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COMMUNICATIONS REGULATION ACT, 2002

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COMMUNICATIONS REGULATION ACT, 2002

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS THE COMMISSION FOR COMMUNICATIONS REGULATION OR, IN THE IRISH LANGUAGE, AS AN COIMISIÚN UM RIALÁIL CUMAR-SÁIDE, TO DEFINE ITS FUNCTIONS, TO DISSOLVE THE OFFICE OF THE DIRECTOR OF TELECOMMUNICATIONS REGULATION, TO TRANSFER THE FUNCTIONS OF THE DIRECTOR OF TELECOMMUNICATIONS REGULATION TO THE COMMISSION FOR COMMUNICATIONS REGULATION, TO MAKE PROVISION IN RESPECT OF THE OPENING OF PUBLIC ROADS FOR ELECTRONIC COMMUNICATIONS INFRASTRUCTURE, TO PROVIDE FOR THE SHARING OF INFRASTRUCTURE, TO REPEAL CERTAIN ENACTMENTS AND PROVISIONS OF ENACTMENTS AND TO PROVIDE FOR CONNECTED MATTERS. [27th April, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—This Act may be cited as the Communications Regulation Act, Short title. 2002.

2.—(1) In this Act, except where the context otherwise requires— Interpretation.

“Act of 1972” means European Communities Act, 1972;

“Act of 1996” means Telecommunications (Miscellaneous Provisions) Act, 1996;

“associated facilities” means those facilities associated with either or both—

(a) an electronic communications network, and

(b) an electronic communications service,

which enable or support the provision of services by way of that network or service, and includes conditional access systems and electronic programme guides;

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“Civil Service” has the meaning assigned to it by the Civil Service Regulation Act, 1956;

“Commission” means the Commission for Communications Regulation established by *Part 2*;

“Commissioner” means a member of the Commission;

“Community” means European Communities;

“conditional access systems” means any technical measure or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation;

“Director” means the Director of Telecommunications Regulation appointed under the Act of 1996 and, where the context so admits, includes the Office of the Director of Telecommunications Regulation;

“electronic communications market” means electronic communications networks, electronic communications services and associated facilities;

“electronic communications network” means transmission systems including, where applicable—

- (a) switching equipment,
- (b) routing equipment,
- (c) other resources,

which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, and such conveyance includes the use of—

- (i) satellite networks,
- (ii) electricity cable systems, to the extent that they are used for the purposes of transmitting signals,
- (iii) fixed terrestrial networks (both circuit-switched and packet-switched, including the Internet),
- (iv) mobile terrestrial networks,
- (v) networks used for either or both radio and television broadcasting, and
- (vi) cable television networks,

irrespective of the type of information conveyed;

“electronic communications service” means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services, publicly available telephone services and transmission services in networks used for broadcasting, but does not include—

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- (a) services providing, or exercising editorial control over, content transmitted using electronic communications networks and services, and Pt.1 S.2
- (b) information society services within the meaning of Article 1 (inserted by Directive 98/48/EC of 20 July 1998¹) of Directive 98/34/EC of 22 June 1998² which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;

“essential requirements” has the meaning assigned to it by Article 2 of Directive 97/13/EC of 10 April 1997³;

“establishment day” means the day appointed under *section 4* to be the establishment day for the purposes of this Act;

“Minister” means Minister for Public Enterprise;

“Office” means Office of the Director of Telecommunications Regulation;

“postal services” has the meaning assigned to it by Directive 97/67/EC of 15 December 1997⁴;

“prescribed” means prescribed by regulations made by the Minister;

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

“television set” has the meaning assigned to it by section 1 of the Wireless Telegraphy Act, 1972;

“transferred function” means a function transferred to the Commission under *section 9*;

“undertaking” means a provider of electronic communications networks or services or associated facilities;

“user” means a natural or legal person using or requesting a publicly available electronic communications service.

(2) In this Act—

- (a) a reference to a section or Schedule is a reference to a section of, or Schedule to, this Act unless it is indicated that some other enactment is intended;
- (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended; and
- (c) a reference to an enactment includes a reference to that enactment as amended or extended by or under any subsequent enactment including this Act.

¹O.J. No. L217, 5.8.98, p. 18.

²O.J. No. L204, 21.7.98, p. 37.

³O.J. No. L117, 7.5.97, p. 15.

⁴O.J. No. L015, 21.1.98, p. 14.

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Laying of orders
and regulations
before Houses of
Oireachtas.

3.—(1) Other than an order under *section 4*, every order or regulation made under this Act by the Minister or the Minister for the Environment and Local Government shall be laid before each of the Houses of the Oireachtas as soon as practicable after it is made.

(2) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which an order or a regulation was laid before it in accordance with *subsection (1)*, annul the order or regulation.

(3) The annulment of an order or regulation under this section takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under the order before the passing of the resolution.

Establishment day.

4.—The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

Expenses.

5.—The expenses incurred by the Minister and the Minister for the Environment and Local Government in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART 2

COMMISSION FOR COMMUNICATIONS REGULATION

Establishment of
Commission.

6.—(1) On the establishment day there is established a body to be known as the Commission for Communications Regulation or, in the Irish language, An Coimisiún um Rialáil Cumarsáide, which shall perform the functions conferred on it by or under this Act.

(2) The Commission shall be a body corporate with perpetual succession and a seal and power—

(a) to sue and be sued in its corporate name,

(b) to acquire, hold and dispose of land or an interest in land,
and

(c) to acquire, hold and dispose of any other property.

Seal of
Commission.

7.—(1) The Commission shall, as soon as may be after its establishment, provide itself with a seal.

(2) The seal shall be authenticated by the signature of—

(a) a Commissioner, or

(b) a member of the staff of the Commission, authorised by the Commission to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Commission and every document—

(a) purporting to be an instrument made by and to be sealed with the seal of the Commission, and

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(b) purporting to be authenticated in accordance with *subsection (2)*, Pt.2 S.7

shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

8.—On the establishment day the Office of the Director of Telecommunications Regulation is dissolved.

Dissolution of
Office of Director
of
Telecommunications
Regulation.
Transfer of
functions.

9.—(1) On the establishment day there is transferred to the Commission the functions of the Director by or under—

(a) each of the provisions mentioned in *column (3)* of *Part 1* of *Schedule 1* of the enactments mentioned in *column (2)* of that Part opposite the mention of that provision, and

(b) each of the statutory instruments mentioned in *Part 2* of *Schedule 1*.

(2) On the establishment day there is transferred to the Commission the functions of the Minister under section 20 (except in so far as it relates to television sets) of the Broadcasting and Wireless Telegraphy Act, 1988.

(3) Reference—

(a) in section 8 of the Wireless Telegraphy Act, 1926, and

(b) in section 9(1) of the Broadcasting Act, 1990,

to an officer of the Minister shall, from the establishment day, be construed as reference to an officer of the Commission.

(4) Reference in a transferred function to the Director or the Minister (construed by virtue of section 4 of the Act of 1996 as a reference to the Director) shall, from the establishment day, be construed as a reference to the Commission.

10.—(1) The functions of the Commission shall be—

Functions of
Commission.

(a) to ensure compliance by undertakings with obligations in relation to the supply of and access to electronic communications services, electronic communications networks and associated facilities and the transmission of such services on such networks,

(b) to manage the radio frequency spectrum and the national numbering resource, in accordance with a direction under *section 13*,

(c) to ensure compliance by providers of postal services with obligations in relation to the provision of postal services,

(d) to investigate complaints from undertakings and consumers regarding the supply of and access to electronic communications services, electronic communications networks and associated facilities and transmission of such services on such networks, and

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(e) to ensure compliance, as appropriate, by persons in relation to the placing on the market of communications equipment and the placing on the market and putting into service of radio equipment.

(2) (a) The Minister may, after consultation with the Commission, by order, transfer to the Commission such additional functions as the Minister considers appropriate, being functions that are incidental, supplemental or consequential to the functions conferred on the Commission under this section.

(b) The Minister may, by order, amend or revoke an order under this subsection.

(3) The Commission shall have all such powers as are necessary for or incidental to the performance of its functions under this Act.

