General Scheme of the Online Safety & Media Regulation Bill 2019

Amending the Broadcasting Act 2009
# Table of Contents

**PART 1 – PRELIMINARY & GENERAL MATTERS** ................................................................. 6

**Head 1 – Short title** .................................................................................................. 6

**Head 2 - Interpretation** .......................................................................................... 7

- Media .......................................................................................................................... 7
- Commercial Communications ....................................................................................... 9
- Content ......................................................................................................................... 10
- Broadcasting ............................................................................................................... 11
- Editorial ....................................................................................................................... 12
- General ....................................................................................................................... 12

**Head 3 - Expenses** .................................................................................................. 19

**Head 4 - Regulations and Orders** ............................................................................ 19

**Head 5 - Repeals** ..................................................................................................... 19

**PART 2 – MEDIA COMMISSION** ............................................................................. 21

**Head 6 - Establishment day** .................................................................................... 21

**Head 7 - The Media Commission** ........................................................................... 21

**Head 8 - Independence** ........................................................................................... 22

**Head 9 - Objectives** ................................................................................................ 22

**Head 10 - Functions** ................................................................................................ 23

**Head 11 – Core Powers of the Media Commission** ................................................. 27

**Head 12 – Compliance Notices and Warnings** ......................................................... 28

**Head 13 – Codes of Practice** .................................................................................. 29

**Head 14A – Investigation into affairs of broadcasting contractor** ......................... 30

**Head 14B – Termination or suspension of contract under Part x** ............................. 31

**Head 14C – Investigation into affairs of broadcaster** ................................................. 32
Head 30 - Grants to Commission ................................................................. 62
Head 31 - Accounts of Commission ............................................................ 62
Head 32 - Committees.............................................................................. 64
Head 33 - Review of legislation ................................................................. 64
Head 34 - External cooperation function ................................................... 65
Head 35 – Reporting by Commission ......................................................... 65
Head 36 – Prohibition on unauthorised disclosure of confidential information ................................................................. 66
Head 37 – Disclosure of interests ............................................................... 68
Head 38 – Policy Communications ............................................................ 69
Head 39 – Consultants and Advisors .......................................................... 70
Head 40 – Levy ......................................................................................... 70

PART 3 - TRANSITIONAL PROVISIONS .................................................... 72
Head 41 - Dissolution of the Broadcasting Authority of Ireland ................. 72
Head 42 - Transfer of Functions to the Commission ................................... 72
Head 43 - Transfer of staff to Commission .................................................. 73
Head 44 - Transfer of land and other property ............................................ 73
Head 45 - Transfer of rights and liabilities, and continuation of leases, licences and permissions granted by Broadcasting Authority of Ireland ....... 74
Head 46 - Liability for loss occurring before establishment day .................. 74
Head 47 - Provisions consequent upon transfer of functions, assets and liabilities to Commission ................................................................. 75
Head 48 - Final accounts and final annual report of Broadcasting Authority of Ireland ......................................................................................... 76

Part 4 – Online Safety ................................................................................ 78
Head 49A – Categories of harmful online content ....................................... 78
Head 49B – Provision for further categories of harmful online content ........ 79
Head 49C – Definition of age inappropriate online content .......................... 81
Head 50A – Online safety codes .................................................................. 81
<table>
<thead>
<tr>
<th>Head 50B – Compliance assessments</th>
<th>84</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head 51 – Online safety guidance materials</td>
<td>85</td>
</tr>
<tr>
<td>Head 52A – Auditing complaints handling</td>
<td>86</td>
</tr>
<tr>
<td>Head 52B – Systemic complaints scheme</td>
<td>87</td>
</tr>
<tr>
<td>Head 53 – Compliance and warning notices</td>
<td>88</td>
</tr>
<tr>
<td>Head 54 – Sanctions for non-compliance</td>
<td>90</td>
</tr>
<tr>
<td>Head 55 – Voluntary arrangements</td>
<td>92</td>
</tr>
<tr>
<td>Head 56 – Designation of relevant online services</td>
<td>93</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part 5 – On-demand Audiovisual Media Services</th>
<th>98</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head 57 – Definition of a relevant on-demand audio visual media service</td>
<td>98</td>
</tr>
<tr>
<td>Head 58 – Registration of on-demand audio visual media services</td>
<td>98</td>
</tr>
<tr>
<td>Head 59 – Compliance and Enforcement</td>
<td>98</td>
</tr>
<tr>
<td>Head 60 – Sanctions for non-compliance</td>
<td>98</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part 6 – Miscellaneous AVMSD Provisions</th>
<th>99</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head 61 – Investigations</td>
<td>99</td>
</tr>
<tr>
<td>Head 62 – Media Codes</td>
<td>99</td>
</tr>
<tr>
<td>Head 63 – Prominence of public service content</td>
<td>99</td>
</tr>
<tr>
<td>Head 64 - Definition of European works</td>
<td>99</td>
</tr>
<tr>
<td>Head 65 - European works quota</td>
<td>99</td>
</tr>
<tr>
<td>Head 66 - Prominence of European works</td>
<td>99</td>
</tr>
<tr>
<td>Head 67 – Reporting</td>
<td>99</td>
</tr>
</tbody>
</table>
PART 1 – PRELIMINARY & GENERAL MATTERS

Head 1 – Short title

Amends s.1 of the Broadcasting Act 2009

Related to the transposition of the AVMSD? No.

