



AN BILLE EALAÍON, 2002
ARTS BILL, 2002

EXPLANATORY MEMORANDUM

General

The Bill is intended to update the existing arts legislation to make it more relevant and appropriate to the present day context. It repeals the Arts Acts, 1951 and 1973.

The Bill provides that—

- the Arts Acts, 1951 and 1973, which govern the functions and structure of the Arts Council, and its relationship with Government are being repealed, to be replaced by this Bill when enacted;
- “the arts” will be defined, for the purposes of the Bill, in a way that continues to refer to constituent art forms, but will be sufficiently flexible to include traditional as well as emerging and innovative art forms, and art forms in Irish, English, or any other language;
- the Bill provides that the Minister for Arts, Heritage, Gaeltacht and the Islands shall promote the arts, both nationally and internationally, and gives recognition to the role of the Minister in formulating overall State policy on the arts;
- the Arts Council will continue to be the principal State agency with responsibility for the promotion and development of the arts, and the plans and strategies of the Council will be required to be compatible with Government policy on the arts;
- the Bill will give specific recognition to the independence of the Arts Council in taking decisions on the disbursement of funding;
- the Arts Council will be reduced from seventeen to nine members. Rolling membership is being introduced to provide for better continuity in the work of the Council;
- the Bill provides that public bodies shall, in the performance of any functions that relate to the arts, have regard to Government policy relating to the arts;
- the Bill provides that Local Authorities shall, for the purposes of section 31 of the Local Government Act, 1994, prepare and implement plans for the development of the arts within its functional area and shall, in so doing, take account of policies of Government in relation to the arts. A Local Authority can also provide financial or other assistance for the arts within their functional areas.

The Arts Council will continue to be empowered to establish sub-committees as it considers necessary, but will be required to establish three standing committees on Irish Traditional Arts, Arts Activity by Local Authorities, and New Art and Innovation. These committees will advise the Arts Council on issues falling within their remit, and the Standing Committee on Irish Traditional Arts will make recommendations to the Council on the advance of moneys to any person relating to Irish traditional arts.

Exchequer costs and staffing implications.

This Bill has no financial or staffing implications.

Section 1 contains the short title and commencement provisions.

Section 2 contains definitions.

Section 3 provides for the payment of expenses incurred by the Minister in the administration of the Bill when enacted.

Section 4 provides for the repeal of the Arts Act, 1951 and the Arts Act, 1973.

Section 5 sets out the Minister's powers and functions under the Bill when enacted. It provides that the Minister shall promote Irish arts inside and outside the State. The Minister, in discharging his/her functions, may consult with the Arts Council, other Ministers of the Government, or other bodies or persons. The Minister may give a direction in writing to the Arts Council requiring the Council, in performing its functions, to comply with policy decisions made by the Minister or by the Government. This can include a direction to the Council to furnish a plan specifying the strategies or measures that the Council proposes to adopt.

Section 6 provides that Local Authorities shall prepare and implement plans for the development of the arts within their functional areas, and shall in so doing take account of Government policies on the arts. It is also provided that a local authority may provide financial or other assistance to stimulate public interest in the arts, promote knowledge of the arts, or improve standards in the arts.

Section 7 provides that a public body shall, when performing any function relating to the arts, have regard to Government policies on the arts. The Minister may require a public body to furnish a report on its performance, having regard to Government policy, of any function relating to the arts.

Section 8 provides that the Arts Council will continue in being as a body corporate. It also includes technical provisions relating to authentication of the Council's seal, and recognition of the seal.

Section 9 sets down the functions of the Arts Council under this Bill. These include the stimulation of public interest in the arts, the promotion of knowledge, appreciation and practice of the arts, and assisting in the improvement in standards of the arts. The Council shall advise and assist the Minister when so requested, and shall, when so requested or when Council considers it appropriate, furnish advice to Ministers of the Government or public bodies on any matter connected with the Council's functions. The Council may cooperate with a public body on any issue relevant to the Council's functions, and shall have such other powers as are necessary or expedient to carry out its functions.

Section 10 allows the Minister, with the consent of the Minister for Finance and after consultation with the Council and any other Minister of the Government as he/she considers appropriate, by order to

confer additional functions on the Council. The relevant order shall be laid before both Houses of the Oireachtas. The Minister may also amend or revoke such an order.

Section 11 provides that the Arts Council shall consist of a Chairperson and 8 ordinary members, considered by the Minister to have a special interest and expertise in the arts or the functions of the Council. The Minister shall appoint the Chairperson (who shall be appointed for up to 5 years) and ordinary members, and shall appoint one of the ordinary members as the Deputy Chairperson. In the case of the first Council appointed after the enactment of the Bill, 4 ordinary members shall be appointed for up to 5 years, and 4 for up to 30 months. Subsequent appointments shall all be for 5 years. Members and Chairpersons may be appointed for up to 2 consecutive terms.

