

## Head 79 - Emergencies

1. During the continuance of any emergency declared under Section 10 of the Wireless Telegraphy Act 1926 the Minister may suspend the licence issued under section 112 and, while any such suspension continues, the Minister may operate any service which was provided under the suspended licence or require such service to be operated as he or she directs.
2. It shall be a duty of the company, at the direction of the Minister, to make its best endeavours to assist and to co-operate with the relevant public bodies in the preparation for, and execution of, the dissemination of relevant information to the public in the event of a major local, national or regional emergency.
3. If and whenever the Minister shall exercise the powers conferred on him under subsection (1) the company shall be entitled to receive from the Minister, with the consent of the Minister for Finance-
  - (a) such sums as are required to defray any expenses which, regard being had to the nature of the emergency, have been properly and necessarily incurred by the company and for meeting which revenue is by reason of the exercise of such powers not otherwise available to the company; and
  - (b) compensation for any damage done to any property of the company, being damage directly attributable to the exercise of such powers.
4. The Minister may direct the company to allocate broadcasting time for announcements for and on behalf of any Minister of State, in the event of a major local, national or regional emergency, in connection with the functions of that Minister of State, and the company shall comply with the direction. The company may broadcast whether or not it has received such a direction from the Minister.
5. The Government may direct the company in writing to allocate broadcasting time for any announcements which are in the public interest, by or on behalf of any Minister of State in connection with the functions of that Minister of State, and the company shall comply with the direction. The company may broadcast whether or not it has received such a direction from the Government.
6. The Government shall cause every direction issued under subsection (5), and the reasons for such direction, to be laid before each House of the Oireachtas as soon as may be after it is made.

**See note on Head 29**

## Head 81 - Chairperson and directors

1. The articles of association of the company shall provide that -
  - (a) The number of directors including the chairperson shall not be more than 12.
  - (b) That not less than 5 of the directors shall be men and not less than 5 of them shall be women.
  - (c) The chairperson and other directors shall be appointed by the Government on the nomination of the Minister.
  - (d) Each director of the company shall be appointed for a period not exceeding four years.
  - (e) A director of the company whose term of office expires by the effluxion of time shall be eligible for re-appointment.
  - (f) A director of the company shall not serve more than two terms of office.
  - (g) Within two years of the establishment day and, every two years thereafter not less than four directors of the company, shall retire from office.
  - (h) The directors required to retire by virtue of paragraph (g) in any year shall be those who have served longest as a director of the company since last appointed.
  - (i) Where in determining which director or directors are required to retire by virtue of paragraph (g) there is more than one director who was appointed to the company on the same day then as respects such directors appointed on the same day the director or directors to retire shall be determined by lot unless such directors otherwise agree.
  - (j) A director of the company 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.
  - (k) There shall be paid to directors of the company, out of moneys at the disposal of the company, such remuneration (if any) and allowances for expenses incurred by them as the Minister, with the consent of the Minister for Finance, from time to time determines.
  - (l) Subject to the provisions of this Act, a director of the company shall hold office on such terms (other than the payment of remuneration and allowances for expenses) as the Minister, with the consent of the Minister for Finance, from time to time determines.
  - (m) The Minister shall cause a statement in writing specifying the terms of office and remuneration of the directors of the company to be laid before both Houses of the Oireachtas.
  - (n) A director of the company may at any time be removed from directorship of the company by the Government if, in the Government's opinion, the director has become incapable through ill-health of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the Government to be necessary for the effective performance by the company of its functions, and only if, resolutions are passed by each House of the Oireachtas calling for his or her removal.
  - (o) A director of the company shall cease to be and shall be disqualified from being a director of the company where such director -
    - (i) is adjudicated bankrupt,
    - (ii) makes a composition or arrangement with creditors,
    - (iii) on conviction on indictment by a court of competent jurisdiction is sentenced to a term of imprisonment,
    - (iv) is convicted of an offence involving fraud or dishonesty, or
    - (v) is disqualified or restricted from being a director of any company.
  - (p) Where a director of the company fails -
    - (i) to attend three consecutive meetings of the company, and no satisfactory reason can be given for such non-attendance.

