

Broadcasting and Wireless Telegraphy Act, 1988

1988 19

No. 19/1988:

BROADCASTING AND WIRELESS TELEGRAPHY ACT, 1988

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ACTS REFERRED TO

Broadcasting Authority Act, 1960	1960, No. 10
Broadcasting Authority (Amendment) Act, 1976	1976, No. 37
Broadcasting (Offences) Act, 1968	1968, No. 35
Companies Act, 1963	1963, No. 33
Copyright Act, 1963	1963, No. 10
Police (Property) Act, 1897	1897, c. 30
Postal and Telecommunications Services Act, 1983	1983, No. 24
Wireless Telegraphy Act, 1926	1926, No. 45
Wireless Telegraphy Act, 1972	1972, No. 5

Number 19 of 1988

No. 19/1988: BROADCASTING AND WIRELESS
TELEGRAPHY ACT, 1988

AN ACT TO PROHIBIT BROADCASTING IN THE STATE SAVE UNDER AND IN ACCORDANCE WITH A LICENCE ISSUED BY THE MINISTER FOR COMMUNICATIONS AND TO AMEND AND EXTEND THE WIRELESS TELEGRAPHY ACTS, 1926 TO 1972, AND THE [BROADCASTING \(OFFENCES\) ACT, 1968](#) , AND TO PROVIDE FOR OTHER MATTERS CONNECTED WITH THE MATTERS AFORESAID.

[3rd July, 1988]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definitions.

1.—In this Act—

"the Act of 1926" means the [Wireless Telegraphy Act, 1926](#) ;

"the Act of 1963" means the [Copyright Act, 1963](#) ;

"the Act of 1968" means the [Broadcasting \(Offences\) Act, 1968](#) ;

"the Act of 1972" means the [Wireless Telegraphy Act, 1972](#) ;

"apparatus for wireless telegraphy" has the meaning assigned to it by virtue of *section 2 (1)* of this Act;

"artistic work" has the meaning assigned to it by section 9 of the Act of 1963;

"broadcast" means a broadcast by wireless telegraphy of communications, sounds, signs, visual images or signals, whether such communications, sounds, signs, visual images or signals are actually received or not;

"cinematograph film" means any sequence of visual images recorded (whether cinematographically or by means of any other process) on material of any description (whether translucent or not) so as to be capable, by the use of that material, of comprising, or being included in, a broadcast, and includes a video recording of any description;

"dramatic work" has the meaning assigned to it by section 2 (1) of the Act of 1963;

"literary work" includes any written table or compilation;

"the Minister" means the Minister for Communications;

"owner", in relation to premises, means—

(a) a person, other than a mortgagee not in possession, who, whether in his own right or as a trustee or agent for any other person, is entitled to receive the rack rent of the premises or, where the premises are not let at a rack rent, would be so entitled if they were so let, whether the interest of the person is held solely, jointly or severally, or

(b) a lessee or occupier, whether the lease is held or the occupier is in occupation solely, jointly or severally;

"premises" includes land not built on, land covered by water and a structure of any kind whether attached or affixed to the land or not;

"record", except where the context otherwise requires, has the meaning assigned to it by section 2 (1) of the Act of 1963;

"supply" includes giving without payment;

"telecommunications service" means a telecommunications service described in [section 87](#) (1) of the [Postal and Telecommunications Services Act, 1983](#) ;

"vehicle" includes vessel.

"Apparatus for wireless telegraphy", "wireless telegraphy" and "television set".

2.—(1) Section 2 of the Act of 1926 is hereby amended by—

(a) the substitution for the definition of "apparatus for wireless telegraphy" therein contained of the following:

"'apparatus for wireless telegraphy' means apparatus capable of emitting and receiving, or emitting only or receiving only, over paths which are not provided by any material substance constructed or arranged for that

purpose, electric, magnetic or electro-magnetic energy, of a frequency not exceeding 3 million megahertz, whether or not such energy serves the conveying (whether they are actually received or not) of communications, sounds, signs, visual images or signals, or the actuation or control of machinery or apparatus, and includes any part of such apparatus, or any article capable of being used as part of such apparatus, and also includes any other apparatus which is associated with, or electrically coupled to, apparatus capable of so emitting such energy"; and

(b) the substitution for the definition of "wireless telegraphy" (as amended by [section 18 of the Broadcasting Authority \(Amendment\) Act, 1976](#)) therein contained of the following:

"'wireless telegraphy' means the emitting and receiving, or emitting only or receiving only, over paths which are not provided by any material substance constructed or arranged for that purpose, of electric, magnetic or electro-magnetic energy of a frequency not exceeding 3 million megahertz, whether or not such energy serves the conveying (whether they are actually received or not) of communications, sounds, signs, visual images or signals, or the actuation or control of machinery or apparatus."