Associated policy paper? N/A

Provides that:

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

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

Explanatory Note

To amend the s.1 of the Broadcasting Act 2009 to ensure that it is cited as the Online Safety & Media Regulation Act and to provide for the long title of this amending Bill.
Head 2 - Interpretation

Provide that:

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

In this Act –

Media

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

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

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

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

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

“sound broadcasting service” means a sound media service provided by a media service provider for simultaneous or quasi simultaneous listening of programmes on the basis of a programme schedule; [adapted from the definition of audiovisual media service in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808) and the definition of sound broadcasting service in the Broadcasting Act 2009]

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

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

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

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

“commercial communication” means information conveyed by a media service or relevant online service which is designed to promote, directly or indirectly, the goods, services or image of the natural or legal entity pursuing an economic activity. Forms of audiovisual commercial communication include, inter alia, advertising, sponsorship, teleshopping and product placement but does not include public service announcements and charity appeals made available without charge; [adapted from the definition of audiovisual commercial communication in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

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

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

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

“sponsorship” means any contribution made by a public or private undertaking or natural person not engaged in providing media services or in the production of content, to the financing of media services or content with a view to promoting its name, its trade mark, its image, its activities or its products; [adapted from the definition of sponsorship in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]
“product placement” means any form of commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme or user-generated content, in return for payment or for similar consideration; [adapted from the definition of product placement in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]

Content

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

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

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

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

“user-generated video” means user-generated content consisting of a set of moving images with or without sound constituting an individual item, irrespective of its length, that is created by a user and uploaded to a relevant online service or media service by that user or any other user and does not include content uploaded to a relevant online service or media service by the provider of that service; [adapted from the definition of user-generated video in the revised Audiovisual Media Services Directive (Directive (EU) 2018/1808)]
"broadcast" or “broadcasting” means the transmission, relaying or distribution by electronic communications network of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signal are actually received or not; [adapted from the definition of broadcast in the Broadcasting Act 2009]

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

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

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

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

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

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

“television programme service” means a service which comprises a compilation of audio-visual programme material of any description and is broadcast by means of wireless telegraphy directly or indirectly for reception by the general public; [adapted from the definition of broadcasting service in the Broadcasting Act 2009]
“television programme service contract” and “television programme service contractor” have the same meaning as they have in section x; [the definition of television programme service contract in the Broadcasting Act 2009]

Editorial

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

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

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

General

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

“Act of 1926” means Wireless Telegraphy Act 1926;


“Act of 2009” means the Broadcasting Act 2009;

“Authority” means Broadcasting Authority of Ireland;

“BAI” means Broadcasting Authority of Ireland;
“BCC” means Broadcasting Complaints Commission;

“BCI” means Broadcasting Commission of Ireland;

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

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

“broadcasting rules” means rules prepared under section x;

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

“Communications Regulator” means Commission for Communications Regulation;

“communications media” means—

  (a) the provision of an audiovisual service,

  (b) the provision of a sound media service,

  (c) the provision of a broadcasting service platform,

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

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

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

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

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

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

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

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

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

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

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

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

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

“employment” includes—

(a) full-time employment,

(b) part-time paid employment, where such employment is ongoing in the year of appointment or which arises in subsequent years,

(c) temporary paid employment, being for a period of 16 weeks or more in the year of appointment or in subsequent years, or

(d) being retained under contract, directly or indirectly, in any capacity as an adviser, consultant or lobbyist, or for the provision of services, by or in any business related to the functions of the public body concerned;
“establishment day” means the day appointed by the Minister under section x to be the establishment day for the purposes of x;

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

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

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

“holder” means—

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

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

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

“interests” includes—

( a) employment by or on behalf of—

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

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

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

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

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

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

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

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

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

(a) the nature and characteristics of published material,

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

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

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

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

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

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

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

“multiplex” has the meaning assigned to it by [section x of the Broadcasting Act 2009];
“multiplex contractor” means the holder of a contract entered into under [section x of the Broadcasting Act 2009];

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

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

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

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

(b) has a value of €5,000 or more;

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

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

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

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

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

“RTÉ” means Raidió Teilifís Éireann;

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

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

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

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

“TG4” means Teilifís na Gaeilge;

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

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

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

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

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

“website” means a website maintained on the Internet;

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

**Explanatory Notes**

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

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

**Head 3 - Expenses**

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

**Provide that:**

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

**Explanatory Notes**

This is a standard provision.

**Head 4 - Regulations and Orders**

**Provide that:**

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

**Explanatory Notes**

This is a standard provision.

**Head 5 - Repeals**

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

Explanatory Notes

This is a standard provision.
PART 2 – MEDIA COMMISSION

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

Head 6 - Establishment day

Provide that:

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

Explanatory Note:

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

Head 7 - The Media Commission

Provide that:

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

2. The Commission –

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

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

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

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

   (a) a member; or

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

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

Explanatory note:

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

Head 8 - Independence

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulatory Structures and Functions: Paper 1

Provide that:

The Commission shall be independent in the performance of its functions

Explanatory note:

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

Head 9 - Objectives

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulatory Structures and Functions: Paper 1

Provide that:

The Commission has the following objectives:

1. Ensure that democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression are upheld.
2. Ensure that the number and categories of public service media made available in the State serve the needs of the people of the island of Ireland, having regard to the following:

   (a) linguistic, religious, ethical and cultural diversity

   (b) accessibility of services to people with disabilities

3. Subject to the provisions of this Act, ensure that appropriate regulatory arrangements and systems are in place to address, where appropriate, illegal and harmful online, sound and audio-visual content.

