

Annex

Extracts from Proposals for Broadcasting Legislation - Draft General Scheme

Head 2/5: Appointment of Authority, Contract Awards Committee and Compliance Committee

Provide that-

1. The members of the Authority shall be appointed by the Government on the recommendation of the Minister and shall consist of nine members.
2. The members of the Contract Awards Committee shall be appointed by the Government on the recommendation of the Minister and shall consist of five members.
3. The members of the Compliance Committee shall be appointed by the Government on the recommendation of the Minister and shall consist of five members.

Explanatory Note

This provision is based on section (1) of the Schedule to the Radio and Television Act 1988 as amended by section 64 of the Broadcasting Act 2001.

Head 2/6: Criterion for membership

Provide that-

1. A person shall not be appointed to be a member of the Authority, the Contract Awards Committee or the Compliance Committee unless he or she has had experience of or shown capacity in-
 - (i) media or commercial affairs
 - (ii) broadcast or digital media technologies
 - (iii) legal matters
 - (iv) trade union affairs, or
 - (v) social, cultural, educational or community activities
2. Each member of the Authority, the Contract Awards Committee or the Compliance Committee shall be appointed for a period not exceeding four years.
3. A member of the Authority, the Contract Awards Committee or the Compliance Committee whose term of office expires by the effluxion of time shall be eligible for re-appointment.
4. A member of the Authority, the Contract Awards Committee or the Compliance Committee shall not serve more than two terms of office.
5. Within eighteen months of the establishment day and, every eighteen months thereafter-
 - (a) not less than four members of the Authority,
 - (b) not less than two members of the Contract Awards Committee, and
 - (c) not less than two members of the Compliance Committeeshall retire from office.
6. The members required to retire by virtue of *subsection (5)* in any year shall be those who have served longest as a member of the Authority, Contract Awards Committee or Compliance Committee since last appointed.
7. Where in determining which member or members are required to retire by virtue of *subsection (5)* there is more than one member who was appointed to the Authority, Contract Awards Committee or Compliance Committee on the same day then as respects such members appointed on the same day the member or members to retire shall be determined by lot unless such members otherwise agree.
8. A member of the Authority, Contract Awards Committee or Compliance Committee may at any time resign his or her office by letter addressed to the Government and the resignation shall take effect on the date specified therein or upon receipt of the letter by the Government, whichever is the later.

Head 2/6: Criterion for membership (continued)

Explanatory Note

Subsection (1) is based on section (1) of the Schedule to the Radio and Television Act of 1988 as amended

Subsection (3) is based on section (1) of the Schedule to the Radio and Television Act of 1988 as amended

Subsection (4) is based on section 15(4) of the Communications Regulations Act 2002 and section 10(12) of the Sustainable Energy Act 2002

Subsections (5), (6) and (7) are based on subsections (9) to (11) of section 10 of the Sustainable Energy Act 2002

Subsection (8) is based on section (1) of the Schedule to the Radio and Television Act of 1988 as amended

Head 2/9: Exclusions from membership of the Authority, Contract Awards Committee or Compliance Committee

Provide that –

1. Where a member of the Authority, Contract Awards Committee or Compliance Committee is nominated as a candidate for election to the European Parliament, either House of the Oireachtas, or as a member of Seanad Éireann, he or she shall thereupon stand suspended from membership of the Authority, Contract Awards Committee or Compliance Committee until the conclusion of such election.
2. Where a member of the Authority, Contract Awards Committee or Compliance Committee is—
 - (a) elected as a member of either House of the Oireachtas or as a representative in the European Parliament; or
 - (b) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament to fill a vacancy,

he or she shall thereupon cease to be a member of the Authority, Contract Awards Committee or Compliance Committee.

3. Where the person who is the chief executive officer or a member of the staff of the Authority is—
 - (a) nominated as a candidate for election to the European Parliament, either House of the Oireachtas, or as a member of Seanad Éireann; or
 - (b) elected as a member of either House of the Oireachtas or as a representative in the European Parliament, or
 - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament to fill a vacancy,

he or she shall thereupon stand seconded from employment by the Authority and shall not be paid by, or be entitled to receive from, the Authority any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected as the case may be, and ending when such person ceases to be a member of either such House or a representative in that Parliament.