- (ii) to make a declaration in accordance with the requirements of subsections (1) and (4) of section 94
- (iii) to comply with the requirements of subsection (1) of section 95
- (iv) to make a declaration in accordance with the requirements of Section 17 of the Ethics in Public Office Act 1995. the Minister may with the consent of the Government by order remove the director from office.
- (q) Every order under paragraph (p) shall be laid by the Minister 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 21 days on which that House sits after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.
- (r) If a director of the company dies, resigns, becomes disqualified or is removed from office or for any other reason ceases to be a director of the company, the Government on the nomination of the Minister, may appoint a person to be a director of the company to fill the casual vacancy so occasioned and the person so appointed shall be appointed for the unexpired period of the term of directorship of, and in the same manner as, the director of the company who occasioned the casual vacancy.
- (s) The Government shall from time to time as occasion requires appoint, on the nomination of the Minister, a director of the company to be chairperson thereof.
- (t) The chairperson of the company shall, unless he or she sooner dies, resigns the office of chairperson or ceases to be chairperson under paragraph (v), hold office until the expiration of his or her period of office as a director of the company.
- (u) The chairperson of the company may at any time resign his or her office as chairperson by letter sent to the Government and the resignation shall, unless it is previously withdrawn in writing, take effect at the commencement of the meeting of the company held next after the company has been informed by the Government of the resignation.
- (v) Where the chairperson of the company ceases during his or her term of office as chairperson to be a director of the company he or she shall also cease to be chairperson of the company.
- (w) The director general, employee director or other executive director appointed by the Government shall not be appointed as chairperson of the company.
- (x) A person shall not be appointed to be a director of the company unless he or she has experience of or shown capacity in -
- (i) media or commercial affairs,
  - (ii) digital broadcasting and digital media technologies,
  - (iii) legal matters,
  - (iii) trade union affairs or
  - (iv) social, cultural, educational or community activities or Gaeltacht affairs relevant to the oversight of a public service broadcaster.
- This paragraph does not apply to the director general or staff director.
- (y) A person shall not be appointed to be a director of Teilifís na Gaeilge unless the or she is able to speak proficiently in the Irish language.
- (z) Paragraphs (d) and (g) shall not apply to the directorship of the director general of the company.
- (aa) The Government in setting a term of appointment under paragraph (d) shall consider the need for continuity of membership of the board of the company.

**Section 1 (i): Provision of removal from office if three consecutive meetings missed with no satisfactory reason is perhaps insufficient. Suggest omit altogether, as current 'name and**

shame' approach, by listing in the Annual Report, may be just as effective; or make a requirement to attend at least 75% of meetings per annum.

Section 1 (y): "speak proficiently" – by what test? Needs clarification

**Head 82 - Appointment of staff director**

1. The articles of association of the company shall provide that the Government shall appoint to be a director of the company one member of staff of the company who is elected in accordance with this section and who may not act as chairperson of the company.
2. An appointment under this section shall be in writing and shall specify the day on and from which and the period during which it is to have effect, which period shall be determined by the Government.
3. The term of office of a director of the company who is appointed under this section shall, unless, he or she sooner dies, resigns, ceases to be a member of staff of the company, becomes disqualified or is removed from office, terminate on the expiration of the period for which he or she was appointed.
4. The Government may appoint a member of staff of the company eligible to be nominated as a candidate at an election under this section to fill a casual vacancy arising by reason of an event mentioned in subsection (3) for the remainder of the term of office of the director whose vacancy is to be filled.
5. A director of the company appointed under this section shall, subject to this section, be eligible for nomination as a candidate and for election at an election for the purposes of this section.
6. An election for the purposes of this section shall be held within 6 months after vesting day or such longer period as may be agreed between the company and recognised trade unions and staff associations.
7. Subsections (8) to (22) shall apply for the purposes of an election under this section.
8.
  - (a) The Secretary of the company (or a person selected by him or her after consultation with representatives of the employees) shall be the returning officer for each election of a staff director of the company.
  - (b) The returning officer shall not be entitled to be nominated as, or to nominate, act as agent for or promote the interests of, a candidate at the election.
  - (c) The returning officer may authorise any person to exercise designated functions on his behalf and paragraph (b) shall apply to any such person.
9.
  - (a) A poll shall be conducted where there is more than one candidate.
  - (b) Voting shall be by secret ballot and on the basis of proportional representation by means of a single transferable vote.
  - (c) Presiding officers at the poll and polling clerks shall be appointed by the returning officer.
  - (d) The election shall be held in accordance with arrangements made by the returning officer.
  - (e) The returning officer shall be required to give due notice of these arrangements to the electorate and to designate premises as an election office.
  - (f) All arrangements for an election shall be subject to the consent of the Government.
10.
  - (a) The returning officer shall fix the nomination day and give notice of the election not later than 8 weeks before that day.
  - (b) The nomination day shall be not earlier than 6 weeks after the day on which eligibility of voters and candidates is determined in accordance with subsections (18) and (19), respectively.