4. Protect the interests of children taking into account the vulnerability of children to harmful content and undue commercial exploitation.

5. Provide a regulatory framework that takes account of the rapidly changing technological environment and that provides for rules to be applied in a proportionate, consistent and fair manner across all services regulated, having regard to the differing nature of those services.

**Explanatory note:**

A provision to assigned objectives to the Media Commission.

**Head 10 - Functions**

**Related to the transposition of the AVMSD?** Yes.

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

**To provide that:**

(1) The Commission has the following functions:

   (i) Ensure the provision of open and pluralistic broadcasting and audio-visual media services;

   (ii) Promote and stimulate the development of Irish language content;

   (iii) Stimulate provision of high quality, diverse and innovative content from commercial, community and public service media providers and independent producers;
(iv) Prepare and submit proposals to the Minister for a scheme or schemes for the granting of funds to support the production of audio-visual content and sound broadcasting content;

(v) Promote and protect the interests of the public in relation to audio-visual, audio and online content;

(vi) The Commission shall have all such powers as are necessary or expedient for the performance of its functions and shall ensure that its functions are performed effectively and efficiently;

(vii) To carry out an investigation, either on its own initiative or in response to a complaint made to it by any person, into any suspected breach of the relevant statutory provisions;

(viii) To enforce the relevant statutory provisions;

(ix) To encourage compliance with the relevant statutory provisions, which may include the publication of notices containing practical guidance as to how those provisions may be complied with;

(x) The Commission shall prepare or make codes and rules to be observed by entities operating in the following categories:

(a) Audiovisual media services
(b) Sound media services
(c) designated online services

(xi) The Commission shall establish or facilitate, where appropriate, a complaints mechanism or mechanisms covering some or all of the following categories:

(a) Audiovisual media services
(b) sound media services
(c) designated online services

(xii) To promote, where appropriate, the development of alternative dispute resolution procedures as a means of resolving complaints;
(xiii) To promote public awareness, encourage research and conduct public information campaigns for the purpose of educating and providing information to the public in relation to:

(a) online safety;

(b) media literacy;

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

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

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

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

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

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

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

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

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

(I) sectoral funding

(II) technological and societal change
(III) the protection of children

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Explanatory note:

A provision to confer certain functions on the Media Commission.

**Head 11 – Core Powers of the Media Commission**

**Related to the transposition of the AVMSD?** Yes.

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

Provides that:

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

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

Explanatory Note

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

Head 12 – Compliance Notices and Warnings

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

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

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

(3) A warning notice will:

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

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

Explanatory Note

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

Head 13 – Codes of Practice

Existing provision – s. 42

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

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

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

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

Explanatory Note

A provision to confer on the Media Commission powers in relation to codes, their implementation and review. How this power is exercised and the policies and principles governing its exercise are laid out in the relevant heads, including Heads 50 and 62.
Head 14A – Investigation into affairs of broadcasting contractor.

Existing Provision – s. 50 of the Broadcasting Act 2009

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

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

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

(3) The Commission shall notify the contractor concerned of the matter under investigation and afford the contractor an opportunity to respond, within 7 days of the date of the notification, or such further period as the Commission allows, to the matter under investigation. It is the duty of the contractor to co-operate in the investigation.

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

( a) produce to the investigator such information or records in the contractor’s possession or control relevant to the investigation,
(b) allow the investigator to enter the premises of the contractor to conduct such inspections and make such examinations of broadcasting equipment found there, and

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

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

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

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

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

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

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

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

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

Existing Provision - s. 51 of the Broadcasting Act 2009

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

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

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

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

the Commission shall—

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

(ii) terminate the contract concerned.

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

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

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

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

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

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

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

**Head 14C – Investigation into affairs of broadcaster.**

Existing Provision - ss. 53 of the Broadcasting Act 2009
**Related to the transposition of the AVMSD?** Yes.

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

**Provides that:**

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

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

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

   (a) notify the broadcaster (“broadcaster concerned”) of the matter under investigation,
   
   (b) supply the broadcaster with copies of any documents relevant to the investigation, and
   
   (c) afford to the broadcaster an opportunity to respond, within 7 days of the date of the notification, or such further period not exceeding 21 days as the Commission allows, to the matter under investigation.

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

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

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

requests, for reasons specified by the person, that the Commission afford to him or her an opportunity to comment within 7 days, or such further period not exceeding 21 days as the Commission allows, on the matter under investigation, then the Commission shall, having considered the reasons so specified, require the investigating officer to afford to the person such an opportunity, if the Commission is satisfied that—
(i) in the case of a person referred to in paragraph (a), an interest of the person, which the Commission considers relevant to the person’s employment by the broadcaster concerned, is involved,

(ii) in the case of a person referred to in paragraph (b), the prospects of the person obtaining further commissions in respect of programmes from the broadcaster concerned, may, because of the matter under investigation, be adversely affected, or

(iii) in the case of a person referred to in paragraph (a) or (b), it is in the interests of fairness to do so, having regard to any potential consequences for the good name of the person.

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

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

( a) provide to the investigating officer such information or records in the broadcaster’s possession or control relevant to the investigation, and

( b) where appropriate, attend before the investigating officer for the purposes of the investigation.

(8) In this section

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

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

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

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

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

Existing Provision - s. 54 of the Broadcasting Act 2009

**Related to the transposition of the AVMSD?** Yes.

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

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

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

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

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

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

(iv) the recommendation of the investigating officer.

