

THE BROADCASTING AND RADIO
RE-DIFFUSION ACT

ARRANGEMENT OF SECTIONS

PART I. *Introduction*

1. Short title.
2. Interpretation.

PART II. *Commercial and Non-Commercial Broadcasting*

3. Restriction on Commercial Broadcasting.
4. [Repealed by Act 43 of 1995.]
5. [Repealed by Act 43 of 1995.]
6. Licence may be exclusive or non-exclusive.
- 6A. Non-commercial broadcasting services.
7. Unlawful interference with cable wire.

PART III. *Radio Diffusion*

8. Control of radio re-diffusion.
9. [Repealed by Act 43 of 1995.]
10. [Repealed by Act 43 of 1995.]
11. Unlawful interference with re-diffusion system.

PART IIIA. *Subscriber Television Service*

- 11A. No person to operate subscriber television service without licence.
- 11B. Person eligible for licence to operate subscriber television service.
- 11C. Offences.

PART IIIB. *Licences*

- 11D. Application for licences.
- 11E. Procedure relating to application for licence.
- 11F. Grant or refusal, etc., of licence.
- 11G. Terms of licences.

PART IIIC. *Appeals*

- 11H. Appeals.

PART IV. *The Broadcasting Commission*

12. Establishment of the Broadcasting Commission.
13. Appointment of staff.
14. Expenses of the Commission.
15. Accounts and audit.
16. Functions of the Commission.
17. Power to require information from licensees.
18. Advisory Committees.
19. Annual reports.
20. Contravention of licence.
21. Impartiality in political broadcasts.
22. Penalty for failure to comply with directions.
23. Regulations.

SCHEDULES.

THE BROADCASTING AND RADIO RE-DIFFUSION ACT

[27th October, 1949.]

Cap. 47.
Laws
66 of 1958,
45 of 1959.
Acts
16 of 1962,
5 of 1978,
5 of 1986,
43 of 1993,
12 of 2001,
37 of 2004
S. 29,
2 of 2005,
11 of 2008.

PART I. *Introduction*

1. This Act may be cited as the Broadcasting and Radio Re-Diffusion Act. Short title.

2.—(1) In this Act—

“broadcasting” means either sound broadcasting or television broadcasting or both; Interpreta-
tion.
10/1962
S. 2(a).

“Caribbean Community” means the Caribbean Community established by Article 2 of the Treaty; 11/2008
S. 3(b).

“commercial matter” means matter of any description which is broadcast with the intention of influencing listeners or viewers thereto to engage or abstain from engaging in commercial relations with any person; 10/1962
S. 2(b).

“commercial broadcasting licence” includes an exclusive commercial broadcasting licence and a non-exclusive commercial broadcasting licence granted under section 11F; 40/1995
S. 2(b).

“Commission” means the Broadcasting Commission established under section 12; 43/1995
S. 2 (c).

“community access channel” means a channel dedicated to the provision of access to news, information and other 11/2008
S. 3(b).

BROADCASTING AND RADIO RE-DIFFUSION

content of public interest related to the geographic area or zone served by the subscriber television operator or subscriber television licensee;

11/2008
S. 3(b).

“independent programme provider” means a programme provider who—

- (a) transmits at least fourteen hours of new, unrepeated local content per week, on a subscriber television channel; and
- (b) is licensed to operate pursuant to section 11D;

11/2008
S. 3(b).

“international relay service licence” means a non-exclusive international relay service broadcasting licence granted under section 11F to provide broadcasts which are relayed worldwide and are consistent with the national interest and which—

- (a) include broadcast matter of any description that is not intended to influence listeners thereto or viewers thereof to engage in or abstain from engaging in commercial relations with any other person;
- (b) are not for profit; and
- (c) do not in any manner involve engagement in commercial activity;

11/2008
S. 3(b).

“local content” means local television programming which—

- (a) originates in Jamaica or any other Member State;
- (b) is created and produced by a Jamaican national or a national of any other Member State;
- (c) relates to Jamaica or any other Member State;

11/2008
S. 3(b).

“Member State” means a Member State of the Caribbean Community excluding an Associate Member within the meaning of Article 231 of the Treaty;

“national” means a person who—

**11/2008
S. 3(b).**

- (a) is a citizen of a Member State; or**
- (b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or, if it be so expressed, as being a native or resident of such a Member State for the purposes of the laws thereof relating to immigration; or**
- (c) is a company or other legal entity constituted in a Member State in accordance with the laws thereof and which that Member State regards as belonging to it, provided that such company or other legal entity has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity, within the Community and is substantially owned and effectively controlled by persons mentioned in paragraphs (a) and (b);**

“non-commercial broadcaster” means a broadcaster—

**11/2008
S. 3(b).**

- (a) whose articles of incorporation or equivalent document states that the objects of the broadcaster are non-commercial in nature;**
- (b) that does not operate its broadcasting services at a profit;**
- (c) that establishes a programme format, content and schedule not subject to the control or influence of any commercial entity;**
- (d) that does not collect advertising revenue which represents more than 30% of its total revenue; and**
- (e) that submits a business model that does not reflect reliance on commercial revenue for sustainability,**

and the terms “non-commercial” and non-commercial broadcasting” shall be construed accordingly;

“re-diffusion system” means a system for the dissemination by electrical or magnetic agency over a wired network connecting a transmitting instrument with a number of receiving instruments of sound;

10/1962
S. 2(a).