(4) The Commission shall be the national regulatory authority for the purposes of Regulation No. 2887/2000 of 18 December 2000¹ of the European Parliament and of the Council on unbundled access to the local loop.

Independence of
Commission.

11.—Subject to this Act, the Commission shall be independent in the exercise of its functions.

Objectives of
Commission.

12.—(1) The objectives of the Commission in exercising its functions shall be as follows—

(a) in relation to the provision of electronic communications networks, electronic communications services and associated facilities—

(i) to promote competition,

(ii) to contribute to the development of the internal market, and

(iii) to promote the interests of users within the Community,

(b) to ensure the efficient management and use of the radio frequency spectrum and numbers from the national numbering scheme in the State in accordance with a direction under *section 13*, and

(c) to promote the development of the postal sector and in particular the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all users.

(2) In relation to the objectives referred to in *subsection (1)(a)*, the Commission shall take all reasonable measures which are aimed at achieving those objectives, including—

(a) in so far as the promotion of competition is concerned—

(i) ensuring that users, including disabled users, derive

¹O.J. No. L336, 30.12.2000, p. 4.

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maximum benefit in terms of choice, price and quality, Pt.2 S.12

- (ii) ensuring that there is no distortion or restriction of competition in the electronic communications sector,
 - (iii) encouraging efficient investment in infrastructure and promoting innovation, and
 - (iv) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources,
- (b) in so far as contributing to the development of the internal market is concerned—
- (i) removing remaining obstacles to the provision of electronic communications networks, electronic communications services and associated facilities at Community level,
 - (ii) encouraging the establishment and development of trans-European networks and the interoperability of transnational services and end-to-end connectivity,
 - (iii) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services and associated facilities, and
 - (iv) co-operating with electronic communications national regulatory authorities in other Member States of the Community and with the Commission of the Community in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of Community law in this field,
- and
- (c) in so far as promotion of the interests of users within the Community is concerned—
- (i) ensuring that all users have access to a universal service,
 - (ii) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved,
 - (iii) contributing to ensuring a high level of protection of personal data and privacy,
 - (iv) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services,
 - (v) encouraging access to the internet at reasonable cost to users,

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- (vi) addressing the needs of specific social groups, in particular disabled users, and
- (vii) ensuring that the integrity and security of public communications networks are maintained.

(3) In carrying out its functions, the Commission shall seek to ensure that measures taken by it are proportionate having regard to the objectives set out in this section.

(4) In carrying out its functions, the Commission shall, without prejudice to *subsections (1), (2) and (3)*, have regard to policy statements, published by or on behalf of the Government or a Minister of the Government and notified to the Commission, in relation to the economic and social development of the State.

(5) In carrying out its functions, the Commission shall have regard to international developments with regard to electronic communications networks and electronic communications services, associated facilities, postal services, the radio frequency spectrum and numbering.

(6) The Commission shall take the utmost account of the desirability that the exercise of its functions aimed at achieving the objectives referred to in *subsection (1)(a)* does not result in discrimination in favour of or against particular types of technology for the transmission of electronic communications services.

(7) In this section, “national numbering scheme” means the scheme administered by the Commission which sets out the sequence of numbers or other characters used to route telephony traffic to specific locations.

Directions by
Minister.

13.—(1) In the interests of the proper and effective regulation of the electronic communications and postal markets, the management of the radio frequency spectrum in the State and the formulation of policy applicable to such proper and effective regulation and management, the Minister may give such policy directions to the Commission as he or she considers appropriate to be followed by the Commission in the exercise of its functions. The Commission shall comply with any such direction.

(2) Before giving a direction under *subsection (1)*, the Minister shall give to the Commission and publish a draft of the proposed direction and—

- (a) give the reasons for it, and
- (b) specify the period (being not less than 21 days from 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 give the direction under *subsection (1)* with or without amendment.

(4) Where the Minister proposes to make a direction under *subsection (1)* which, in the opinion of the Minister, has or may relate to the functions of another Minister of the Government, the Minister shall not give to the Commission or publish a draft of the proposal under *subsection (2)* without prior consultation with that other Minister of the Government.

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(5) A direction under *subsection (1)* relating to management of the radio frequency spectrum may include directions relating to—

- (a) the allocation of particular bands of spectrum for specific categories of service, and
- (b) the means by which entitlements to use such spectrum may be assigned (including appropriate fees),

and in giving such direction the Minister shall have regard to principles of good frequency management.

(6) A direction under *subsection (1)* relating to fees referred to in *subsection (5)(b)* may only be given with the consent of the Minister for Finance.

(7) The Minister shall not give a direction under *subsection (1)* in respect of—

- (a) a person—
 - (i) who has applied for, or holds a licence or authorisation, or
 - (ii) to whom a licence or authorisation may be, granted by the Commission, or
- (b) the performance of the functions of the Commission in relation to individual undertakings or persons.

(8) Where the Minister gives a direction under *subsection (1)*, a notice of such direction and details thereof, including reasons for giving the direction, shall be published in *Iris Oifigiúil*.

14.—(1) The Commission shall consist of at least one member and not more than 3 members.

Composition and procedure of Commission.

(2) Each member of the Commission shall be known as a Commissioner for Communications Regulation and is in this Act referred to as a “Commissioner”.

(3) Subject to this Act, the Commission may regulate its own procedure.

15.—(1) Each Commissioner shall be appointed—

Appointment and term of office of Commissioners.

- (a) by the Minister, and
- (b) on such terms and conditions, including remuneration, as the Minister may fix, with the consent of the Minister for Finance.

(2) Subject to *subsection (5)*, a person shall not be appointed as a Commissioner unless the Civil Service and Local Appointments Commissioners, after holding a competition on behalf of the Commission, have selected him or her for appointment as a Commissioner.

(3) A Commissioner appointed in accordance with *subsection (2)* shall be appointed on a full-time basis for a period of not less than 3 years and not more than 5 years.

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(4) Subject to *subsection (5)(c)*, a Commissioner shall not serve more than 2 terms of office as a Commissioner.

(5) (a) Notwithstanding this section, the person who, immediately before the establishment day, was the Director, shall be deemed to be appointed as a Commissioner upon that day and shall, subject to *paragraph (b)*, stand appointed on the same terms and conditions on which she was previously retained.

(b) *Section 19(5)* applies to the Commissioner deemed appointed under *paragraph (a)* instead of paragraph 8 of the First Schedule to the Act of 1996.

(c) The Commissioner deemed appointed under *paragraph (a)* shall, where her term of office, in accordance with that paragraph, expires by effluxion of time, be deemed to have served 2 terms as a Commissioner and, accordingly, she shall not be eligible for re-appointment as a Commissioner.

Appointment of
Chairperson of
Commission.

16.—(1) Where there is more than one Commissioner, the Minister shall appoint one of them to be the chairperson of the Commission (in this section referred to as “the chairperson”).

(2) The Minister shall, when appointing the chairperson, with the consent of the Minister for Finance, fix the terms and conditions, including remuneration, of the chairperson.

(3) The chairperson shall have a casting vote in the case of decisions to be taken by the Commission in the event of a tied vote.

(4) In circumstances where the chairperson is unavailable to perform his or her duties, the Minister shall appoint an acting chairperson to assume the duties of chairperson of the Commission for a stated period not exceeding 6 months. The acting chairperson shall be an existing Commissioner.

Deputy
commissioner.

17.—The Commission shall, where there is not more than one Commissioner appointed under *section 15*, designate a member of its staff as a deputy member of the Commission (“deputy commissioner”) who shall assume and carry out with the authority of the Commission all of the functions of the Commission in the absence of the Commissioner.

Resignation and
removal of
Commissioners.

18.—(1) A Commissioner may resign by giving notice in writing to the Minister of his or her intention to resign and any such resignation shall take effect as of the date upon which the Minister shall have received notice of the resignation.

(2) A Commissioner may be removed from office by the Minister—

(a) if, in his or her opinion, the Commissioner has become incapable through ill health of effectively performing his or her duties, or

(b) for stated misbehaviour.

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(3) In removing a Commissioner, the Minister shall give a statement of the reason or reasons for the removal to the Commissioner and the statement of reasons shall be laid before each House of the Oireachtas. Pt.2 S.18

19.—(1) A Commissioner shall be deemed to have vacated his or her office where he or she— Restrictions relating to Commissioners.