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

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

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

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

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

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

(a) set out the reasons for the notification,

(b) state that the Commission intends to apply to the Court for a determination that there has been a breach or a failure to co-operate with an investigation, unless the broadcaster concerned requests, in writing within 14 days of the date of the notification or such further period as the Commission allows, that the Commission deal with the matter under Head 16D, and

(c) indicate the amount of the administrative financial sanction (not exceeding €xxx) that it proposes, if the matter is dealt with by the Commission under Head 16D, and the Commission may indicate in the notification the amount of the administrative financial sanction that it intends to recommend to the Court if the matter is dealt with by the Court under Head 16C.

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

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

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

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

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

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

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

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

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

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

(3) An appointment shall cease—
(a) if the Commission revokes, in writing, the appointment,

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

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

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

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

**Head 15B – Powers of Authorised Officers.**

New Provision

**Related to the transposition of the AVMSD?** Yes.

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

**Provides that:**

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

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

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

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

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

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

(d) secure for later inspection—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) with the consent of the occupier, or
(b) in accordance with a warrant under Head 15C.

(9) A person who —

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

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

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

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

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

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

shall be guilty of a category 2 offence.

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

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

(a) a dwelling or a part thereof,

(b) a building or a part thereof,

(c) any other premises or part thereof, and

(d) a vehicle, vessel, aircraft or any other means of transport.
Head 15C – Search Warrant.

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

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

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

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

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

(5) Nothing in subsections (1) to (4) prevents a judge of the District Court from issuing, on the making of a new application under subsection (1), a further search warrant under this section in relation to the same place.
Head 15D – Actions to be taken by authorised officer upon completion of investigation.

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

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

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

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

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

(ii) a copy of this section, and

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

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

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

(b) having —

(i) considered the submissions (if any) referred to in subsection (1)(b)(iii) made before the expiration of that period on the draft of the authorised officer investigation report concerned, and
(ii) made any revisions to the draft of the authorised officer investigation report which, in the opinion of the authorised officer are warranted following such consideration,

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

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

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

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

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

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

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

(i) impose a sanction pursuant to Head 12,
or

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

or

(iii) take no further action

as it thinks fit in the circumstances of the case,

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

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

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

(a) conduct an oral hearing, or

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

(i) a copy of the investigation report, and

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

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

(5) The Commission shall, as soon as is practicable after making a decision under subsection
(2), give notice in writing of the decision and the reasons for the decision to the regulated
entity to whom the investigation concerned relates and, if subsection (2)(a) applies in the
case of that regulated entity, set out in that notice —
(a) the sanction to be imposed on the regulated entity for the improper conduct specified in the notice in respect of which the Commission is satisfied as referred to in that subsection, and

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

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

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

Explanatory Note

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

Head 16A – Administrative Financial Sanctions

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

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

General

“In Head 16A, B, C, and D –

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

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

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

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

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

(b) the seriousness of the breach,

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

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

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

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

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

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

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

(j) the duration of the breach,

(k) repeated breaches by the relevant undertaking,

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

(m) the extent to which—

(i) the management of the relevant undertaking knew, or ought to have known, that the breach was occurring or would occur, and
(ii) any breach was caused by a third party, or any relevant circumstances beyond the control of the relevant undertaking,

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

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

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

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

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

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

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

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

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

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

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

(4) A relevant undertaking shall comply with a requirement referred to in subsection (3).
(5) All payments received by the Commission under this section shall be paid into or disposed for the benefit of the Exchequer in such manner as the Minister for [Finance] may direct.

Explanatory Note:

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

Head 16B – Appeal against administrative financial sanction

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

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

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

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

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

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

   (c) annul the decision.

(4) The court shall, for the purposes of subsection (3), act in accordance with Head 16A(1)
(5) In this section, “court” means—

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

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

Explanatory Note:

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

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

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

(1) Where a relevant undertaking does not appeal in accordance with Head 16B against a decision by the Commission to impose an administrative financial sanction on the relevant undertaking, the Commission shall, as soon as is practicable after the expiration of the period referred to in that subsection, and on notice to the relevant undertaking concerned, make an application in a summary manner to the Circuit Court for confirmation of the decision.

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

Explanatory Note:

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

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

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

Explanatory Note:

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

Head 17 – Prosecution of Summary Offences by the Commission

New Provision

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Yes – Regulatory Powers Policy Paper

Provides that:

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

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

(a) at any time within [an appropriate period] from the date on which the offence was alleged to have been committed, or
(b) if, at the expiry of that period, the person against whom the proceedings are to be brought is outside the State, within 6 months of the date on which he or she next enters the State,

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

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

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

Explanatory Note

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

**Head 18 – Categories 1 to 4 offences - penalties**

**Related to the transposition of the AVMSD?** Yes.

**Associated policy paper?** n/a

**Provide that:**

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

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

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

(2) A person guilty of an offence under this Act that is stated to be a category 2 offence shall be liable—
(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

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

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

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

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

Explanatory Note

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

Head 19 - Membership of the Commission

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulatory Structures and Functions: Paper 1

Provide that:

1. The membership of the Commission shall consist of –

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

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

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

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

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

5. An appointment of a Member shall not be made unless the person who the [Minister/Government] proposes to appoint possesses, in the opinion of the [Minister/Government], sufficient expertise in, or experience of, one or more of the following areas, namely, [specify areas]

6. The term of office of a member of the Commission shall not exceed 5 years.

7. A member of the Commission whose term of office expires by the effluxion of time shall be eligible for reappointment to the Commission.

