



AN BILLE CRAOLACHÁIN, 1999
BROADCASTING BILL, 1999

EXPLANATORY AND FINANCIAL MEMORANDUM

General

The Bill is intended to facilitate the introduction of digital terrestrial television (DTT) in Ireland. It provides that the Minister for Arts, Heritage, Gaeltacht and the Islands may designate a company which will be licensed by the Director of Telecommunications Regulation to construct and operate the DTT infrastructure which shall comprise six transmission systems known as multiplexes.

The Bill provides for the name of the Independent Radio and Television Commission (IRTC) to be changed to the Broadcasting Commission of Ireland and provides for this body to be given expanded powers and functions in relation to the regulation of digital broadcasting on all platforms i.e. terrestrial broadcasting, cable and MMDS systems and satellite, entering into contracts with providers of broadcast content and in relation to the drawing up of codes and rules relating to taste and decency of broadcast programme material, broadcast advertising and a range of other broadcasting related matters.

The Bill provides for the repeal and restatement of the provisions of the Broadcasting Authority Act, 1960, and the Radio and Television Act, 1988, in relation to the Broadcasting Complaints Commission and extends the powers of investigation of the Commission to cover all providers of broadcast content.

The Bill also provides:

- for additional clarity and detail in relation to the public service broadcasting remit of RTÉ under the Broadcasting Authority Acts and makes similar provisions in respect of Teilifís na Gaeilge,
- that the Minister may establish Teilifís na Gaeilge as a statutory corporate body the members of which shall be appointed by the Government,
- that the Broadcasting Commission of Ireland shall draw up a scheme for the disbursement by it of a fund of £500,000 provided from the Exchequer in respect of capital expenditure on transmission infrastructure incurred by local and community radio stations,
- for the repeal of paragraph (b) of subsection (4) of section 14 of the Radio and Television Act, 1988, which enables the IRTC to impose a levy on the income of independent broadcasters, and

- for the amendment of section 4 of the Broadcasting Authority (Amendment) Act, 1993, to provide that in the financial year 1999, RTÉ shall make the sum of £16 million available for independent television productions and that, in subsequent years, this amount shall be adjusted in line with changes in the Consumer Price Index.

Exchequer costs and staffing implications

The provision in *section 3* (see also the *First Schedule*) of the Bill for the abolition of the levy payable to the IRTC by independent broadcasters by virtue of paragraph (b) of subsection (4) of section 14 of the Radio and Television Act, 1988, will require that the Commission be funded from the Exchequer through the Vote of the Office of the Minister for Arts, Heritage, Gaeltacht and the Islands. A figure of £2 million is provided on the Vote of the Office of the Minister for Arts, Heritage, Gaeltacht and the Islands in 1999 for the running costs of the Commission. The expanded functions of the Commission will give rise to an increase in the staff numbers employed by it. However, the number of extra staff required has not yet been determined.

The provision in *section 53* of the Bill for the establishment of the £500,000 fund to be administered by the Broadcasting Commission of Ireland for grants toward the transmission costs of local and community radio stations will require that a grant of this amount shall be paid to the Commission in 1999.

The relevant information is set out in the table hereunder.

	Non-Capital Cost	Capital cost	Paybill Cost	Staffing Implications
Current Year	up to a maximum of £2 million (2.539 million euro)	£0.5 million (0.634 million euro)	See Note 1	See Note 1
Next Year	£2 million (2.539 million euro) in 1999 prices	—		
Full Year	£2 million (2.539 million euro) in 1999 prices	—		
Number of years before full cost/ staffing is reached	reached in 2000	once-off cost in 1999		

Note 1: The staffing implications for the Commission arising from its expanded functions have not yet been determined. This will include staff support for the Broadcasting Complaints Commission. The paybill costs will fall to be paid from the £2,000,000 non-capital costs in the column across.

Section 1 contains the short title, collective citation, construction and commencement provisions.

Section 2 contains definitions.

Section 3 provides for repeals of existing legislative provisions set out in the *First Schedule* to the Bill.

Section 4 provides for the payment of expenses incurred by the Minister in the administration of the Bill when enacted.

Section 5 provides that the Minister may, subject to the expressed conditions, following the required consultation with the Minister for Public Enterprise, designate a company formed under the Companies Acts which has as its principal objects the transmission by terrestrial means of television and sound broadcasting services provided by broadcasters, the promotion of the development of multimedia services and the promotion of the development of electronic information services, including Internet services. RTÉ shall transfer its existing transmission infrastructure to this company in exchange for a shareholding in the company.