(2) Section 1 (1) of the Act of 1972 is hereby amended by the substitution of "capable" for "designed primarily for the purpose" in the definition of "television set" contained therein, and the said definition, as so amended, is set out in the Table to this section.

TABLE

"Television set" means any apparatus for wireless telegraphy capable of receiving and exhibiting television programmes broadcast for general reception (whether or not its use for that purpose is dependent on the use of anything else in conjunction therewith) and any assembly comprising such apparatus and other apparatus.

Control of broadcasting. **3.**—(1) A broadcast shall not be made from any premises or vehicle in the State unless it is made pursuant to and in accordance with a licence issued by the Minister.

(2) Where a broadcast is made in contravention of *subsection (1)* of this section, each of the following shall be guilty of an offence:

(a) any person who is the owner of, or is in control or is concerned in the management of, any premises or vehicle from which the broadcast is made and who knowingly permits or suffers the broadcast to take place, and

(b) any person who operates, or assists in the operation of, the apparatus for wireless telegraphy by means of which the broadcast is made.

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

(4) The provisions of *subsection (1)* of this section are in addition to those of sections 2 (1) and 3 (1) of the Act of 1968 and nothing in this section shall be construed as amending the said section 2 (1) or 3 (1).

Prohibition of acts facilitating broadcasting in contravention of *section 3*.

4.—(1) A person who does any of the acts mentioned in *subsection (2)* of this section, while satisfying the condition as to knowledge or belief specified in relation to the act, shall be guilty of an offence.

(2) The acts, and the conditions as to knowledge or belief, referred to in *subsection (1)* of this section are the following:

(a) making available to another any premises or vehicle or any other thing knowing, or having reasonable cause to believe, that broadcasts are to be made from it in contravention of *section 3 (1)* of this Act;

(b) having or keeping, or agreeing to have or to keep, apparatus for wireless telegraphy knowing, or having reasonable

cause to believe, that by means thereof broadcasts have been, are being or are to be made in contravention of the said *section 3 (1)*;

(*c*) supplying any apparatus for wireless telegraphy for installation on or in, or installing any such apparatus on or in, any premises or vehicle or any other thing knowing, or having reasonable cause to believe, that, by means of that apparatus, broadcasts are to be made in contravention of the said *section 3 (1)*;

(*d*) repairing or maintaining any apparatus for wireless telegraphy knowing, or having reasonable cause to believe, that, by means of that apparatus, broadcasts have been, are being or are to be made in contravention of the said *section 3 (1)*.

(3) Where in proceedings for an offence under this section it is proved that the defendant did an act mentioned in *subsection (2)* of this section and that in the particular circumstances of the case he ought to have had the knowledge specified in that subsection in relation to the act, then, unless there is sufficient other evidence to raise an issue as to whether the defendant had such knowledge at the relevant time, the act shall be treated as having been done by him with such knowledge.

(4) For the purposes of this section a broadcast shall be regarded as being made by means of an apparatus whether the broadcast is made by means of the apparatus alone or by means of the apparatus and other apparatus.

(5) In this section "apparatus for wireless telegraphy" has the same meaning as in section 2 of the Act of 1926, as amended by *section 2* of this Act.

Prohibition of acts relating to matter broadcast in contravention of *section 3*.

5.—(1) A person who does any of the acts mentioned in *subsection (2)* of this section, and, if any intent, knowledge or belief or circumstances is or are specified in relation to the act, does it with that intent, knowledge or belief or in those circumstances, shall be guilty of an offence.

(2) The acts, and, where relevant, the intent, knowledge, belief and circumstances, referred to in *subsection (1)* of this section are the following:

(a) supplying a cinematograph film or a record with intent that such film or the sound embodied in the record may comprise, or be included in, a broadcast made in contravention of *section 3 (1)* of this Act;

(b) making a literary, dramatic or musical work with intent that the work may comprise, or be included in, a broadcast made in contravention of the said *section 3 (1)*;

(c) making an artistic work with intent that the work may comprise, or be included in, a broadcast made in contravention of the said *section 3 (1)*;

(d) participating in a broadcast made in contravention of the said *section 3 (1)* whether as a director, producer or announcer or as the deliverer of a speech or otherwise;

(e) participating, whether as a director, producer or announcer or as the deliverer of a speech or otherwise, in the making of a cinematograph film or record made in the State knowing, or having reasonable cause to believe, that such film or record is to comprise, or to be included in, a broadcast made in contravention of the said *section 3 (1)*;

(f) advertising by means of a broadcast made in contravention of the said *section 3 (1)*, inviting another to advertise by means of a broadcast to be so made or making an advertisement with the intent that it may comprise, or be included in, a broadcast to be so made;

(g) publishing dates, times or programme schedules which relate to broadcasts which, if made, would be made in contravention of the said *section 3 (1)* or (otherwise than by publishing such particulars) publishing an advertisement of matter calculated to promote, directly or indirectly, the interests

of a business whose activities consist of or include the operation of a station from which broadcasts are, or are to be, made in contravention of the said *section 3 (1)*.