(a) is nominated as a member of Seanad Éireann, or

(b) is nominated as a candidate for election as a member of Dáil Éireann, Seanad Éireann or to the European Parliament,

or is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament to fill a vacancy.

(2) A person who is, for the time being, entitled under the Standing Orders of either House of the Oireachtas to sit in either House or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from becoming a Commissioner.

(3) (a) A person who is a member of a local authority shall be disqualified from becoming a Commissioner.

(b) A Commissioner shall be deemed to have vacated his or her office where he or she becomes a member of a local authority.

(4) A Commissioner shall not hold any other office or employment in respect of which emoluments are payable.

(5) (a) For a period of 12 months after a Commissioner has ceased to be a Commissioner, such Commissioner shall not accept any office, consultancy or employment where, in the course of such office, consultancy or employment, the Commissioner could or might use or disclose any confidential information acquired by him or her in the exercise of his or her functions under this Act.

(b) Notwithstanding *paragraph (a)*, a person who has held the Office of Director or who was a Commissioner shall not be precluded from—

(i) holding office, or engagement in, any employment in the civil service or any statutory regulatory body, or

(ii) acting as a consultant to any Minister of the Government,

on the basis that the period referred to in that paragraph has not expired.

20.—(1) Every person who immediately before the establishment day is a member of the staff of the Director shall on that day become a member of the staff of the Commission. Staff of Commission.

(2) (a) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person referred to in *subsection (1)* shall not,

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while in the service of the Commission, be brought to less beneficial conditions of service (including conditions in relation to tenure of office) or of remuneration than the conditions of service (including conditions in relation to tenure of office) or remuneration to which he or she was subject immediately before the establishment day.

(b) In this subsection, “recognised trade union or staff association” means a trade union or staff association recognised by the Commission for the purposes of negotiations which are concerned with the remuneration or conditions of employment or the working conditions of employees.

(3) The Commission may—

(a) with the consent of the Minister and the Minister for Finance, determine the number, grading, remuneration and other conditions of service of staff to be appointed to the Office of the Commission, and

(b) appoint to be members of the staff of the Commission such persons as the Commission may determine from time to time.

(4) Where a member of the staff of the Commission has previous service in the civil service, such service shall be reckonable for the purposes of, but subject to any other exceptions or exclusions in, the Redundancy Payments Acts, 1967 to 1991, the Minimum Notice and Terms of Employment Acts, 1973 and 1994, the Unfair Dismissals Acts, 1977 to 1993, the Worker Protection (Regular Part-Time Employees) Act, 1991, and the Organisation of Working Time Act, 1997.

Performance of certain functions by staff.

21.—The exercise of functions of the Commission may be carried out by or through any member of the staff or authorised officer of the Commission as the Commission shall deem proper.

Consultants.

22.—(1) The Commission may, from time to time, engage such consultants or advisers as it may consider necessary to assist it in the discharge of its functions.

(2) Any fees due to a consultant or adviser engaged under this section shall form part of the expenses of the Commission.

Membership of Houses of Oireachtas or European Parliament by staff.

23.—(1) Where a person employed by the Commission is—

(a) nominated as a member of Seanad Éireann,

(b) elected as a member of either House of the Oireachtas or to the European Parliament, or

(c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament to fill a vacancy,

he or she shall upon that happening stand seconded from his or her employment by the Commission and shall not be paid by, or be entitled to receive from, the Commission remuneration or allowances in respect of the period commencing on such nomination or election,

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or when he or she is so regarded as having been elected, as the case may be, and ending when he or she ceases to be a member of either House or such Parliament. Pt.2 S.23

(2) A person who is, for the time being, entitled under the Standing Orders of either House of the Oireachtas to sit in either House or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from becoming a member of the staff of the Commission.

(3) Without prejudice to the generality of *subsection (1)*, that subsection shall be read as prohibiting, among other things, the reckoning of a period mentioned in that subsection as service with the Commission for the purposes of any superannuation benefits.

24.—(1) Except where otherwise provided by law, a person shall not disclose confidential information obtained by him or her while performing duties as a Commissioner, member of the staff of, or an adviser or consultant to, or as an authorised officer of, or as an agent of the Commission, unless he or she is duly authorised by the Commission to do so. Prohibition on unauthorised disclosure of information.

(2) 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.

(3) A person who contravenes *subsection (1)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

(4) Nothing in *subsection (1)* shall prevent the disclosure of information in a report made to the Commission or by or on behalf of the Commission to the Minister.

(5) The Freedom of Information Act, 1997, is amended at the end of Part 1 of the Third Schedule by inserting the following:

- (a) “*Communications Regulation Act, 2002*” in column (2), and
- (b) “*Section 24*” in column (3).

25.—(1) Where a Commissioner, a member of the staff of the Commission, or a consultant, adviser or other person engaged by the Commission, has a pecuniary interest or other beneficial interest in, or material to, any matter which falls to be considered by the Commission, he or she— Disclosure of interests.

- (a) shall disclose to the Commission or, where the disclosure is required of a Commissioner and he or she is the only Commissioner, disclose to the Minister, the nature of his or her interest in advance of any consideration of the matter,
- (b) shall neither influence nor seek to influence a decision in relation to the matter,
- (c) shall take no part in any consideration of the matter, unless there are compelling reasons requiring him or her to do so,

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(d) if a Commissioner,

- (i) shall withdraw from a meeting of the Commission for so long as the matter is being discussed or considered by the Commission, unless there are compelling reasons requiring him or her not to so withdraw, and
- (ii) shall not vote or otherwise act in relation to the matter,

and

(e) shall prepare and furnish to the Commission a statement in writing of the compelling reasons aforesaid.

(2) For the purposes of this section but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest if—

- (a) he or she or any nominee of his or her is a member of a company or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection,
- (b) he or she is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter, or
- (c) he or she is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such a matter relates.

(3) For the purposes of this section, a person shall not be regarded as having a beneficial interest in, or material to, any matter, by reason only of an interest of his or hers or of any company or of any other body or person mentioned in *subsection (2)* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question with respect to the matter, or in performing any function in relation to that matter.

(4) Where a question arises as to whether or not a course of conduct, if pursued by a person, would be a failure by him or her to comply with the requirements of *subsection (1)*, the question shall be determined by the Commission or, where there is only one Commissioner, in the case of that Commissioner, by the Minister.

(5) Where a disclosure is made to the Commission, particulars of the disclosure shall be recorded in the minutes of any meeting concerned.

(6) Where a person, other than a Commissioner, referred to in this section fails to make a disclosure in accordance with this section, the Commission shall decide the appropriate action (including removal from office or termination of contract) to be taken.

(7) Where a Commissioner fails to make a disclosure in accordance with this section, the Minister shall decide the appropriate action (including removal from office) to be taken.

Superannuation of
Commissioners.

26.—(1) Subject to *subsection (7)*, the Minister may, with the consent of the Minister for Finance, make a scheme or schemes for—

Pt.2
Superannuation of
staff.

27.—(1) The Commission may prepare and submit to the Minister a scheme or schemes or make such other arrangements with the approval of the Minister, given with the consent of the Minister for Finance, for the granting of superannuation benefits to or in respect of such members of the staff of the Commission as it may think fit.

(2) Every scheme under *subsection (1)* shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(3) Every scheme submitted by the Commission to the Minister under *subsection (1)* may, with the consent of the Minister for Finance, be amended or revoked by a subsequent scheme prepared, submitted and approved under *subsection (1)*.

(4) A scheme under *subsection (1)* shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Commission in accordance with its terms.

(5) No superannuation benefit shall be granted by the Commission nor shall any other arrangements be entered into by the Commission for the provision of such a benefit to or in respect of a member of the staff of the Commission otherwise than—

(a) in accordance with a scheme under *subsection (1)*, or

(b) as may be approved of by the Minister with the consent of the Minister for Finance.

(6) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme under *subsection (1)*, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(7) As soon as may be after the establishment day, the Commission shall establish a fund, administered by trustees who shall be appointed by the Commission, from which superannuation benefits payable, in respect of a member of the staff of the Commission ceasing to hold office, under a scheme under *subsection (1)* shall be paid.