Head 2/9: Exclusions from membership of the Authority, Contract Awards Committee or Compliance Committee (continued)

4. A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament, shall, while so entitled or such a member, be disqualified from becoming a member of the Authority, Contract Awards Committee or Compliance Committee or the chief executive officer or a member of staff of the Authority.
5. Without prejudice to the generality of *subsection (3)*, that subsection shall be construed as prohibiting, *inter alia*, the reckoning of a period mentioned in that subsection as service with the Authority for the purposes of any superannuation benefits.
6. A person who holds employment or an interest in a broadcast undertaking, including but not limited to Radio Teilifis Eireann, Teilifis na Gaeilge, an undertaking holding a contract to broadcast under the Act of 1988, the Act of 1990 or the Act of 2001 or this Act, shall be disqualified from becoming a member of the Authority, Contract Awards Committee or Compliance Committee.
7. A person who holds employment or an interest in an undertaking which publishes, prints or circulates a newspaper in the State, shall be disqualified from becoming a member of the Authority, Contract Awards Committee or Compliance Committee.
8. A person who holds membership of the Authority shall be disqualified from becoming a member of the Contract Awards Committee or Compliance Committee.
9. A person who holds membership of the Contract Awards Committee shall be disqualified from becoming a member of the Authority or the Compliance Committee.
10. A person who holds membership of the Compliance Committee shall be disqualified from becoming a member of the Authority or the Contract Awards Committee.

Explanatory Note

Subsection (1) is based on section 22(2) of the Digital Hub Development Agency Act
Subsection (2) is based on section 22(1) of the Digital Hub Development Agency Act 2003

Subsection (3) is based on section 14(3) of the Sustainable Energy Act 2002

Subsection (4) is based on section 22(2) of the Digital Hub Development Agency Act 2003

Subsection (5) is based on section 22(3) of the Digital Hub Development Agency Act 2003

Subsection (6) is based on section 22(4) of the Digital Hub Development Agency Act 2003

Subsections (7) and (8) are based on Section 10 of the Dutch Media Act and the Defamation Bill 2005 (Interpretation).

Head 2/22: Objectives of the Authority

Provide that –

1. The Authority, and the statutory committees of the Authority, in exercising their functions shall endeavour to ensure—
 - (a) that the number and categories of broadcasting services made available in the State by virtue of this Act, the Act of 1988, the Act of 1990, the Act of 2001 or this Act best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity;
 - (b) that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression are upheld; and
 - (c) the provision of open and pluralistic broadcasting services.
2. Without prejudice to the generality of *subsection (1)*, the Authority, and the statutory committees of the Authority, shall—
 - (a) stimulate the provision of high quality, diverse and innovative programming by commercial, community and public service broadcasters;
 - (b) promote diversity in control of the more influential commercial and community broadcasting services; and
 - (c) provide a regulatory environment that will facilitate the development of a broadcasting sector in Ireland that is responsive to audience needs.
3. The Authority, and the statutory committees of the Authority, in carrying out their functions shall seek to ensure that measures taken—
 - (a) are proportionate having regard to the objectives set out in this section;
 - (b) are applied across the range of broadcasting services according to the degree of influence that the different types of broadcasting services are able to exert to in shaping community views in Ireland.
 - (c) will produce regulatory arrangements that are stable and predictable.
 - (d) will readily accommodate and encourage technological development, and its application, by the broadcasting sector

Explanatory Note

Subsection (1)(a) is based on section 11(2) of the Broadcasting Act 2001
Subsection (1)(b) is based on section 17 of the Broadcasting Authority Act 1960 as amended by section 13 of the Broadcasting Authority (Amendment) Act 1976
Subsection (1)(c) is based on article 6 of the Polish Broadcasting Act 1992
Subsections (2)(b) and (2)(c) are based on section 3(1)(b) and (c) of the Broadcasting Services Act 1992
Subsection 3 is based on section 12(3) of the Communications Regulation Act 2002 and sections 4 and 5 of the Australian Broadcasting Services Act 1992