“sound broadcasting” means the dissemination by wireless telephony of sounds of any description but does not include sounds which form part of a television broadcast;

11/2008
S. 3(b).

“special subscriber television service licence” means an island-wide national subscriber television licence;

11/2008
S. 3(b).

“subscriber television operator” means a person who operates a subscriber television service;

10/2008
S. 3(b).

“subscriber television programme provider” means a subscriber television operator that—

(a) provides, on a non-commercial basis, local programming on dedicated channels located on his own subscriber television service; and

(b) is registered as a subscriber television programme provider under section 11D;

43/1995
S. 2(f).

“subscriber television service” means the one-way transmission of video programming or other programming service to subscribers for a fee, and subscriber interaction (if any) which is required for the selection of such programming or other programming service;

“television broadcasting” means the wireless transmission of visual images or pictures, together with any sounds broadcast for reception along with those images or pictures;

11/2008
S. 3(b).

“Treaty” means the Revised Treaty of Chaguaramas establishing the Caribbean Community and the CSME

signed in The Bahamas on July 5, 2001, as is in force in relation to Jamaica.

“video programming” means the transmission of visual images by means of radio magnetic signals or optical agency. 43/1995 S. 2(h).

(2) For the purposes of this Act a person shall be deemed to engage in commercial broadcasting if having the control of any broadcasting apparatus—

10/1962 S. 2(d).

- (a) he accepts or agrees to accept valuable consideration of any description in respect of the use of such apparatus for the making of any broadcast; or
- (b) he uses or permits to be used such apparatus for broadcasting commercial matter.

(3) For the purposes of this Act a person shall be deemed to have the control of any broadcasting apparatus if he is entitled otherwise than in the capacity of servant or agent of some other person resident in Jamaica to determine whether or not such apparatus shall be used for any lawful purpose. 10/1962 S. 2(d).

PART II. *Commercial and Non-Commercial Broadcasting*

3.—(1) No person shall establish or maintain any broadcasting apparatus with a view to engaging or shall engage, in commercial broadcasting or non-commercial broadcasting, except under and in accordance with the terms of one of the following licences granted under this Act— 11/2008 S. 4.

- (a) commercial (sound broadcasting) island-wide licence;
- (b) commercial (sound broadcasting) limited area licence;
- (c) commercial television broadcasting island wide licence;
- (d) commercial television broadcasting limited area licence;
- (e) public service: non-commercial island-wide licence;
- (f) public service: non-commercial limited area licence;

- (g) public service: commercial island-wide licence;
- (h) public service: commercial limited area licence;
- (i) international relay service licence.

(2) Every person who contravenes the provisions of subsection (1) shall be guilty of an offence against this section and on summary conviction before a Resident Magistrate shall be liable to a penalty not exceeding ten thousand dollars in respect of each day on which such offence is committed or in default thereof to be imprisoned for any term not exceeding six months.

4. *[Repealed by Act 43 of 1995.]*

5. *[Repealed by Act 43 of 1995.]*

Licence may
be exclusive
or non-
exclusive.
11/2008
S. 5(a).
10/1962
S. 5(a).

6.—(1) Any broadcasting licence may, subject to the provisions of this section, be either a non-exclusive or an exclusive—

- (a) sound broadcasting licence; or
- (b) television broadcasting licence; or
- (c) sound and television broadcasting licence.

10/1962
S. 5(b).

(2) Every broadcasting licence shall authorize the holder thereof during such period as such licence remains in force to erect, establish, maintain and operate such broadcasting apparatus of every description as may be necessary to enable the holder thereof fully and effectually to engage in broadcasting in accordance with the terms of his licence.

(3) Every non-exclusive broadcasting licence shall authorize the holder thereof during such period as the licence remains in force to engage in broadcasting concurrently with the holder of any other broadcasting licence under this Act.

10/1962
S. 2(c).

(4) Every exclusive sound broadcasting licence shall authorize the holder thereof during such period as such licence

remains in force to engage in broadcasting to the exclusion of all other persons except as otherwise provided in subsection (5) and subsection (6).

(5) No non-exclusive sound broadcasting licence shall be granted at any time when there is in force any applicable exclusive sound broadcasting licence unless either—

11/2008
S. 5(b)(i).

(a) the holder of such applicable exclusive sound broadcasting licence notifies the Minister in writing of his consent to the grant of such non-exclusive sound broadcasting licence; or

11/2008
S. 5(b)(ii).

(b) such non-exclusive sound broadcasting licence contains a term that the holder thereof shall not engage in sound broadcasting until such time as such exclusive sound broadcasting licence has ceased to be in force or the holder thereof has notified the Minister in writing of his consent to the holder of such non-exclusive sound broadcasting licence engaging in sound broadcasting.

