



Broadcasting Law - Ireland

Broadcasting Act, 1990, Number 24 of 1990, 24.07.1990

ACTS REFERRED TO

Broadcasting Authority Act, 1960, 1960, No. 10

Broadcasting Authority (Amendment) Act, 1966, 1966, No. 7

Broadcasting Authority (Amendment) Act, 1976, 1976, No. 37

Broadcasting and Wireless Telegraphy Act, 1988, 1988 No. 19

Police (Property) Act, 1897, 1897, c. 30

Radio and Television Act, 1988, 1988, No. 20

Wireless Telegraphy Act, 1926, 1926, No. 45 (Times New Roman, bold, size 12)

An act to make further provision in relation to broadcasting and wireless telegraphy and for this purpose to amend the broadcasting authority acts, 1960 to 1979, the radio and television act, 1988, and the wireless telegraphy acts, 1926 to 1988, and to provide for other matters connected with the matter aforesaid.

[24th July, 1990]

1.- Interpretation.

(1) In this Act-

"the Act of 1926" means the Wireless Telegraphy Act, 1926;

"the Act of 1966" means the Broadcasting Authority (Amendment) Act, 1966;

"the Act of 1976" means the Broadcasting Authority (Amendment) Act, 1976;

"the Authority" means Radio Telefís Éireann;

"licensee" means the holder of a licence issued by the Minister under the Wireless Telegraphy (Wired Broadcast Relay Licence) Regulations, 1974 (S.I. No. 67 of 1974) or a licence issued by the Minister under the Wireless Telegraphy (Television Programme Retransmission) Regulations, 1989 (S.I. No. 39 of 1989);

"the Minister" means the Minister for Communications;

"owner" has the same meaning as in the Broadcasting and Wireless Telegraphy Act, 1988;

"premises" has the same meaning as in the Broadcasting and Wireless Telegraphy Act, 1988;

"the Principal Act" means the Broadcasting Authority Act, 1960;

"service provider" means the provider of a service specified in an order made under section 16.

(2) A reference in this Act to a section is a reference to a section of this Act, unless it is indicated that a reference to some other enactment is intended.

(3) A reference in this Act to a subsection or a paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs unless it is indicated that a reference to some other provision is intended.

2.- Commencement.

This Act shall come into operation on the 1st day of October, 1990.

3.- Advertising broadcasts by Authority.

(1) The total daily times for broadcasting advertisements fixed by the Authority shall not exceed 7.5 per cent. of the total daily programme transmission time and the maximum period so fixed to be given to advertisements in any one hour shall not exceed five minutes. In the case of the sound broadcasting service known as "Atlantic 25" operating on a longwave frequency and licensed under section 16 of the Principal Act the total daily time for broadcasting advertisements shall not exceed 20 per cent. of daily programme transmission time and the maximum period to be given to advertisements in any one hour shall be as determined by the Authority.

(2) In respect of each financial year beginning with the year commencing on the 1st day of January, 1991, it shall be the duty of the Authority to ensure that the total revenue derived by it from advertising, sponsorship or other forms of commercial promotion in broadcasts in any year does not exceed the amount paid to the Authority pursuant to section 8 of the Act of 1976 in the preceding financial year, that amount having been adjusted by the percentage increase in the consumer price index compiled by the Central Statistics Office for that preceding financial year.

(3) In respect of the part of the year 1990 from the commencement of this Act until the 31st day of December, 1990, it shall be the duty of the Authority to ensure that the total revenue derived by it from advertising, sponsorship or other forms of commercial promotion in broadcasts does not exceed one hundred and twenty per cent. of the balance of the amount of £46.815 million remaining after deducting the amount paid to it pursuant to section 8 of the Act of 1976 in the part of that year preceding such commencement.

(4) If in respect of any financial year or in respect of the period from the commencement of this Act until the 31st day of December, 1990, the statement to be provided to the Minister under section 7 (2) shows that the actual receipts derived by the Authority from advertising, sponsorship or other forms of commercial promotion in broadcasts in that year or period exceeded the limit as calculated in accordance with subsection (2) or (3) of this section, as the case may be, the total receipts which may be derived from such sources in the subsequent financial year in accordance with the said subsection (2) shall be reduced by the amount of the excess.

