AN BILLE UM GHNÍOMHAIREACHT FORBARTHA DON MHOL DIGITEACH, 2002
DIGITAL HUB DEVELOPMENT AGENCY BILL, 2002

Mar a ritheadh ag Seanad Éireann
As passed by Seanad Éireann

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DESCRIPTION OF DIGITAL HUB

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Planning and Development Act, 2000	2000, No. 30
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Wireless Telegraphy Act, 1926	1926, No. 45

AN BILLE UM GHNÍOMHAIREACHT FORBARTHA DON MHOL DIGITEACH, 2002
DIGITAL HUB DEVELOPMENT AGENCY BILL, 2002

BILL

entitled

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS THE DIGITAL HUB DEVELOPMENT AGENCY, TO DEFINE ITS FUNCTIONS, TO DISSOLVE DIGITAL MEDIA DEVELOPMENT LIMITED, TO AMEND THE COMMUNICATIONS REGULATION ACT, 2002, AND TO PROVIDE FOR CONNECTED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary and General

Short title.

1.—This Act may be cited as the Digital Hub Development Agency Act, 2002.

Interpretation.

2.—(1) In this Act—

''Agency'' means Digital Hub Development Agency established under *section 7*;

''committee'' means a committee established under *section 18*;

''company'' means a company within the meaning of the Companies Acts, 1963 to 2001;

''development plan'' shall be construed in accordance with *section 9*;

''digital content'' means content stored—

(*a*) in a digital format, or

(*b*) electronically in a format which is not digital,

that can be created, manipulated and exchanged electronically;

''digital hub'' means the area set out in the *Schedule* being a creative centre for digital content industries and related activities;

''establishment day'' means the day appointed by the Minister under *section 4* to be the establishment day;

''functions'' includes powers and duties, and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the carrying out of the duties;

''IDA'' means Industrial Development Agency (Ireland);

''Minister'' means Minister for Communications, Marine and Natural Resources;

''publication'' includes electronic modes of publication which are capable of being read in a legible form and cognate words shall be construed accordingly;

''remuneration'' includes allowances for expenses, benefits-in-kind and superannuation;

''superannuation benefits'' means pensions, gratuities and other allowances payable on resignation, retirement or death.

(2) (*a*) In this subsection, a reference to a ''thoroughfare'' includes any avenue, bridge, drive, high water mark, place, river, road, row, street or wall.

(*b*) In the *Schedule*—

(i) a reference to a line drawn along any thoroughfare is a reference to a line drawn along the centre of that thoroughfare;

(ii) a reference to a projection of any thoroughfare is a reference to a projection of a line drawn along the centre of that thoroughfare;

(iii) a reference to the point where any thoroughfare or projection of any thoroughfare intersects or joins any other thoroughfare or projection of a thoroughfare is a reference to the point where a line drawn along the centre of such thoroughfare, or in the case of a projection of a thoroughfare, along such projection, would be intersected or joined by a line drawn along the centre of such other thoroughfare or, in the case of another projection of a thoroughfare, along such other projection.

(3) In this Act—

(*a*) a reference to a section or Schedule is a reference to a section of, or Schedule to, this Act, unless it is indicated that a reference to some other enactment is intended,

(*b*) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and

(*c*) a reference to an enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act.

Extension or variation of digital hub area.

3.—(1) The Minister may by order, with the consent of the Minister for Finance, extend or vary the area of the digital hub to include or exclude land, described in the order, contiguous to the boundaries of the digital hub.

(2) Where an order under this section is in force, every reference in this Act to the digital hub shall be construed as a reference to the area described in the *Schedule* as extended or varied by the order.

(3) The Minister may by order amend or revoke an order under this section, including an order under this subsection.

Establishment day.

4.—The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

Laying of orders before Houses of Oireachtas.

5.—Every order (other than an order under *section 4*) made by the Minister under this Act 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 21 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 previously done thereunder.

Expenses.

6.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART 2

Digital Hub Development Agency

Establishment of Agency.

7.—(1) There shall stand established, on the establishment day, a body to be known as the Digital Hub Development Agency (in this Act referred to as the ''Agency''), to perform the functions conferred on it by or under this Act.

(2) The Agency shall be a body corporate with perpetual succession and a seal and with power—

(*a*) to sue and may be sued in its corporate name,

(*b*) to acquire, hold and dispose of land or an interest or part of an interest in land, by transfer, assignment, conveyance, grant of lease or licence or otherwise, with the consent of the Minister, and

(*c*) to acquire, hold and dispose of any other property, with the consent of the Minister.

Functions of Agency.

8.—(1) The functions of the Agency shall be to—

(*a*) procure, secure the provision of and to promote and facilitate the development, including the carrying out of construction or maintenance works, of the digital hub as a location for digital enterprises and related activities;

(*b*) formulate strategies to encourage individuals and enterprises engaged in digital content and related activities to locate in the digital hub;

(*c*) promote and facilitate the procurement of technical and communications infrastructure to attract digital enterprises to the digital hub;

(*d*) prepare a development plan in accordance with *section 9*;

(*e*) prepare estimates of the costs of implementation of the development plan and propose possible funding options;

(*f*) oversee and manage implementation of the development plan;

(*g*) consult with local community interests in or adjacent to the digital hub as part of the implementation of the development plan;

(*h*) enter into agreements with other persons in order to secure the development of the digital hub whether by means of a concession, joint venture, public private partnership or any other means;

(*i*) enter, where appropriate, into an agreement with a person who has arranged or provided funding for the carrying out of any part of the development of the digital hub.