(3) (a) Where in proceedings for an offence under this section it is proved that, by means of a broadcast made in contravention of *section 3 (1)* of this Act, it was stated, suggested or implied that any matter which comprised, or was included in, the broadcast was supplied by, or given at the expense, whether wholly or partly, of the defendant, then, unless there is sufficient other evidence to raise an issue as to whether the defendant advertised by means of the broadcast, he shall be treated as having so advertised.

(b) Where in proceedings for an offence under this section it is proved that the defendant did an act mentioned in *subsection (2)* of this section and that in the particular circumstances of the case he ought to have had the knowledge specified in that subsection in relation to the act, then, unless there is sufficient other evidence to raise an issue as to whether the defendant had such knowledge at the relevant time, the act shall be treated as having been done by him with such knowledge.

(4) Where in proceedings for an offence under this section—

(a) it is proved that a broadcast was made in contravention of *section 3 (1)* of this Act and that the broadcast was wholly or partly comprised of an advertisement, and

(b) (i) there is produced in court anything which both—

(I) by reason of something printed thereon, or on a label attached thereto, purports to relate to the goods, service, accommodation, facility,

entertainment or other event, or other thing, to which the advertisement relates, and

(II) has something printed thereon, or on a label attached thereto, which is such as to seem to the court to be likely to be taken as an indication that the defendant prepares, manufactures, assembles, imports, provides, supplies, promotes, organises or is otherwise connected with the provision of the goods, service, accommodation, facility, entertainment or other event, or other thing, to which the advertisement relates,

(ii) there is contained in the advertisement a reference which, in the opinion of the court, is a reference to the defendant,

then, unless there is sufficient other evidence to raise an issue as to whether the defendant advertised by means of the broadcast, he shall be treated as having so advertised.

(5) In this section, "speech" has the meaning assigned to it by section 6 (6) of the Act of 1968.

Penalties and legal proceedings.

6.—(1) A person guilty of an offence under *section 3, 4 or 5* of this Act shall be liable—

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

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

(2) (*a*) On conviction on indictment of a person for an offence under *section 3* or *section 4* of this Act in relation to a vehicle

the court may, at its discretion, in addition to any punishment to which that person may be liable under *subsection (1)* of this section, order the vehicle to be forfeited.

(*b*) Where a vehicle is forfeited under this subsection, the Minister may direct that it be sold or otherwise disposed of in such manner as he thinks fit.

(3) Where an offence under *section 3, 4 or 5* of this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against accordingly.

(4) Notwithstanding *section 10 (4)* of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under *section 3, 4 or 5* of this Act may be instituted at any time within two years from the time when the offence was committed.

Prohibition notice.

7.—(1) (*a*) Where the Minister is of opinion that a broadcast has been made from any premises or vehicle in contravention of *section 3 (1)* of this Act, he may by a notice in writing (in this section referred to as a "prohibition notice") addressed to and served on either or both of the following, namely, Bord Telecom Éireann and the Electricity Supply Board require the person to whom it is addressed to comply with the requirements of the notice.

(*b*) A person to whom a prohibition notice is addressed and on whom it is served shall, for so long as the notice is in operation, comply with the requirements of the notice.

(2) A prohibition notice shall—

(*a*) specify—

(i) the person or persons to whom it is addressed,

(ii) the premises from which the Minister is of opinion the broadcast to

which it relates was made, and

(iii) the date or dates on which the Minister is of opinion such broadcast was made, and

(b) require a person to whom it is addressed, for so long as the notice is in operation, not to offer to provide, or provide or maintain, to a connection point in the premises specified in the notice,

(i) in case such a person is Bord Telecom Éireann, a telecommunications service,

(ii) in case such a person is the Electricity Supply Board, a supply of electricity.

(3) A person on whom a prohibition notice is served pursuant to *subsection (1)* of this section shall be immune from liability in respect of anything done or omitted to be done by that person in pursuance of the notice.