8. A member of the Commission who has served 2 terms of office shall not be eligible for reappointment to the Commission

9. Each member of the Commission shall hold office on such conditions as may be fixed by the Minister after consultation with the Minister for PER.

10. A member of the Commission may be paid such remuneration, if any, as the Minister with the consent of the Minister for PER determines.

11. If a member of the Commission is personally interested in a particular matter with which the Commission is dealing, he or she shall inform the Minister accordingly and shall not act as a member during the consideration of the matter.

12. The [Minister/Government] may remove from office a member of the Commission who has become incapable through ill-health of performing efficiently his or her duties as such member or whose removal appears to the [Minister/Government] to be necessary in the interests of the effective and economical performance of the functions of the Commission.

13. Where the [Minister/Government] removes a member of the Commission from office, he or she shall lay before each House of the Oireachtas a statement in writing of the reasons for such removal.
14. A member of the Commission may resign from the Commission by letter addressed to the [Minister/Government] and the resignation shall take effect on the date specified in the letter, or the date on which the [Minister/Government] receives the letter, whichever is the later.

15. A person shall be disqualified from holding and shall cease to hold office as a member of the Commission if he or she—

   (a) is adjudicated bankrupt,

   (b) makes a composition or arrangement with his or her creditors,

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

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

Explanatory note:

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

Head 20 - Acting Membership of Commission

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulatory Structures and Functions: Paper 1

Provide that:

1. the [Minister/Government] may appoint a person to be an Acting Member of the Commission to perform the functions of a Member during –

   (a) a period, or during all periods, when a Member is absent from duty or from the State or is, for any other reason, unable to perform the functions of the Member,

   (b) any suspension from the office of the Member, or

   (c) a vacancy in the office of Member.
2. A person shall not be appointed an Acting Member for a continuous period of more than 6 months. This period can be extended for an additional 6 months provided that justification for the extension is provided.

3. The [Minister/Government] may, at any time, terminate an appointment under this section.

**Explanatory note:**

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

**Head 21 - Functions of Chairperson**

**Related to the transposition of the AVMSD?** Yes.

**Associated policy paper?** Regulatory Structures and Functions: Paper 1

**Provide that:**

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

**Explanatory note:**

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

**Head 22 - Exclusions from membership of the Commission**

**Related to the transposition of the AVMSD?** Yes

**Associated policy paper?** Regulatory Structures and Functions: Paper 1

**Provide that:**

1. A member of the Commission or a member of staff of the Commission shall cease to be a member or member of staff of the Commission if they are -
(a) nominated as a member of Seanad Éireann,
(b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
(c) regarded pursuant to Part XIII of the Second Schedule to the Act of 1997 as having been elected to that Parliament, or
(d) elected or co-opted as a member of a local authority,

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

Explanatory Note

This is a standard provision.

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

Head 23 - Staff of Commission

Related to the transposition of the AVMSD? Yes

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

1. The Commission may, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, appoint such and so many persons to be members of the staff of the Commission as it may from time to time determine.

2. The terms and conditions of service of a member of the staff of the Commission shall, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, be such as may be determined from time to time by the Commission.

3. There shall be paid by the Commission to the members of its staff such remuneration and allowances as, from time to time, the Commission, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, determines.
Explanatory note:

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

Head 24 - Superannuation

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

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

(a) Relevant members of the Commission

(b) Relevant members of staff of the Commission

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

Explanatory note:

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

Head 25 - Power to borrow

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

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

**Explanatory Note**

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

**Head 26 - Accountability of Chairperson to Committee of Public Accounts**

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

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

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

**Explanatory note:**

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

**Head 27 - Accountability of Commissioner to other Oireachtas Committees**

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2
Provide that:

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

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

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

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

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

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

and the High Court shall determine the matter.

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

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

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

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

**Head 28 - Strategy statement and work programme**

**Related to the transposition of the AVMSD?** No

**Associated policy paper?** Regulatory Structures and Functions: Paper 2

**To provide that:**

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

(2) A strategy statement shall —

a. specify the key objectives, outputs and related strategies (including the use of resources) of the Commission.

b. have regard to the need to ensure the most beneficial, effective and efficient use of the Commission’s resources,

c. except for the first strategy statement, include a review of the outcomes and effectiveness of the preceding strategy statement,

 d. specify the manner in which the Commission proposes to assess its performance in respect of the objectives referred to in paragraph (a), taking account of relevant performance indicators (financial and non-financial),

 e. include the Commission’s plans as to the number, nature and scope of contracts that it proposes to enter into during the period covered by the statement

 f. be prepared in the form and manner that the Minister may from time to time direct, and

 g. include any other matters that the Minister may from time to time direct.
(3) When preparing the strategy statement, the Commission may consult such persons as it considers appropriate.

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

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

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

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

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

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

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

Explanatory note:

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

Head 29 - Cooperation with other bodies

Related to the transposition of the AVMSD? Yes

Associated policy paper? Regulatory Structures and Functions: Paper 2

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

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

**Explanatory Note:**

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

**Head 30 - Grants to Commission**

**Related to the transposition of the AVMSD?** Yes

**Associated policy paper?** Regulatory Structures and Functions: Paper 2

**Provide that:**

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

**Explanatory Note**

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

**Head 31 - Accounts of Commission**

**Related to the transposition of the AVMSD?** No

**Associated policy paper?** Regulatory Structures and Functions: Paper 2

**Provide that:**

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

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

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

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

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

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

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

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

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

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

**Explanatory note:**

This is a standard provision for legislation of this kind. A provision for the Commission to produce estimates of its income and expenditure is included.
Head 32 - Committees

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 1

To provide that:

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

Explanatory Note

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

Head 33 - Review of legislation

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 1

To provide that:

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

(2) The Commission shall—

   (a) keep under review the relevant statutory provisions,

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

   (c) undertake such reviews of the relevant statutory provisions as the Minister may direct, and
(d) assist in the preparation of such draft legislation as the Minister may direct.