Section 6 provides that the Minister, following consultation with the Minister for Public Enterprise and the Director of Telecommunications Regulation, shall have the power to transfer to the company the benefits of certain broadcasting and related licences which have been granted to RTÉ.

Section 7 provides that the Director of Telecommunications Regulation, on a date specified by the Minister, following consultation with the Minister for Public Enterprise, shall issue a DTT licence to the company designated by the Minister under *section 5*. The licence shall authorise the designated company to operate six digital terrestrial multiplexes. One of these multiplexes will be reserved for use by RTÉ and one half of one multiplex each will be reserved for Teilifís na Gaeilge and the television programme service contractor i.e. TV3. The Minister may also direct that a multiplex or part thereof be reserved for terrestrial broadcasting services provided in Northern Ireland.

Section 8 provides for the change of the name of the IRTC to the Broadcasting Commission of Ireland and *section 9* provides that the Commission shall endeavour to ensure that broadcasting services made available under the Bill best serve the needs of the people of the State.

Existing law: Subsection (1) of section 3 of the Radio and Television Act, 1988, provides that the name of the body is The Independent Radio and Television Commission. Subsection (1) of section 4 of the Radio and Television Act, 1988, provides that it shall be the function of the IRTC to arrange for the provision of sound broadcasting services (including a national sound broadcasting service) and one television programme service additional to any broadcasting services provided by RTÉ.

Section 10 enables the Broadcasting Commission of Ireland to enter into digital content contracts with broadcasters for the provision of programme material to be transmitted by digital terrestrial means by the company designated under *section 5*.

Section 11 provides that the designated company shall, if requested, enter into arrangements to transmit the analogue or digital free-to-air television services of RTÉ, Teilifís na Gaeilge and the television programme service contractor (i.e. TV3) and to transmit the sound radio services of RTÉ and the sound radio services of independent radio stations (some of which are currently transmitted by RTÉ on a contractual basis). The designated company may enter into arrangements to transmit other broadcasting services by digital terrestrial means. It may also enter into arrangements to transmit electronic information services.

Sections 12 and 13 deal with electronic programme guides (EPGs) which are defined as a means of providing information in relation to the schedule of programme material on a broadcast service. It is expected that EPGs will be essential to allow viewers navigate through the array of services which will be available by way of digital

transmission. Consequently there is a provision requiring ease of access to information regarding the broadcasting services provided by RTÉ, Teilifís na Gaeilge, the television programme service contractor (i.e. TV3) and certain of the services provided in Northern Ireland. The Commission may also enter into a contract for the provision of an EPG covering the DTT, cable and MMDS platforms and may direct that this EPG be carried on these platforms.

Section 14 provides for the application, subject to necessary modifications, of certain fundamental existing legislative provisions contained in the Radio and Television Act, 1988, to new broadcasting services provided pursuant to contracts entered into under this Act.

Existing Law: Paragraphs (a) and (b) of subsection (1) of section 9 of the Radio and Television Act, 1988, provide for objectivity and impartiality in the broadcast of news and current affairs programmes by independent broadcasters. Paragraph (d) of the same subsection prohibits the broadcast of material likely to promote crime or tending to undermine the authority of the State and paragraph (e) prohibits unreasonable encroachments by broadcasters upon the privacy of an individual. Subsection (2) of section 9 of the 1988 Act allows for the transmission of party political broadcasts. Subsection (3) of section 10 of the 1988 Act prohibits the broadcast of an advertisement which is directed towards any religious or political end or which has any relation to an industrial dispute.

Section 15 provides for the preparation by the Broadcasting Commission of Ireland of codes and rules to be complied with by broadcasters with respect to programme material. The Commission shall, following consultation with RTÉ, prepare codes in relation to the taste and decency of programme material and broadcast advertising and other forms of commercial promotion. The Commission shall make rules in order to promote the enjoyment of broadcast services by persons who are deaf or hard of hearing and persons who are blind or partially sighted. The Commission shall also prepare a code in respect of a broadcasting service which has as one of its principal objectives the promotion of the interests of any organisation.

Existing Law: Subsection (1) of section 4 of the Broadcasting Act, 1990, provides that the Minister shall draw up a code regarding advertising, sponsorship and other forms of commercial promotion in broadcasting services. This code was drawn up in May 1995. Subsection (3) of section 9 of the Radio and Television Act, 1988, provides that the IRTC shall draw up a code regarding, *inter alia*, good taste and decency in broadcast services under its aegis.