(4) Where a prohibition notice is served pursuant to *subsection (1)* of this section and a premises is specified in the notice, the Minister shall, as soon as may be, serve a copy of the notice on the occupier of the premises together with a statement that such occupier may, within the period of fourteen days beginning on the date of the notice, make representations to the Minister showing why the prohibition notice should not come into operation (which representations are hereby authorised to be made).

(5) Unless it is previously withdrawn, a prohibition notice shall come into operation on such day as the Minister shall determine (being a day not earlier than the day immediately following the expiration of the period of fourteen days referred to in *subsection (4)* of this section).

(6) When a prohibition notice comes into operation—

(a) it shall remain in operation until it is withdrawn, and

(b) for so long as it remains in operation, a person to whom the notice is addressed

shall not offer to provide, or provide or maintain to a connection point in the premises specified in the notice a telecommunications service or a supply of electricity, as may be appropriate having regard to the terms of the notice.

(7) A notice or copy of a notice required to be served on a person by this section shall be served on him in some one of the following ways:

(a) where it is addressed to him by name, by leaving it at his registered or principal office or at his principal place of business,

(b) by sending it by post in a prepaid registered letter addressed to him at the address at which he ordinarily resides or at his registered or principal office, or at his principal place of business or, in a case in which an address for service has been furnished, at that address.

(8) Where a copy of a prohibition notice is required by this section to be served on an occupier of any premises and the name of the occupier cannot be ascertained by reasonable inquiry, it may be addressed to "the occupier" without naming him.

(9) For the purposes of this section, a company within the meaning of the [Companies Act, 1963](#) , 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.

Use of certain services to promote, further or facilitate certain interests an offence.

8.—Any person who—

(a) by using either a telecommunications service as regards which he is the subscriber or a supply of electricity supplied to him; or

(b) by enabling or permitting such a supply of electricity or such a telecommunications service to be used by another,

promotes, furthers or facilitates, directly or indirectly, the interests of a business whose activities consist of or

include the operation of a station from which broadcasts are, or are to be, made in contravention of *section 3 (1)* of this Act shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

Production of licence granted under Act of 1926 required in certain circumstances.

9.—(1) Subject to *subsection (2)* of this section, a person shall not, pursuant to a sale or to an agreement to sell, let on hire or hire purchase or otherwise to supply, deliver any apparatus for wireless telegraphy other than a television set which is of a particular class or description unless within the relevant period there has been produced by or on behalf of the purchaser, hirer, or the party to whom the apparatus is to be otherwise supplied, as may be appropriate, for inspection by the person making the delivery or by his agent, a licence granted under the Act of 1926 which—

(*a*) was issued to the purchaser or hirer, or the party so supplied, as may be appropriate, and

(*b*) relates to apparatus for wireless telegraphy which is of such class or description, and

(*c*) is for the time being in force.

(2) The Minister may by order exempt from the provisions of *subsection (1)* of this section apparatus for wireless telegraphy which is of a class or description specified in the order, and in case an order under this subsection is for the time being in force, *subsection (1)* of this section shall be construed and have effect subject to the terms of the order.

(3) In any proceedings in which a contravention of *subsection (1)* of this section is alleged it shall be a defence for the defendant to—

(*a*) prove that—

(i) the relevant purchaser, hirer or party supplied produced to the defendant or to his agent a document purporting to be the licence the production of which would have satisfied the requirements of the said *subsection (1)*, and

(ii) such document was inspected by the defendant or by his agent, and

(iii) the defendant, or, in case the document was produced to his agent, his agent, reasonably believed the document to be such licence, and

(iv) the document was so produced within the period which would have been appropriate having regard to the said *subsection (1)*, and

(*b*) satisfy the court that such belief was reasonable.

(4) Any person who contravenes *subsection (1)* of this section shall be guilty of an offence and shall be liable—

(*a*) on summary conviction, to a fine not exceeding £1,000,

(*b*) on conviction on indictment, to a fine not exceeding £20,000.

(5) In this section—

"the relevant period" means in relation to a delivery the period beginning on the day which is three days prior to the date on which the delivery is made and ending immediately before the making of the delivery;

"television set" has the meaning assigned to it by [section 1 \(1\) of the Wireless Telegraphy Act, 1972](#) , as amended by *section 2 (2)* of this Act.

Notice of no sales etc.

10.—(1) In case during a particular month a television dealer—

(*a*) sells or lets no television set in a manner mentioned in paragraph (*a*) or (*b*) of section 3 (1) of the Act of 1972, or

(*b*) makes no arrangement described in paragraph (*c*) of the said section 3 (1),

he shall give to the Minister a notice in writing stating that during that month no such sale, letting or arrangement was made by him.

(2) (*a*) Where a notice is by this subsection required to be given to the Minister, the notice shall be so given not later than the last day of the month which

follows the month to which the notice relates.