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

Explanatory Note:

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

Head 34 - External cooperation function

Related to the transposition of the AVMSD? Yes.

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

To provide that:

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

Explanatory note

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

Head 35 – Reporting by Commission

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

To provide that:

(1) The Commission shall not later than 30 June in each year prepare and submit to the Minister a report on its activities in the immediately preceding year (in this section referred
to as the “annual report”), and the Minister shall, as soon as may be after receiving the
annual report, cause copies of the annual report to be laid before each House of the
Oireachtas.

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

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

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

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

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

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

Explanatory Note:

This is a standard provision for legislation of this kind.

Head 36 – Prohibition on unauthorised disclosure of confidential information

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

To provide that:
Provision - Prohibition on unauthorised disclosure of confidential information

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

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

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

   (b) to a Minister of the Government, and

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

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

(4) In this section—

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

“relevant person” means—

   (a) a Commissioner,

   (b) a member of staff of the Commission,

   (c) an authorised officer,

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

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

Explanatory Note:

Given the nature of the information that staff of the Commission are likely to be exposed to, it is prudent to include an explicit provision to prohibit disclosure of confidential
information. This will provide assurance to regulated entities that procedures are in place to prevent the release of commercially sensitive information and trade secrets.

Head 37 – Disclosure of interests

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

To provide that:

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

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

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

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

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

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

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

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

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

**Head 38 – Policy Communications**

**Related to the transposition of the AVMSD?** No.

**Associated policy paper?** Regulatory Structures and Functions: Paper 2

**To provide that:**

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

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

   (a) give the reasons for it, and

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

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

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

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

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

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

Explanatory Note:

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

Head 39 – Consultants and Advisors

Related to the transposition of the AVMSD? No.

Associated policy paper? Regulatory Structures and Functions: Paper 2

To provide that:

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

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

Explanatory Note:

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

Head 40 – Levy

Related to the transposition of the AVMSD? Yes

Associated policy paper? Funding Policy Paper
To provide that:

A provision to grant the Media Commission the power to impose on regulated entities levies to provide for the cost of regulation and to provide for the Commission’s working capital.
PART 3 - TRANSITIONAL PROVISIONS

Head 41 - Dissolution of the Broadcasting Authority of Ireland

Related to the transposition of the AVMSD? Yes

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

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

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

Explanatory note:

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

Head 42 - Transfer of Functions to the Commission

Related to the transposition of the AVMSD? Yes

Associated policy paper? Regulatory Structures and Functions: Paper 2

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

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

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

Explanatory Note:

This head provides that the relevant functions of the BAI are transferred to the Commission on the establishment day.
Head 43 - Transfer of staff to Commission

Related to the transposition of the AVMSD? Yes

Associated policy paper? Regulatory Structures and Functions: Paper 2 [To be drafted

Provide that:

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

Explanatory Note:

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

Head 44 - Transfer of land and other property

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

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

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

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

Explanatory Note:

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

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

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

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

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

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

Explanatory Note:

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

Head 46 - Liability for loss occurring before establishment day

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

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

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

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

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

Explanatory Note:

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

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

Related to the transposition of the AVMSD? No

Associated policy paper? Regulatory Structures and Functions: Paper 2

Provide that:

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

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

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

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

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

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

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

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

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

**Explanatory Note:**

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

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

Provide that:

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

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

**Explanatory Note:**

This head refers to the final accounts of the Broadcasting Authority of Ireland and how they should be drawn up and in such form so they may be approved of by the Minister in respect
of the accounting year or part of an accounting year of the Broadcasting Authority of Ireland ending immediately before the establishment day.
Part 4 – Online Safety

Head 49A – Categories of harmful online content

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Defining harmful online content

Provides that:

“harmful online content” includes –

(a) material which it is a criminal offence to disseminate under Irish [or Union law],

(b) material which is likely to have the effect of intimidating, threatening, humiliating or persecuting a person to which it pertains and which a reasonable person would conclude was the intention of its dissemination,

(c) material which is likely to encourage or promote eating disorders and which a reasonable person would conclude was the intention of its dissemination, and,

(d) material which is likely to encourage or promote [self-harm or suicide] or provides instructions on how to do so and which a reasonable person would conclude was: (i) the intention of its dissemination and (ii) that the intention of its dissemination was not to form part of philosophical, medical and political discourse.

but does not include –

(a) material [containing or comprising] a defamatory statement,

(b) material that violates [data protection or privacy law],

(c) material that violates [consumer protection law], and

(d) material that violates [copyright law];

Explanatory note:

It is not proposed to define harmful online content. Instead it is proposed to enumerate descriptions of categories of material that are considered to be harmful online content.

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

• Content containing or comprising incitement to violence or hatred, and,

• Public provocation to commit a terrorist offence.

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

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

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

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

**Related to the transposition of the AVMSD?** Yes.

**Associated policy paper?** Defining harmful online content

**Provides that:**

(1) The Media Commission may propose to include or exclude further categories of material from the definition of harmful online content.