(6) No exclusive sound broadcasting licence shall be granted at any time when there is in force any non-exclusive sound broadcasting licence unless such exclusive licence contains a term that it shall take effect as a non-exclusive sound broadcasting licence until such time as all non-exclusive sound broadcasting licences in force at the date of the grant of such exclusive sound broadcasting licence shall have ceased to be in force or shall have become vested in the holder of such exclusive sound broadcasting licence.

10/1962
S. 5(c).

(7) The provisions of subsections (4), (5) and (6) shall have effect as respects exclusive television broadcasting licences and non-exclusive television broadcasting licences in like manner as they have effect as respects exclusive sound broadcasting licences and non-exclusive sound broadcasting licences.

10/1962
S. 5(c).

10/1962
S. 5 (d).

(8) Subject to the provisions of this section, an exclusive sound broadcasting licence may be granted notwithstanding that there is in force an exclusive television broadcasting licence; and an exclusive television broadcasting licence may be granted notwithstanding that there is in force an exclusive sound broadcasting licence.

Non-commercial
broadcasting
services
originating
outside of
Jamaica
11/2008
S. 6.

6A.—(1) No person shall establish or maintain any broadcasting apparatus to engage in non-commercial broadcasting services which originate outside of Jamaica, except under and in accordance with the terms of an international relay service licence granted under this Act.

(2) Every person who contravenes subsection (1) shall be guilty of an offence and shall be liable on a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Unlawful
interference
with cable
wire.
10/1962
S. 6.
11/2008
S. 7

7. Every person who unlawfully and maliciously or fraudulently cuts, injures, taps or interferes with any cable or wire connected with or used in connection with any broadcasting apparatus or other apparatus or equipment utilized for broadcasting by the holder of a broadcasting licence granted under this Act or for broadcasting by the holder of an international relay service licence in accordance with the terms of such licence shall be guilty of an offence against this Act, and shall be liable on summary conviction thereof before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment with or without hard labour for a term not exceeding two years.

43/1995
S. 4 (a).
43/1995
S. 4 (b).

PART III. *Radio Re-Diffusion*

Control of
radio re-
diffusion.
10/1962
S.8(a)(b)(c).

8.—(1) No person shall establish, maintain or operate in Jamaica any radio re-diffusion system except under and in

accordance with the terms of a licence granted under this Act.

(2) Every person who contravenes the provisions of subsection (1) shall be guilty of an offence against this section and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding one thousand dollars or to imprisonment for any term not exceeding six months in respect of each day on which such offence is committed.

40/1995
S. 5 (ii).

9. *[Repealed by Act 43 of 1995.]*

10. *[Repealed by Act 43 of 1995.]*

11. Every person who unlawfully and maliciously or fraudulently cuts, injures, taps or connects any wired extension or apparatus or hearing device to or otherwise interferes with any feeder wiring or high level link wiring or any wiring to or on or in any premises or any other wiring or cable or any insulator or support for wiring or any pole or apparatus or loudspeaker or transformer or other part of any radio re-diffusion system operated by the holder of a licence under this Part in accordance with the terms of such licence shall be guilty of an offence against this Act, and shall be liable on summary conviction thereof before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment with or without hard labour for a term not exceeding two years.

Unlawful
interference
with re-
diffusion
system.
10/1962
S. 11
(a)(b)(c).

43/1995
S. 5 (d) (iii)
(iv).

PART IIIA. *Subscriber Television Service and Independent Programme Providers*

43/1995
S. 6.
11/2008
S. 8.

11A.—(1) No person shall—

(a) establish, maintain or operate a subscriber television service; or

(b) operate as an independent programme provider,

Licence
required
for sub-
scriber
television
operator and
independent
programme
provider.
11/2008
S. 9 (a)(b).

except under and in accordance with the terms of a licence granted under this Act.

(2) Every person who contravenes the provisions of subsection (1) shall be guilty of an offence against this section and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(3) Where a person has been convicted of an offence under subsection (2), the Court may, in addition to any other penalty, order that any equipment used in committing the offence be forfeited to the Crown.

Person
eligible for
licence to
operate sub-
scriber tele-
vision
service.
11/2008
S. 10(a).

11B.—(1) A company referred to in subsection (2) shall be eligible to apply for a licence—

- (a) to operate a subscriber television service; and
- (b) to operate as an independent programme provider.

(2) A company mentioned in subsection (1) is a company which—

37/2004
S. 29.

- (a) is incorporated in Jamaica or any other Member State; and

37/2004
S. 29.

- (b) is controlled by persons who are nationals of Jamaica or another Member State.

(3) Any company which—

- (a) provides telecommunication service and has a monopoly in any area of that service; or
- (b) is an approved organization as defined in section 2 of the Office of Utilities Regulation Act,

shall not be eligible to apply for or be granted any licence to operate subscriber television service.