4.- Codes of practice relating to advertising and other commercial promotions.

(1) The Minister shall draw up and may amend, from time to time as he thinks proper, codes governing standards, practice and, and prohibitions in advertising, sponsorship or other forms of commercial promotion in broadcasting services and the Authority, every sound broadcasting contractor and the television programme service contractor shall comply with every such code in relation to its broadcasting services.

(2) A code under subsection (1) relating to the Authority may provide for the extent to which the Authority's promotion of its own commercial activities within its own broadcasting services is to be treated as advertising for the purposes of section 3 and a code relating to a sound broadcasting contractor or television programme service contractor may provide for the extent to which that contractor's promotion of its own commercial activities within its own broadcasting services is to be so treated for the purposes of section 10 (4) of the Radio and Television Act, 1988.

(3) The Minister shall consult the Authority and the Independent Radio and Television Commission in drawing up or amending a code under subsection (1).

(4) Pending the drawing up of a code under subsection (1) the Authority and the Independent Radio and Television Commission shall continue to apply their codes for the time being in force governing standards, practice and prohibitions in broadcast advertising.

(5) A code drawn up under subsection (1), in relation to the broadcasting services of the Authority, sound broadcasting contractors or the television programme service contractor, shall supersede any existing code under Section 18B(1) (e) of The Principal Act (inserted by section 4 of the Act of 1976) or under section 10 (2) of the Radio and Television Act, 1988, in relation to such services.

(6) The references to section 10 (2) (which relates to codes of standards) of the Radio and Television Act, 1988, in section 10 (6) or section 11 (4) (a) (iv) of that Act shall be construed as including reference to a code under subsection (1) of this section.

5.- Independent productions on Authority's television services.

In the period from the commencement of this Act until the 3rd day of October, 1991, the Authority shall ensure that a reasonable proportion of the programme material on its television services is devoted to original programme material produced in the State or in another Member State of the European Communities by persons other than the Authority, its subsidiaries or other broadcasting organisations and that, as far as is practicable, that proportion shall not be less than that broadcast by the Authority in the year 1989.

6.- Television programme service contract.

(1) The Independent Radio and Television Commission may, if it considers it appropriate to do so, in addition to the contract entered into under section 4 (2) (b) of the Radio and

Television Act, 1988, enter into an additional contract with the television programme service contractor under which the television programme service contractor shall have the right and duty, in addition to the transmission systems referred to in section 17 of that Act, to establish, maintain and operate television broadcasting transmitters for the purpose of transmitting the television programme service referred to in section 4 of the said Act of 1988.

(2) Subsections (3) to (6) of section 4 of the said Act of 1988 shall apply with necessary modifications with respect to the provision of any such transmission facilities as they apply in relation to sound broadcasting services.

(3) Section 18 (1) of the said Act of 1988 shall be amended by the deletion of the reference therein to section 7 of that Act.

7.- Accounts and audits.

(1) The Authority shall submit annually for audit to such duly qualified auditors as the Authority may appoint all accounts kept for the purposes of the Broadcasting Authority Acts, 1960 to 1979, and this Act.

(2) Immediately after each audit of its accounts, the Authority shall send to the Minister-

(a) a copy of the income and expenditure account and balance sheet as certified by the auditors,

(b) a copy of the auditors' report,

(c) a statement certified by the auditors in respect of the total revenue derived by the Authority from advertising, sponsorship or other forms of commercial promotion in its broadcasts,

(d) copies of such of the accounts submitted for audit as the Minister may appoint as accounts of which copies are to be furnished to him.

8.- Complaints to Broadcasting Complaints Commission regarding broadcasts affecting an individual.

(1) section 18B (1) of the Principal Act (inserted by section 4 of the Act of 1976) is hereby amended by the addition of the following paragraph:

"(g) a complaint by a person that on a specified occasion an assertion was made in a broadcast of inaccurate facts or information in relation to that person which constituted an attack on that person's honour or reputation."

(2) section 18B of the Principal Act is hereby amended by the insertion of a new subsection as follows:

"(11A) Without prejudice to subsection (11) of this section, the Authority shall, unless the Commission considers it inappropriate, broadcast the Commission's decision on every complaint considered by the Commission in which the Commission found in favour, in whole or in part, of the complainant, including any correction of inaccurate facts or information relating to an individual arising from a complaint under subsection (1) (g) of this section, at a time and in a manner corresponding to that in which the offending broadcast took place."

