

Guidelines for the Registration Process for media service providers 2023

1. Coimisiún na Meán, having power pursuant to section 46H(2) of the Broadcasting and Other Media Regulation Acts 2009 – 2022, issues the following Guidelines which may be referred to as the “*Guidelines for the Registration Process for media service providers 2023*”.

Interpretation

2. In these Guidelines, unless the context otherwise requires:

“Acts of 2009 to 2022”	means Broadcasting and Other Media Regulation Act 2009 - 2022
“audiovisual broadcasting service”	means an audiovisual media service provided for simultaneous or near-simultaneous viewing of audiovisual programmes on the basis of a programme schedule;
“audiovisual media service”	means a service, within the meaning of Articles 56 and 57 of the Treaty on the Functioning of the European Union, where — (a) the principal purpose of the service is devoted to, or (b) the principal purpose of a dissociable section of the service is devoted to, providing audiovisual programmes, by electronic communications networks, to the general public, under the editorial responsibility of the provider of the service, in order to inform, entertain or educate.
“audiovisual media service activity”	means activity relating to the audiovisual media service concerned;
“audiovisual on-demand media service”	means an audiovisual media service provided for the viewing of programmes at the moment chosen by the user and at the user’s request on the basis of a catalogue of programmes selected by the provider of the service.
“audiovisual programme”	means a set of moving images with or without sound which, in the case of an audiovisual media service, constitutes an individual item, irrespective of its length, within a programme schedule or a catalogue.
“Commission”	means the Coimisiún na Meán

“editorial responsibility”	means effective control — (a) over the selection programmes, and (b) over their organisation in a programme schedule or in a catalogue;
“media service provider”	means a person who provides an audiovisual media service
“relevant editorial decisions”	means editorial decisions about the audiovisual media service concerned.

Duties in respect of the Registration Process

3. The provisions of the Acts of 2009 to 2022 have introduced a process of registration for certain media service providers. Pursuant to section 46A of the the Acts of 2009 to 2022, the Commission is required to establish and maintain a Register of media service providers that are under the jurisdiction of the State and are the providers of audiovisual on-demand media services. Such media service providers that are subject to registration have corresponding obligations to provide notifications to the Commission of specified information for the purposes of the registration process.
4. Pursuant to section 46H(1) of the Acts of 2009 to 2022, the Commission has made Rules prescribing the information required to be furnished by media service providers and the procedures which the Commission is required to follow in respect of the registration process. These Guidelines are issued by the Commission to assist in the operation and understanding of the registration process under Part 3A of the Acts of 2009 to 2022 and of the Rules made by the Commission.

Duties of media service providers to notify the Commission

5. A media service provider which is subject to registration under the Acts of 2009 to 2022 is required to provide a notification under section 46B within specified time periods set out in this section (and which are detailed further below). A media service provider is subject to the duty to register with the Commission if it is:
 - 5.1 a media service provider “under the jurisdiction of the State”, and
 - 5.2 is “an audiovisual on-demand media service”.

6. A media service provider is “under the jurisdiction of the State” in the following circumstances:
- 6.1.1 if the media service provider is established in Ireland which requires either that:
- 6.1.2 the provider has its head office in Ireland and the relevant editorial decisions are taken in Ireland; or
- 6.1.3 the provider has its head office in Ireland but where the relevant editorial decisions are taken in another Member State, then the media service provider will be established in Ireland
- if a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in Ireland; or
 - if a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in Ireland where relevant editorial decisions are taken; or
 - if the provider first began its activity in accordance with the law of Ireland and has maintained a stable and effective link with the economy of Ireland.
- 6.2 if the place where the media service provider has its head office and the place where the relevant editorial decisions are taken are different, and only one of these places is in Ireland, the provider will be considered to be established in Ireland provided a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in Ireland.
7. A media service provider is “an audiovisual on-demand media service” which thereby will be subject to registration if it provides an audiovisual media service for the viewing of programmes at the moment chosen by the user and at the user’s request on the basis of a catalogue of programmes selected by the provider of the service.

8. The time periods within a media service provider subject to registration is required to provide a notification to the Commission are specified in section 46B of the Acts of 2009 to 2022 as being as follows:

8.1 In respect of an existing media service provider, not later than three months from the commencement of the notification provisions under the Acts of 2009 to 2022. This three month period from commencement date is referred to as the “transitional period”;

8.2 In respect of a media service provider which commences operating during the transitional period, not later than end of the transitional period or, if later, not later than 10 working days from the date upon which the provider became subject to registration;

8.3 In respect of a media service provider which commences operating after the expiration of the transitional period, not later than 10 working days from the date upon which the provider became subject to registration;

The Notification

9. The Commission has made Rules which prescribe the information which must be provided in the notification required from media service providers which are subject to registration under sections 46B and 46C of the Acts of 2009 to 2022. In this regard, paragraph 4 of the Registration Rules for media service providers requires that relevant notifications from media service providers shall contain: -

- (a) The name or names of the media service provider;
- (b) The contact details of the media service provider;
- (c) The name or names of each audiovisual on-demand media service provided by the media service provider;
- (d) In each case, a description of the nature of the service and the nature of the content provided by the media service;
- (e) A statement of the basis upon which the media service provider considers that it is under the jurisdiction of the State;
- (f) Such further or other matters as may be prescribed by the Commission.

Requests for Further Information by the Commission

10. The Commission may request further information from the media service provider for the purposes of deciding:

10.1 whether a media service provider is subject to registration.

10.2 whether an amendment is required to be made to an entry in the Register (section 46D of Acts of 2009 to 2022)

11. In the event there is a failure to comply with a request for further information made by the Commission, a direction to comply with that request may be issued by the Commission. The failure of a person without reasonable excuse to comply with such a direction of the Commission may constitute a criminal offence.

Duty to Notify of Changes to the Register

12. Media service providers included on the Register are required to provide a notification of any changes to the information provided to the Commission for the purposes of registration. Such notification is required to be made to the Commission not later than 10 working days from the date on which the relevant change or changes have occurred.

13. In such notification of changes made to the information provided for the purposes of registration, the media service provider should identify clearly the relevant information which has changed and provide full details of the new information which may be required to replace the changed information.

Review and Correction of the Register by the Commission

14. The Commission is required to review each entry in the Register as it considers appropriate and to amend the Register if satisfied that information included in the Register is incorrect or that the relevant media service provider is not subject to registration. Before making any such amendment, the Commission is required to consult with the provider concerned if it is practicable to do so. The Commission will provide a statement in writing to the relevant media service provider of any amendment which is made to the Register as consequence of such review.

[These Guidelines have been prepared to provide assistance in understanding the registration and other obligations upon relevant media service providers under the Acts of 2009 to 2022 and the processes which are provided for in this regard. These Guidelines are not intended to be and are not exhaustive of such obligations and processes and media service providers should seek their own legal advice in relation to their duties under the Acts of 2009 to 2022.]