(2) The Agency shall have all such powers as are necessary or expedient for the performance of its functions.

(3) The Agency may, with the consent of the Minister, enter into arrangements with other persons to perform on behalf of the Agency such of its functions as the Agency considers necessary.

(4) In performing its functions under *subsection (1)* the Agency shall consult with Enterprise Ireland, IDA and any other relevant body established by or under statute.

(5) The Agency may exploit commercial opportunities arising from its functions.

(6) The Agency may receive income (including any amount, right, interest, benefit or profit) arising from or make payments (or otherwise provide consideration) in respect of any of its functions referred to in *subsection (1)*.

(7) Where an agreement or arrangement was entered into by Digital Media Development Limited on a date before the establishment day and was entered into in good faith, then the agreement or arrangement, as the case may be, shall have effect and be taken to have had effect when the agreement or arrangement was entered into.

Development plan.

9.—(1) The Agency shall, as soon as may be after its establishment, prepare a plan for the strategic development (''development plan'') for the digital hub.

(2) The development plan shall consist of a written statement and a plan indicating the objectives for the development of the digital hub, including *inter alia*—

(*a*) acquisition of suitable property to provide physical space for digital enterprises and related activities,

(*b*) management and refurbishment of property,

(*c*) disposal of property,

(*d*) a strategy for educational provision, particularly for digital arts and technology, including linkages with first and second level schools, with further education and with third level institutions engaged in digital content projects,

(*e*) the setting of a budget for the plan and a strategy for its delivery within the set budget.

(3) In preparing a draft of the development plan, the Agency shall—

(*a*) have regard to Dublin City Council's integrated area plan for the Liberties and Coombe area and Dublin City Council's Development Plan,

(*b*) consult with Dublin City Council, relevant Departments of State, Enterprise Ireland, IDA, other relevant bodies established by or under statute and interested relevant third parties,

(*c*) make arrangements for the making of submissions by interested parties in relation to the draft and the consideration by the Agency of any such submissions, and

(*d*) comply with any general directive that may be given to it by the Minister under *section 12*.

(4) Before a development plan is adopted, the Agency shall—

(*a*) publish in one or more newspapers circulating in the digital hub and on a web site notice—

(i) stating that a draft development plan has been prepared and that it will be considered for adoption by the Agency,

(ii) indicating the times at which, the period (which shall be not less than one month) during which and the place where a copy of the draft development plan may be inspected,

(iii) indicating where a copy of the draft development plan may be obtained and specifying the fee (if any) for such copy (which shall be not more than the reasonable cost of making such copy), and

(iv) stating that submissions or observations may be made in writing to the Agency in relation to the draft development plan before a specified date (which shall be not less than two weeks after the end of the period for inspection),

and

(*b*) consider any submissions or observations made to it under this subsection and not withdrawn and make such amendments or modifications (if any) to the draft development plan as it considers appropriate.

(5) Dublin City Council and An Bord Pleanála shall, in deciding any application or in determining any application on appeal for permission under Part III of the Planning and Development Act, 2000, in respect of development in the digital hub area, consider anything relevant contained in the development plan.

(6) Every act done by or on behalf of Digital Media Development Limited before and in anticipation of the establishment day in respect of this section shall have and be deemed always to have had all such (if any) validity and effect as it would have had if this section had been in force when such act was done, and as if the act had been done, by or on behalf of the Agency.

Strategic, etc., plans.

10.—(1) As soon as may be, but not later than 6 months after the adoption of the development plan, and thereafter as requested by the Minister, the Agency shall prepare and present to the Minister and the Minister for Finance strategic, business and financial plans or any revisions to those plans.

(2) The Minister shall, as soon as may be, after a strategic, business or financial plan or any revision thereto under this section has been presented to him or her, cause a copy of it to be laid before each House of the Oireachtas.

Conferral of additional functions on Agency.

11.—(1) The Minister may, with the consent of the Minister for Finance, by order—

(*a*) confer on the Agency such additional functions relating to and connected with the functions conferred on the Agency by *section 8* or an order made under this section as the Minister considers appropriate, and

(*b*) make such provision as he or she considers necessary or expedient in relation to matters ancillary to or arising out of the conferral on the Agency of functions so conferred.

(2) The Minister may by order amend or revoke an order under this section, including an order under this subsection.

Directives of Minister to Agency.

12.—(1) The Minister may, from time to time, give to the Agency a general directive in writing as to policy regarding the performance of any of the functions assigned to it by or under this Act, and the Agency shall, in performing its functions, have regard to any such directive.

(2) (*a*) The Minister may, from time to time, with the consent of the Minister for Finance, give to the Agency a general directive in writing specifying the financial objectives of the Agency, the manner in which the Agency shall conduct its financial affairs and requiring the application of profits or other income or funds of the Agency in such manner (including application for the benefit of the Exchequer) as may be specified in the directive.

(*b*) The Agency shall, in performing its functions, comply with any directive given to it under this subsection.

(*c*) This subsection shall not be construed as imposing on the Agency, either directly or indirectly, a duty or liability which may be the subject of any legal proceedings.