Section 12 provides that the Minister may remove from office a member of Council for stated reasons. A member may resign from office by giving notice in writing to the Minister, which notice shall have immediate effect. The section also lists circumstances in which a member of Council shall cease to be qualified for office. Members of Council shall hold office upon such terms and conditions, including terms and conditions relating to remuneration and allowances, as may be determined by the Minister, with the consent of the Minister for Finance.

Section 13 provides that the Minister may fill casual vacancies arising on the Council, and that those appointed to fill casual vacancies shall hold office until the terms of the member replaced would have expired in the normal course.

Section 14 provides that the chairperson and ordinary members of Council shall be paid such remuneration by the Council, and such allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.

Section 15 provides that there shall be a chief executive officer, (known as “the Director”), who shall carry on and manage and control generally the administration of the Council, and perform such other functions as may be determined by the Council. The Director shall be appointed, and may be removed from office, by the Council with the consent of the Minister. The terms and conditions of office, including those relating to remuneration and allowances, will be determined by the Council with the consent of the Minister and the Minister for Finance. The Director shall not hold any other office or employment or carry on any business without the consent of the Council. The Director shall not be a member of the Council, but may attend meetings of the Council, and may make submissions, orally and in writing, and otherwise advise the Council at such meetings in accordance with Council procedures.

Section 16 lays down procedures for the meetings of the Council. The Council shall hold as many meetings as are necessary for the fulfillment of its functions. At meetings, the Chairperson shall, if present, chair the meeting. In the absence of the Chairperson, the Deputy Chairperson shall act as Chair. Questions shall be determined by a majority vote of those present, and in the case of an equal division of votes, the chairperson of the meeting shall have a casting vote. The Council may act notwithstanding one or more vacancies among its members, and subject to the provisions of this Bill, Council shall regulate its procedure by rules or otherwise. The quorum for a meeting of the Council shall be 5.

Section 17 provides that where a member of the Council is nominated as a member of Seanad Éireann, is elected as a member of either House of the Oireachtas, or is elected to the European Parliament, he or she shall cease to be a member of the Council. Where a member of the staff of the Council is nominated as a member of Seanad Éireann, is elected as a member of either House of the Oireachtas, or is elected to the European Parliament, he or she shall stand seconded from employment by the Council and shall receive no remuneration or allowances from the Council while such nomination or election remains extant, and this period shall not be reckonable for superannuation purposes. A person who is for the time being entitled under Standing Orders of either House of the Oireachtas to sit therein, or who is a representative in the European Parliament, shall, while he or she is so entitled or is such a representative, be disqualified from membership of the Council or employment in any capacity by the Council.

Section 18 provides that should anything arise at a meeting of the Council in which a member has an interest, other than in his or her capacity as a member of the Council, the member in question shall disclose at the meeting the interest and the nature thereof, shall neither influence nor seek to influence a decision by Council in the matter, shall absent himself or herself from the meeting or part of the meeting where the relevant issue is being discussed, shall take no part in the Council's deliberations on the matter, and shall not vote on a decision on the matter. Where an interest is disclosed for the purposes of this section, the disclosure shall be recorded in the minutes of the meeting, and for so long as the matter to which the disclosure relates is being dealt with by the meeting, the person by whom the disclosure was made shall not be counted in the quorum for the meeting. Where at a meeting of the Council a question arises as to whether a course of conduct, if pursued by a member, would constitute a failure by him or her to comply with the requirements of this section, the question may be determined by the chairperson of the meeting, whose decision shall be final, and particulars of any such determination shall be recorded in the minutes of the meeting. Where the Minister is satisfied that a member of Council has contravened this section, the Minister may, if he/she thinks fit, remove that member from office, and a person so removed shall thenceforth be disqualified from membership of the Council.

Section 19 provides that where a member of the staff of the Council has an interest, otherwise than in his or her capacity as such a member, in anything to which the Council is a party, that person shall disclose to the Council his or her interest and the nature thereof, shall take no part in devising or arranging the Council's involvement with the relevant area, and will neither influence nor seek to influence a decision on the matter. This shall not apply to contracts or proposed contracts of employment of members of staff of the Council. Where a person contravenes this section the Council may alter the person's terms of employment, or terminate the employment, as the Council considers appropriate.

Section 20 prohibits the unauthorised disclosure of confidential information obtained by persons while performing functions as members of Council or of a Standing Committee of the Council, or as a member of the Council's staff. A person contravening this provision shall be guilty of an offence.