(8) The assets and liabilities of a superannuation fund established by the Director for his or her staff shall be transferred to a fund referred to in *subsection (7)*.

(9) The Minister for Finance shall agree with the Commission an appropriate contribution, related to reckonable service given before the establishment day, towards the superannuation benefits which may be granted to or in respect of persons who are transferred from the Office of the Director to the Commission and who have previous service in the civil service, and shall, subject to *subsection (11)*, pay such contribution to the trustees appointed under *subsection (7)* at such times and in such manner as shall be agreed with the Commission.

(10) Where any part of the contribution under *subsection (9)* remains unpaid for any period after the establishment day, interest shall be payable by the Minister for Finance to the trustees appointed under *subsection (7)* at such rate as the Minister for Finance may agree with the Commission in respect of that period on the amount so unpaid.

[2002.] *Communications Regulation Act, 2002.* [No. 20.]

(11) Payments under *subsection (9) or (10)* shall be made not later than 7 years after the establishment day. Pt.2 S.27

(12) (a) A scheme under *subsection (1)* shall be laid before each House of the Oireachtas by the Minister for Finance as soon as may be after it is made.

(b) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which the scheme was laid before it in accordance with *paragraph (a)*, annul the scheme.

(c) The annulment of scheme under *subsection (1)* takes effect immediately on the passing of the resolution concerned but does not affect anything that was done under the scheme before the passing of the resolution.

(13) Moneys required to be paid by the Minister for Finance under this section shall be advanced out of the Central Fund or the growing produce thereof.

28.—(1) The Minister may, from time to time, with the consent of the Minister for Finance, advance to the Commission out of moneys provided by the Oireachtas such sums as the Minister may determine for the purposes of expenditure by the Commission in the performance of its functions. Advances by
Minister to
Commission.

(2) The sums to be advanced under *subsection (1)* shall be expended solely for the purpose and exercise of the functions conferred on the Commission by this Act.

(3) The Commission shall pay to the Minister, on every sum advanced to the Commission under this Act, interest from the date of the advance of such sum until the same is repaid at such rate and in such manner as shall be appointed by the Minister at the time of the advance and at such rate as may be determined from time to time, and such rate of interest shall not at any time exceed that fixed by an order under section 20 of the Courts Act, 1981.

29.—The Commission may, for the purpose of the performance of its functions, borrow money but shall not do so without the consent of the Minister and the Minister for Finance. Borrowings.

30.—(1) For the purpose of—

Levies and fees.

(a) meeting expenses properly incurred by the Commission in the discharge of its functions in relation to electronic communications, and

(b) enabling the Minister to pay contributions or other membership charges to international telecommunications organisations,

the Commission may make an order imposing a levy on providers of electronic communications services.

(2) For the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions in relation to postal services, the Commission may make an order imposing a levy on providers of postal services.

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(3) Whenever a levy order is made there shall be paid to the Commission by each provider of postal or electronic communications services as the case may be such amount as shall be appropriate having regard to the terms of the levy order.

(4) A levy order, including a levy order made under the Act of 1996, may be amended or revoked by the Commission.

(5) Any surplus of levy income over the expenses incurred by the Commission in the discharge of its functions relevant to that levy in a particular financial year shall either—

- (a) be retained by the Commission to be offset against levy obligations for the subsequent year, or
- (b) be refunded proportionately to the providers on whom the levy is imposed.

(6) All fees and levies that may be collected under the provisions of any enactments mentioned in *Schedule 1* shall be collected by, and, subject to *subsections (7) and (8)*, may be retained by, the Commission.

(7) The Minister may, with the consent of the Minister for Finance, direct the Commission to pay into the Exchequer such sum as he or she may, subject to *subsection (8)*, specify being a sum that, subject to *subsection (8)*, represents the amount by which the aggregate sum received by the Commission in each financial year exceeds the aggregate costs incurred in the administration of its office in that year, less the sum of any surplus referred to in *subsection (5)* and any interim payments made in accordance with *subsection (9)*.

(8) The method of calculation of the surplus referred to in *subsection (7)* shall be such method as may be determined by the Minister, with the consent of the Minister for Finance, after consultation with the Commission, taking into account any reasonable requirements of the Commission for funds to meet expenses.

(9) Where the Commission receives substantial licence fee income, the Minister may, after consultation with the Commission and with the consent of the Minister for Finance, direct the Commission to pay into the Exchequer, such sum which represents an interim payment of the sum referred to in *subsection (7)*.

(10) The Public Offices Fees Act, 1879, does not apply in respect of fees payable to the Commission pursuant to this Act.

(11) The Commission shall not impose a levy on providers of—

- (a) electronic communications for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions in respect of postal services, or
- (b) postal services for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions in respect of electronic communications services.

(12) The Commission may recover as a simple contract debt in any court of competent jurisdiction from the person by whom it is payable any amount due and owing to it under this section.

(13) In this section “levy order” means an order imposing levy under *subsection (1) or (2)*.

[2002.] *Communications Regulation Act, 2002.* [No. 20.]

31.—(1) The Commission shall draw up and adopt a strategy statement reflecting its statutory functions. Pt.2
Strategy statements.

(2) In drawing up a strategy statement under *subsection (1)*, the Commission shall distinguish between its functions in relation to electronic communications, management of radio frequency spectrum and postal services.

(3) A strategy statement shall—

(a) be adopted within 6 months of the establishment day and every 2 years thereafter, and

(b) take into account the objectives set out in *section 12* and any directions under *section 13*.

(4) The Commission shall present a copy of a strategy statement to the Minister and to such committees of either or both Houses of the Oireachtas as the Minister may, from time to time, direct.

(5) 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.

32.—(1) In accordance with good accounting practice, the Commission shall keep, in such form as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of all moneys received or expended by it including an income and expenditure account and balance sheet, distinguishing between— Accounts and
annual report.

(a) its functions relating to electronic communications, and

(b) its functions relating to postal matters.

(2) (a) Within 3 months of the end of each financial year, the Commission shall submit accounts kept under *subsection (1)* in respect of that financial year to the Comptroller and Auditor General for audit.

(b) Within 42 days of the accounts being audited by the Comptroller and Auditor General, they shall, together with the report of the Comptroller and Auditor General on those accounts, be presented by the Commission to the Minister.

(c) The Minister shall cause copies of the accounts and report referred to in *paragraph (b)* to be laid before each House of the Oireachtas.

(3) The Commission shall, when presenting the report referred to in *subsection (2)(b)* to the Minister, present a report to the Minister in relation to—

(a) the performance of its functions in the previous financial year,

(b) its proposed work programme for the following year, with reference to progress on the strategy statement, and

(c) adherence to its code of financial management under *section 33*.

[No. 20.] *Communications Regulation Act,* [2002.]
2002.

Pr.2
Code of financial
management.

33.—(1) The Commission shall adopt, with the approval of the Minister and the Minister for Finance, a code of financial management and shall arrange for its publication following such approval.

(2) The Commission shall periodically review its code of financial management and revise and republish the code as appropriate.

(3) The Commission shall comment in its annual report on adherence to its code of financial management.

Accountability of
Commission to
Committees of
Oireachtas.

34.—(1) The chairperson of the Commission shall, whenever required by a 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 on—

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Commission is required by or under statute to prepare,

(b) the economy and efficiency of the Commission in the use of its resources,

(c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and

(d) any matter affecting the Commission referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act, 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

(2) From time to time, and whenever so requested, the Commission shall account for the performance of its functions to a Committee of one or both Houses of the Oireachtas.

Radio frequency
plan.

35.—(1) The Radio Frequency Plan (in this section referred to as “the plan”) published under section 3(5) of the Act of 1996 shall on the establishment day continue.

(2) The Commission shall revise and republish the plan from time to time.

(3) The Commission shall, in formulating, revising and implementing the Radio Frequency Plan, comply with any direction given by the Minister under *section 13*.

(4) The plan shall be comprised of a set of tables indicating frequency allocations in the radio spectrum at the date of publication of the plan.

Public service
requirements.

36.—(1) The Minister may from time to time specify public service requirements in relation to licences or authorisations mentioned in *subsection (3)*.

[2002.] *Communications Regulation Act, 2002.* [No. 20.]