(3) Nothing in this section shall be construed as enabling the Minister to exercise any power or control in relation to the performance, in a particular case, by the Agency of a function assigned to it by or under this Act.

Subsidiaries, investments, joint ventures, etc.

13.—(1) Such functions of the Agency as it may determine may be performed by a subsidiary and, accordingly, the Agency may, with the consent of the Minister and the Minister for Finance, for the purpose of such performance, acquire or form and establish one or more subsidiaries.

(2) The Agency or a subsidiary may, either by itself or with another person, with the consent of the Minister and the Minister for Finance, promote and 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 Agency may, with the consent of the Minister and the Minister for Finance, 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 consistent with this Act as may be determined by the Agency with the consent of the Minister and the Minister for Finance.

(5) The Minister may give a direction in writing to the Agency on any matter relating to a subsidiary and the Agency 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.

(7) In this section ''subsidiary'' means a subsidiary (within the meaning of section 155 of the Companies Act, 1963) of the Agency.

Charges by Agency.

14.—(1) The Agency may, with the consent of the Minister, make such charges, as it considers necessary and appropriate in consideration of—

(*a*) the provision by it of services (other than a service consisting of the provision of advice to the Minister), and

(*b*) the carrying on by it of any activities.

(2) The Agency may recover as a simple contract debt in any court of competent jurisdiction from any other person by whom it is payable any amount due and owing under *subsection (1)*.

Membership of Agency and term of office of members.

15.—(1) The Agency shall consist of 14 members.

(2) The Agency shall include the chief executive.

(3) The members of the Agency (other than the chief executive) shall be appointed by the Minister, with the consent of the Minister for Finance.

(4) The Minister shall designate one member of the Agency as chairperson.

(5) The Minister, when appointing a member (other than the chairperson) of the Agency, shall fix such member's period of membership which shall not exceed 3 years, and, subject to this section, membership shall be on such terms as the Minister determines.

(6) The ordinary members of the Agency shall include—

(*a*) persons, who, in the opinion of the Minister, have a special interest or expertise in matters relating to the functions of the Agency or matters related thereto, and

(*b*) the City Manager of Dublin City Council or an officer of Dublin City Council nominated by him or her.

(7) There may be paid to members of the Agency, out of moneys at the disposal of the Agency, such remuneration (if any) and allowances for expenses incurred by them as the Minister, with the consent of the Minister for Finance, may determine.

(8) Each member of the Agency shall hold office on such terms (other than the payment of remuneration and allowances for expenses) as the Minister determines at the time of his or her appointment.

(9) A member of the Agency may resign from the Agency by letter addressed to the Minister and the resignation shall take effect on the date specified therein or upon receipt of the letter by the Minister, whichever is the later.

(10) A member of the Agency may at any time be removed from membership of the Agency by the Minister if, in the Minister's opinion, the member 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 Minister to be necessary for the effective performance by the Agency of its functions.

(11) A member of the Agency shall cease to be and shall be disqualified from being a member of the Agency where such member—

(*a*) is adjudicated bankrupt,

(*b*) makes a composition or arrangement with creditors,

(*c*) on conviction on indictment by a court of competent jurisdiction is sentenced to a term of imprisonment,

(*d*) is convicted of an offence involving fraud or dishonesty, or

(*e*) is disqualified or restricted from being a director of any company.

(12) If a member of the Agency dies, resigns, becomes disqualified or is removed from office or for any other reason ceases to be a member of the Agency, the Minister may appoint a person to be a member of the Agency to fill the casual vacancy so occasioned and the person so appointed shall be appointed for the unexpired period

of the term of membership of, and in the same manner as, the member of the Agency who occasioned the casual vacancy.

(13) A member of the Agency whose period of membership expires by the effluxion of time shall be eligible for re-appointment as a member of the Agency.

(14) Subject to *section 17(3)*, the Agency may act notwithstanding one or more vacancies in its membership.

(15) In appointing persons to be members of the Agency, the Minister shall insofar as is practicable and having regard to relevant experience, ensure an equitable gender balance between men and women in the composition of the Agency.

Chairperson of Agency.

16.—(1) The term of office of the chairperson of the Agency shall be 3 years.

(2) Where the chairperson of the Agency ceases to hold such office, he or she shall also cease to be a member of the Agency.

(3) Where the chairperson of the Agency ceases to be a member of the Agency he or she shall also thereupon cease to be chairperson of the Agency.

(4) The chairperson of the Agency may resign his or her office as chairperson by letter addressed to the Minister and the resignation shall take effect on receipt of the letter by the Minister.

(5) The chairperson of the Agency shall, unless he or she sooner dies or otherwise ceases to be chairperson by virtue of *subsection (3)* or *(4)*, hold such office until the expiration of his or her period of membership of the Agency and, if he or she is re-appointed as a member of the Agency, he or she shall be eligible to be designated as chairperson of the Agency in accordance with *section 15(4)*.

Meetings of Agency.

17.—(1) The Agency shall hold such and so many meetings as may be necessary for the performance of its functions, but shall hold at least one meeting in each quarter of a year.

(2) The Minister, in consultation with the chairperson of the Agency, shall fix the time of the first meeting of the Agency.

(3) The quorum for a meeting of the Agency shall be 6.