Head 2/23: Functions of the Authority

Provide that –

1. It shall be a function of the Authority to:
 - (a) Prepare a strategy for the provision of broadcasting services in the State additional to those provided by Radio Teilifis Eireann and Teilifis na Gaeilge;
 - (b) Prepare a statement under Head 2/32 [Strategy Statement];
 - (c) Direct the Contract Awards Committee to make arrangements, in accordance with the provisions of the Act of 1988, the Act of 1990, the Act of 2001 and this Act, for the provision of broadcasting services additional to any broadcasting services provided by Radio Teilifis Eireann or Teilifis na Gaeilge pursuant to this Act, or a broadcasting contractor pursuant to the Act of 1988, the Act of 1990, the Act of 2001;
 - (d) Prepare or make codes or rules under *Head 2/39*;
 - (e) Prepare and implement schemes for the granting of funds under the Act of 2003;
 - (f) Make an order under *Head 2/34* [levy order];
 - (g) Prepare a scheme under *Head 2/XX* [Right of reply scheme]; and
 - (h) Advise the Minister as to the sectoral impact of a proposal under–
 - (i) *Head 4/8(1)(f)* [Development of new local, regional and community services by RTÉ/TnG]
 - (ii) *Head 4/8(1)(g)* [Development of services for the Irish diaspora by RTÉ/TnG]
 - (iii) *Head 4/8(1)(h)* [Development of non-linear audio-visual services by RTÉ/TnG]
 - (iv) *Head 4/9* [Additions to RTÉ/TnG remit]
 - (v) *Head 4/10(2)* [Variation in number of RTÉ/TnG channels]
 - (vi) *Head 4/10(3)* [Subcontracting by RTÉ/TnG]
 - (vii) *Head 4/10(4)* [Development of ancillary services by RTÉ/TnG]
 - (viii) *Head 4/14* [Terms of RTÉ/TnG archive access scheme]
 - (ix) *Head 4/24* [Establishment of subsidiaries, joint ventures and partnerships by RTÉ/TnG]
 - (x) *Head 4/25* [Changes to the RTÉ/TnG memorandum and articles of association]
 - (xi) *Head 4/37* [Borrowing above a set level by RTÉ/TnG]
 - (xii) *Head 4/38* [Format of RTÉ/TnG accounts]
 - (xiii) *Head 4/44* [RTÉ/TnG Strategy/Business Plan]
 - (xiv) *Head 4/45* [Approval of RTÉ/TnG Public Service Broadcasting Charter]
 - (xv) *Head 4/46* [Approval of RTÉ/TnG Annual Statement of Commitments]
 - (xvi) *Head 4/50* [RTÉ/TnG advertising minutage]
 - (xvii) *Head 4/51* [Terms of RTÉ/TnG Code of Fair Trading Practice]
 - (xviii) *Head 4/52* [Independent Television Programme Account]of this Act

Head 2/23: Functions of the Authority (continued)

- (i) Prepare and issue guidance to Radio Teilifis Eireann and Teilifis na Gaeilge as to the fulfilment of each company's obligations under—
 - (i) *Head 4/38* [Statement identifying costs associated with (a) public service and (b) commercial activities (cost accounting principles)]
 - (ii) *Head 4/45* [Preparation of Public Service Broadcasting Charter]
 - (iii) *Head 4/46* [Preparation of Annual Statement of Commitments]
 - (iv) *Head 4/51* [Code of fair trading practice] of this Act

 - (j) Undertake a review under—
 - (i) *subsection (3) of Head 4/47* [Achievement of RTÉ/TnG's Annual Statement of Commitments]
 - (ii) *subsection (9) of Head 4/47* [Five year review of public funding of RTÉ/TnG]