(2) Any requirements specified under *subsection (1)* shall be published by the Minister in *Iris Oifigiúil*. Pt.2 S.36

(3) It shall be a condition of any licence or authorisation to provide a network service or system referred to in section 111(2) (inserted by S.I. No. 96 of 1998) of the Postal and Telecommunications Services Act, 1983, that the holder of the licence or authorisation complies with any public service requirements under *subsection (1)*.

(4) In this section, “public service requirements” means essential requirements and requirements relating to conditions of permanence and availability provided or to be provided by the provider of electronic communications, services, networks or associated facilities.

37.—Regulations shall not be made by the Commission under section 6 of the Wireless Telegraphy Act, 1926, other than with the consent of the Minister. Regulations relating to wireless telegraphy.

38.—Sections 2 to 6, 11, 12 and 14 of, and the First, Second and Third Schedules to, the Act of 1996 are repealed on the establishment day. Repeals.

PART 3

ENFORCEMENT

39.—(1) The Commission may appoint persons to be authorised officers for the purposes of this Act. Authorised officers.

(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 *subsection (3)* shall, if requested by any person thereby affected, produce such certificate to that person for inspection.

(3) For the purposes of the exercise by the Commission of its functions under this Act, a transferred function or any regulations made under the Act of 1972, an authorised officer may—

- (a) enter, at any reasonable time, any premises or place or any vehicle or vessel where any activity connected with the provision of electronic communications services, networks or associated facilities or postal services takes place or, in the opinion of the officer takes place, and search and inspect the premises, place, vehicle or vessel and any books, documents or records found therein,
- (b) require any such person to produce to him or her any books, documents or records relating to the provision of electronic communications services, networks or associated facilities or postal services which are in the 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 officer such information as he or she may reasonably require in relation to any entries in such books, documents or records,
- (c) secure for later inspection any such premises, place, vehicle or vessel or part thereof in which books, documents or

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2002.

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records relating to the provision of electronic communications services, networks or associated facilities or postal services are kept or there are reasonable grounds for believing that such books, documents or records are kept,

- (d) inspect and take extracts from or make copies of any such books, 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),
- (e) remove and retain such books, documents or records for such period as may be reasonable for further examination,
- (f) require the person to maintain such books, documents or records for such period of time, as may be reasonable, as the authorised officer directs,
- (g) require the person to give to the officer any information which he or she may reasonably require with regard to the provision of electronic communications services, networks or associated facilities or postal services,
- (h) make such inspections, tests and measurements of machinery, apparatus, appliances and other equipment on the premises or vessel or at the place or in the vehicle as he or she considers appropriate,
- (i) require any person on the premises or vessel or at the place or in the vehicle having charge of, or otherwise concerned with the operation of, any machinery, apparatus, appliance or other equipment (including data equipment) or any associated apparatus or material, to afford the officer all reasonable assistance in relation thereto,
- (j) take photographs or make any record or visual recording of any activity on such premises or vessel, at such place or in such vehicle.

(4) Where an authorised officer in exercise of his or her powers under this section is prevented from entering any premises or place, an application may be made under *section 40* for a warrant to authorise such entry.

(5) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant under *section 40* authorising such entry.

(6) A person to whom this section applies who—

- (a) obstructs, impedes or assaults an authorised officer in the exercise of a power under this section,
- (b) fails or refuses to comply with a requirement under this section,
- (c) alters, suppresses or destroys any books, documents or records which the person concerned has been required to produce, or may reasonably expect to be required to produce,

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(d) gives to the Commission or to an authorised officer information which is false or misleading in a material respect, or

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

is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

(7) An authorised officer appointed under section 12 of the Act of 1996 and holding office immediately before the establishment day continues in office as if appointed under this section.

40.—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 the Commission exercising its functions under this Act, a transferred function or regulations made under the Act of 1972 is held at any premises or place or on any vessel or in any vehicle, the judge may issue a warrant authorising the authorised officer, accompanied if the officer considers it necessary by other authorised officers or members of the Garda Síochána, at any time or times, within one month 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 premises, place, vessel or vehicle and exercise all or any of the powers conferred on an authorised officer under *section 39*.

Search warrants.

41.—Where the Commission is satisfied that any member of the staff of the Commission or an authorised officer has discharged his or her duties in pursuance of the functions of the Commission in a *bona fide* manner, the Commission shall indemnify such member of staff or authorised officer, against all actions or claims howsoever arising in respect of the discharge by him or her of his or her duties.

Indemnification.

42.—Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Offences of bodies corporate.

43.—A summary offence under this Act (other than *section 53(2)*) may be prosecuted by the Commission.

Prosecution of summary offences by Commission.

44.—(1) Where the Commission has reasonable grounds for believing that a person has committed an offence under—

Notice by Commission of intention to prosecute, etc.

(a) any Regulations mentioned in *Part 2 of Schedule 1*, or

(b) any other regulation made under the Act of 1972 which is declared in a regulation under that Act to be an offence to which this section applies,

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2002.

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the Commission may give to the person or, where the person believed to have committed the offence is a company, to an officer of the company, a notice in the prescribed form stating that—

- (i) the person or company is alleged to have committed that offence,
 - (ii) the person to whom the notice is delivered may during a period of 21 days beginning on the date of the notice—
 - (I) remedy as far as practicable to the satisfaction of the Commission any default that constitutes the offence, and
 - (II) make to the Commission a payment of €1,000 accompanied by the notice, and
 - (iii) a prosecution of the person to whom the notice is delivered in respect of the alleged offence will not be instituted during the period specified in the notice and, if the default is remedied to the satisfaction of the Commission and the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.
- (2) Where a notice is given under *subsection (1)*—
- (a) a person to whom it applies may, during the period specified in the notice, make to the Commission the payment specified in the notice, accompanied by the notice,
 - (b) the Commission may receive the payment and issue a receipt for it, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
 - (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice and, if the default is remedied to the satisfaction of the Commission and the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence shall be instituted.
- (3) In a prosecution for an offence to which this section applies, the onus of showing that a payment pursuant to a notice under this section has been made shall lie on the defendant.
- (4) All payments made to the Commission 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 may direct.
- (5) The Minister may by regulations vary the amount standing specified for the time being in *subsection (1)(ii)(II)*.
- (6) *Section 60* (other than *subsection (1)(e)*) applies to a notice given under this section.
- (7) In this section “company” means a company within the meaning of the Companies Acts, 1963 to 2001.

[2002.] *Communications Regulation Act,* [No. 20.]
2002.

45.—Section 111(11) (inserted by S.I. No. 96 of 1998) of the Postal and Telecommunications Services Act, 1983, is amended by substituting for paragraph (a) the following paragraph:

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Increase of penalties under section 111(11) of Postal and Telecommunications Services Act, 1983.

“(a) A person guilty of an offence under subsection (2)(c) or (i), (3)(c) or (f), (4)(d) or (7)(d) is liable—

(i) on summary conviction, to a fine not exceeding €3,000, or

(ii) on conviction on indictment, to a fine not exceeding whichever of the following amounts is the greater, namely, €4,000,000 or 10 per cent of the turnover of the person in the financial year ending in the 12 months prior to the conviction.”.

46.—Section 13 of the Act of 1996 is amended, on the establishment day, by substituting for subsection (1) and (2) the following:

Amendment of section 13 of Act of 1996 (offences and increase of penalties).

“(1) A person who fails to comply with—

(a) an order under section 7(2), or

(b) a request under section 7(4),

is guilty of an offence.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding €1,000,000.”.

PART 4

TRANSITION PROVISIONS

47.—(1) The following shall be transferred to the Commission on the establishment day—

Transfer of property and liabilities of Director to Commission.

(a) all property and rights held or enjoyed immediately before the establishment day by the Director, and

(b) all liabilities incurred by the Director that are not discharged before the establishment day,

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

(i) the property so held or enjoyed, both real and personal, vests on the establishment day in the Commission for all the estate, term or interest for which, immediately before the establishment day, was vested in the Director but subject to all trusts and equities affecting the property and capable of being performed,

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2002.

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- (ii) the rights so held or enjoyed, are as on and from the establishment day, held and enjoyed by the Commission, and
- (iii) the liabilities so incurred are, as on and from the establishment day, the liabilities of the Commission.