(4) For the purposes of subsection (2) (b) “control” in relation to a company means the power of a person to secure by means of the holding of shares or the possession of voting

power in or in relation to that company, or by any agreement or by virtue of any other powers conferred by the articles of incorporation or other document regulating the company, that the affairs of the company are conducted in accordance with the wishes of that person.

11/2008
S. 10(b).

11C.—(1) A person who knowingly subscribes to subscriber television service supplied by a person who is not licensed to operate such service commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Offences.

(2) Every person who unlawfully and maliciously or fraudulently—

- (a) cuts, injures, taps or interferes with any cable or wire connected with any equipment or apparatus; or
- (b) interferes with any wireless signal,

utilized for providing subscriber television service commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

PART IIIB. *Licences*

43/1995
S. 6.

11D.—(1) Every person who is desirous of—

- (a) engaging in commercial broadcasting; or
- (b) establishing, maintaining or operating a radio re-diffusion system,

Application
for licences

shall make an application to the Minister in the prescribed form for a licence.

(2) A company referred to in section 11B (1) which is

desirous of offering subscriber television service shall make an application to the Minister in the prescribed form for—

11/2008
S. 11 (a).

- (a) a subscriber television service (wired) licence;
- (b) a subscriber television service (wireless) licence;
or
- (c) a special subscriber television service licence.

(2A) [*Deleted by Act 1 of 2008.*]

11/2008
S. 11 (b)(ii).

(3) Subject to subsection (4), a person who is desirous of providing non-commercial broadcasting services shall make an application to the Minister in the prescribed form for one of the following licences—

- (a) an international relay service licence;
- (b) a public service: non-commercial islandwide licence;
or
- (c) a public service: non-commercial limited area licence.

(4) A company referred to in section 11B (1) which is desirous of operating as an independent programme provider shall make an application to the Minister in the prescribed form for a licence.

(5) A person who is desirous of providing independent local content to any subscriber television service shall make an application to the Minister in the prescribed form, for an independent programme provider licence or an independent programme provider (subscription only) licence.

(6) A subscriber television operator who provides, or intends to provide on a non-commercial basis, local programming on dedicated channels located on his subscriber television service shall make an application to the Minister in the prescribed form for registration—

- (a) as a subscriber television programme provider; and

(b) of the relevant channels.

(7) A subscriber television operator who provides, or intends to provide on a commercial basis, local content on dedicated channels, whether or not such channels are located on his, or any other subscriber television service (with the exception of one community access channel) shall make an application to the Minister in the prescribed form for an independent programme provider licence or an independent programme provider (subscription only) licence.

(8) A person who is desirous of offering an island-wide subscriber television service shall make an application to the Minister in the prescribed form for a special subscriber television licence.

(9) An application under this section shall be accompanied by the prescribed application fee.

12/2001
S. 6(b).

11E.—(1) The Commission shall process applications for licences and registration under this Act and shall make such recommendation to the Minister in relation thereto as it thinks fit.

Procedure
relating to
application
for licence.
11/2008
S. 12(a).

(2) For the purposes of making a recommendation under subsection (1) the Commission—

(a) shall determine whether or not the applicant satisfies the prescribed requirements for—

11/2008
S. 12 (b).

- (i) commercial or non-commercial broadcasting;
- (ii) radio re-diffusion;
- (iii) operation of a subscriber television service;
- (iv) operation as an independent programme provider; or
- (v) registration as a subscriber television programme provider,

as the case may be,

- (b) may, if it thinks necessary, hear oral submissions from the applicant.

Grant or
refusal, etc.
of licence or
registration.
43/1995
S. 6.
11/2008
S. 13(a)(b).

11F.—(1) The Minister, on receipt of a recommendation under section 11E (1), may—

- (a) grant a licence or issue a certificate of registration (as the case may require) on such terms and subject to such conditions as he thinks fit;
- (b) refer the recommendation back to the Commission for further consideration; or
- (c) refuse to grant the licence or issue a certificate of registration (as the case may require).

11/2008
S. 13(c)(i).
(ii)(iii).

(2) Where the Minister grants a licence or issues a certificate of registration under subsection (1), the applicant shall be notified in writing forthwith and the licence or certificate (as the case may require) shall be issued to the applicant upon payment by him to the Commission of the prescribed fee.

11/2008
S. 13(d).

(3) Where the Minister decides to refuse to grant a licence or issue a certificate of registration under subsection (1) he shall, within thirty days of that decision, notify the applicant in writing of the reasons for such refusal.

(4) An applicant may, in writing, within fourteen days after receipt of such notification request the Minister to hear him in respect of the application and the Minister shall hear any applicant who so requests.

(5) After hearing an applicant the Minister may make such decision as he thinks fit.

(6) A licensee may, within a period of six months before the expiry of his licence, make an application in the prescribed form to the Minister for a renewal of the licence and the application shall be accompanied by the prescribed fee.

(7) The provisions of section 11E and subsections (1) to (5) of this section shall apply to an application for the renewal of a licence.