(b) Where a notice required by this section is given to the Minister, the person giving the notice shall make a record of the fact that such notice was given and of the date on which it was sent to the Minister and such record shall be kept by such person for a period of not less than twelve months, and for the purposes of subsection (4) of section 6 of the Act of 1972 the record shall be regarded as being kept under that section.

(3) A person who—

(a) without reasonable cause or excuse fails to comply with any of the requirements of *subsection (1) or (2)* of this section, or

(b) in purported compliance therewith:

(i) furnishes any information which to his knowledge is false in a material respect, or

(ii) makes or causes to be made or knowingly allows to be made any record which to his knowledge is false in a material respect,

shall be guilty of an offence under section 10 (1) of the Act of 1972.

Failure to comply with certain requirements under section 6 (4) of Act of 1972 an offence.

11.—Any person who without reasonable cause or excuse fails to comply with a requirement duly made under section 6 (4) of the Act of 1972, as extended by *section 10 (2) (b)* of this Act, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

Penalties for certain offences under Act of 1926 and Act of 1972 altered.

12.—(1) The Act of 1926 is hereby amended by—

(a) in section 3, the substitution of the following subsections for subsection (3):

"(3) (a) Every person who keeps, has in his possession, instals, maintains, works or uses any apparatus in contravention of this section shall be guilty of an offence and shall be liable—

(i) in case the apparatus in respect of which the offence was committed is a television set, on summary conviction thereof—

(I) in the case of a first such offence, to a fine not exceeding £500,

(II) in the case of a second or subsequent such offence, to a fine not exceeding £1,000,

(ii) in case the apparatus in respect of which the offence was committed is not a television set—

(I) on summary conviction to a fine not exceeding £1,000,

(II) on conviction on indictment to a fine not exceeding £20,000.

(b) In this subsection 'television set' has the meaning assigned to it by [section 1](#) (1) of the [Wireless Telegraphy Act, 1972](#) , as amended by [section 2](#) (2) of the [Broadcasting and Wireless Telegraphy Act, 1988](#) .

(3A) (a) Where a person is convicted on indictment of an offence under this section, the interest of the person, whether as owner or otherwise, in the following apparatus shall stand forfeited as a statutory consequence of conviction:

(i) in case the apparatus in respect of which the offence was committed is a wired broadcast relay station, the part or parts thereof comprised in the station between the station's initial point of reception of television programmes, sound programmes or television programmes and sound programmes, as the case may be, and the point at which such programmes are fed into the station's trunk cable for conveyance by wire,

(ii) in case the apparatus in respect of which the offence was committed is not a wired broadcast relay station, the apparatus in respect of which the offence was committed.

(b) In this subsection—

'service point' means a point in a premises or part of a premises which is connected by wire to a wired broadcast relay station and to which television programmes, sound programmes or both television programmes and sound programmes are conveyed by the wire for reception on

wireless telegraphy apparatus in the possession of the occupier of the premises or part;

'wired broadcast relay station' means wireless telegraphy apparatus capable of receiving television programmes, sound programmes or both television programmes and sound programmes by means of wireless telegraphy and then conveying the programmes by wire for reception on wireless telegraphy apparatus, and includes any aerials and the wires connected to any service point served by such station.

(3B) Where anything is, as a statutory consequence of conviction, forfeited under this section, the Minister may direct that such thing shall be destroyed or be sold or otherwise disposed of in such manner as he thinks fit.

(3C) Where the Minister, in pursuance of subsection (3B) of this section, directs a thing to be sold, the net proceeds of the sale shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance shall direct.";

(*b*) in section 7, the substitution for "fifty pounds" (inserted by section 12 of the Act of 1972) of "two hundred and fifty pounds" in subsection (3);

(*c*) in section 9—

(i) the substitution of the following subsection for subsection (2):

"(2) Regulations made under this section may—

(*a*) provide that a

breach or contravention of any specified such regulation shall be an offence,

(*b*) in relation to convictions on indictment for such an offence, provide that the court by whom the defendant is convicted may order the interest of the defendant, whether as owner or otherwise, in all or any apparatus in respect of or by means of which the court is satisfied a breach or contravention of a specified such regulation was committed to be forfeited."; and

(ii) the insertion of the following subsection after subsection (5):

"(6) A person guilty of an offence by reason of a breach or contravention of a regulation specified, by virtue of paragraph (*a*) of subsection (2) of this section, in regulations made under this section shall be liable—

(*a*) on summary conviction, to a fine of one thousand pounds together with, in the case of a continuing such breach or contravention, a further fine (not exceeding one thousand pounds in all) not exceeding one hundred pounds for each day during which the offence is continued, and