Section 16 provides for the co-operation by the Broadcasting Commission of Ireland in the preparation of non-technical codes or standards with respect to the transmission of information by electronic means including the Internet.

Section 17 provides that the Broadcasting Commission of Ireland shall enforce the provisions of the Bill when enacted and the codes and rules and contracts made thereunder.

Sections 18 to 23 provide for matters relating to the Broadcasting Complaints Commission. *Section 18* provides for the appointment, remuneration, resignation and removal of the chairman and members of the Commission and provides for gender balance among the members. *Section 19* provides for the supply by the Broadcasting Commission of Ireland to the Broadcasting Complaints Commission of staff, services, accommodation and facilities for the performance

of its functions and for the payment of the expenses of the Broadcasting Complaints Commission by the Broadcasting Commission of Ireland. An exceptional expense of the Broadcasting Complaints Commission may be reimbursed by the Minister to the Broadcasting Commission of Ireland from television licence fee revenue. *Section 20* provides for the grounds for complaint to the Broadcasting Complaints Commission which comprise the existing grounds with the addition of the case of a breach of the code regarding taste and decency of programme material. The section also provides for the procedures for making complaints and the procedures to be followed by the Commission in investigating a complaint. *Sections 21 to 23* provide for annual reports by the Commission, for recording of programme material by holders of content provider contracts and for the completion by the Commission of existing investigations.

Existing Law: Sections 18A to 18C of the Broadcasting Authority Act, 1960, as amended, provide for the establishment, functions and duties of the Broadcasting Complaints Commission. Subsections (3) and (4) of section 11 of the Radio and Television Act, 1988, provide for the extension of the powers of the Commission to the independent radio and television sector. Section 8 of the Broadcasting Authority (Amendment) Act, 1976, provides for the payment of the expenses of the Broadcasting Complaints Commission by the Minister from television licence fee revenue.

Section 24 provides additional clarity and detail in respect of the public service character of the national television and sound broadcasting service provided by RTÉ which shall comprise a comprehensive range of programmes in Irish and English, shall be free-to-air and shall be universally available in so far as is reasonably practicable. The Minister may by order modify *subsection (2)* which relates to the programme schedules of the public service broadcasting service by adding provisions relating to categories of programmes that shall be included in the programme schedules. Extensive consultation will be required before an order can be made. Television licence fee revenue shall be, and commercial revenues may be, used by RTÉ for the purpose of fulfilling its public service remit. RTÉ shall make an annual report to the Minister of the use it has made of television licence fee revenue. *Section 25* provides that in addition to its national service RTÉ may provide local, community or regional services. *Section 26* provides that, in addition to its public service broadcasting remit, RTÉ shall have the power to offer special interest subscription or pay-per-view programme services (secondary broadcasting services) and to transmit programmes by electronic means other than broadcasting.

Existing law: Section 16 of the Broadcasting Authority Act, 1960, as amended, provides that RTÉ shall establish and maintain a national television and sound broadcasting service and that it may establish and maintain local broadcasting services.

Section 27 provides for the continuation of the current regime in relation to the approval by the Minister of advertising time on RTÉ broadcasting services (which are not subject to a contract with the Broadcasting Commission of Ireland) and specifically includes tele-shopping within this regime.

Existing law: Section 2 of the Broadcasting Authority (Amendment) Act, 1993, provides that the maximum daily and hourly advertising times on RTÉ broadcasting services shall be subject to the approval of the Minister.

Section 28 subsection (1) provides that the power of the Minister

under section 25 of the Broadcasting Authority Act, 1960, to direct RTE to keep special accounts includes a power to direct RTE to keep a special account showing the manner in which television licence fee revenue has been appropriated. *Subsection (2)* provides for an amendment to section 6 of the Broadcasting Authority (Amendment) Act, 1976, under which RTE is required to record every broadcast and to make such a recording available to the Broadcasting Complaints Commission in the event of a complaint. The amendment will require RTE to record visual as well as audio material.

Existing law: Section 25 of the Broadcasting Authority Act, 1960, provides that RTE shall keep in such form as approved by the Minister, after consultation with the Minister for Finance, accounts of all moneys received or expended by it and that it shall also keep special accounts as directed by the Minister. Section 6 of the Broadcasting Authority (Amendment) Act, 1976, provides that, as regards a television broadcast, RTE shall be regarded as complying with its duty to record every broadcast by recording the broadcast in sound only.