(2) the Commission may publish such proposals and invite submissions from interested parties, [including members of... advisory committees],and shall consider any submissions it receives and may amend proposals as it deems warranted.

(4) the Commission may bring proposals to the Minister and recommend they be adopted by the Government.

(5) the Minister shall consider proposals brought to them by the Commission and shall consult with the Joint Oireachtas Committee as part of this consideration.

(6) having considered a proposal, the Minister may:
(a) return the proposal to the Media Commission for further examination, or

(b) submit the proposal to the Government.

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

(8) if a proposal submitted to the Government by the Minister in accordance with subsection (6) (b) is adopted then the Minister may, by regulation, include or exclude from the categories considered to be harmful online content the categories of material contained within the proposal.

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

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

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

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

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

(e) the general public interest,

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

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

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

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

**Explanatory note:**

In order to complement the non-exhaustive nature of the list of categories of harmful online content a procedure by which it can be amended by order is included in this head. This procedure is intended to draw upon the expertise of the regulator, be broadly consultative
and contain a number of checks and balances in order to account for the challenges in balancing fundamental rights in this area.

**Head 49C – Definition of age inappropriate online content**

**Related to the transposition of the AVMSD?** Yes.

**Associated policy paper?** Defining harmful online content

**Provides that:**

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

1. material containing or comprising gross or gratuitous violence,
2. material containing or comprising cruelty, including mutilation and torture, towards humans or animals, and,
3. material containing or comprising pornography.

**Explanatory Note:**

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

**Head 50A – Online safety codes**

**Related to the transposition of the AVMSD?** Yes.

**Associated policy paper?** Regulating harmful online content

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Explanatory note:**

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

This provision also provides a list of matters that the Commission shall have regard to in preparing online safety codes, including matters relating to EU law, the nature and scale of services, transparency and fundamental rights.
**Head 50B – Compliance assessments**

**Related to the transposition of the AVMSD?** Yes.

**Associated policy paper?** Regulating harmful online content

**Provides that:**

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

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

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

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

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

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

**Explanatory note**

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

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

**Head 51 – Online safety guidance materials**

**Related to the transposition of the AVMSD?** Yes.

**Associated policy paper?** Regulating harmful online content

**Provides that:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Explanatory note:

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

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

Head 52A – Auditing complaints handling

Related to the transposition of the AVMSD? Yes.
**Associated policy paper?** Regulating harmful online content

**Provides that:**

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

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

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

**Explanatory note**

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

**Head 52B – Systemic complaints scheme**

**Related to the transposition of the AVMSD?** Yes.

**Associated policy paper?** Regulating harmful online content

**Provides that:**

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

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

(3) in outlining the functioning of the scheme provided for under subsection (1), the Media Commission shall provide for:
(a) the form in which it will receive notices,

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

(c) the criteria for nomination,

(d) the process through which a body can apply for nomination,

(e) the process through which a body’s nominated status can be revoked by the Media Commission, and,

(f) the criteria for revocation of a body’s nominated status.

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

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

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

Explanatory note

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

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

Head 53 – Compliance and warning notices

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulating harmful online content
Provides that:

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

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

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

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

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

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

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

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

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

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

(9) The Media Commission may publish details relating to any warning notice it issues under this section.
following a warning issued by the Media Commission under subsection (4) regarding alleged non-compliance by a designated online service and the expiry of the timescale specified in accordance with subsection (5), the Commission may take the view that the alleged non-compliance has not been remedied.

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

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

Explanatory note:

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

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

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

Head 54 – Sanctions for non-compliance

Related to the transposition of the AVMSD? Yes.

Associated policy paper? Regulating harmful online content

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

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

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

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

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

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

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

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

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

**Explanatory note:**

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

These sanctions include:

- an administrative financial sanction,
- compelling compliance, or
- the blocking of access to the designated online service in Ireland.
The application of each of these sanctions requires court approval whereupon the designated online service in question will have the opportunity to dispute its application. The procedure for administrative financial sanctions is set out in Head 16.

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

**Head 55 – Voluntary arrangements**

**Related to the transposition of the AVMSD?** Yes.

**Associated policy paper?** Regulating harmful online content

**Provides that:**

(1) The Media Commission may enter into voluntary arrangements with any relevant online service not established in the State.

(2) these voluntary arrangements shall specify the extent to which a relevant online service agrees to comply with any online safety code and/or online safety guidance materials issued by the Media Commission in accordance with Head 50A/Head 51 and any reporting requirements.

(3) the Media Commission shall notify the Minister of any arrangements entered into under this section.

(4) the Media Commission shall publish the details of any relevant online service that enters into an arrangement under this section and the nature of the arrangement.

(5) the Media Commission may request information from a relevant online service which has entered into an arrangement under this section regarding their compliance with the specifics of the arrangement and may request such services to report to them regarding their compliance on a periodic basis.

(6) if the Media Commission is of the view that, following an information request under subsection (5), that a relevant online service party to an arrangement under this section is not in compliance, or that the a relevant online service has not complied with an information request made under subsection (5), they may publish this fact.
(7) if the Media Commission is of the view that, following an information request under subsection (5), that a relevant online service party to an arrangement under this section is not in compliance, they may revoke the arrangement.

(8) arrangements made under this section shall be reviewed on a periodic basis.

(9) any arrangements entered into by the Media Commission under this section shall be compatible with the jurisdiction rules for video sharing platform services under article 28a of Directive (EU) 2018/1808.