(*b*) on conviction on indictment, to a fine of twenty thousand pounds together with, in the case of a continuing such

breach or contravention, a further fine not exceeding two thousand pounds for each day during which the offence is continued.";

(*d*) in section 10—

(i) the substitution of the following subsection for subsection (3):

"(3) Regulations made under this section may—

(*a*) provide that a breach or contravention of any specified such regulation shall be an offence,

(*b*) in relation to convictions on indictment for such an offence, provide that the court by whom the defendant is convicted may order the interest of the defendant, whether as owner or otherwise, in all or any apparatus in respect of or by means of which the court is satisfied a breach or contravention of a specified such regulation was committed to be forfeited.";

(ii) the insertion of the following subsection after subsection (7):

"(8) A person guilty of an offence, by reason of a breach or contravention of a regulation specified, by virtue of paragraph (*a*) of subsection (3) of this section, in regulations made under this section, shall be liable—

(a) on summary conviction, to a fine of one thousand pounds, or, at the discretion of the court, to imprisonment for a term not exceeding six months, or, at such discretion, to both such fine and such imprisonment, together with, in the case of a continuing such breach or contravention, a further fine (not exceeding one thousand pounds in all) not exceeding one hundred pounds for each day during which the offence is continued, and

(b) on conviction on indictment, to a fine of twenty thousand pounds, or, at the discretion of the court, to imprisonment for a term not exceeding twelve months, or, at such discretion, to both such fine and such imprisonment, together with, in the case of a continuing such breach or contravention, a further fine not exceeding two thousand pounds for each day during which the offence is continued.";

(e) the insertion of the following section after section 10:

"Forfeiture of apparatus;
supplementary provisions.

10A.—(1) A court shall not order anything to be forfeited pursuant to regulations under section 9 (2) or 10 (3) of this Act if a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

(2) Where—

(a) a person is convicted on indictment of an offence under section 3 of this Act, or

(b) an order is made pursuant to regulations under section 9 (2) or 10 (3) of this Act,

the apparatus to which the forfeiture under the said section 3 or, as may be appropriate, the order relates shall be sold or disposed of in such other manner as the Minister thinks fit.

(3) Where the apparatus is sold pursuant to this section, the net proceeds of the sale shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance shall direct.";

(f) in section 11, the substitution of the following subsection for subsections (3) and (4):

"(3) Every person who sends or attempts to send, or divulges the purport of, any message, communication or signal in contravention of this section shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding one thousand pounds, or, at the discretion of the court, to a term

of imprisonment not exceeding six months, or, at such discretion, both to such fine and such imprisonment,

(*b*) on conviction on indictment, to a fine not exceeding twenty thousand pounds, or, at the discretion of the court, to a term of imprisonment not exceeding twelve months, or, at such discretion, to both such fine and such imprisonment.";

(*g*) in section 12, the substitution in subsection (3) for all the words from "liable on summary conviction" to the end of the subsection of the following:

"liable—

(*a*) on summary conviction, to a fine not exceeding one thousand pounds together with, in the case of a continuing offence, a further fine (not exceeding one thousand pounds in all) not exceeding one hundred pounds for every day during which the offence is continued,

(*b*) on conviction on indictment, to a fine not exceeding twenty thousand pounds together with, in the case of a continuing offence, a further fine not exceeding two thousand pounds for every day during which the offence is continued.";

(*h*) in section 12A (inserted by [section 34](#) of the [Broadcasting Authority Act, 1960](#)), the substitution for subsection (12) of the following subsection:

"(12) A person guilty of an offence under this section shall be liable—

(*a*) on summary conviction, to a fine not exceeding one

thousand pounds together with, in the case of a continuing offence, a further fine (not exceeding one thousand pounds in all) not exceeding one hundred pounds for every day during which the offence is continued,

(*b*) on conviction on indictment, to a fine not exceeding twenty thousand pounds together with, in the case of a continuing offence, a further fine not exceeding two thousand pounds for every day during which the offence is continued."; and

(i) in section 12B (inserted by the said section 34), the substitution for subsection (3) of the following subsection:

"(3) A person guilty of an offence under this section shall be liable—

(*a*) on summary conviction, to a fine not exceeding one thousand pounds together with, in the case of a continuing offence, a further fine (not exceeding one thousand pounds in all) not exceeding one hundred pounds for every day during which the offence is continued,

(*b*) on conviction on indictment, to a fine not exceeding twenty thousand pounds together with, in the case of a continuing offence, a further fine not exceeding two thousand pounds for every day during which the offence is continued.";

and the said subsection (3) of the said section 7 and the

said subsection (3) of the said section 12, as amended by this subsection, are set out in *paragraphs 1* and 2, respectively, of the Table to this section.