Section 29 provides for an amendment to section 4 of the Broadcasting Authority (Amendment) Act, 1993, which deals with the annual amounts which RTE must make available for independent television productions. *Paragraph (b)* of the section provides that the amount to be made available in the financial year 1999 shall be £16,000,000. The other provisions of the section provide that, in subsequent years, this amount shall be adjusted in line with changes in the Consumer Price Index.

Existing law: Section 4 of the Broadcasting Authority (Amendment) Act, 1993, provides that the amount to be made available by RTE for independent television productions in the financial year 1999 and in subsequent years shall be £12,500,000 (adjusted in line with changes in the Consumer Price Index in years subsequent to 1999) or 20% of RTE's television programme expenditure whichever is the greater.

Section 30 provides that the Broadcasting Commission of Ireland may authorise the television programme service contractor (i.e. TV3) to provide additional broadcasting services by means of a variation made by it to the contract which has been entered into under the Radio and Television Act, 1988, in respect of its existing service.

Section 31 provides for the entry by the Broadcasting Commission of Ireland into satellite content contracts with persons for the supply of programme material to be transmitted as a broadcasting service by means of a satellite device. The Commission may charge fees for the entry into by it of such contracts.

Section 32 provides for measures in respect of the transmission and re-transmission of programme material by means of cable and MMDS systems. *Subsections (1), (2) and (3)* provide for measures in respect of the transmission of broadcasting services the programme material of which must be the subject of one of the expressed content provider contracts entered into by the Broadcasting Commission of Ireland or be supplied by an excepted person i.e. a broadcaster under the jurisdiction of another Member State of the European Union or the European Economic Area. *Subsection (4)* provides for the notification of the Broadcasting Commission of Ireland in respect of the re-transmission of broadcasting services. *Subsections (5) to (11)* provide for "must carry" status for the television services of RTE, Teilifis na Gaeilge and the television programme service contractor

(i.e. TV3), national VHF sound radio services and community channels.

Section 33 enables the Broadcasting Commission of Ireland to enter into local content contracts with persons for the supply of programme material for local interest channels to be transmitted on cable and MMDS systems.

Section 34 enables the Broadcasting Commission of Ireland to enter into community content contracts with members of local communities for the supply of programme material for community channels to be transmitted on cable and MMDS systems.

Section 35 enables the Broadcasting Commission of Ireland to enter into cable-MMDS content contracts with persons for the supply of programme material for commercial channels to be transmitted on cable and MMDS systems.

Sections 36, 37 and 38 provide for the establishment of Teilifis na Gaeilge as a statutory corporate body on a day which the Minister may appoint.

Section 39 provides that the function of Teilifis na Gaeilge shall be to provide a national television broadcasting service catering for the expectations of those whose preferred spoken language is Irish or who otherwise have an interest in Irish. The service shall have a public service character similar to that to be provided for in the case of RTÉ in *section 24* of the Bill.

Section 40 provides that the general duty of Teilifis na Gaeilge shall be similar to that of RTÉ by virtue of section 17 of the Broadcasting Authority Act, 1960, as amended by section 13 of the Broadcasting Authority (Amendment) Act, 1976.

Section 41 provides a statutory basis for the supply by RTÉ free of charge to Teilifis na Gaeilge of one hour per day of Irish language programming.

Section 42 provides that the approval of the Minister will be required for the total time per year of broadcasting by Teilifis na Gaeilge. This provides for the continuation of the current regime.

Existing law: The current regime applies by virtue of section 19 of the Broadcasting Authority Act, 1960, as amended by section 14 of the Broadcasting Authority (Amendment) Act, 1976.

Section 43 provides that the approval of the Minister will be required for the daily and hourly times devoted to the broadcast of advertising and teleshopping by Teilifis na Gaeilge. This provides for the continuation of the current regime.

Existing law: The current regime applies by virtue of section 2 of the Broadcasting Authority (Amendment) Act, 1993.

Section 44 provides for the application subject to necessary modifications of certain fundamental existing legislative provisions contained in the Broadcasting Authority Acts, 1960 to 1993, to Teilifis na Gaeilge as they apply to RTÉ under the existing law. By virtue of the application of section 21 of the Broadcasting Authority Act, 1960, Teilifis na Gaeilge shall have the power to appoint advisory committees or advisors.

Existing law: Sections 18, 20 and 31 (2) of the Broadcasting Authority Act, 1960, and section 6 of the Broadcasting Authority (Amendment) Act, 1976, currently apply to the Teilifis na Gaeilge service.

Section 45 provides for the payment by the Minister of Exchequer funding to Teilifis na Gaeilge.