 - (k) Make a recommendation under
 - (i) *subsection (6) of Head 4/47* [adjustment to annual licence fee/Exchequer funding to RTÉ/TnG]
 - (ii) *subsection (13) of Head 4/47* [Five year adjustment to licence fee/Exchequer funding to RTÉ/TnG]; and

 - (l) Co-operate with the Commission for Communications Regulation in the preparation of the allocation plan for the frequency range dedicated to radio and television broadcasting.
3. The Authority shall have the following additional functions—
- (a) To collect and disseminate information on the broadcasting sector in Ireland
 - (b) To monitor developments in broadcasting internationally
 - (c) To initiate, organise and facilitate research relating to broadcasting matters
 - (d) To collect and disseminate information in relation to the skills requirements of the broadcasting sector.
 - (e) To co-operate with other bodies to promote training activities in relation to areas of skill shortages in the broadcasting sector
 - (f) To co-operate with other bodies outside the State which perform similar functions to the Authority, in relation to *subsection (1)(d) of Head 2/40* [development of codes or rules]
 - (g) To bring about, or to encourage others to bring about, a better public understanding of:
 - (h) the nature and characteristics of material published by means of broadcast and related electronic media;
 - (ii) the processes by which such material is selected, or made available, for publication by broadcast and related electronic media; and
 - (iii) the available systems by which access to material published by means of the broadcast and related electronic media is or can be regulated.

Head 2/23: Functions of the Authority (continued)

4. The Minister may confer on the Authority by order such other additional functions as he or she may from time to time consider necessary which said order may be amended or revoked by order by the said Minister
5. An order made under *subsection (4)* of this section by the Minister shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next twenty-one days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything done thereunder.
6. Reference in a transferred function under this section to the Commission shall, from the establishment day, be construed as a reference to the Authority.

Explanatory Note

Subsection (1)(c) is based on section 11 of the Broadcasting Act 2001

Subsections (3)(h) imposes a duty on the Authority to promote broadcast media literacy and is based on section 11 of the UK Communications Act 2003

Subsection (3)(d) and (e) is based on section 27 of the UK Communications Act.

Subsection (4) and (5) are based on section 4 of the Marine Institute Act 1991

Subsection (6) is based on section 9(4) of the Communications Regulations Act 2002

Head 2/24: Functions of the Contract Awards Committee

Provide that –

1. It shall be a function of the Contract Awards Committee, at the direction of the Authority, to make arrangements, in accordance with the provisions of the Act of 1988, the Act of 1990, the Act of 2001 and this Act, for the provision of broadcasting services additional to any broadcasting services provided by Radio Teilifís Éireann or Teilifís na Gaeilge pursuant to this Act, or a broadcasting contractor pursuant to the Act of 1988, the Act of 1990, the Act of 2001.
2. Reference in a transferred function under this section to the Commission shall, from the establishment day, be construed as a reference to the Contract Awards Committee.

Explanatory Note

Subsection (1)(c) is based on section 11 of the Broadcasting Act 2001

Subsection (2) is based on section 9(4) of the Communications Regulations Act 2002

Head 2/25: Functions of the Compliance Committee

Provide that –

1. It shall be a function of the Compliance Committee to–
 - (a) Monitor compliance by broadcasting contractors with the terms and conditions of any contract entered into by the Authority under the Act of 1988, the Act of 1990, the Act of 2001 or this Act;
 - (b) Enforce the terms and conditions of any contract entered into by the Authority under the Act of 1988, the Act of 1990, the Act of 2001 or this Act;
 - (c) Monitor compliance by broadcasters with the provisions of *Head 2/38 [duties of broadcasters]*;
 - (d) Enforce compliance by broadcasters with the provisions of *Head 2/38*;
 - (e) Monitor compliance by broadcasters with any code or rule prepared or made under the Act of 1988, the Act of 2001 or *Head 2/39 [codes or rules]*;
 - (f) Enforce compliance by broadcasters with any code or rule prepared or made under the Act of 1988, the Act of 2001 or *Head 2/39*;
 - (g) Investigate and decide upon a complaint made under *Head 2/42 [complaints process]*; and
 - (h) Investigate and decide upon a request made under *Head 2/XX [Right of Reply]*