(2) All moneys transferred to the Commission by this section that, immediately before the establishment day, are standing in the name of the Director shall, upon the request of the Commission, be transferred into its name.

(3) Every right and liability transferred by this section to the Commission 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, to the person whose right or liability is transferred by this section, of the transfer.

Preservation of certain continuing contracts.

48.—(1) Every bond, guarantee or other security of a continuing nature made or given by or on behalf of the Director to any person or given by any person to and accepted by or on behalf of the Director shall continue in force on and after the establishment day.

(2) Every contract or agreement in writing made between the Director and any other person and in force but not fully executed and completed immediately before the establishment day shall continue in force on and after the establishment day.

(3) For the purposes of *subsections (1) and (2)*, every bond, guarantee or other security and every contract or agreement in writing to which those paragraphs relate shall be read and have effect as if—

- (a) the Commission were substituted for the Director as party to it, and
- (b) the name of the Commission were substituted in it for that of the Director,

and shall be enforceable by or against the Commission.

Adaptation of certain documents.

49.—With effect from the establishment day—

- (a) every document (including any certificate or licence) made, issued or granted in the exercise of a function transferred by *section 9* shall, if and in so far as it was operative immediately before the establishment day, have effect on and after that day as if it had been granted or made by the Commission, and
- (b) references to the Director in any Act (other than *section 15(5)(a)*) or in any other document (being an instrument made, issued or granted under a power or authority conferred by any Act) shall, in so far as it was operative immediately before the establishment day and where the context so allows, be read and have effect on and after that day as a reference to the Commission.

[2002.] *Communications Regulation Act,* [No. 20.]
2002.

50.—Anything commenced before the establishment day by or under the authority of the Director may, in so far as it relates to functions transferred by this Act, be carried on or completed on or after such day by the Commission. Pt.4
Continuation of
certain matters by
Commission.

51.—(1) Where, immediately before the establishment day, any legal proceedings are pending in any court or tribunal and the Director is a party to the proceedings, the following shall have effect— Pending legal
proceedings.

- (a) the Commission shall be substituted for the Director as a party to the proceedings,
- (b) the name of the Commission shall be substituted in the proceedings for that of the Director, and
- (c) the proceedings shall not abate by reason of such substitution.

(2) Where, immediately before the establishment day—

- (a) any legal proceedings are pending in any court or tribunal and the Director is a party to those proceedings, and
- (b) the proceedings have reference to any functions transferred from the Director to the Commission by *section 9*,

the Commission shall not be substituted for the Director in those proceedings notwithstanding such transfer of functions under this section.

PART 5

ELECTRONIC COMMUNICATIONS INFRASTRUCTURE ROAD WORKS AND SHARING

52.—(1) In this Part, except where the context otherwise requires— Interpretation (*Part*
5).

“Act of 2000” means Planning and Development Act, 2000;

“consent” means a consent granted by a road authority under *section 53(3)* to open a public road;

“duct” means a pipe or tube for the carriage of electronic communications infrastructure;

“electronic communications infrastructure” means any part of an electronic communications network;

“emergency roadworks” means roadworks necessary to eliminate or reduce danger or risk to persons or property;

“land” includes seashore, land covered with water (whether inland or coastal), foreshores and any interest or right in or over land;

“network operator” means any person who provides or operates an electronic communications network;

“physical infrastructure” means infrastructure which is capable of supporting electronic communications infrastructure including ducts,

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poles, antennae support structures and rights of way over land, but does not include electronic communications infrastructure;

“physical infrastructure provider” means a network operator or any other person which allows any part of its physical infrastructure to be used by any other network operator for the provision of electronic communications services;

“physical infrastructure sharing” means the sharing of the use of all physical infrastructure for the purpose of providing electronic communications services;

“planning authority” has the meaning assigned to it by the Act of 2000;

“public road” means a road over which a public right of way exists and the responsibility for the maintenance of which lies with a road authority;

“road” has the meaning assigned to it by the Roads Act, 1993;

“road authority” has the meaning assigned to it by the Roads Act, 1993;

“roadworks” means the opening of a public road for the purpose of the establishment, extension, replacement, removal or maintenance of works on electronic communications infrastructure.

(2) In this Part a reference to the Commission shall be construed before the establishment day as a reference to the Director.

(3) For the avoidance of doubt this Part comes into operation on the passing of this Act.

Opening of public road for establishment of underground electronic communications infrastructure.

53.—(1) A network operator shall not commence or carry out or cause to be commenced or carried out any road works unless—

(a) the operator has obtained the prior written consent under *subsection (3)* of the road authority, in whose functional area the operator proposes to carry out the road works, and

(b) the network operator or any person engaged by the operator complies with any conditions contained in the consent.

(2) A network operator or a person engaged by the network operator who contravenes *subsection (1)* is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding €1,000,000.

(3) Subject to this section and any regulations under *section 56(2)*, a road authority may grant consent to a network operator, upon application to it by the operator, to open a public road in the functional area of the road authority for the purposes of—

(a) establishing underground electronic communications infrastructure and any associated physical infrastructure,

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- (b) extending the underground electronic communications network to parts of the road under which electronic communications infrastructure has not previously been placed by that network operator, or
- (c) carrying out work upon underground electronic communications infrastructure, being maintenance, repair, replacement or the addition or removal of underground electronic communications infrastructure which requires the opening of the road,

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subject to any conditions contained in the consent.

(4) Any conditions contained in a consent—

- (a) shall not discriminate unfairly between network operators, and
- (b) shall be consistent with the need for the road authority to carry out its functions under this Part and under the Roads Acts, 1993 to 2001, and the Road Traffic Acts, 1961 to 2002,

and the road authority granting the consent shall notify the network operator, in writing, of the reason for such conditions.

(5) A road authority may, subject to any regulations under *section 56(2)*, impose charges on network operators—

- (a) for the grant of consents to cover the administrative costs, including costs involved in monitoring compliance with consents, incurred by the road authority under this section, and
- (b) for reasonable costs it may incur in making good long term damage to a road as a result of road openings carried out by the network operator.

(6) When considering an application for a consent, a road authority shall have regard to—

- (a) the existing and potential use and availability of space under the surface of the road concerned, including—
 - (i) the course and depth of ducts to be laid by the applicant,
 - (ii) the existence of ducts in addition to those which are immediately required by any network operator, and
 - (iii) the existence of duct space in addition to that which is reasonably required by any network operator,

(b) traffic control,

(c) the protection of the environment and of amenities including residential amenities,

(d) the manner and timing of the reinstatement of the road, and

(e) any scheme adopted under *subsection (7)*.

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(7) A road authority may formulate and, after public consultation, adopt a scheme setting out its policy regarding—

- (a) the use of underground road capacity, including the rationing of any particular underground spaces below roads,
- (b) conditions (including restrictions and requirements) that may be imposed by it in relation to the grant of consents, either generally or with respect to specific areas or circumstances,
- (c) refusal of consents, either generally or with respect to specific areas or circumstances,
- (d) charges for consents and provision for repair of long term damage to roads,
- (e) emergency roadworks.

(8) The Minister for the Environment and Local Government, in consultation with the Minister, may issue guidelines to be followed by a road authority in relation to public consultation regarding a scheme drawn up by it under *subsection (7)*.

(9) A road authority shall consult with the Commission before attaching a condition to a consent requiring the applicant to lay additional ducts.

(10) Where the holder of a consent fails to comply with any condition attached to a consent, the road authority which granted the consent may withdraw the consent.

(11) Where a road authority proposes—

- (a) to refuse to grant consent,
- (b) to grant consent subject to conditions, or
- (c) to withdraw a consent granted by it,

the road authority shall notify the network operator concerned in writing of the proposal and shall include in the notification a statement of the reasons for the proposal and of the right of the network operator to make representations to the authority under *subsection (12)*.

(12) A network operator may, within 21 days of the receipt by the operator of a notification under *subsection (11)*, make representations to the road authority in relation to the proposal.