(4) The chairperson of the Agency shall chair any meetings of the Agency except in the case that the chairperson is not present or such office is vacant in which case the members who are present shall choose one of their number to chair the meeting.

(5) At a meeting of the Agency, each member of the Agency present, including the chairperson, shall have a vote and any question on which a vote is required in order to establish the Agency's view shall be determined by a majority of votes of the members of the Agency present when the vote is called and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second and casting vote.

(6) Subject to this Act, the Agency shall regulate, by standing orders or otherwise, the procedure and business of the Agency or any committee established under *section 18*.

Committees of Agency.

18.—(1) The Agency may establish committees to advise it on matters relating to any of its functions and may determine the terms of reference and regulate the procedure of any such committee.

(2) A committee established under this section may include persons who are not members of the Agency.

(3) A member of a committee established under this section may be removed at any time from membership of the committee by the Agency.

(4) The Agency may at any time dissolve a committee established under this section.

(5) The Agency may appoint a person to be chairperson of a committee established under this section.

(6) There may be paid by the Agency to members of a committee established under this section such reimbursement of expenses incurred by them as the Agency may, with the consent of the Minister and the Minister for Finance, determine.

Chief Executive of Agency.

19.—(1) There shall be a chief executive officer of the Agency who shall be known and is referred to in this Act as the ''chief executive''.

(2) The chief executive shall carry on and manage, and control generally, the administration and business of the Agency and perform such other functions (if any) as may be determined by the Agency.

(3) The chief executive shall be appointed by the Agency and may be removed from office at any time for stated reasons by the Agency with the consent of the Minister.

(4) The chief executive shall hold office for such term and upon and subject to such terms and conditions (including terms and conditions relating to remuneration and allowances for expenses) as may be determined by the Agency with the consent of the Minister given with the approval of the Minister for Finance and shall be paid out of moneys at the disposal of the Agency in accordance with *section 29*.

(5) The chief executive shall, for the duration of his or her appointment, become an *ex officio* member of the Agency.

(6) The chief executive shall not hold any other office or position without the consent of the Agency.

(7) The chief executive shall provide the Agency with such information, including financial information, in relation to the performance of his or her functions as the Agency may, from time to time, require.

(8) The functions of the chief executive may be performed in his or her absence or when the position of chief executive is vacant by such member of the staff of the Agency as may, from time to time, be designated for that purpose by the Agency.

Staff of Agency.

20.—(1) The Agency may appoint such and such number of persons to be members of the staff of the Agency as it may determine with the consent of the Minister and the Minister for Finance.

(2) The grades of the staff of the Agency and the numbers of staff in each grade and the appropriate level of remuneration for each grade shall be determined by the Agency with the consent of the Minister and the Minister for Finance.

(3) A member of the staff of the Agency shall—

(*a*) be paid, out of moneys advanced to the Agency in accordance with *section 29*, such remuneration and allowances for expenses incurred by him or her as the Agency may, with the consent of the Minister and the Minister for Finance, determine, and

(*b*) hold his or her office or employment for such term upon and subject to such other conditions (including terms and conditions relating to remuneration) as may be determined by the Minister after consultation with the Agency and with the consent of the Minister for Finance.

Superannuation.

21.—(1) The Agency, with the approval of the Minister and the consent of the Minister for Finance, shall make a scheme or schemes for the granting of superannuation benefits to or in respect of the members of staff, including the chief executive, of the Agency.

(2) A scheme under this section shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons.

(3) The Agency may, with the approval of the Minister and the consent of the Minister for Finance, make a scheme amending or revoking a scheme under this section including a scheme under this subsection.

(4) A scheme submitted by the Agency under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Agency in accordance with its terms.

(5) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(6) No superannuation benefits shall be granted by the Agency to or in respect of a person on ceasing to be chief executive or a member of the staff of the Agency otherwise than—

(*a*) in accordance with a scheme or schemes under this section, or

(*b*) with the consent of the Minister and the Minister for Finance.

(7) A scheme under this section, including an amendment of a scheme, shall 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, but without prejudice to the validity of anything previously done thereunder.

Membership of either House of Oireachtas or European Parliament.

22.—(1) Where a member of the Agency is—

(*a*) nominated as a member of Seanad Éireann,

(*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 cease to be a member of the Agency.

(2) Where the person who is the chief executive or a member of the staff of the Agency is—

(*a*) nominated as a member of Seanad Éireann,

(*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 Agency and shall not be paid by, or be entitled to receive from, the Agency 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.

(3) 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 Agency or the chief executive or a member of staff of the Agency.

(4) Without prejudice to the generality of *subsection (2)*, that subsection shall be construed as prohibiting, *inter alia*, the reckoning of a period mentioned in that subsection as service with the Agency for the purposes of any superannuation benefits.

Code of conduct.

23.—(1) The Agency shall, as soon as may be, following consultation with the Minister, draw up a code of conduct in respect of controls on staff interests and ethical behaviour to apply to each member of its staff.

(2) The Agency shall publish any code of conduct drawn up under *subsection (1)*.

Declaration of interests.

24.—(1) On his or her appointment, the chief executive and each member of the Agency and a committee and a director of a subsidiary, shall make a declaration in writing of his or her interests to the

Minister, in such form as the Minister, following consultation with the Minister for Finance, may specify.