(2) Section 10 of the Act of 1972 is hereby amended by—

(*a*) the substitution of "five hundred pounds" and "one thousand pounds" for "twenty-five pounds" and "one hundred pounds", respectively, in subsection (3); and

(*b*) the substitution of the following subsection for subsection (4):

"(4) (*a*) (i) A person guilty of an offence under subsection (2) of this section shall be liable—

(I) on summary conviction to a fine not exceeding one thousand pounds,

(II) on conviction on indictment to a fine not exceeding twenty thousand pounds.

(ii) Where a person is convicted on indictment of an offence under subsection (2) of this section, the Court may, at its discretion, in addition to imposing any fine to which the person may be liable under this section, order that the interest of the person, whether as owner or otherwise, in any apparatus in relation to which the offence was committed be forfeited.

(*b*) A court shall not order any thing to be forfeited under paragraph (*a*) of this subsection if a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has

been given to him to show cause why the order should not be made.";

and the said subsection (3), as amended by this subsection, is set out in *paragraph 3* of the Table to this section.

(3) [Section 4](#) (2) of the [Criminal Justice Act, 1951](#) , and section 13 (3) (*b*) of the [Criminal Procedure Act, 1967](#) (which provide for maximum penalties under section 11 of the Act of 1926) are hereby repealed.

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1. (3) Every person on whom a special notice is duly served under this section shall within the time aforesaid duly and correctly complete in accordance with such notice and this section the form of declaration accompanying or annexed to such notice and give or send such declaration to the officer named in that behalf in such notice, and if any such person shall fail or neglect so to complete and give or send such declaration or shall make in such declaration any statement which is to his knowledge false or misleading he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a penalty not exceeding two hundred and fifty pounds.

2. (3) Every person who works or uses any apparatus for wireless telegraphy in contravention of this section and, having been served with a notice under this section requiring him to terminate the interference or injurious affection which contravenes this section, does not within the time specified in that behalf in such notice terminate by the means specified in such notice or by some other means such interference or injurious affection shall be guilty of an offence under this section and shall be liable—

(*a*) on summary conviction, to a fine not exceeding one thousand pounds, together with in the case of a continuing offence, a further fine (not exceeding one thousand pounds in all) not exceeding one hundred pounds for every day during which the offence is continued,

(*b*) on conviction on indictment, to a fine not exceeding twenty thousand pounds together with, in the case of a continuing

offence, a further fine not exceeding two thousand pounds for every day during which the offence is continued.

3. (3) A person guilty of an offence under *subsection (1)* of this section shall be liable on summary conviction to a fine not exceeding—

(*a*) in case the offence relates to a requirement of an order under the said section 5, five hundred pounds, and

(*b*) in any other case, one thousand pounds.

Recovery of licence fees.

13.—Any sum due in respect of a fee prescribed under section 6 of the Act of 1926 shall be recoverable by the Minister as a simple contract debt in any court of competent jurisdiction.

Prosecution of offences.

14.—Summary proceedings for an offence under this Act may be prosecuted by the Minister.

Onus of proof.

15.—In proceedings for an offence under this Act it shall not be necessary to negative by evidence the existence either of any order under *section 9 (2)* of this Act or of any licence to broadcast and accordingly the onus of proving the existence of such an order, or the issue of such a licence to the defendant, shall be on the defendant.

Subsections (1), (2) and (3) of section 3 of Act of 1926 applied to Bord Telecom Éireann (Irish Telecommunications Board).

16.—For the avoidance of doubt it is hereby declared that subsections (1), (2) and (3) of section 3 of the Act of 1926 apply to Bord Telecom Éireann (The Irish Telecommunications Board).

Amendment of sections 7 and 8 of Act of 1926.

17.—(1) Paragraph (*b*) of section 7 (2) of the Act of 1926 is hereby amended by the insertion of ", the name and address of the person by whom such apparatus was sold, let, hired or otherwise supplied to him" after "the nature of such apparatus", and the said paragraph (*b*), as so amended, is set out in the Table to this section.

(2) Section 8 (1) of the Act of 1926 is hereby amended by the insertion after "place" wherever that word occurs of "or in any specified vehicle" and by the insertion after the words "all or any part of such apparatus" of the words "or any such vehicle".