Sections 46 and 47 provide for transitional provisions in relation to Teilifis na Gaeilge including the transfer to Teilifis na Gaeilge of land, property and other rights and liabilities of Seirbhísí Theilifis na Gaeilge Teoranta which is the wholly-owned subsidiary company of RTÉ which currently provides the Teilifis na Gaeilge service.

Section 48 provides for the separation of accounts and moneys in respect of secondary broadcasting services provided by RTÉ and Teilifis na Gaeilge in addition to their national public service broadcasting services.

Section 49 provides for general matters relating to content provider contracts entered into by the Broadcasting Commission of Ireland under the Bill and *section 50* provides for the charging by the Commission of fees for applications for contracts.

Section 51 provides for offences in relation to the supply of programme material for the purpose of its being transmitted as a broadcasting service otherwise than in accordance with a content provider contract, offences in relation to the “must carry” requirements on cable and MMDS systems and offences in relation to the requirements to notify the Broadcasting Commission of Ireland of services transmitted or re-transmitted on cable and MMDS systems.

Section 52 provides for the payment by the Minister of Exchequer moneys to the Broadcasting Commission of Ireland in respect of its expenses. This arises from the repeal provided for in *section 3* of the Bill of the power of the IRTC to impose financial levies on independent broadcasters under paragraph (b) of subsection (4) of section 14 of the Radio and Television Act, 1988.

Existing law: Section 20 of the Radio and Television Act, 1988, provided for moneys to be paid by the Minister to the IRTC in respect of its initial expenses during its first two years of operation.

Section 53 provides for the operation by the Broadcasting Commission of Ireland of a scheme of capital grants to local and community radio stations in respect of their transmission costs to be funded from Exchequer moneys up to a maximum total of £500,000 to be provided to the Commission by the Minister.

Section 54 provides for an increase from fourteen to thirty in the number of days in a period of twelve months for which the Commission can licence a temporary sound broadcasting service.

Existing law: Section 8 of the Radio and Television Act, 1988, provides that the Commission may enter into a contract with a person for a temporary sound broadcasting service for a specified area subject to a maximum period of fourteen days broadcasting in a twelve month period.

Section 55 provides for amendment in respect of the grounds on which the Commission can authorise a derogation by a broadcaster from the minimum requirement of 20% of broadcasting time to be devoted to news and current affairs programmes.

Existing law: Section 15 of the Radio and Television Act, 1988, provides that the Commission may authorise such a derogation only in relation to a sound broadcasting service which it contracts to provide in any area to meet specific special interests provided it is satisfied that there is a reasonable plurality of sources of news and current affairs programming in the area concerned.

Section 56 extends the application of an order made by the Minister under section 31 (1) of the Broadcasting Authority Act, 1960, to all new broadcasting services provided under the provisions of the Bill. There is no such order in force at present.

Existing law: Section 12 of the Radio and Television Act, 1988, provides for the application of an order under section 31(1) of the Broadcasting Authority Act, 1960, to the independent broadcasting sector as it applies to RTÉ.

The *First Schedule* contains the list of enactments to be repealed by *section 3* of the Bill. Sections 18A, 18B and 18C of the Broadcasting Authority Act, 1960, provide for the establishment, functions and duties of the Broadcasting Complaints Commission. Section 19 of the Act provides for the hours of broadcasting on RTÉ radio and television services to be subject to the approval of the Minister. Subsections (3) and (4) of section 11 of the Radio and Television Act, 1988, provide for the extension of the powers of the Broadcasting Complaints Commission to the independent radio and television sector. Paragraph (b) of subsection (4) of section 14 of the Act provides for the payment by independent broadcasters of financial levies to the IRTC. Section 4 of the Broadcasting Act, 1990, provides for the drawing up by the Minister of a code dealing with advertising, sponsorship and other forms of commercial promotion in broadcast services which shall be complied with by RTÉ and independent broadcasters. Section 2 of the Broadcasting Authority (Amendment) Act, 1993, provides that the maximum daily and hourly advertising times on RTÉ broadcasting services shall be subject to the approval of the Minister.

The *Second Schedule* provides for standard provisions in relation to the establishment of Teilifís na Gaeilge as a separate statutory body including the appointment, remuneration, resignation and removal of the chairperson and members of the body and the requirement for gender balance among the members. Provision is made for the employment of, and a superannuation scheme for, staff including a chief executive. Provision is also made for Teilifís na Gaeilge to present annual reports and accounts.

*An Roinn Ealaíon, Oidhreachta, Gaeltachta agus Oileán,
Bealtaine, 1999.*