(2) On his or her appointment, each consultant or adviser and each member of the staff of the Agency at a grade or level specified before the appointment by the Agency, following consultation with the Minister, shall declare his or her interests in writing to the chairperson of the Agency and the chairperson shall inform the Agency at its next meeting of the interests declared and the names of those making the declarations.

(3) A person to whom *subsection (1)* or *(2)* applies shall, throughout the tenure of his or her appointment, amend and update his or her declarations of interests as required by the Minister or the Agency, as the case may be, of any changes in the interests held by the person.

(4) (*a*) A statement of the interests declared under *subsection (1)* shall be included in the next report prepared in accordance with *section 34* following the making of the declaration and any subsequent changes in a declaration shall also be included in a statement in the next available report.

(*b*) The form and content of the statement to be included in such report shall be agreed between the chairperson of the Agency, the Minister and the Minister for Finance.

(*c*) Notwithstanding the provisions of *paragraph (a)*, it shall not be necessary to specify in a statement in such report the amount or monetary value of any interest, or the remuneration of any trade, profession, or employment included in the statement.

(5) In this section—

''employment'' includes—

(*a*) full-time employment,

(*b*) part-time paid employment, where such employment is ongoing in the year of appointment or which arises in subsequent years,

(*c*) temporary paid employment, being for a period of 16 weeks or more in the year of appointment or in subsequent years, or

(*d*) being retained under contract, directly or indirectly, in any capacity as an adviser, consultant or lobbyist, or for the provision of services,

by or in any business related to the functions of the Agency;

''interests'' includes—

(*a*) employment by or on behalf of—

(i) any business related to the functions of the Agency,

(ii) any organisation representative of any business related to the functions of the Agency,

(*b*) ownership of any business related to the functions of the Agency,

(*c*) shares in, bonds or debentures of, or other like investments in any business related to the functions of the Agency, where the aggregate of such holdings exceeds €13,000,

(*d*) a directorship or shadow directorship (within the meaning of the Companies Acts, 1963 to 2001) in any business related to the functions of the Agency, held currently or during the previous two years, or

(*e*) gifts of travel, holidays, transport or other benefits (in excess of €650), including benefits from any beneficial interest in or connected with any business related to the functions of the Agency, during the previous two years which were received by the person being appointed or by his or her spouse;

''ownership'' includes any proprietary interest in any business related to the functions of the Agency, whether that interest is freehold, leasehold or beneficial, and applies where the interest—

(*a*) is held solely by the person being appointed or shared with one or more persons, and

(*b*) at the time of his or her appointment, has a value of €5,000 or more.

(6) The Agency shall, for the purposes of this section, keep a register (which is in this section referred to as the ''register of interests'') and shall enter therein the particulars contained in declarations given to the Minister or the Agency under this section.

(7) The register of interests shall be available for inspection by any person at the Agency's headquarters during office hours and a copy of the register or any entry in the register may be obtained by any person on the payment to the Agency of such fee (if any) as the Agency shall fix not exceeding the reasonable cost of making a copy.

(8) Where a person to whom *subsection (1)* applies fails to make a declaration in accordance with that subsection or to update such declaration in accordance with *subsection (3)*, the Minister shall decide the appropriate course of action (including removal from office) to be taken.

(9) Where a person to whom *subsection (2)* applies fails to make a declaration in accordance with that subsection or to update such declaration in accordance with *subsection (3)*, the Agency shall decide the appropriate course of action (including removal from office or termination of contract) to be taken.

Disclosure by members of Agency of certain interests.

25.—(1) Where at a meeting of the Agency any of the following matters arise, namely—

(*a*) an arrangement to which the Agency is a party or a proposed such arrangement, or

(*b*) a contract or other agreement with the Agency or a proposed such contract or other agreement,

then, any member of the Agency present at the meeting who otherwise than in his or her capacity as such a member has an interest in the matter shall—

(i) at the meeting disclose to the Agency the fact of such interest and the nature thereof,

(ii) neither influence nor seek to influence a decision to be made in relation to the matter,

(iii) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed,

(iv) take no part in any deliberation of the Agency relating to the matter, and

(v) not vote on a decision relating to the matter.

(2) Where an interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being considered or discussed by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.

(3) Where at a meeting of the Agency a question arises as to whether or not a course of conduct, if pursued by a member of the Agency, would constitute a failure by him or her to comply with the requirements of *subsection (1)*, the question may be determined by the Agency, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(4) Where the Minister is satisfied that a member of the Agency has failed to comply with *subsection (1)*, the Minister may if he or she thinks fit, remove that member from office or take such other action as he or she considers appropriate and, in case a person is removed from office pursuant to this subsection, he or she shall thereafter be disqualified from membership of the Agency.

(5) For the purposes of this section and *section 26* a person shall not be regarded as having an interest in any matter by reason only of an interest of that person, or of any company in which he or she has an interest, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question relating to the matter, or in performing any function in relation to that matter.

Disclosure by staff of Agency, etc., of certain interests.

26.—(1) Where a member of the staff of the Agency, or a committee or a consultant or adviser engaged under *section 35* has an interest, otherwise than in his or her capacity as such in any, or any proposed contract, agreement or arrangement, to which the Agency is or is proposed to be a party, that person—

(*a*) shall disclose to the Agency his or her interest and the nature thereof,

(*b*) shall take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by members

of the Agency or members of the staff of the Agency in relation thereto,

(*c*) shall not influence or seek to influence a decision to be made in the matter, and

(*d*) shall not make any recommendation in relation to the contract, agreement or arrangement.