(3) A reference in the said section 18B to a code shall be construed as including a reference to a code in force under section 4 of this Act.

9.- Prohibition on interception of services.

(1) No person, other than a duly authorised officer of the Minister, shall, in relation to a service provided by a licensee or a service provider-

(a) intercept the service,

(b) suffer or permit or do any other thing that enables such interception by any person,

(c) possess, manufacture, assemble, import, supply, or offer to supply, any equipment which is designed or adapted to be used for the purpose of enabling such interception by any person, or

(d) publish information with the intention of assisting or enabling any person to intercept such a service.

(2) No person shall-

(a) knowingly instal or attempt to instal or maintain any equipment which is capable of being used or designed or adapted to be used for the purpose of enabling such interception by any person, or

(b) wilfully damage or attempt to damage a system or part of a system operated by a licensee or service provider.

(3) A person who contravenes any provision of subsection (1) or (2) shall be guilty of an offence.

(4) In this section "intercept" in relation to a service means receive, view, listen to, record by any means or acquire the substance or purport of the service or part thereof supplied by a licensee or service provider without the agreement of the licensee or service provider.

10.- Prohibition on owner of premises where prohibited action or conduct takes place.

(1) No person, being the owner of, or in control of, or concerned in the management of, any premises shall knowingly suffer or permit any action or conduct to which section 9 relates to occur on such premises.

(2) A person who contravenes subsection (1) shall be guilty of an offence.

(3) Where in proceedings for an offence under this section it is proved that an offence was committed in or on particular premises and that the defendant was, at the time of the alleged offence, the owner of, or in control or concerned in the management of, the premises then, unless there is sufficient other evidence to raise an issue as to whether the defendant knowingly permitted the offence to have been committed, he shall be treated as having so suffered or permitted the offence to have been committed.

11.- Penalties.

(1) A person guilty of an offence under section 9 or 10 shall be liable:

(a) on summary conviction, to imprisonment for a term not exceeding three months or, at the discretion of the court, to a fine not exceeding £1,000, or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or, at the discretion of the court, to a fine not exceeding £20,000 or to both such fine and such imprisonment.

(2) Where an offence under section 9 or 10 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against accordingly.

(3) Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under section 9 or 10 of this Act may be instituted at any time within two years from the time when the offence was committed.

12.- Forfeiture of equipment.

(1) On summary conviction or on conviction on indictment for an offence under section 9 (1) (c) or 9 (2) (a) the Court may order the forfeiture to the Minister of any equipment used in the commission of the offence.

(2) The Minister may deal with or dispose of, as he thinks fit, anything so forfeited.

(3) The net proceeds of anything sold by the Minister in pursuance of this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance shall direct.

13.- Onus of proof.

In proceedings for an offence under section 9 or 10 it shall not be necessary to negative by evidence the existence of an agreement with a licensee or service provider and accordingly the onus of proving the existence of such an agreement shall be on the defendant.

14.- Search warrants.

(1) A Justice of the District Court may, upon the information on oath of a member of the Garda Síochána that there is reasonable ground for believing that an offence under section 9 or 10 is taking or has taken place in a specified place, grant to such member of the Garda Síochána a search warrant which shall be expressed and shall operate to authorise the member of the Garda Síochána to whom it is granted to enter, and if need be by force, the place named in the said information and there to search for equipment to which section 9 (1) (c) or 9 (2) (a) relates and to examine all such equipment there found and to seize and take away all or any part of such equipment.

(2)(a) A search warrant granted under this section shall operate to authorise any one or more of the following, namely, any member of the Garda Síochána or any person authorised by the member of the Garda Síochána to whom the warrant is granted to accompany and assist him in the exercise of the powers thereby conferred on him.

