



AN BILLE CRAOLACHÁIN (LEASÚ), 2012
BROADCASTING (AMENDMENT) BILL 2012

Mar a tionscnaíodh
As initiated

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ACTS REFERRED TO

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Road Traffic Act 1961

2009, No. 18
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AN BILLE CRAOLACHÁIN (LEASÚ), 2012
BROADCASTING (AMENDMENT) BILL 2012

BILL

entitled

5 AN ACT TO DEFINE PUBLIC SERVICE BROADCASTING,
TO PROVIDE FOR THE REPLACEMENT OF TELE-
VISION LICENCES, TO PROVIDE FOR REVISED
ARRANGEMENTS FOR THE FUNDING OF BROAD-
CASTING SERVICES IN IRELAND, TO PLACE BROAD-
10 CASTERS ON A MORE EVEN FOOTING, TO PROVIDE
A PROCESS OF INDEPENDENT ADJUDICATION OF
COMPLAINTS, AND TO PROVIDE A RIGHT OF ACCESS
TO UNEDITED INTERVIEW RECORDINGS AND TO
PROVIDE FOR RELATED MATTERS.

15 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL MATTERS

1.—(1) This Act may be cited as the Broadcasting (Amendment) Act 2012. Short title, collective citation and construction.

20 (2) The Broadcasting Act 2009 and this Act may be cited together as the Broadcasting Acts 2009 to 2012 and shall be construed together as one.

2.—In this Act “Principal Act” means the Broadcasting Act 2009. Interpretation.

PART 2

25 **AMENDMENT OF DEFINITIONS**

3.—The Principal Act is amended in section 2 by—

(a) inserting after the definition of “broadcaster” the following:

Amendment of definitions in Principal Act.

“ ‘broadcasting charge certificate fees’ means a fee paid on a broadcasting charge certificate granted under section 143;”;

- (b) substituting for the definition of “public service broadcaster” the following: 5

“ ‘public service broadcaster’ means a broadcaster which undertakes public service broadcasting;”;

- (c) inserting after the definition of “public service broadcaster” the following:

“ ‘public service broadcasting’ means broadcasting services 10 which seek to inform, educate, and entertain and in so doing adhere to the following four principles:

1. Universality — The services are free to air and are accessible to every citizen throughout the region in respect of which the broadcasting 15 licence has been granted. In respect of RTE and TG4 the services must be accessible to every citizen in the State in so far as is practicable.

2. Diversity — The services are diversified (a) in 20 terms of the genres of programs offered, (b) the audiences targeted, and (c) the subject matters addressed.

3. Independence — The services permit ideas being expressed freely, where information, opinions 25 and criticisms circulate; the services are not subject to commercial pressures or political influence.

4. Distinctiveness — The services are distinctive in that they differ from that of other broadcasting 30 services, and in particular that they differ in the quality and character of its programs and also that they reflect the uniqueness of Irish society and culture in all its diversity;”;

- (d) deleting the definition of “television licence fees”. 35

PART 3

PUBLIC FUNDING

CHAPTER 1

Allocation of Public Funding

Functions of the Authority: funding. 4.—The Principal Act is amended in subsection (1) of section 26 40 by substituting the following for paragraph (d):

“(d) devise proposals for submission to the Minister pursuant to section 123(3).”.

5.—The Principal Act is amended in subsection (1) of section 28 by substituting the following for paragraphs (g) and (h):

Functions of the
Compliance
Committee:
monitoring
expenditure.

“(g) investigate and decide upon a complaint made under section 48,

5 (h) investigate and decide upon a request made under section 49, and

 (i) monitor the expenditure by broadcasters of funding provided to them under section 123.”.

6.—(1) The Principal Act is amended in section 33 by substituting the following for subsection (1):

Amendment of
levy.

“(1) The Authority shall make an order imposing a levy on public service broadcasters and broadcasting contractors, the income derived from which shall form part of the Public Service Broadcasting Allocation provided for in section 123.”.

15 (2) The Principal Act is amended in section 33 by substituting the following for subsection (5):

20 “(5) The expenses properly incurred by the Authority, the Contract Awards Committee, the Compliance Committee and Complaints Assessment Board in the performance of their functions shall be funded pursuant to disbursements made under section 123(5).”.

7.—The Principal Act is amended by substituting for section 123, the following:

Establishment of
Public Service
Broadcasting
Allocation.

25 “Establishment of Public Service Broadcasting Allocation. 123.—(1) The Minister shall establish a fund to be known as the Public Service Broadcasting Allocation consisting of:

30 (a) the total of the receipts in that year in respect of broadcasting charge certificate fees less any expenses certified by the Minister as having been incurred by him or her in that year in relation to the collection of those fees,

 (b) income derived from the levy imposed under section 33, and

35 (c) other monies which may be provided by the Oireachtas, at its discretion, in respect of each financial year.

40 (2) The purpose of the Public Service Broadcasting Allocation is to provide a funding mechanism for television and radio broadcasters in the State who are engaged in the provision of public service broadcasting services and to also provide funding for the Authority.

45 (3) (a) On or before 30 September each year, the Authority shall invite broadcasters to submit proposals seeking the distribution of funding to them for specific

purposes in respect of the forthcoming financial year.