(2) *Subsection (1)* does not apply to a person as regards a contract or proposed contract of employment of that person as a member of the staff of the Agency.

(3) In this section ''member of staff'' includes the chief executive.

(4) Where a person to whom *subsection (1)* applies fails to comply with a requirement of this section, the Agency shall decide the appropriate action (including removal from office or termination of contract) to be taken.

Prohibition on unauthorised disclosure of confidential information.

27.—(1) Save as otherwise provided by law, a person shall not, without the consent of the Agency, disclose confidential information obtained by him or her while performing, or as a result of having performed, duties as—

(*a*) the chairperson of the Agency,

(*b*) the chief executive,

(*c*) an ordinary member of the Agency,

(*d*) a member of a committee,

(*e*) a member of the staff of the Agency, or

(*f*) a consultant or adviser or an employee of such person engaged by the Agency under *section 35*,

unless he or she is duly authorised to do so.

(2) A person who contravenes *subsection (1)* is guilty of an offence and shall be liable on summary conviction to a fine not exceeding €2,000.

(3) Nothing in *subsection (1)* shall prohibit the disclosure of information by means of a report made—

(*a*) to the Agency, or

(*b*) by or on behalf of the Agency to the Minister.

(4) In this section ''confidential information'' includes—

(*a*) information that is expressed by the Agency to be confidential either as regards particular information or as regards information of a particular class or description,

(*b*) commercial information in relation to contractors, consultants, providers of finance, or any other person, and

(*c*) proposals of a commercial nature or tenders submitted to

the Agency by contractors, consultants, or any other person.

(5) The Third Schedule to the Freedom of Information Act, 1997, is amended by the insertion in Part 1 at the end thereof:

(*a*) in column (2) of ''*Digital Hub Development Agency Act, 2002*'', and

(*b*) in column (3) of ''*section 27*''.

Gifts.

28.—(1) The Agency may accept gifts of money, land or other property upon such trusts, terms or conditions, if any, as may be specified by the donor.

(2) The Agency shall not accept a gift if the trusts, terms or conditions attached to it would be inconsistent with or prejudice the effective performance of the functions of the Agency.

(3) Particulars in relation to any gift accepted under this section shall be included in the annual report under *section 34*.

(4) In *subsection (3)* ''particulars'' includes—

(*a*) the name of the donor of the gift,

(*b*) a description of the gift, and

(*c*) particulars of any condition attached to a gift.

(5) The Agency shall include details of any gift that exceeds, in its opinion, such amount as may be directed by the Minister, with the consent of the Minister for Finance, in the report under *section 34* for the year in which the gift is accepted.

Advances by Minister to Agency.

29.—The Minister may, from time to time and with the consent of the Minister for Finance, advance to the Agency (out of moneys provided by the Oireachtas) such sums as the Minister may determine for the purposes of expenditure by the Agency in the performance of its functions.

Borrowings.

30.—The Agency may, for the purpose of providing for current or capital expenditure, from time to time, borrow money (whether on the security of the assets of the Agency or otherwise), not exceeding in the aggregate €10,000,000, subject to the consent of the Minister and the Minister for Finance and to such conditions as they may determine.

Accounts and Audits.

31.—(1) The chief executive, following the agreement of the Agency, shall submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times, as may be required by the Minister and shall furnish to the Minister any information which the Minister may require in relation to such estimates, including proposals and future plans relating to the discharge by the Agency of its functions over a period of years, as required.

(2) The chief executive, under the direction of the Agency, shall cause to be kept, on a continuous basis and in either or both a legible

and a machine readable form, all proper books and records of account of all income and expenditure of the Agency, and of the sources of such income and the subject matter of such expenditure, and of the property, assets and liabilities of the Agency and shall keep and shall account to the Agency for all such special accounts as the Minister or the Agency, with the consent of the Minister, may from time to time direct should be kept.

(3) (*a*) The Agency, the chief executive and any relevant member of the staff of the Agency shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the books or other records of account of the Agency in respect of any financial year or other period and shall facilitate any such examination, and the Agency shall pay such fee therefor as may be fixed by the Minister.

(*b*) In this subsection ''relevant member of the staff of the Agency'' means a member of the staff of the Agency in respect of whom there have been duly assigned duties which relate to the books or other records of account referred to in *paragraph (a)*.

(4) The accounts of the Agency for each financial year shall be kept in such a form and manner as may be specified by the Minister and be prepared by the chief executive and approved by the Agency as soon as practicable but not later than 3 months after the end of the financial year to which they relate for submission to the Comptroller and Auditor General for audit.

(5) A copy of the accounts referred to in *subsection (4)* and the report of the Comptroller and Auditor General thereon shall, immediately after the audit of the Comptroller and Auditor General, be presented to the members of the Agency and to the Minister as soon as practicable and the Minister shall cause a copy of these documents to be laid before each House of the Oireachtas.

(6) The financial year of the Agency shall be the period of 12 months ending on 31 December in any year, and for the purposes of this section the period commencing on the establishment day and ending on the following 31 December shall be deemed to be a financial year.