(b) The member of the Garda Síochána to whom the warrant is granted may retain anything seized under this section which he believes to be evidence of any offence or suspected offence under section 9 (1) (c) or 9 (2) (a) for use as evidence in proceedings in relation to any such offence, for such period from the date of seizure as is reasonable, or, if proceedings are commenced in which the thing so seized is required for use in evidence, until the conclusion of the proceedings, and the member of the Garda Síochána shall, as soon as may be, deliver any such thing to the person who in his opinion is the owner thereof, and in case the member of the Garda Síochána decides that he is unable to ascertain such person, then, on and from the date of his decision, the Police (Property) Act, 1897, shall apply to the thing so seized.

(3)(a) Any person who by act or omission impedes or obstructs a member of the Garda Síochána or any other person in the exercise of a power conferred by this section shall be guilty of an offence.

(b) Any person who with intent to impede or obstruct a member of the Garda Síochána or any other person in the exercise of a power conferred by this section places, erects, installs, keeps or maintains any thing shall be guilty of an offence and if the impediment or obstruction is continued after conviction, he shall be guilty of a further offence on each day on which it is so continued.

(c) Every person guilty of an offence under this subsection shall be liable on summary conviction to a fine not exceeding £500.

15.- Civil remedies.

(1) Where it is alleged by a licensee or service provider that any activity or conduct prohibited by section 9 is being, has been or is about to be carried on and that, as a result, he has suffered, is suffering or may suffer damage he shall be entitled to seek the following remedies against the person responsible-

(a) an order of the High Court or Circuit Court restraining the person from carrying on or attempting to carry on the activity or conduct complained of;

(b) damages or, at the option of the complainant, an account of profits.

(2) An application to the High Court or Circuit Court for an order referred to in subsection (1) shall be by motion and the court, when considering the matter, may make such interim or interlocutory order (if any) as it considers appropriate.

(3) An application to the Circuit Court under subsection (1) shall be made to the judge of the Circuit where the activity or conduct is alleged to be or to have been carried on or to be apprehended or where the person alleged to be responsible resides.

16.- Extension of provisions.

(1) The Minister may by order, subject to such exceptions as he thinks fit, extend provisions of sections 9 to 15 (subject to such modifications as he thinks proper) to any class of service transmitted by wireless telegraphy intended by the service provider to be received only by persons paying a fee to the service provider.

(2) This section applies to any class of service, whether transmitted from inside or outside the State, which is transmitted by encrypted programme transmission.

(3) In this section the term "encrypted programme transmission" means a transmission in a form whereby the aural or visual characteristics (or both) are modified or altered for the purpose of preventing the unauthorised reception of such transmission by persons without authorised equipment which is designed to eliminate the effects of such modification or alteration.

(4) The Minister may by order revoke or amend any order made by him under this section.

(5) Where it is proposed to make an order under this section a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each House.

17.- Amendment of Act of 1926.

(1) For the avoidance of doubt, where it appears appropriate to the Minister, he may, in the interests of the efficient and orderly use of wireless telegraphy, limit the number of licences for any particular class or classes of apparatus for wireless telegraphy granted pursuant to section 5 of the Act of 1926.

(2) The Act of 1926 is hereby amended by the insertion after section 6 (2) of the following:

"(2A) Where it appears to be expedient to the Minister he may by instrument in writing recognise as valid a licence issued by another country in respect of a class or classes of apparatus for wireless telegraphy subject to such conditions or restrictions as to the use of such apparatus as the Minister sees fit."

18.- Amendment of Broadcasting and Wireless Telegraphy Act, 1988.

Subsection (4) of section 6 of the Broadcasting and Wireless Telegraphy Act, 1988, is hereby amended by the insertion after the words "sections 3, 4 or 5 of this Act" of the words "or under section 3 of the Act of 1926 as amended by section 12 of this Act".

19.- Repeals.

Each of the enactments cited in the Schedule to this Act is hereby repealed to the extent indicated in the third column of that Schedule.

20.- Short title.

This Act may be cited as the Broadcasting Act, 1990.

SCHEDULE REPEALS

Number and Year Short Title Extent of Repeal

No. 10 of 1960 Broadcasting Authority Act, 1960 Section 20 (3), inserted by section 14 of Act No. 37 of 1976.

Section 25 (1A), (1B), inserted by section 6 of Act No. 7 of 1966. No. 7 of 1966 Broadcasting Authority (Amendment) Act, 1966 Section 6.

No. 37 of 1976 Broadcasting Authority (Amendment) Act, 1976 Section 14 (2).