(13) (a) Where, after consideration of any representations made by the network operator under *subsection (12)*, a road authority decides—

- (i) to refuse to grant consent,
- (ii) to grant consent subject to conditions, or
- (iii) to withdraw its consent,

the road authority shall, not more than 21 days after the expiration of the period specified in *subsection (12)*, notify the network operator in writing of its decision and

shall include in the notification a statement of the reasons for the decision and of the right of the network operator to appeal the decision under *subsection (14)*. Pt.5 S.53

(b) Where a road authority does not receive representations from the network operator within the period specified in *subsection (12)*, the road authority shall, not more than 21 days after the expiration of that period, notify the network operator in writing of its decision—

- (i) to refuse to grant consent,
- (ii) to grant consent subject to conditions, or
- (iii) to withdraw its consent,

and shall include in the notification a statement of the reasons for the decision and of the right of the network operator to appeal the decision under *subsection (14)*.

(14) A network operator may, within 28 days of the receipt by the operator of a notification under *subsection (13)*, appeal to the High Court against the decision concerned and the Court may—

- (a) confirm the decision,
- (b) amend the decision, or
- (c) direct the road authority to grant the consent or refrain from withdrawing consent, as the case may be.

(15) Subject to *section 56(2)*, a network operator shall not require the consent of a road authority to carry out emergency roadworks, but shall inform the road authority of such roadworks as soon as practicable in advance of the commencement of those roadworks.

(16) A network operator shall be responsible for all costs incurred in the reinstatement of a road which the operator has opened for the purpose of—

- (a) the establishment of underground electronic communications infrastructure, or
- (b) maintenance, repair, replacement or the addition or removal of underground electronic communications infrastructure,

to a standard satisfactory to the road authority.

(17) The requirement to hold a licence under section 254 of the Act of 2000 in respect of *subsection (1)(e)* of that section does not apply where a network operator has obtained a consent.

(18) A network operator shall, on a request being made by a road authority, provide among other things—

- (a) such information as the road authority may require in relation to the utilisation of underground electronic communications infrastructure owned or operated by the operator, and
- (b) such access to underground electronic communications infrastructure owned or operated by the operator,

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as may be necessary to enable the road authority to exercise its functions under this section.

(19) A road authority may apply to the High Court for an order—

(a) by way of injunction, to prohibit any non-compliance, or

(b) by way of *mandamus*, to direct any compliance,

with a requirement of this section and the Court may grant such order as it sees fit.

(20) This section is without prejudice to section 101D (inserted by the Dublin Transport Authority (Dissolution) Act, 1987) of the Road Traffic Act, 1961 (which relates to directions given by local authorities to persons carrying out roadworks).

(21) A summary offence under *subsection (2)* may be prosecuted by the road authority within whose functional area the offence is committed.

Use of public road for establishment of electronic communications infrastructure overground.

54.—(1) Section 254(1) of the Act of 2000 is amended by inserting after paragraph (e) the following paragraph:

“(ee) overground electronic communications infrastructure and any associated physical infrastructure,”.

(2) A network operator shall be responsible for all costs incurred in the reinstatement of a road to a standard satisfactory to the road authority concerned arising from the opening of the road by the operator for the purpose of—

(a) the establishment of overground electronic communications infrastructure, or

(b) maintenance, repair, replacement or the addition or removal of overground electronic communications equipment.

(3) This section is without prejudice to section 101D of the Road Traffic Act, 1961.

Cost apportionment for electronic communications infrastructure relocation due to road improvements.

55.—(1) Notwithstanding section 254(4) of the Act of 2000 and subject to *subsections (2)* and *(4)*, where a road authority undertakes work for the purposes of improving a road, it shall pay to a network operator all reasonable costs incurred by the operator in the relocation of its electronic communications infrastructure and any associated physical infrastructure necessitated by and directly attributable to that work.

(2) Where electronic communications infrastructure and any associated physical infrastructure is replaced or improved by a network operator in the course of relocation due to road improvement, the road authority shall pay only the costs directly attributable to work done to electronic communications infrastructure and any associated physical infrastructure as a result of roadworks which would have been incurred if the electronic communications infrastructure and any associated physical infrastructure existing immediately before the road improvement had been relocated.

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(3) A network operator shall be responsible to a road authority for any costs incurred by the road authority where the network operator fails to carry out the relocation of its electronic communications infrastructure in a safe, expeditious and efficient manner. Pt.5 S.55

(4) Where a road authority, on an application to it by a network operator to carry out roadworks over, along, on (under section 254 of the Act of 2000) or under (under *section 53*) a public road, gives the operator notice that the road is due to be improved by the authority within the period of 18 months of the date from which the operator intends to carry out the works, the road authority shall not be responsible for the cost of relocating electronic communications infrastructure or anything connected with the works where the road improvement proceeds within that period.

(5) Where a dispute or difference arises between a network operator and a road authority in respect of the cost of the relocation of electronic communications infrastructure, the dispute or difference shall be determined by agreed conciliation procedures between both parties or, in default of such agreement, by arbitration under the Arbitration Acts, 1954 to 1998.

56.—(1) The Minister may, with the consent of the Minister for the Environment and Local Government, make regulations for the purposes of *sections 54(2)* and *55*—

Regulations and policy of directions to road authorities.

- (a) to establish the basis for the calculation by a network operator of costs reasonably attributable to costs incurred by the network operator as a result of roadworks, and
- (b) to establish an objective measure of works to be deemed to be improvements to electronic communications infrastructure for the purposes of this Part.

(2) The Minister for the Environment and Local Government may, with the approval of the Minister, make regulations for the purposes of *section 53* in relation to—

- (a) any conditions, restrictions or requirements to be made in a consent,
- (b) the imposition of charges by road authorities in respect of consents,
- (c) anything to be contained in schemes under *section 53(7)*, and
- (d) emergency roadworks.

(3) The Minister for the Environment and Local Government, after consultation with the Minister, may, subject to any regulations under this section, issue policy directions to road authorities in connection with the exercise of the powers of road authorities under this Part.

57.—(1) This section applies to that part of the infrastructure of a physical infrastructure provider which is used to support electronic communications infrastructure and to no other part of the infrastructure.

Physical infrastructure sharing by infrastructure providers.

(2) A network operator has the right to negotiate an agreement to share physical infrastructure with other infrastructure providers

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and may, upon the commencement of any negotiations, serve notice on the Commission of such negotiations.

(3) The Commission may, on its own initiative, or shall, if so requested by either party, specify the period within which negotiations on physical infrastructure sharing shall be completed.

(4) Where agreement is not reached within the period specified by the Commission under *subsection (3)*, the Commission shall take such steps as are necessary to resolve the dispute in accordance with the procedures referred to in *subsection (6)*.

(5) With regard to any intervention by the Commission referred to in *subsections (3) or (4)*, the Commission may—

- (a) having carried out a preliminary examination of the matter, decide not to intervene in those negotiations, or
- (b) discontinue the intervention in those negotiations where the Commission considers that—
 - (i) the request for intervention is trivial or vexatious, or
 - (ii) the person making the request has not taken reasonable steps to reach an agreement on physical infrastructure sharing.

(6) The Commission shall resolve a dispute referred to in *subsection (4)* in accordance with procedures established and maintained by it and the procedures shall be made available, on a request being made for that purpose, to interested parties free of charge.

(7) In making a decision in relation to a dispute, the Commission may impose conditions for physical infrastructure sharing and such conditions may include, but not necessarily be limited to—

- (a) conditions in respect of conformity with the relevant standards relating to establishment, operation, maintenance and repair of electronic communications infrastructure and physical infrastructure,
- (b) compliance with essential requirements or the maintenance of the quality of electronic communications services or both, or
- (c) rules for the apportionment of the costs of physical infrastructure sharing,

and the Commission shall notify, in writing, the network operator and physical infrastructure provider, as appropriate, of the reasons for such conditions.

(8) The procedures referred to in *subsection (6)* shall include provisions for public consultation during which all interested parties shall be given an opportunity to express their views.

