

Broadcasting Authority (Amendment) Act, 1993

1993 15

No. 15/1993:

BROADCASTING AUTHORITY (AMENDMENT) ACT, 1993

ARRANGEMENT OF SECTIONS

Section

- [1. Interpretation.](#)
 - [2. Advertising broadcasts by Authority.](#)
 - [3. Repeal of section 3 of Broadcasting Act, 1990.](#)
 - [4. Independent television programmes account.](#)
 - [5. "Independent television programme".](#)
 - [6. Annual report by Authority concerning the commissioning of independent television programmes.](#)
 - [7. Provision as to membership of the Authority.](#)
 - [8. Short title, collective citation and construction.](#)
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ACTS REFERRED TO

Broadcasting Act, 1990	1990, No. 24
Broadcasting and Wireless Telegraphy Act, 1988	1988, No. 18
Broadcasting Authority Act, 1960	1960, No. 10
Companies Act, 1963	1963, No. 33

BROADCASTING AUTHORITY (AMENDMENT)
ACT, 1993

AN ACT TO AMEND AND EXTEND THE
BROADCASTING AUTHORITY ACTS, 1960 TO 1979,
TO REPEAL [SECTION 3](#) of THE [BROADCASTING
ACT, 1990](#) , AND TO PROVIDE FOR RELATED
MATTERS.

[30th June, 1993]

BE IT ENACTED BY THE OIREACHTAS AS
FOLLOWS:

Interpretation.

1.—(1) In this Act—

"broadcaster" means a person who provides a television programme service (that is to say a service providing to members of the public images or images and sounds for reception on a television set whether the transmission (by broadcasting or any other means) of the said images or images and sounds is effected by the person or another person on his behalf) in the State or elsewhere;

"the consumer price index number" means the All Items Consumer Price Index Number compiled by the Central Statistics Office and a reference to such a number at a particular date shall be construed as a reference to such a number expressed on the basis that the consumer price index number at mid-November, 1989, is 100;

"holding company" has the same meaning as in the [Companies Act, 1963](#) ;

"independent television programme" has the meaning assigned to it by *section 5* of this Act;

"subsidiary" has the same meaning as in the [Companies Act, 1963](#) ;

"television set has the same meaning as in [section 9](#) of the [Broadcasting and Wireless Telegraphy Act, 1988](#) .

(2) For the purposes of this Act, the making of an independent television programme shall not be regarded as having been commissioned by the Authority unless, before work on the making of the programme commences, the Authority has incurred a legal obligation to pay at least 25 per cent. of the cost of its making.

Advertising broadcasts by Authority.

2.—The total daily times for broadcasting advertisements fixed by the Authority and the maximum period so fixed to be given to advertisements in any hour shall be subject to the approval of the Minister.

Repeal of [section 3](#) of [broadcasting Act, 1990](#) .

3.—(1) [Section 3](#) of the [Broadcasting Act, 1990](#) , is hereby repealed.

(2) This section shall be deemed to have come into operation on the 1st day of September, 1992.

Independent television programmes account.

4.—(1) The Authority shall keep an account which shall be known as the "independent television programmes account and is in this Act referred to as "the account.

(2) (a) Monies standing to the credit of the account shall be used by the Authority for the purpose of—

(i) commissioning the making of independent television programmes,

(ii) procuring the formulation by persons of proposals for the commissioning by the Authority of the making of programmes as aforesaid,

(iii) assisting the completion of programmes as aforesaid the making of which has not been commissioned by the Authority,

and for no other purpose.

(b) The amount of monies that the Authority is required by *subsection (3)* of this section to pay into the account in a financial year shall be expended, unless it is impracticable to do so, in that financial year.

(c) The Authority shall not in a financial year use for the purposes specified in *subparagraphs (ii) and (iii) of paragraph (a)* of this subsection more than 10 per cent. of the amount of monies that it is required by *subsection (3)* of this section to pay into the account in that financial year.

(3) The Authority shall in each financial year mentioned in *column (1)* of the Table to this section pay into the account, in accordance with *subsection (4)* of this section, an amount of monies that is not less than the amount of monies mentioned in *column (2)* of the said Table opposite the mention of the financial year concerned in the said *column (1)*.

(4) The amount of monies required to be paid by *subsection (3)* of this section into the account in a financial year shall be so paid in such number of instalments as the Authority deems appropriate having regard to its duty under *subsection (2) (b)* of this section:

Provided that the said amount shall be paid into the account not later than the 30th day of September of the financial year concerned.

(5) If any of the monies paid under *subsection (3)* of this section into the account in a financial year remains unexpended at the end of that financial year the Minister may, having considered the terms of the report made to him by the Authority under *section 6* of this Act in respect of that financial year and such other matters as he deems relevant, authorise the Authority to withdraw the said monies or a specified portion thereof from the account and monies so withdrawn shall thereupon become and be available to the Authority for the purposes generally of its functions under the *Broadcasting Authority Acts, 1960 to 1993*.

(6) References in this section to the expenditure of monies in the account include references to the incurring of a legal obligation or legal obligations to expend such monies.

(7) (a) The Minister may, having had regard to each of the following matters, namely—

(i) the current and prospective financial liabilities of the Authority,

(ii) the effect (if any) for the time being

of the operation of the provisions of this section on—

(I) the employment or recruitment of staff by the Authority,

(II) the performance by the Authority of its functions generally under the *Broadcasting Authority Acts, 1960 to 1993*,

(III) the employment of persons in the making of independent television programmes,

from time to time by order vary an amount or percentage referred to in *column (2)* of the Table to this section or the amount referred to in *paragraph (i)* of the definition of "the appropriate amount" in *subsection (8) (a)* of this section and for so long as such an order is in force the said Table or the said definition, as the case may be, shall be construed and have effect in accordance with the order.

