Act.

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

6.(1) Subject to the provisions of this regulation, 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 Audiovisual Media Services Directive.

(2) The Authority shall have the power to take measures provisionally derogating from sub-regulation (1) in respect of a given on-demand audiovisual media service only after obtaining the Minister's approval and 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 objective; and

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(c) is proportionate to those objectives.

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

(4) Subject to sub-regulation (5), the Authority shall take a measure pursuant to sub-regulation (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, the Governor has informed the Minister that the measure needs to be taken.

(5) The Authority may take a measure pursuant to sub-regulation (2) without complying with the requirements of sub-regulation (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 sub-regulation (2);
- (b) refrain from adopting a proposed measure pursuant to sub-regulation (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 sub-regulation (2) above, that on-demand audiovisual media service provider commits an offence under these Regulations.

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

(9) A person who commits an offence under sub-regulations (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.

Co-operation with Member States.

7.(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 sub-regulation (1) as if it were a rule provided for under these Regulations.

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

PART III

PROVISIONS APPLICABLE TO ALL AUDIOVISUAL MEDIA SERVICES

Information in respect of providers of media services.

8. Audiovisual media service providers under Gibraltar jurisdiction 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 the provider's electronic mail address or website, which allow it to be contacted rapidly in a direct and effective manner; and
- (d) where applicable, the competent regulatory or supervisory bodies.

Prohibition of incitement to hatred.

9. No audiovisual media service provided by a media service provider under Gibraltar jurisdiction shall contain any incitement to hatred based on race, sex, religion or nationality.

Accessibility.

10. 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.

Prohibition on broadcasting cinematographic work.

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

Audiovisual commercial communications.

12.(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 sub-regulation (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.

Sponsored Television Programmes.

13.(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;
- (b) viewers shall be clearly informed of the existence of a sponsorship agreement;
- (c) they shall be clearly identified as a sponsored programme by the name, logo or any other symbol of the sponsor such as a reference to its product or service or a distinctive sign thereof in an appropriate way for programmes at the beginning, during or the end of the programme;
- (d) 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 or programmes 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 jurisdiction which the media service provider falls under.

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

Product Placement.

14.(1) 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

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

(2) Programmes that contain product placement permitted by virtue of sub-regulation (1) 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) 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;
- (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—
 - (i) at the start and the end of the programme; and
 - (ii) where the programme resumes after an advertising break, when the programme resumes.

(3) 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 ;
- (b) specific medicinal products or medical treatments available only on prescription in the jurisdiction which the media service provider falls under.

PART IV

PROVISIONS APPLICABLE ONLY TO ON-DEMAND AUDIOVISUAL MEDIA SERVICES

Protection of minors.

15. On-demand audiovisual media services provided by media service providers under Gibraltar jurisdiction which might seriously impair the physical, mental or moral development of minors shall only be made available in such a way as to ensure that minors will not normally hear or see such on-demand audiovisual media services.

European works.

16.(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 sub-regulation (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 Minister shall ensure that a report is sent to the Commission no later than 19 December 2011, and every four years thereafter, on the implementation of this regulation.

PART V

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

Exclusive rights to major events.

17.(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 and transparent manner and in due time.

(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.

18.(1) This regulation applies where—

- (a) an event not on the list of events designated under regulation 17 is nevertheless an event of high interest to the public;
- (b) a broadcaster under Gibraltar jurisdiction (“the transmitting broadcaster”) has an exclusive right to that event; and
- (c) another broadcaster (“the requesting broadcaster”), whether 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 sub-regulation (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.

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

(5) 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.

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(6) The Authority may issue guidelines regulating access conditions for the purposes of this regulation and such guidelines shall cover the following matters-

- (a) the establishment of a procedure, other than the one set out in this regulation, 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

PROMOTION OF DISTRIBUTION AND PRODUCTION OF TELEVISION PROGRAMMES

Proportion of distribution and production of television programmes.

19.(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 sub-regulation (1) shall be achieved progressively, on the basis of criteria judged suitable for this purpose.

(3) Where the proportion referred to in sub-regulation (1) cannot be attained, the proportion of transmission time, as defined in sub-regulation (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 sub-regulation (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.

20.(1) Notwithstanding the repeal of section 10B(6) of the Gibraltar Broadcasting Act by these Regulations, the Minister shall continue to ensure that the Commission is provided every two years with a report on the application of regulation 19.

(2) The report required by sub-regulation (1) shall include, in particular, a statistical statement on the achievement of the proportions referred to in regulation 19 (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 VII

TELEVISION ADVERTISING AND TEleshopping

Basic requirements on television advertising and teleshopping.

21.(1) Television advertising and teleshopping shall—

- (a) be readily recognisable and distinguishable from editorial content; and
- (a) 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.

22.(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.

23. 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.

24. 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.

Television advertising and teleshopping as a percentage of transmission time.

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

(2) Sub-regulation (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.

26. 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 channels exclusively devoted to advertising and teleshopping and self-promotion channels.

27.(1) Subject to sub-regulation (2), these Regulations shall apply to—

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

(2) Part VI and regulations 22 and 25 of these Regulations shall not apply to these channels.

Television broadcasts intended only for Gibraltar.