11G.—(1) The provisions of section 6 shall apply to every broadcasting licence granted under this Act and every such licence shall—

Terms of
licences.
43/1995
S. 6.
11/2008
S. 14(a).

- (a) authorize the holder thereof to establish, maintain and operate a transmitting station and to engage in broadcasting;
- (b) specify the type of broadcasting to which it relates; and
- (c) subject to section 22, be valid for such period as may be specified in the licence.

(2) Every licence to establish, maintain or operate a radio re-diffusion system shall, subject to section 22, be valid for such period as may be specified therein and—

- (a) shall specify the area in which such system may be established;
- (b) may be either a non-exclusive radio re-diffusion licence or an exclusive radio re-diffusion licence, as the case may be.

(3) Every licence granted in respect of subscriber television service an independent programme provider, an independent programme provider (subscription only) or a subscriber television programme provider shall, subject to section 22, be valid for a period of six years or such longer period as the Minister may determine, on the advice of the Commission that such longer period is justifiable.

11/2008
S. 14 (b).

(4) Subject to subsection (5), it shall be a term of every licence granted under this Act that the licensee shall comply with such terms and conditions as may be specified therein.

12/2001
S. 8.
11/2008
S. 2(1)(b).

(4A) Every international relay service licence shall, subject to section 22—

- (a) be valid for a period of six years;
- (b) be non-transferable; and
- (c) be subject to cancellation at the direction of the Minister in the national interest.

12/2001
S. 8.
11/2008
S. 2(1)(b).

(4B) It shall be a term of every international relay service licence that the licensee shall—

- (a) pay the prescribed licence fee to the Commission forthwith upon the grant of the licence thereafter, while the licence continues in force, annually on or before each anniversary of such grant;
- (b) forthwith upon any change in its membership, notify the Commission in writing of that change;
- (c) comply with the relevant provisions of the Radio and Telegraph Control Act and the Telecommunications Act.

11/2008
S. 14 (b).

(5) It shall be a term of every licence granted for subscriber television service an independent programme provider, an independent programme provider (subscription only) or a subscriber television programme provider that the licensee shall—

- (a) pay the prescribed licence fee to the Commission forthwith upon the grant of the licence and thereafter, while the licence continues in force, annually on or before each anniversary of such grant;
- (b) forthwith upon any change in the nationality of or control by its members, notify the Minister in writing of that change.

(6) If a person who is granted a licence to provide subscriber television service does not provide that service within a period of six months from the grant of the licence or such longer period as the Minister may allow, the licence shall lapse and thereupon shall be rendered void.

(7) Where a licence is rendered void under subsection (6) the Commission shall so notify the licensee in writing and shall require the licensee to return the licence to the Commission within fourteen days after receipt of the notification.

(8) A licensee who fails to comply with a requirement under subsection (7) shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine of ten thousand dollars for each day on which the licence is not returned to the Commission.

PART IIIC. *Appeals*

43/1995
S. 6.

11H.—(1) Subject to subsection (1A), a person aggrieved by the decision of the Minister to refuse to—

Appeals.
12/2001
S. 9 (a).
11/2008
S. 15.

(a) grant or renew a licence;

(b) issue a certificate of registration,

under this Act may appeal to the Appeal Tribunal appointed by the Minister pursuant to subsection (3).

(1A) No appeal shall lie to the Appeal Tribunal against the decision of the Minister to refuse to grant or renew an international relay service licence on the ground that such refusal is necessary in the national interest.

12/2001
S. 9 (b).
11/2008
S. 2 (1)(b).

(2) An appeal shall lie from the Appeal Tribunal to the Court of Appeal on a point of law.

(3) The provisions of the Second Schedule shall have effect as to the constitution of the Appeal Tribunal and otherwise in relation thereto.

Second
Schedule.

(4) The Minister may make rules prescribing procedures relating to appeals to the Appeal Tribunal.

5/1986
S. 3.

Establishment
of the Broad-
casting Com-
mission.

PART IV. *The Broadcasting Commission*

12.—(1) There shall be established for the purposes of this Act a body to be called the Broadcasting Commission.

(2) The Commission shall be a body corporate to which the provisions of section 28 of the Interpretation Act shall apply.

First
Schedule.
43/1995
S. 7.

(3) The provisions of the First Schedule shall have effect with regard to the constitution of the Commission and otherwise in relation thereto.

Appointment
of staff.

13.—(1) The Commission may appoint and employ at such remuneration and on such terms and conditions as it thinks fit a secretary, and such officers, agents and servants as it may consider necessary for the proper carrying out of its functions under this Act.

(2) The Governor-General may, subject to such conditions as he may impose, approve of the appointment of any officer in the service of the Government to any office with the Commission, and any officer so appointed shall, during such appointment, in relation to pension, gratuity or other allowance, and to other rights as a public officer, be treated as continuing in the service of the Government.

Expenses of
the Commis-
sion.
43/1995
S. 8.

14. The expenses of the Commission (including remuneration of members and staff thereof) shall be defrayed out of sums provided from time to time for the purpose by Parliament and from fees paid pursuant to this Act.