11. The returning officer may declare a candidate elected if the number of candidates standing duly nominated does not exceed one.
12. (a) The returning officer may take a preliminary poll, at the request of one or more recognised trade unions or staff associations representing at least 15 per cent. of the electorate, to ascertain whether or not a majority of the electorate is in favour of proceeding with the election.  
(b) The preliminary poll shall be undertaken in accordance with arrangements made by the returning officer and duly notified to the electorate.  
(c) If a majority at the preliminary poll opposes the election, the holding of the election shall be deferred for 3 years.  
(d) The arrangements for a preliminary poll shall be subject to the consent of the Government.
13. If the nomination of candidates or any poll is interrupted or cannot be proceeded with the returning officer may adjourn the nomination or poll for such period as he considers appropriate to enable him, on its expiration, to proceed with or complete the nomination or poll.
14. On receipt of a notification from the returning officer of the name of the candidate elected or declared to be elected under subsection (11), the Government shall, in accordance with this section, appoint the candidate as a director of the company.
15. The returning officer shall place the remaining candidates in order of votes credited to each at the last count in which he or she was involved.
16. In choosing a person to fill a casual vacancy the Government shall select the next eligible candidate, if any, on the voting list under subsection (15). Where two or more candidates are credited with an equal number of votes the Government shall select one of them by lot.
17. The company shall bear the cost of holding the election except costs incurred by candidates expressly on their own behalf.
18. Every employee of the company who, on the day specified by the returning officer and on the day on which the poll is taken—
  - (a) is not less than eighteen years of age, and
  - (b) has been an employee of the company for a continuous period of not less than one year, shall be entitled to vote at an election or preliminary poll.
19. (a) Every employee of the company who, on the day specified by the returning officer under subsection (18), is not less than eighteen years of age and has been an employee of the company for a continuous period of not less than three years shall be eligible to be nominated as a candidate at the election.  
(b) Nominations shall be made in the manner prescribed by the returning officer.  
(c) A candidate may be nominated by a recognised trade union or staff association or jointly by two or more such bodies but no such body shall be entitled both to nominate one or more candidates of its own accord and to nominate one or more candidates jointly with another such body or bodies.  
(d) The returning officer shall rule on the validity of nominations. His or her decision shall be final.
20. Prior service (for a continuous period ending on the vesting day) with the Authority for staff transferred to the company on the vesting day shall be reckonable as service with the company for the purposes of subsections (18) and

(19).

21. The returning officer shall prepare and maintain a list of eligible voters and candidates.

22. The returning officer shall prepare and maintain a list of recognised trade unions and staff associations for the purposes of this section.