**Explanatory note:**

This head provides for the Media Commission to enter into voluntary arrangements with any relevant online service not established in the State. These arrangements would be public and specify the extent to which the any relevant online services agree to comply with online safety codes issued by the Commission.

The Media Commission may request information and determine reporting schedules for services that enter into such arrangements. The Media Commission may also make findings of non-compliance and publish the fact of these findings and to revoke arrangements if deemed necessary.

This head provides for the voluntary extra-jurisdictional application of the regulatory regime for online safety while respecting the practical and constitutional limitations of such application.

**Head 56 – Designation of relevant online services**

**Related to the transposition of the AVMSD?** Yes.

**Associated policy paper?** Policy Paper – Services covered by Strands 1 & 2

**Provides that:**

(1) The Media Commission shall, from time to time, designate relevant online services or categories thereof.

(2) in designating relevant online services or categories thereof the Media Commission shall have regard to:

(a) the definition of a video sharing platform service in Head 2,
(b) guidelines issued by the European Commission in respect of the practical application of the essential functionality criterion within the definition of a video sharing platform service,

(c) the jurisdiction rules for video sharing platform services under article 28a of Directive (EU) 2018/1808,

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

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

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

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

(h) the likely prevalence of harmful online content the relevant online services or categories thereof in question facilitate the dissemination of or access to,

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

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

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

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

(3) video sharing platform services shall be a category of designated online services.

(5) the Media Commission shall not designate a relevant online service that is:

(a) an audiovisual media service, or,

(b) a sound media service.

(6) the Media Commission shall inform a relevant online service that it is considering designating of its considerations and may request information from said relevant online service to inform these considerations.
(7) relevant online services shall comply with information requests from the Media Commission made in accordance with subsection (6).

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

(9) if the Media Commission is considering designating a category of relevant online services it shall consult with services within said category and may issue information requests to said services in accordance with subsection (6).

(10) in designating relevant online services or categories thereof the Media Commission may consult with any persons or bodies it sees fit, [including members of... advisory committees].

(11) in designating relevant online services or categories thereof the Media Commission shall specify any online safety codes, prepared by the Commission in accordance with Head 50A, that the designated online service or category of designated online services shall abide by, having regard to the matters specified in subsection (2).

(12) the Media Commission may vary, following any compliance procedures under this Part, consultation with any persons or bodies the Commission sees fit to consult, including members of advisory committees established in accordance with Head 32, and/or consultation with the designated online service or services within a category of designated online services, the online safety codes that said service or category of services shall abide by.

(13) the Media Commission may not oblige a designated online service or category thereof to abide by an online safety code that relates to material which it is not a criminal offence to disseminate if said service or services are:

(a) an interpersonal communications service, or,

(b) a private online storage service.

(14) the Media Commission shall maintain a readily accessible, publically available and up to date list of designated online services and categories thereof and the relevant online safety codes that apply to said services and shall periodically provide this list to the Minister.

(15) disputes between relevant online services and the Media Commission regarding the application of this section [may be brought to the High Court by either party] [and/or] the European Commission in the case of video sharing platform services.

Explanatory note:

This head provides for the following:
• Provides the Media Commission with the power to designate individual and categories of online services from a wider pool of relevant online services to abide by any online safety codes the Commission deems necessary.

• Provides that video sharing platform services be specified are a category of designated online services.

• Provides that services that are to be subject to other regulatory regimes under this Bill be excluded from the possibility of being designated, these being audiovisual media services and sound media services.

• Provides that the Media Commission’s code making powers in relation to interpersonal communications services and private online (cloud) storage services be explicitly limited to matters relating to content which it is a criminal offence to disseminate. This reflects the different balance of fundamental rights that arise in relation to these services than other relevant online services.

This approach would bring a wide range of services into scope for potential designation. However, importantly, this does not imply that such services should or will be designated. The designation of services will be a matter for the Media Commission, which will be required by law to have regard to the legal limits of liability, the nature and scale of services and the fundamental rights of users and operators of services. This is a substantive check against any potential inappropriate designation by the Commission and provides a strong basis for the Commission to take a proportionate risk based approach to designation.

Kinds of services that this approach brings into scope for potential designation includes, but is not limited to:

• Social media services,

• Public boards and forums,

• Online gaming services,

• Ecommerce services, where they facilitates the dissemination of or access to user-generated content,

• Private communication services,

• Private online (cloud) storage services,

• Press publications, where they facilitate the dissemination of or access to user-generated content,
• Online search engines, and,

• Internet service providers.

However, in relation to two examined categories, private communications services and private online storage services, it is provided that the Media Commission’s code making powers in relation to these services be explicitly limited to matters relating to content which it is a criminal offence to disseminate. The reason for this is that these services raise particular rights balancing issues, especially regarding the right to privacy, which make it difficult to justify giving the Commission to power to require them to take measures in relation to non-criminal harmful online content.
Part 5 – On-demand Audiovisual Media Services

Head 57 – Definition of a relevant on-demand audio visual media service
[to insert]

Head 58 – Registration of on-demand audio visual media services
[to insert]

Head 59 – Compliance and Enforcement
[to insert]

Head 60 – Sanctions for non-compliance
[to insert]
Part 6 – Miscellaneous AVMSD Provisions

Head 61 – Investigations
[to insert]

Head 62 – Media Codes
[to insert]

Head 63 – Prominence of public service content
[to insert]

Head 64 - Definition of European works
[to insert]

Head 65 - European works quota
[to insert]

Head 66 - Prominence of European works
[to insert]

Head 67 – Reporting
[to insert]