Accounts
and audit.

15. The Commission shall keep proper accounts of its transactions and such accounts shall be audited annually by an auditor to be approved by the Minister.

Functions
of the Com-
mission.

16. It shall be the duty of the Commission, with a view to the carrying out of the provisions and objects of this Act—

- (a) to advise the Minister on any matter within its knowledge or on which the Minister may seek its advice, and, without prejudice to the generality of the foregoing, to advise in relation to—
 - (i) the terms and conditions on which licences may be granted; and
 - (ii) the allocation of time to broadcasting of programmes which are of Jamaican origin or performed by Jamaicans or which are particularly relevant or significant to Jamaica;
- (b) to conduct, or cause to be conducted, surveys for the purpose of ascertaining the extent to which matter transmitted or relayed from any station operated by a licensee is being received, or is capable of being received, in any geographical area within Jamaica;
- (c) to undertake, sponsor, or assist in research relating to any class or classes of operations which may be subject to control or regulation under this Act;
- (d) to establish a system for monitoring transmissions by licensees—
 - (i) whether by the Commission with the aid of mechanical or electronic means, or by securing the services of persons for that purpose; or
 - (ii) by requiring licensees to keep tape recordings of their broadcasts and submit them to the Commission;
- (e) to monitor the operations of licensees;
- (f) to receive and investigate complaints in relation to any matter under this Act.

43/1995
S. 9 (b).

43/1995
S. 9 (b).

Power to
require in-
formation
from
licensees.

17. The Commission may from time to time by notice in writing require from any licensee such information relating to the programmes and operations of that licensee as may be prescribed.

Advisory
committees.

18. The Commission may from time to time appoint such committees as it may consider appropriate to advise it on such matters relating to its functions as it may determine, and such committees may consist of as many persons, whether or not members of the Commission, as the Commission may determine.

Annual
report.

19.—(1) The Commission shall, as soon as practicable after the end of each financial year, submit to the Minister an annual report of its affairs and such report shall include—

- (a) a report of the broadcasting performance of the licensee during the year in such detail as the Commission may decide or the Minister may require;
- (b) a summary of the decisions of the Commission in regard to any matter or thing respecting which the Commission has acted during the year; and
- (c) a report on such other matters as appear to the Commission to be of public interest in connection with broadcasting in the Island.

(2) As soon as may be after the receipt of such report, the Minister shall cause a copy to be laid upon the Table of the House of Representatives and of the Senate.

Contraven-
tion of
licence.

20.—(1) Where there is a contravention of any licence the Commission shall give to the licensee notice in writing—

- (a) specifying particulars of such contravention; and
- (b) requiring that licensee to justify its actions to the Commission or otherwise to take such remedial action as may be specified in the notice.

(2) Where the Commission gives any notice under subsection (1), the Commission shall send a copy of such notice to the Minister for his information.

(2A) Where the Commission gives notice under subsection (1) to the holder of an international relay service licence, the Commission shall send a copy of that notice to any person who provides broadcasting apparatus in order to facilitate the relay within Jamaica of non-commercial broadcasting by the licensee.

12/2001
S. 10.
11/2008
S. 2(1)(b).

(3) Where a licensee fails to justify its actions to the satisfaction of the commission or fails or refuses to take any remedial action specified in the notice issued under subsection (1) the Commission—

- (a) shall notify the Minister in writing of the fact of such failure or refusal;
- (b) may direct such licensee, where the Commission considers it appropriate, to broadcast or transmit an apology at such time and at such intervals as the Commission may determine.

21.—(1) Where, under any broadcasting licence issued under this Act, time is allocated to the Government for broadcast for reasons of emergency or in the national interest, such time shall not be used for broadcasting any matter which is likely, or intended—

Impartiality
in political
broadcasts.

- (a) to solicit support for any political party or to promote the election of any individual or of any political party to any public or municipal office or to the House of Representatives; or
- (b) to attack the policies, plans or programmes of any political party or parties.

(2) Where on any broadcasting station time is allocated to the Government or any political party for a broadcast which is used as mentioned in subsection (1)(a) or (1)(b), on terms whereby the time so allocated is free of charge or at a rate which is less than the normal commercial rate, equal time shall be

allocated on that broadcasting station on similar terms to any political party which the Commission is satisfied is likely to be prejudicially affected by that broadcast.

(3) For the purpose of ensuring compliance with subsection (1) or subsection (2) the Commission shall investigate any allegation of non-compliance made not later than twenty-one days after the date of the relevant broadcast, if satisfied of the truth of the allegation shall—

(a) if the allegation relates to subsection (1), direct—

- (i) that equal time be afforded to such other political party or parties as may be approved by the Commission to reply to matters arising out of such broadcast; and
- (ii) that any such reply is broadcast at such time, on such terms with regard to payment or otherwise and in such circumstances as are in the opinion of the Commission necessary to ensure that the reply is given exposure equivalent to that given to the broadcast which was the subject of the allegation;

(b) if the allegation relates to subsection (2), give such directions as it thinks appropriate to ensure compliance with that subsection.