**Section 4: would interim appointment of a candidate eligible for election confer an unmerited advantage? (for any subsequent election). Consideration should be given to appointment of number 2 in the election.**

**Section 19 (C): consideration should be given to amending to allow for nomination of candidates by other than "... a recognised trade union or staff association..."; c50% of current RTÉ staff are not members of either.**

**Section 22: consideration should be given to amending as Section 19 above.**

**Head 84 - Director general**

1. The articles of association of the company shall provide that -
  - (a) The company shall from time to time appoint a person to be the chief further period of no more than three years, and such person shall be known, and is in this Act referred to, as the "director general".
  - (b) The director general shall carry on and manage, and control generally, the administration of the company and perform such other functions (if any) as may be determined by the board of the company.
  - (c) The consent of the Government shall be necessary before the company appoints or removes the director general, or alters his or her remuneration or his or her terms and conditions of holding office.
  - (d) The person who, immediately before the vesting day, was the director general of the Radio Éireann, shall be deemed to be appointed as director general of Radio Teilifís Éireann upon that day and shall stand appointed on the same terms and conditions on which he or she was previously retained and shall not be subject to the fixed term as required in paragraph (a).
  - (e) The director general shall not hold any other office or employment or carry on any business without the consent of the board of the company.
  - (f) The director general shall furnish the board of the company with such information (including financial information) in relation to the performance of his or her functions as the board of the company may from time to time require.
  - (g) The functions of the director general may be performed in his or her absence or when the position of director general is vacant by such member of the staff of the company as may, from time to time, be designated for that purpose by the board of the company.

**Section 1 (b): Need for reference to day-to-day responsibilities of Director-General as Editor-in-Chief; link with Section 1 (b) and (c) of Head 89.**

#### Head 86 - Meetings

1. The company shall hold such and so many meetings as may be necessary for the due fulfilment of its functions.
2. The Minister may fix the date, time and place of the first meeting of the company.
3. At a meeting of the company -
  - (a) the chairperson of the company shall, if present, be chairperson of the meeting; and
  - (b) if and so long as the chairperson of the company is not present or if the office of chairperson is vacant, the directors of the company who are present shall choose one of their number to be chairperson of the meeting.
4. Every question at a meeting of the company shall be determined by a majority of the votes of the directors present and voting on the question, and in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.
5. The company may act notwithstanding one or more vacancies among its members.
6. Subject to the provisions of this Act, the company shall regulate its procedure by rules.
7. The quorum of the company shall be seven.

**Section 7: Suggest amending by replacing "The quorum of the company shall be seven" by a phrase like "The quorum of the Company shall be 50% plus one of the then current membership". Setting the quorum at 7 could lead to problems if there were a number of vacancies on the Board at any one time.**

Head 87 - Establishment of subsidiaries, investments and joint ventures

1. Such functions of the company as it may determine may be performed by a subsidiary and, accordingly, the company may, with the consent of the Minister and the Minister for Finance, the Minister having consulted with the Authority, for the purpose of such performance, acquire or form and establish one or more subsidiaries.
2. The company or a subsidiary may, either by itself or with another person, with the consent of the Minister and the Minister for Finance, the Minister having consulted with the Authority, promote or take part in the formation or establishment of a company, enter into joint ventures or partnerships for the purpose of fulfilling any of its functions.
3. The company may, with the consent of the Minister and the Minister for Finance, the Minister having consulted with the Authority, acquire, hold and dispose of shares or other interests in a company and become a member of a company.
4. The memorandum and articles of association of a subsidiary shall be in such form as may be determined by the company with the consent of the Minister and the Minister for Finance, the Minister having consulted with the Authority.
5. The Minister may give a direction in writing to the company on any matter relating to a subsidiary and the company shall comply or, as may be appropriate, secure compliance with the direction.
6. A direction under this section in relation to the disposal of any assets or surpluses of a subsidiary shall not be given without the consent of the Minister for Finance, the Minister having consulted with the Authority.
7. In this section "subsidiary" means a subsidiary (within the meaning of section 155 of the Companies Act 1963) of the company.