(9) The Commission, in reaching a decision pursuant to the procedures referred to in *subsection (6)*, shall take into account, *inter alia*—

- (a) the interests of consumers of electronic communications services,

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- (b) any requirements imposed by an enactment or instrument made thereunder, Pt.5 S.57
- (c) the public interest, including traffic control and the protection of the environment and of amenities,
- (d) the desirability of encouraging the sharing of electronic communications infrastructure,
- (e) the provision of electronic communications services that are not available at the time of the making of the conditions,
- (f) the availability of alternatives to the physical infrastructure sharing requested,
- (g) the need to provide access to the market for electronic communications services to network operators,
- (h) the need to maintain the security of electronic communications networks and the ability of providers of electronic communications services to use different types of electronic communications infrastructure and physical infrastructure,
- (i) the nature of the request in relation to the resources available to the network operator or physical infrastructure provider concerned to meet that request,
- (j) the promotion of competition between electronic communications services providers, and
- (k) the need to maintain a universal service.

(10) In this section, “universal service” means the services which are made available, in accordance with the European Communities (Voice Telephony and Universal Service) Regulations 1999 (S.I. No. 71 of 1999) or any regulations amending or replacing those Regulations, to all consumers of electronic communications services independent of their geographical location.

58.—(1) Subject to this section, a network operator, or any person authorised by him or her in that behalf, may lop or cut any tree, shrub or hedge which obstructs or interferes with any physical infrastructure of the network operator. Lopping of trees.

(2) Before lopping or cutting any tree, shrub or hedge under this section, a network operator shall give to the landowner or occupier of the land on which the tree, shrub or hedge is standing, notice in writing of its intention to do so and, after the expiration of 28 days from the date of such service, the network operator may lop or cut any tree, shrub or hedge where the landowner or occupier has not already done so.

(3) A network operator may, upon the expiration of the period contained in the notice served by the operator under *subsection (2)*, enter the land (with or without vehicles) at any reasonable time.

(4) Where a network operator carries out the cutting or lopping referred to in *subsection (1)*, he or she shall do so in a manner which causes the least damage to property or the environment or amenities.

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(5) Where an occupier or landowner lops or cuts any tree, shrub or hedge under *subsection (2)*, the expense incurred by him or her in so doing shall be paid to him or her on demand by the network operator and the amount of such expenses shall be recoverable from the network operator, in default of agreement, as a simple contract debt in any court of competent jurisdiction.

(6) A network operator shall not carry out the cutting or lopping of trees in contravention of an order under section 205 (which relates to the preservation of trees, a group of trees or woodlands) of the Act of 2000.

(7) *Subsection (1)* does not apply to any obstruction of or interference with signals transmitted by means of the radio frequency spectrum.

Repeals and
revocation.

59.—(1) The enactments mentioned in *column (2)* of *Schedule 2* are repealed to the extent mentioned in *column (3)* of that Schedule.

(2) Regulation 12 of the European Communities (Interconnection in Telecommunications) Regulations 1998 (S.I. No. 15 of 1998) is revoked.

Service of notices.

60.—(1) Where a notice or notification is required under this Part to be given to a person, the notice or notification shall be addressed to that person and shall be given to the person in one of the following ways—

- (a) by delivering it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or carries on business,
- (c) by sending it by post in a pre-paid registered letter addressed to the person at the address at which the person ordinarily resides or carries on business,
- (d) if an address for the service of notices has been furnished by the person, by leaving it at, or sending it by pre-paid registered post addressed to the person to, that address,
- (e) in any case where the person giving the notice or notification considers that the immediate giving of the notice is required, by sending it, by means of a facsimile machine, to a device or facility for the reception of facsimiles located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the notice.

(2) For the purposes of this section, a company registered under the Companies Acts, 1963 to 2001, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

SCHEDULE 1

Section 9.

TRANSFER OF FUNCTIONS FROM DIRECTOR TO COMMISSION

PART 1

Functions under Acts which are transferred

Number and Year (1)	Short Title (2)	Provision (3)
No. 45 of 1926	Wireless Telegraphy Act, 1926	Section 3(6) (inserted by section 11(c) of Act No. 5 of 1972) Section 5 (as amended by section 34(d) of Act No. 10 of 1960) (except as regards licences in respect of television sets) Section 6 (as amended by section 17(2) of Act No. 24 of 1990) (except as regards licences in respect of television sets) Section 7 (as amended by section 12 of Act No. 5 of 1972) (except as regards television sets) Section 9(1) (except as regards aircraft) Section 10A(2) (inserted by section 12(1)(e) of Act No. 19 of 1988) Section 13 (except as regards prosecutions for offences under section 3 in respect of television sets)
No. 10 of 1960	Broadcasting Authority Act, 1960	Section 16(3)(a)
No. 5 of 1972	Wireless Telegraphy Act, 1972	Sections 5, 7 and 8
No. 24 of 1983	Postal and Telecommunications Services Act, 1983	Section 111 (as amended by S.I. No. 96 of 1998)
No. 19 of 1988	Broadcasting and Wireless Telegraphy Act, 1988	Sections 3, 6, 7, 9, 13 and 14.
No. 20 of 1988	Radio and Television Act, 1988	Sections 4(3) and (5), Sections 5(2) and (3), Section 7
No. 24 of 1990	Broadcasting Act, 1990	Sections 12, 16 and 17
No. 29 of 1993	Irish Aviation Authority Act, 1993	Section 70
No. 34 of 1996	Telecommunications (Miscellaneous Provisions) Act, 1996	Section 7 (other than subsection (5))
No. 4 of 2001	Broadcasting Act, 2001	Sections 7 and 9

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PART 2

Functions under Statutory Instruments which are transferred

Telecommunications Tariff Regulation Order 1996 (S.I. No. 393 of 1996) (as amended by S.I. No. 438 of 1999);

European Communities (Telecommunications Infrastructure) Regulations 1997 (S.I. No. 338 of 1997);

Wireless Telegraphy (GSM and TACS Mobile Telephony Licence) Regulations 1997 (S.I. No. 468 of 1997);

European Communities (Interconnection in Telecommunications) Regulations 1998 (S.I. No. 15 of 1998);

European Communities (Electromagnetic Compatibility) Regulations 1998 (S.I. No. 22 of 1998);

European Communities (Telecommunications Licences) Regulations 1998 (S.I. No. 96 of 1998);

European Communities (Leased Lines) Regulations 1998 (S.I. No. 109 of 1998);

European Communities (Use of Standards for the Transmission of Television Signals) Regulations 1998 (S.I. No. 262 of 1998);

European Communities (Voice Telephony and Universal Service) Regulations 1999 (S.I. No. 71 of 1999);

Wireless Telegraphy (Programme Services Distribution) Regulations 1999 (S.I. No. 73 of 1999);

Wireless Telegraphy (Fixed Wireless Point to Multi-point Access Licence) Regulations 1999 (S.I. No. 287 of 1999);

Wireless Telegraphy (Carrigaline UHF Television Programme Retransmission) Regulations 1999 (S.I. No. 347 of 1999);

Wireless Telegraphy (UHF Television Programme Retransmission) Regulations 1999 (S.I. No. 348 of 1999);

Wireless Telegraphy (GSM and TACS Mobile Telephony Licence) Regulations 1999 (S.I. No. 442 of 1999);

European Communities (Postal Services) Regulations 2000 (S.I. No. 310 of 2000);

European Communities (Conditional Access) Regulations 2000 (S.I. No. 357 of 2000);

European Communities (Radio Equipment and Telecommunications Terminal Equipment) Regulations 2001 (S.I. No. 240 of 2001).

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SCHEDULE 2
ENACTMENTS REPEALED

Section 59.

Session and Chapter (1)	Short Title (2)	Extent of Repeal (3)
26 & 27 Vic. c.112	Telegraph Act, 1863	The whole Act
31 & 32 Vic. c.110	Telegraph (Amendment) Act, 1868	The whole Act
32 & 33 Vic. c.73	Telegraph Act, 1869	Sections 23 and 24
41 & 42 Vic. c.76	Telegraph Act, 1878	The whole Act
55 & 56 Vic. c.59	Telegraph Act, 1892	The whole Act
62 & 63 Vic. c.38	Telegraph Act, 1899	The whole Act
8 Edw. 7. c.33	Telegraph (Construction) Act, 1908	The whole Act
9 Edw. 7. c.20	Telegraph (Arbitration) Act, 1909	The whole Act
1 & 2 Geo. 5. c.39	Telegraph (Construction) Act, 1911	The whole Act
6 & 7 Geo. 5. c.40	Telegraph (Construction) Act, 1916	The whole Act