Section 21 provides that the Council shall establish 3 standing committees, to advise the Council on matters relating to traditional arts, activities of local authorities in relation to arts, and artistic innovation. Each of these standing committees shall consist of a chairperson appointed by the Minister, and 4 ordinary members, 2 of whom

will be appointed by the Minister, and 2 of whom shall be appointed by the Council. Ordinary members may be Council members or persons who are not members of the Council. Persons may be appointed to fill casual vacancies on standing committees in the same manner as was used to appoint his or her predecessor, and in these circumstances the person appointed to fill the vacancy shall serve until the term of office of his or her predecessor would have expired in the normal course, at which point they will be eligible for reappointment to the standing committee. A member of a standing committee shall hold office for such period as the Minister or the Council may determine, up to a maximum of 5 years. The Council may publish advice that it receives from a standing committee, and the standing committee for the traditional arts shall make recommendations to the Council on the advance of money to any person relating to traditional Irish arts. The Council shall in the performance of its duties take into account any advice given to it by the relevant standing committee.

Section 22 allows the Council to establish committees other than those covered by section 21 to advise it in relation to any of its functions, and may determine the terms of reference and regulate the procedures of any such committee. Members of such committees may be members of the Council or other persons. Members of such committees may be removed from office at any time by the Council and the Council may at any time dissolve such a committee. The Council may appoint a person to be chairperson of a committee established under this section. Council may pay to the members of such committees, and of the standing committees established under section 21, such allowances for expenses incurred by them as the Council may, with the consent of the Minister for Finance, determine.

Section 23 provides that the Minister may, with the consent of the Minister for Finance, advance to the Council out of moneys provided by the Oireachtas such sums as the Minister may determine.

Section 24 allows the Council, for the purposes of performing its functions, to advance such amounts of money as it determines to such persons or in respect of such activities as it considers appropriate upon such terms and conditions as it determines.

Section 25 provides that the Council shall keep in such form and in respect of such accounting periods as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of moneys received or expended by it, including an income and expenditure account, a cash flow statement and a balance sheet, and in particular, shall keep all such special accounts as the Minister may, with the consent of the Minister for Finance, determine. Accounts kept in pursuance with this section shall be submitted not later than 3 months after the end of the accounting period to which they relate by the Council to the Comptroller and Auditor General, and immediately after the audit, a copy of the accounts, statement and balance sheet, and a copy of the report of the Comptroller and Auditor General on the accounts, shall be presented to the Minister, who shall cause copies thereof to be laid before each House of the Oireachtas.

Section 26 provides that not later than 3 months after the end of each financial year, the Council shall prepare and submit to the Minister a report on its activities in the immediately preceding financial year, and the Minister shall, as soon as may be, cause copies of the report to be laid before each House of the Oireachtas. This will include details of gifts received. The Council's Annual Report will also include reports from the Chairpersons of the three Standing Committees.

Section 27 allows the Council to accept gifts of money, land or other property upon such terms as may be specified by the donor, provided such terms are not inconsistent with the functions of the Council.

Section 28 provides that the Council may appoint persons to the staff of the Council, with the consent of the Minister and the Minister for Finance. Terms and conditions of service, and remuneration and allowances, shall be determined by Council with the consent of the Minister and the Minister for Finance. Persons who were on the staff of the Council immediately before the enactment of this Bill shall continue in office with no worsening of their conditions or remuneration, save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned.

Section 29 provides that in setting the rates of remuneration and allowances paid to staff of the Council, the Council shall have regard to Government or nationally agreed guidelines and to Government policy on remuneration and conditions of employment. In addition, the Council shall comply with any directives regarding remuneration, allowances, or terms or conditions of employment, issued by the Minister with the consent of the Minister for Finance.

Section 30 allows the Council to prepare and submit to the Minister a scheme or schemes, or an amendment of an existing scheme or schemes, for the superannuation of staff (including the Director), as the Council thinks fit. Every such scheme shall fix the time and conditions of retirement for all those to benefit under the scheme, and different times and conditions may be fixed for different classes of persons. If such a scheme is approved by the Minister with the consent of the Minister for Finance, it shall be carried out by the Council on the basis approved. Superannuation arrangements in place immediately before the enactment of this Bill will not be affected by enactment and will remain in force. If any dispute arises as to the claim of any person, or the amount payable, under the Council's superannuation scheme or schemes, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final. No superannuation benefit shall be granted by the Council to members of its staff other than on terms approved by the Minister with the consent of the Minister for Finance. The Minister shall cause every scheme submitted and approved under this section to be laid before each House of the Oireachtas as soon as may be after it is approved, and if either such House within the next 21 days on which that House sits after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled, but without prejudice to anything previously done thereunder.

Section 31 provides that the Minister may, by notice in writing, require the Council to produce to him or her or to another specified person records or documents, including documents stored in non-legible form, relating to the Council, and the Council shall comply with such a notice. The Minister or other specified person may make and retain copies of, or copies of extracts from, documents produced in accordance with such a notice.

*An Roinn Ealaíon, Oidhreachta, Gaeltachta agus Oileán,
Aibreán, 2002.*