**This requirement already exists in the *Code of Practice for State Bodies* so could be considered superfluous; also emphasises the Minister's powers to give directions to subsidiaries on any matters which would normally be a Board function. Once again the BAI will have to be consulted by the Minister.**

Head 88 - Restriction on alteration of memorandum or articles of association  
(4/25-95)

1. No alteration to the memorandum of association of the company shall have effect unless the Minister shall, having consulted with the Authority, have given his or her prior approval with the consent of the Minister for Finance by order thereto.
2. No alteration to the articles of association of the company shall have effect unless the Minister shall have given his or her prior approval with the consent of the Minister for Finance by order thereto.
3. Where the Minister proposes to make an order under subsection (1) he or she shall cause a draft of the order to be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly.

**Section 1: Suggest amending to make it explicitly clear that the Company has an appropriate role with regard to changes in its memorandum and articles of association.**

**Section 1: Any amendment should also clarify what role the Authority plays in the consultation and what, if any, weight attaches to that consultation.**

Head 89 - Duties of directors

1. Subject to the requirements of this Act every director of the company shall
  - (a) ensure that the activities of the company in pursuance of its objectives as set out in section 109(1) or 114(1) are performed efficiently,
  - (b) to ensure that the gathering and presentation by the company of news and current affairs is accurate and impartial according to the recognised standards of objective journalism, and
  - (c) to ensure the independence of the company regarding the conception, content and production of programmes, the editing and presentation of news and current affairs programmes and the definition of programme schedules from State, political and commercial influences.

**Section 1 (b): Reference to "... recognized standards of objective journalism ..."; there are various (and contradictory) interpretations of this phrase. It is a problematic form of words and needs to be clarified.**

**Section 1 (b) and (c): Consider amendment to recognise that the day-to-day responsibilities rest with the Director-General who shall also be recognised as the Editor-in-Chief.**

## Head 91 - Staff

1. The company shall, as well as appointing the director general, appoint such and so many persons to be members of the staff of the company as it may from time to time determine but, subject to subsection (2) of this section, a person shall not be appointed under this section to be a member of staff of the company unless he or she has been selected by means of a public competition.
2. The requirement under subsection (1) of this section of being selected by means of a public competition shall not apply in relation to:
  - (i) a person who, immediately before vesting day, was a member of staff of Radio Éireann,
  - (ii) an appointment consisting of the promotion of a person who is already a member of staff of the company,
  - (iii) an office for which, in the opinion of the company, specialised qualifications not commonly held are required, or
  - (iv) an office to which appointments are made for limited periods only, being periods not exceeding two years.
3. A member of staff of the company shall hold his or her employment on such terms and conditions as the company from time to time determines.
4. There shall be paid by the company to its members of staff such remuneration and allowances as the company from time to time determines.
5. The company may at any time remove any member of staff of the company from being a member of staff.
6. The company may perform any of its functions through or by any of its members of staff duly authorised by the company in that behalf.
7. The company shall accept into its employment on vesting day in accordance with the terms of this Act every person who immediately before establishment is a member of staff of Radio Éireann.
8. Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a member of staff of Radio Éireann who is transferred, on vesting day to the company shall not, while in the service of the company, receive a lesser scale of pay or be brought to less beneficial conditions of service than the scale of pay to which he or she was entitled and the conditions of service to which he or she was subject immediately before vesting day.
9. Until such time as the scales of pay and conditions of service of members of staff so transferred are varied by the company, following consultation with recognised trade unions and staff associations, the scales of pay to which they were entitled and the conditions of service, restrictions, requirements and obligations to which they were subject before their transfer shall continue to apply to them and may be exercised or imposed by the board or the director general, as the case may be, of the company while they are in its service. As provided in subsection (8), no such variation shall operate to worsen the scales of pay and conditions of service applicable to such members of staff immediately before establishment, save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned.
10. The conditions in regard to tenure of office which are granted by either company in relation to a member of staff so transferred shall not, while he or she is in the service of the company, be less favourable to him or her than those prevailing on establishment in Radio Éireann; any alteration in the conditions in regard to tenure of office of any such member shall not be less

favourable to him or her than the prevailing conditions in Radio Eireann at the time of such alteration, save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned. If a dispute arises between the company and any such member of staff as to conditions, prevailing in Radio Éireann, the matter shall be determined by the Minister for Finance.

**Section 6: suggest amendment to refer to all other legal obligations and requirements.**