(4) Where it is alleged that any broadcast contains information which is inaccurate the Commission shall, upon being required to do so by any person not later than twenty-one days after the broadcast, investigate the allegation and, if satisfied as to the truth of the allegation—

(a) direct the licensee to broadcast—

- (i) an apology; or
- (ii) if the Commission thinks fit, a correction of the inaccuracy,

in such form as the Commission may determine; or

(b) subject to subsection (5), direct the licensee to afford

to any person prejudiced by the broadcast the opportunity of broadcasting a reply for the purpose of rebutting any information alleged to be inaccurate; or

- (c) direct the licensee to do both (a) and (b) above.

(5) A direction pursuant to subsection (4)(b) shall be on such terms as the Commission may determine, so, however, that, without prejudice to the generality of the foregoing—

- (a) if, in the opinion of the Commission, the licensee did not exercise due care in ensuring the accuracy of the information where it was possible to do so, the broadcast in rebuttal shall be free of charge; and
- (b) in any other case, the broadcast in rebuttal shall be on such terms as to payment to the licensee as the Commission may determine.

(6) For the purposes of this section “political party” means a political party which, at the time when the matter arises has five or more members in the House of Representatives or which had, immediately prior to the then last preceding dissolution of that House, five or more such members.

22.—(1) Where a licensee fails to comply with any directions given by the Commission under section 20 or 21, the Commission may—

Penalty for failure to comply with directions.

- (a) on the first occasion of such failure, recommend to the Minister that the licence be suspended for a period not exceeding three months; or
- (b) if the failure occurs on any second or subsequent occasion, recommend to the Minister that the licence be suspended for such period as the Commission considers appropriate or cancelled.

(2) Before suspending or cancelling a licence the Minister shall direct the Commission to notify the licensee accordingly and shall afford the licensee an opportunity to show cause why the licence should not be suspended or cancelled.

43/1995
S. 10(b).

Regulations.
43/1995
S. 11(a).

23.—(1) The Commission may, after consultation with the Minister, make regulations generally for the better carrying out of the objects and purposes of this Act.

11/2008
S. 16 (b).

(2) Regulations made under subsection (1) shall be subject to negative resolution.

(3) Notwithstanding the provisions of section 29 of the Interpretation Act, regulations made under this section may prescribe greater penalties than those specified in the said section 29, so, however, that the maximum penalty that may be imposed shall be a fine of ten thousand dollars or imprisonment with or without hard labour for a term not exceeding twelve months.

(4) Where an offence against the regulations is committed by a body corporate then, notwithstanding and without prejudice to the liability of that body, any person who at the time of such commission was a director, general manager, secretary or other similar officer of that body, or was purporting to act in any such capacity, shall be liable to be prosecuted as if he had personally committed that offence and shall be liable to the like conviction and punishment as if he had personally been guilty of that offence unless the Court finds on a balance of probability that—

- (a)** the contravention was committed without his consent or connivance; and
- (b)** he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

43/1995
S. 11 (b).

(5) In this section and in section 21, “broadcasting” includes broadcasting over a radio re-diffusion system.

FIRST SCHEDULE

(Section 12 (3)) 5/1986
S. 4.*Constitution of Commission*

1.—(1) The Commission shall consist of not less than five nor more than nine members appointed by the Governor-General by instrument in writing after consultation with the Prime Minister and the Leader of the Opposition.

Appointment of members.
43/1995
S. 12 (a) (b)
(c) (d).

(2) The Governor-General after consultation with the Prime Minister and the Leader of the Opposition, shall appoint one of the members of the Commission to be Chairman of the Commission.

(3) No person shall be qualified to be a member of the Commission if he—

- (a) is a Member of Parliament or a member of any local authority;
- (b) has been a Member of Parliament or of any local authority (or has been a candidate for election as a Member of Parliament or of any local authority) during a period of seven years immediately prior to the date of his proposed appointment to the Commission.

2.—(1) The appointment of a member of the Commission shall, subject to the provisions of this Schedule, be for a period of five years.

Tenure of office.

(2) The members of the Commission shall be eligible for re-appointment.

(3) A member of the Commission may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with sub-paragraph (4).

(4) A member of the Commission shall be removed from office—

- (a) by the Governor-General;
- (b) on the ground specified at sub-paragraph (3),

if the revocation of his appointment is recommended by Parliament by means of a resolution of each House of Parliament, approved by not less than two-thirds of all the members of that House.

(5) If the office of a member of the Commission becomes vacant any other person who is qualified to be a member of the Commission may be appointed to be a member in accordance with the provisions of paragraph 1, and the duration of the term of office of such member shall be the unexpired period of the term of office of the member whose office became vacant.

3.—(1) Any member, other than the Chairman, may at any time resign his office by instrument in writing addressed to the Governor-General and transmitted through the Chairman, and from the date of receipt by the Governor-General of such instrument such member shall cease to be a member.

Resignation.