28. Without prejudice to regulation 7, and with due regard for European Union law, and with the consent of the Minister, the Authority may lay down

conditions other than those laid down in regulation 22(2) to (4) and regulation 25 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.

PART VIII

PROTECTION OF MINORS IN TELEVISION BROADCASTING

Protection of minors.

29.(1) Television broadcasts by broadcasters under Gibraltar jurisdiction shall not include any programme which might seriously impair the physical, mental or moral development of minors, in particular, any programme that involves pornography or gratuitous violence.

(2) The prohibition in sub-regulation (1) shall also extend to other programmes which are likely to 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) When the programmes referred to in sub-regulation (2) are broadcast in unencoded form, they shall be preceded by an acoustic warning or shall be identified by the presence of a visual symbol throughout their duration.

PART IX

RIGHT OF REPLY IN TELEVISION BROADCASTING

Right of reply.

30.(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 regulation referred to as “the complainant”) is of the view that he is entitled, by virtue of sub-regulation (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 sub-regulation (2)–

(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 sub-regulation (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 sub-regulations (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 regulation shall apply by substituting the broadcaster for the programme maker.

(12) For the purposes of sub-regulation (11), the terms “programme contractor” and “programme maker” shall have the same meaning as they have under the Gibraltar Broadcasting Act.

Recording of broadcasts.

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

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

(3) When a complaint is being investigated by the Authority under regulation 30, the recording of a broadcast to which the complaint relates, together with the recording, made and being retained under this regulation, 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.

PART X

ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

The Authority.

32.(1) The Gibraltar Regulatory Authority, established under section 3(1) of the Gibraltar Regulatory Authority Act 2000, is the Authority for the purposes of these Regulations.

(2) The Minister may, from time to time, by notice in the Gazette, appoint such other person or agency to be the Authority for the purposes of these Regulations.

Powers of the Minister and the Authority.

33.(1) In order to enable the Minister and the Authority to perform their respective functions and duties under these Regulations, and to enable them to generally regulate the audiovisual media service sector in Gibraltar, the provisions of the Communications Act 2006 set out in sub-regulation (2) below apply to these Regulations as they apply under that Act.

(2) Those provisions of the Communications Act 2006 are the following ones—

- (a) section 4 (power to require information);
- (b) section 5 (making false or misleading statements);
- (c) section 6 (general restrictions on disclosure of information);
- (d) section 7 (power to establish advisory bodies);
- (e) section 8 (annual reports);
- (f) section 10 (directions by the Minister and the Authority);
- (g) section 11 (administrative notices);
- (h) section 12 (power of the Authority to issue notices);
- (i) section 14 (requirements in relation to documents issued);
- (j) section 15 (service of documents);
- (k) section 16 (documents in electronic form);
- (l) section 17 (timing and location of things done electronically).

Publication of information and advice.

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

(2) In arranging for the publication of any of the information or advice referred to in sub-regulation (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.

Codes of practice.

35.(1) The Authority may from time to time with respect to any form of broadcasting or audiovisual media service issue codes of practice to media service providers under Gibraltar jurisdiction which may address any issues with respect to 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 to the Authority.

(2) Audiovisual media service providers shall comply with the codes of practice and any revision of those codes.

Co-operation.

36.(1) The Authority shall cooperate with the regulatory bodies in the Member States which are responsible for ensuring compliance with the Audiovisual Media Services Directive in their Member States, particularly when necessary—

- (a) to carry out its duties under these Regulations;

- (b) to assist the regulatory bodies in the Member States in the exercise of their duties pursuant to the Audiovisual Media Services Directive;
- (c) to provide each other with the information necessary for the application of the Directive and in particular Articles 2, 3 and 4 thereof.

(3) The Authority shall immediately inform the Minister of any information it provides pursuant to paragraph (c) of sub-regulation (2) and the Minister shall ensure that such information is notified to the Commission.

Offences.

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

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

(3) Sub-regulation (2) is without prejudice to regulation 5 (5) to (7) and regulation 6 (7) to (9).

Offences by corporate bodies.

38.(1) Where a corporate body is guilty of an offence under these Regulations 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, sub-regulation (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.

39. Without prejudice to the right to bring separate proceedings for contraventions of these Regulations taking place on separate occasions, a person who is convicted of an offence under these Regulations 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 these Regulations, to a fine not exceeding level 5 on the standard scale for each such day.

Time limit for bringing proceedings.

40. Proceedings for any offence under these Regulations which is punishable on summary conviction may be commenced at any time within twelve months next after the commission of the offence.

Civil proceedings.

41. Nothing in these Regulations shall limit any right of any person to bring civil proceedings in respect of any act or omission rendered unlawful by any provision of these Regulations, and, without prejudice to the generality of the preceding words, compliance with the provisions of these Regulations, contraventions of which are declared to be offences under these Regulations, shall be enforceable by civil proceedings by the Minister or the Authority, as the case may be, for an injunction or for any other appropriate relief.

Revocation of provisions of the Gibraltar Broadcasting Act.

42. The following provisions of the Gibraltar Broadcasting Act shall cease to have effect on the day of entry into force of these Regulations—

- (a) in section 2, the definition of the terms “sponsorship”, “surreptitious advertising”, “television advertising” and “television broadcasting” ;
- (b) section 8 (3A), (3B) and (3C) ;
- (c) sections 10A to 10J inclusive, in their entirety.