2. The Compliance Committee shall have the following additional functions–
 - (a) At the request of the Minister, to report on compliance by the company [RTÉ or TnG] with the requirements of–
 - (i) *Head 4/43 [Commercial services undertaken at arms length]*;
 - (ii) *Head 4/51 [Code of Fair Trading Practice]*; and
 - (iii) *Head 4/38 [Use of public funding]*
 - (b) At the request of the Minister, to report on the proportion of the television programme service of a broadcaster which is–
 - (i) produced in the State or in another Member State of the European Communities, and
 - (ii) devoted to original programme material produced therein by persons other than the broadcaster, his or her subsidiary, his or her parent or existing broadcasting organisations
 - (c) At the request of the Minister, to report in compliance by the company with the requirements of *Head 4/14(14) [Access to RTÉ/TnG archives]*
 - (d) to make determinations in respect of disputes arising under Section 37(7) of the Act of 2001

3. Reference in a transferred function under this section to the Commission shall, from the establishment day, be construed as a reference to the Compliance Committee.

Head 2/25: Functions of the Compliance Committee (continued)

Explanatory Note

Subsection (2)(b) is intended to permit reporting on the fulfilment of obligations under Articles 4 to 6 of the Television Without Frontiers Directive. An alternative treatment would be to reference the role of the Compliance Committee in meeting the obligations of articles 4 to 6 of the Directive. This subsection is based on section 18(4) of the Radio and Television Act 1988 as amended by section 6 of the Broadcasting Act 1990.

Subsection (3) is based on section 9(4) of the Communications Regulations Act 2002

Head 2/26: Independence

Provide that –

1. Subject to this Act, the Authority, the Contract Awards Committee and the Compliance Committee shall be independent in the exercise of their functions.

Explanatory Note

This provision is based on Section 11 of the Communications Regulation Act 2002.

Head 2/27: Powers

Provide that –

1. The Authority, or a statutory committee of the Authority, will have all the powers necessary, incidental or conducive to its functions and duties and to the objectives of the Authority
2. Without prejudice to the generality of *subsection (1)*, the Authority shall have power necessary, incidental or conducive to its objectives, functions and duties—
 - (a) to make contracts, agreements and arrangements;
 - (b) to acquire and make use of copyrights, patents, licences, privileges and concessions;
 - (c) to compile, prepare, publish and distribute, with or without charge, printed, aural or visual material;
 - (d) subject to the consent of the Minister, to arrange for the provision of broadcasting and related services for and on behalf of any Minister of the Government;
 - (e) to require broadcasting contractors to enter into financial bonds with the Authority; and
 - (f) undertake, sponsor or commission research and development.

Explanatory Note

This provision is based on Section 4 of the Radio and Television Act 1988.

Subsection 2(e) is based on Section 4(8) of the Radio and Television Act 1988.