(2) The Chairman may at any time resign his office by instrument in writing addressed to the Governor-General; and such resignation shall take effect as from the date of receipt by the Governor-General of the instrument.

Publication
of member-
ship.

4. The names of all members as first appointed and every change in the membership of the Commission shall be published in the *Gazette*.

Procedure
and meet-
ings.

5.—(1) The Commission shall meet as and when necessary for the performance of its functions under this Act and such meetings may be held at such places and times and on such days as the Commission may determine.

(2) The Chairman may at any time call a special meeting of the Commission and shall call a special meeting within seven days of the receipt of a written request for that purpose addressed to him by any two members of the Commission.

(3) The Chairman shall preside at all meetings of the Commission at which he is present, and, in the case of his absence from any meeting, the members present and constituting a quorum shall elect one of their number to act as Chairman at the meeting.

43/1995
S. 12 (e).

(4) The quorum at any meeting shall be three.

(5) Every decision of the Commission shall be by a majority vote and where the voting is equal the Chairman or person presiding shall have a casting vote in addition to his original vote.

(6) Subject to the provisions of this paragraph the Commission shall have power to regulate its own proceedings.

(7) The validity of any proceedings of the Commission shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

Protection
of members.

6. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Commission in respect of any act done *bona fide* in pursuance or execution or intended execution of the Commission's functions under this or any other enactment.

Remunera-
tion of
members

7. The members of the Commission shall receive such emoluments and be subject to such terms and conditions of service as may from time to time be prescribed by or under any law or by resolution of the House of Representatives.

Authentica-
tion of
seal and
documents.

8.—(1) The seal of the Commission shall be authenticated by the signatures of the Chairman and another member authorized to act in that behalf.

(2) All documents, other than those required by law to be under seal, made by, and all decisions of, the Commission may be signified under the hand of the Chairman or any other member authorized to act in that behalf.

9. Where, pursuant to paragraph 1, the Governor-General is directed to act after consultation with the Leader of the Opposition and—

Provisions applicable when there is no Leader of Opposition.

- (a) there is no person holding the office of Leader of the Opposition; or
- (b) the holder of that office is unwilling or, by reason of his illness or absence from Jamaica, unable to perform his functions in that regard,

the Governor-General shall act as if the reference in that paragraph to the Leader of the Opposition were a reference to such person as the Governor-General, in his discretion, considers appropriate.

SECOND SCHEDULE

(Section 11H)

43/1995
S. 13.

Constitution and Procedure of Appeal Tribunal

Appointment of members.

1. The Tribunal shall consist of five members appointed by the Minister of whom—

- (a) two shall be Attorneys-at-Law, who shall be chairman and vice-chairman, respectively; and
- (b) three shall be persons appearing to the Minister to be competent in relation to broadcasting matters.

2. If the chairman, vice-chairman or other members of the Tribunal are absent or unable to act, the Minister may appoint another person to act temporarily as chairman, vice-chairman or as such other member.

Acting appointment.

3.—(1) The appointment of every member of the Tribunal shall be evidenced by instrument in writing and shall be for a period not exceeding three years.

Tenure of office.

(2) Every member of the Tribunal shall be eligible for reappointment.

(3) The Minister may at any time revoke the appointment of the chairman, vice-chairman or any other member of the Tribunal.

4.—(1) Any member of the Tribunal other than the chairman may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of such instrument, such member shall cease to be a member of the Tribunal.

(2) The chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.

Publication
of member-
ship.

5. The names of the members of the Tribunal as first constituted and every change in membership thereof shall be published in the *Gazette*.

Authentica-
tion of
documents.

6. All documents made by, and all decisions of the Tribunal may be signified under the hand of the chairman or the secretary or any member or officer of the Tribunal authorized to act in that behalf.

Procedure.

7.—(1) The Tribunal shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and times and on such days as the Tribunal may determine.

(2) The chairman or, in his absence the vice-chairman, or in their absence any other person appointed to act temporarily as chairman, shall preside at meetings of the Tribunal and shall have an original and a casting vote in any case in which the voting is equal.

(3) The decisions of the Tribunal shall be by a majority of votes.

(4) The Tribunal shall have power to regulate its own proceedings.

(5) The secretary shall keep a record of all proceedings of the Tribunal.

(6) Subject to the provisions of this Schedule the Tribunal shall regulate its own proceedings.

Remunera-
tion of
members.

8. There shall be paid to the chairman, vice-chairman and other members of the Tribunal in respect of each appeal, such remuneration (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine.

Protection
of members.

9. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Tribunal in respect of an act done *bona fide* in pursuance or execution or intended execution of the provisions of this Act.

Disclosure
of interest.

10. Any member of the Tribunal who has any interest, directly or indirectly, in any appeal brought before the Tribunal—

(a) shall disclose the nature of the interest to the Tribunal; and

(b) shall not take part in any deliberations or decision of the Tribunal with respect to that appeal.

Office of
member not
a public
office.

11. The office of chairman, vice-chairman or member of the Tribunal shall not be a public office for the purpose of Chapter V. of the Constitution of Jamaica.