Accountability of chief executive to Committee of Public Accounts.

32.—(1) The chief executive shall, whenever he or she is required to do so by a Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and the reports of the Comptroller and Auditor General, give evidence to that Committee on all matters pertaining to the expenditure of the Agency.

(2) The chief executive, if required under *subsection (1)* to give evidence, shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

Accountability of chief executive to other Oireachtas Committees.

33.—(1) In this section ''Committee'' means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in *section 18* or the Committee on Members' Interests of Dáil Éireann

or the Committee on Members' Interests of Seanad Éireann) or a subcommittee of such a Committee.

(2) Subject to *subsection (3)*, the chief executive shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Agency.

(3) The chief executive shall not be required to give account before a Committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.

(4) Where the chief executive is of the opinion that a matter in respect of which the chief executive is requested to give an account before a Committee is a matter to which *subsection (3)* applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the chief executive is before it, the information shall be so conveyed in writing.

(5) Where the chief executive has informed a Committee of his or her opinion in accordance with *subsection (4)* and the Committee does not withdraw the request referred to in *subsection (2)* in so far as it relates to a matter the subject of that opinion—

(*a*) the chief executive may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (3)* applies, or

(*b*) the Chairperson of the Committee may, on behalf of the Committee, make such an application,

and the High Court may determine the matter.

(6) Pending the determination of an application under *subsection (5)*, the chief executive shall not attend before the Committee to give account for the matter the subject of the application.

(7) If the High Court determines that the matter concerned is one to which *subsection (3)* applies, the Committee shall withdraw the request referred to in *subsection (2)*, but if the High Court determines that *subsection (3)* does not apply, the chief executive shall attend before the Committee to give account for the matter.

Reports and information to Minister.

34.—(1) The Agency shall, not later than 30 June in each year, make a report to the Minister (in this section referred to as the ''annual report'') in such form as the Minister may approve, on the performance of its functions and activities during the preceding year and the Minister shall cause copies of each annual report to be laid before each House of the Oireachtas.

(2) Each annual report shall include information in such form and regarding such matters as the Minister may direct.

(3) The Agency may, from time to time, make such other reports to the Minister relating to its functions as it thinks fit or as the Minister may require.

(4) In addition to information provided by the Agency in its annual report and in reports made pursuant to *subsection (3)*, the

Agency shall supply to the Minister such information as the Minister may from time to time require regarding the performance of its functions.

(5) The Minister may, from time to time, give the Agency specific directions in relation to the annual report or other reports under *subsection (3)*.

Consultants and advisers.

35.—The Agency may, with the consent of the Minister, from time to time engage such consultants or advisers as it may consider necessary for the performance of its functions, and any fees due to a consultant or adviser engaged under this section shall be paid by the Agency out of moneys at its disposal.

Seal of Agency.

36.—(1) The Agency shall, as soon as may be after its establishment, provide itself with a seal.

(2) The seal of the Agency shall be authenticated by the signature of—

(*a*) the chairperson of the Agency or another member of the Agency, or

(*b*) the chief executive or a member of the staff of the Agency,

authorised by the Agency to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Agency and every document purporting to be an instrument made by the Agency and to be sealed with the seal of the Agency (purporting to be authenticated in accordance with *subsection (2)*) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

(4) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Agency by any person generally or specially authorised by the Agency in that behalf.

Indemnification.

37.—(1) Where the Agency is satisfied that a person to whom this section applies has discharged his or her duties in pursuance of the functions of the Agency in a *bona fide* manner, the Agency shall indemnify such person against all actions or claims howsoever arising in respect of the discharge by him or her of his or her duties.

(2) This section applies to—

(*a*) the chairperson of the Agency,

(*b*) an ordinary member of the Agency,

(*c*) the chief executive officer,

(*d*) a member of the staff of the Agency, and

(*e*) a member of a committee.

38.—No action or other proceedings shall lie or be maintainable against the Agency for the recovery of damages in respect of any injury to persons, damage to property or other loss alleged to have been caused or contributed to by a failure to perform any of the functions conferred on the said Agency.

Immunity of Agency.

PART 3

Dissolution of Digital Media Development Limited and Transitional Provisions

39.—(1) The former company is with effect from the establishment day dissolved.

Dissolution of Digital Media Development Limited.

(2) In this Part, ''former company'' means Digital Media Development Limited.

40.—References to the former company contained, immediately before the establishment day, in any enactment other than this Act, shall, in so far as they relate to anything transferred to the Agency by this Act, be construed on and after the establishment day as references to the Agency.

References to former company in enactments.

41.—(1) On the establishment day the following are transferred to the Agency—

Transfer to Agency of assets and liabilities of former company and Commissioners of Public Works in Ireland.

(*a*) all rights and property (and rights to such property) held or enjoyed immediately before that day by—

(i) the former company, or

(ii) the Commissioners of Public Works in Ireland, in respect of the digital hub, other than rights and property held in respect of Media Lab Europe Limited,

(*b*) all liabilities incurred before that day by the former company which had not been discharged before that day,

and, accordingly, without any further conveyance, transfer or assignment—

(i) the said property, real and personal, shall, on that day, vest in the Agency for all the estate, term or interest for which, immediately before that day, it was vested in the former company or the Commissioners of Public Works in Ireland, but subject to all trusts and equities affecting the property and capable of being performed,

(ii) those rights shall, as and from that day, be enjoyed by the Agency, and

(iii) those liabilities shall, as and from that day, be liabilities of the Agency.