(3) Section 8 of the Act of 1926 is hereby amended by the substitution of the following subsections for

subsection (2):

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

(3) (a) An officer of the Minister may retain anything seized under this section which he believes to be evidence of any offence or suspected offence under the *Wireless Telegraphy Acts, 1926 to 1988*, or the *Broadcasting (Offences) Acts, 1968 and 1988*, for use as evidence in proceedings in relation to any such offence, for such period from the date of seizure as is reasonable, or, if proceedings are commenced in which the thing so seized is required for use in evidence, until the conclusion of the proceedings, and, subject to section 3 (3A) of the Act of 1926, inserted by *section 12 (1) (a) of the [Broadcasting and Wireless Telegraphy Act, 1988](#)*, thereafter the Minister shall, as soon as may be, deliver any such thing to the person who in his opinion is the owner thereof, and in case the Minister decides that he is unable to ascertain such person, then, on and from the date of his decision, the Act of 1897 shall apply to the thing so seized.

(b) Where, by virtue of *paragraph (a)* of this subsection, the Act of 1897 is applied to any thing, then, without prejudice to the right of any claimant of the thing to make an application under that Act in regard thereto, the Minister shall, as soon as may be, make such an application.

(c) For the purpose of giving effect to the foregoing paragraphs of this subsection the Act of 1897 shall be construed and have effect subject to any modification which is necessary to give such effect.

(d) In this subsection, 'the Act of 1897'

means the Police (Property) Act, 1897.

(4) (a) Any person who by act or omission impedes or obstructs an officer of the Minister or a member of the Garda Síochána or any other person in the exercise of a power conferred by a search warrant granted under this section shall be guilty of an offence.

(b) Any person who with intent to impede or obstruct an officer of the Minister or a member of the Garda Síochána or any other person in the exercise of a power conferred by a search warrant granted under this section places, erects, instals, keeps or maintains any thing shall be guilty of an offence and if, in the case of a continuing offence, the impediment or obstruction is continued after conviction, he shall be guilty of a further offence.

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

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(b) If he keeps or has in his possession any such apparatus, the nature of such apparatus, the name and address of the person by whom such apparatus was sold, let, hired or otherwise supplied to him and the place at which he keeps or has the same.

Amendment of section 7 of Act of 1968. **18.**—Subsection (1) of section 7 of the Act of 1968 is hereby amended by the substitution of "£1,000" and "£20,000" for "£100" and "£500", respectively, and the said subsection (1), as so amended, is set out in the Table to this section.

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(1) A person guilty of an offence under this Act shall be liable—

(a) on summary conviction, to

imprisonment for a term not exceeding three months or, at the discretion of the court, to a fine not exceeding £1,000 or to both such imprisonment and such fine, or

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

Amendment of section 2 of Act of 1972. **19.**—Section 2 of the Act of 1972 is hereby amended by the substitution of the following subsections for subsection (2):

"(2) A person shall not act as a television dealer unless, prior to his so acting, he has given to the Minister a notice in the prescribed form, or in a form to the like effect, containing the following information—

(*a*) the person's name, and

(*b*) the place or places where the records which a television dealer is required by this Act to keep will be kept by him and be available for inspection,

and the information when received shall be entered in the register established and maintained under subsection (1) of this section.

(2A) In any proceedings in which a contravention of subsection (2) of this section is alleged, it shall be a defence for the defendant to prove—

(*a*) that, immediately before the commencement of the [Broadcasting and Wireless Telegraphy Act, 1988](#), apart from sections 16 and 21 thereof, he was a television dealer,

(*b*) that he gave to the Minister, either before or after the commencement of that Act, the notice required to be so given by this section, and

(*c*) that such notice contained the information so referred to and was given by him to the Minister not later than thirty

days after the defendant started to act as a television dealer."

Fees on application for licence.

20.—The Minister may by regulations prescribe the fee to be paid in respect of applications for licences or any class of licence under section 5 of the Act of 1926, subject to such exceptions as he may prescribe, and subsections (3) and (4) of section 6 of that Act shall apply to any such regulation.

Short title, commencement and collective citations.

21.—(1) This Act may be cited as the [Broadcasting and Wireless Telegraphy Act, 1988](#) .

(2) This Act, other than this section and *section 16*, shall not come into operation before the expiry of one month beginning on the day on which it is passed, but subject to the foregoing it (apart from this section and *section 16*) shall come into operation on the 31st day of December, 1988, or on such earlier day as may be appointed by the Minister by order.

(3) (a) The Act of 1968 and this Act, other than *sections 2, 9, 10, 11, 12, 16, 17* and *19* of this Act, may be cited together as the Broadcasting (Offences) Acts, 1968 and 1988.

(b) The Wireless Telegraphy Acts, 1926 to 1972, and *sections 2, 9, 10, 11, 12, 14, 15, 16, 17* and *19* of this Act may be cited together as the Wireless Telegraphy Acts, 1926 to 1988.