(*b*) The Minister may by order revoke an order under this subsection.

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

(8) (*a*) In the Table to this section—

"the appropriate amount means—

(i) in the case of the financial year 1999, £12,500,000,

(ii) in the case of a subsequent financial year, the said amount as increased by an amount equal to the appropriate

percentage of the said amount;

"television programme expenditure" means, in respect of a financial year, the total costs incurred by the Authority in that financial year in making, commissioning the making of, acquiring, preparing, producing, or cooperating in the production of, television programmes.

(b) In this subsection "the appropriate percentage" means the difference between the consumer price index number at mid-August, 1998, and the said number at the mid-August immediately preceding the financial year concerned expressed as a percentage of the first-mentioned number.

(c) If at the second-mentioned date in *paragraph (b)* of this subsection the consumer price index number stands at a figure that is less than that at which it stood at the first-mentioned date in that paragraph, the definition of "the appropriate amount in this subsection shall have effect as respects the financial year immediately following the second-mentioned date as if "reduced" were substituted for "increased" in that definition.

TABLE

Financial year	Amount of monies to be paid by the Authority into the account
(1)	(2)
1994	£ 5,000,000
1995	£ 6,500,000
1996	£ 7,500,000
1997	£ 8, 500, 000
1998	£10, 000, 000
Each subsequent financial	Whichever of the following amounts is the greater-

year

(i) the appropriate amount, or

(ii) 20 per cent. of television programme expenditure in the preceding financial year.

"Independent television programme".

5.—(1) In this Act "independent television programme" means a television programme made by a person who complies with the following conditions, namely—

(a) each of the following matters as respects the said programme is determined by him or by one or more persons on his behalf and over whose activities in respect of the determination of such matters he exercises control, namely—

(i) the persons who are to participate in the said programme,

(ii) the persons who are to be involved in the making of the said programme, and

(iii) the equipment and facilities to be used in the making of the said programme,

(b) he is not a subsidiary of a broadcaster, and

(c) he is not a holding company of a broadcaster.

(2) For the purposes of the definition in *subsection (1)* of this section, where—

(a) two or more broadcasters hold shares in a body corporate or a holding company of a body corporate, or

(b) each of two or more broadcasters (being shareholders in a body corporate or a holding company of a body corporate) by the exercise

of some power exercisable by it without the consent or concurrence of any other person can appoint or remove a holder of a directorship of the body corporate or, as the case may be, the holding company,

then, notwithstanding that the body corporate is not a subsidiary of any of the said broadcasters, the body corporate shall be deemed not to comply with the condition specified in *paragraph (b)* of the aforesaid definition if—

(i) the total number of shares held by the said broadcasters in the body corporate or, as the case may be, the holding company, or

(ii) the total number of directorships of the body corporate or, as the case may be, the holding company that the aforesaid powers of the said broadcasters may be exercised in respect of,

is such that, were the said broadcasters to be regarded as one company, the body corporate would be a subsidiary of it, and

(I) the Authority is one of the said broadcasters, or

(II) there exists a business relationship between the said broadcasters that, in the opinion of the Authority, is of such a kind as is likely to result in the said broadcasters acting in concert with one another in exercising their rights under the said shares or in exercising the said powers.

(3) For the purposes of *subsection (2) (b)* of this section a broadcaster shall be deemed to have power to appoint to a directorship in relation to which the condition specified in paragraph (a) or (b) of [section 155](#) (2) of the [Companies Act, 1963](#), is satisfied and for this purpose references in the said paragraphs to the other company shall be construed as references to the broadcaster.

Annual report by Authority concerning the commissioning of

6.—As soon as may be, but not later than 3 months, after the end of the financial year 1994 and each subsequent financial year the Authority shall make a report to the

independent television programmes. Minister of—

(a) its activities during that financial year as respects commissioning the making of independent television programmes.

(b) the operation by it of the account during that financial year,

(c) such other matters relating to the matters referred to in *paragraphs (a) and (b)* of this section as the Minister may direct,

and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

Provision as to membership of the Authority.

7.—(1) The [Broadcasting Authority Act, 1960](#) , is hereby amended—

(a) in section 4, by the insertion after subsection (1) of the following subsection:

"(1A) (a) Where the number of members of the Authority for the time being is 7, not less than 3 of them shall be men and not less than 3 of them shall be women.

(b) Where the number of members of the Authority for the time being is 8 or 9, not less than 4 of them shall be men and not less than 4 of them shall be women.";

(b) in section 10, by the substitution of the following subsection for subsection (5):

"(5) The Authority may act notwithstanding one or more vacancies among its members (including one or more vacancies that result in subsection (1A) (inserted by the [Broadcasting Authority \(Amendment\) Act, 1993](#)) of section 4 of this Act not being complied with).".

(2) This section shall come into operation on the 1st day of June, 1995, or such earlier day as the Minister may appoint

by order.

Short title, collective
citation and
construction.

8.—(1) This Act may be cited as the [Broadcasting
Authority \(Amendment\) Act, 1993](#) .

(2) The Broadcasting Authority Acts, 1960 to 1979, and
this Act may be cited together as the Broadcasting
Authority Acts, 1960 to 1993.

(3) The Broadcasting Authority Acts, 1960 to 1979, and
this Act shall be construed together as one.