(2) All moneys, stocks, shares and securities transferred to the Agency by this section that, immediately before the establishment day, are standing in the name of the former company shall, upon the request of the Agency, be transferred into its name.

(3) Every right and liability transferred to the Agency by this section may, on or after the establishment day, be sued on, recovered or enforced by or against the Agency in its own name and it shall not be necessary for the Agency to give notice of the transfer to the person whose right or liability is transferred by this section.

(4) In this section ''former company'' includes any trustee or agent of the former company acting on behalf of the former company.

Preservation of certain contracts and adaptation of references to former company.

42.—Every contract or agreement made between the former company or any trustee or agent thereof acting on its behalf, and any other person, which is in force immediately before the establishment day shall continue in force on and after that day and shall be construed and have effect as if the Agency were substituted therein for the former company or, as the case may be, its trustee or agent acting on its behalf, and shall be enforceable against the Agency.

Pending legal proceedings.

43.—Where, immediately before the establishment day, any legal proceedings are pending in any court or tribunal and the former company or any trustee or agent thereof acting on its behalf, is a party to the proceedings, the name of the Agency shall be substituted for that of the former company or, as the case may be, such trustee or agent thereof, and the proceedings shall not abate by reason of such substitution.

Final accounts of former company.

44.—(1) Final accounts of the former company shall be drawn up by the Agency as soon as may be after the establishment day in such form as may be approved of by the Minister, and in respect of such period or periods as may be specified by the Minister.

(2) Accounts prepared pursuant to this section shall be submitted as soon as may be by the Agency to the Comptroller and Auditor General for audit, and, immediately after the audit, a copy of the income and expenditure account and of the balance sheet and of such other (if any) of the accounts as the Minister may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

PART 4

Amendment of Communications Regulation Act, 2002

Amendment Communications Regulation Act, 2002.

45.—The Communications Regulation Act, 2002, is amended—

(*a*) in section 2(1), by substituting for the definition of ''Minister'' the following definition:

'' 'Minister' means Minister for Communications, Marine and Natural Resources;'',

(*b*) in section 3(3), by substituting ''done under the order or regulation'' for ''done under the order'',

(*c*) in section 51, by deleting subsection (2) and consequently renumbering subsection (1) of that section as section 51, and

(*d*) in Schedule 1, Part 1—

(i) opposite the mention in column (2) of ''Wireless Telegraphy Act, 1926''—

(I) by substituting in column (3) for ''Section 3(6) (inserted by section 11(*c*) of Act No. 5 of 1972)'' the following:

''Section 3(3B), (3C) (inserted by section 12 of Act No. 19 of 1988) and (6) (inserted by section 11(*c*) of Act No. 5 of 1972)'', and

(II) by inserting in column (3) ''Section 12'' above the mention of ''Section 13'',

and

(ii) opposite the mention in column (2) of ''Postal and Telecommunications Services Act, 1983'' by substituting in column (3) for ''Section 111 (as amended by S.I. No. 96 of 1998)'' the following:

''Sections 5(6) and 111 (as amended by S.I. No. 96 of 1998)''.

SCHEDULE

Sections 2 and *3*.

Description of Digital Hub

That part of the county borough of Dublin bounded by a line commencing at the point (hereafter in this description referred to as the first mentioned point) where Thomas Street West joins Crane Street, then continuing in a southerly direction along Crane Street to a point where it joins Bellevue, then continuing in a southerly direction along Bellevue to the point where it is joined by School Street, then continuing in an easterly direction along School Street to the point bounding the rear of Thomas Court, then continuing in a northerly direction in a line bounding the rear of Thomas Court, then continuing in a northerly direction along Thomas Court to the point where it joins Rainsford Street, then continuing in a westerly direction along Rainsford Street to a point that is opposite the rear of number 1 Rainsford Avenue, then continuing in a northerly direction across Rainsford Street in a line along the rear of numbers 1 to 9 Rainsford Avenue, then continuing in an easterly direction along the northern boundary of numbers 9 and 10 Rainsford Avenue and number 5 Thomas Court to a point where it joins Thomas Court, then continuing in a northerly direction along Thomas Court to the point where it joins Thomas Street West, then continuing in a northerly direction across Thomas Street West to the point where it joins Bridgefoot Street, then continuing in a northerly direction along Bridgefoot Street to the point where it joins Marshal Lane, then continuing in a westerly direction in a line to the boundary of the former Guinness Windmill site, then continuing in a northerly direction along the boundary of the former Guinness Windmill site to the point where it joins Bonham Street, then continuing in a northwesterly direction along Bonham Street to the point where it joins Watling Street, then continuing in a southerly direction along Watling Street to the point where it joins the northern boundary of Emmet Buildings, then con-

tinuing along the eastern and southern boundary of Emmet Buildings to the point where it joins Watling Street, then continuing in a southerly direction along Watling Street to the point where it joins James's Street, then continuing in an easterly direction along James's Street to the point where it joins Thomas Street West, then continuing along Thomas Street West to the point opposite Crane Street, then continuing in a southerly direction across Thomas Street West to the first mentioned point.