Subsection 2 (f) is a new provision

Head 4/8: Principal objects and associated powers of the company

Provide that –

1. The objects of the company shall be stated in its memorandum of association to be-
 - (a) To establish and maintain a national television and sound broadcasting service which shall have the character of a public service, be a free-to-air service and be made available, in so far as it is reasonably practicable, to the whole community on the island of Ireland.
 - (b) To establish and maintain a website and teletext services in connection with the services of the company under paragraphs (a), (c) to (i) of this subsection.
 - (c) To establish and maintain orchestras, choirs, composers, music libraries and other cultural performing groups in connection with the services of the company under paragraphs (a), (f), (g) (h) and (i) of this subsection.
 - (d) To assist and co-operate with the relevant public bodies in preparation for, and execution of, the dissemination of relevant information to the public in the event of a major local, regional or national emergency.
 - (e) To establish and maintain libraries and archives containing materials relevant to the objects of the company under this subsection.
 - (f) Subject to the consent of the Minister, to establish and maintain, community, local, or regional broadcasting services, which shall have the character of a public service, and be free-to-air.
 - (g) Subject to the consent of the Minister, to establish and maintain, in so far as it is reasonably practicable, broadcasting services, which shall have the character of a public service, for reception by Irish communities living outside of the Island of Ireland.
 - (h) Subject to the consent of the Minister, to establish and maintain non-broadcast non-linear audio-visual media services, in so far as it is reasonably practicable, which shall have the character of a public broadcasting service.
 - (i) Subject to the consent of the Minister, to establish and maintain, in so far as it is reasonably practicable, broadcasting services which are of a special interest to only certain members of the community and which are made available on a subscription or pay-per-view basis (within the meaning of the Broadcasting Act, 2001), which shall have the character of a public service.**
 - (j) So far as it is reasonably practicable, to exploit such commercial opportunities arising in pursuit of the objects outlined in paragraphs (a) to (i) of this subsection.

Head 4/8: Principal objects and associated powers of the company (continued)

2. In pursuit of the objects outlined in *subsection (1)* of this section the company shall—
 - (a) be responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Irish language,
 - (b) uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, and
 - (c) have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of such countries which are members of the European Union.

3. Without prejudice to the generality of *subsection (1)*, the company shall ensure that the programme schedules of the broadcasting services referred to in that subsection—
 - (a) provide a comprehensive range of programmes in the Irish and English languages that reflect the cultural diversity of the whole island of Ireland and include, both on television and radio (and also, where appropriate, any means of transmission referred to in *subsections (4)(p) and (q)* of this section) programmes that entertain, inform and educate, provide coverage of sporting, religious and cultural activities and cater for the expectations of the community generally as well as members of the community with special or minority interests and which, in every case, respect human dignity,
 - (b) provide programmes of news and current affairs in the Irish and English languages, including programmes that provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament, and
 - (c) facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting.

4. The principal express powers of the company in pursuance of the objects outlined in *subsection (1)* of this section shall be stated in its memorandum of association to be-
 - (a) to establish, maintain and operate broadcasting stations and to acquire, install and operate apparatus for wireless telegraphy;
 - (b) subject to any regulations under the Wireless Telegraphy Act, 1926, which are for the time being in force, to provide for the distribution by means of wired broadcast relay stations of programmes broadcast by the company and such other programmes as the company may decide;

Head 4/8: Principal objects and associated powers of the company (continued)

- (c) to provide, broadcasting services which are of a special interest to only certain members of the community and which are made available on a subscription or pay-per-view basis (within the meaning of the Broadcasting Act, 2001);
- (d) to originate programmes and procure programmes from any source;
- (e) to make contracts, agreements and arrangements incidental or conducive to the objects of the company;
- (f) to acquire and make use of copyrights, patents, licences, privileges and concessions;
- (g) to collect news and information and to subscribe to news services and such other services as may be conducive to the objects of the company;
- (h) to subscribe to such international associations, and to such educational, musical and dramatic bodies and such other bodies promoting entertainment or culture, as may be conducive to the objects of the company;
- (i) to organise, provide and subsidise concerts and other entertainments in connection with the broadcasting service or for any purpose incidental thereto and, in relation to any such concert or entertainment, to provide or procure accommodation and, if desired, to make charges for admission;
- (j) to prepare, publish and distribute, with or without charge, such magazines, books, papers and other printed matter as may seem to the company to be conducive or incidental to its objects;
- (k) to arrange with other broadcasting companies or authorities for the distribution, receipt, exchange and relay of programmes (whether live or recorded);
- (l) to compile, publish and distribute, with or without charge, recorded aural and visual material;
- (m) provide programmes of news and current affairs in the Irish and English languages, including programmes that provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament; and
- (n) facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting.
- (o) to establish and maintain a website.
- (p) to establish and maintain an electronic communications network within the meaning of section 2 of the Communications Regulations Act 2002, subject to the provisions of any enactment or rule of law.