- (b) Having considered all of the proposals received by it, the Authority shall submit to the Minister, on or before 1 December each year, its recommendations concerning the allocation of the monies arising from the Public Service Broadcasting Allocation. 5

(4) In making disbursements pursuant to subsection (5), the Minister: 10

- (a) shall have regard to the proposals devised by the Authority pursuant to subsection (3), and

- (b) shall ensure that a reasonable proportion, of an amount to be prescribed by the Minister, is to be allocated to Irish language broadcasting. 15

(5) The Public Service Broadcasting Allocation shall be disbursed in the following way: 20

- (a) amounts, at the Minister's discretion, with the approval of the Minister for Public Expenditure and Reform, to be paid to RTE and TG4;

- (b) an amount to be prescribed by the Minister being not greater than 15 per cent in respect of each financial year shall be paid to the Authority for distribution under the Broadcasting Fund pursuant to Part 10; 25 30

- (c) an amount to meet the expenses properly incurred by the Authority, the Contract Awards Committee, the Compliance Committee and the Complaints Assessment Board. 35

(6) A broadcaster whose funding under subsection (5) exceeds 40 per cent of its overall funding requirements in respect of that year shall not impose a financial or other charge for public access to its internet based television and radio services." 40

CHAPTER 2

Broadcasting Fund

Funding for local news and local sports coverage.

8.—The Principal Act is amended in subsection (1) of section 154 by substituting the following for paragraphs (e) and (f): 45

- “(e) the development of archiving of programme material produced in the State,

- (f) the provision of local news and current affairs coverage or programming,
- (g) the provision of local sports events coverage or programming, and
- (h) such ancillary measures as are necessary to support schemes prepared under paragraphs (a), (b), (c) or (d).”.

9.—The Principal Act is amended by substituting the following for section 156: Use of funding.

156.—Monies provided to the Authority pursuant to section 123 may be used for the purpose of grants under a scheme and any administration of or reasonable expenses relating to a scheme.”.

PART 4

TRANSPARENCY, ACCOUNTABILITY AND FAIRNESS

CHAPTER 1

Accountability

10.—The Principal Act is amended by inserting the following new section after section 39: Accountability of broadcasters.

39A.—From time to time, and whenever so requested, the chief executive of a broadcasting entity shall appear before a Committee of one or both Houses of the Oireachtas to provide information or respond to questions of a general nature and shall have regard to any recommendations of such Committee relevant to its activities.”.

CHAPTER 2

Recorded Interviews

11.—The Principal Act is amended by inserting the following section after section 46: Access to unedited interview recordings.

46A.—(1) Where a person (in this section ‘the applicant’) has participated in a recorded interview which has subsequently been broadcast in an edited form, the interviewee may following the broadcast request an unedited copy of the interview recording from the broadcaster or production company.

(2) Where a person has made a request under subsection (1), the broadcaster or production company shall provide the requested material promptly and in any event within 24 hours of the request being made.

(3) An applicant may make free and unrestricted use of the unedited copy of the interview

recording including its publication on the internet or publication in other forms.

(4) A broadcaster or production company may impose a nominal charge, not to exceed €50, in respect of material provided under subsection (2).”.

CHAPTER 3

BAI — Functions of CEO

Functions of CEO of BAI.

12.—The Principal Act is amended in section 14 by substituting the following for subsection (2):

“(2) The chief executive shall perform his or her functions subject to such policies as may be determined from time to time by the Authority and shall be accountable to the Authority for the efficient and effective management of the administration of the Authority, Contract Awards Committee, Compliance Committee and Complaints Assessment Board and for the due performance of his or her functions.”.

PART 5

OUT OF COURT ASSESSMENT OF COMPLAINTS

New Part 4A: Adjudications.

13.—The Principal Act is amended by inserting the following Part after section 49:

“PART 4A

ASSESSMENT OF COMPLAINTS

Interpretation. 49A.—In this Part:

‘Board’ means the Complaints Assessment Board established under section 49B;

‘complainant’ means a person who would be entitled to pursue a civil action against a broadcaster in respect of material which has been broadcast in relation to him or her.

Establishment of Complaints Assessment Board.

49B.—(1) The Authority shall establish the Complaints Assessment Board to perform the functions conferred on it by this Act.

(2) The Board shall exist as a separate division within the Authority.

(3) The Board shall, subject to the provisions of this Act, be independent in the performance of its functions.

Functions of Assessment Board.

49C.—(1) The principal functions of the Board shall be—

(a) to arrange for the making, in accordance with this Part, of assessments of complaints the subject of applications to it under section 49D,

(b) to collect and analyse data in relation to amounts awarded on foot of, or agreed in settlement of, civil actions to which this Part applies, and

(c) to perform any additional functions conferred on the Board.

(2) The Board shall have all such powers as are necessary or expedient for, or incidental to, the performance of its functions under this Part.

(3) The Board may perform any of its functions through or by any member of the staff of the Board duly authorised in that behalf by the Board.

Making a complaint.

49D.—(1) A complainant may make an application under this section to the Board for an assessment to be made of his or her complaint arising from the broadcasting of material in relation to him or her.

(2) That application shall be in the prescribed form and be accompanied by such documents or copies of broadcast material as may be so prescribed.

(3) As soon as practicable after receipt of an application under subsection (1) the Board shall serve on the broadcaster (in this Part referred to as the ‘respondent’) a notice stating that the Board has received an application made under this section by the complainant and requesting the respondent to state to the Board in writing, within the period specified in the notice, whether he or she consents to an assessment being made under section 49E of the complaint.

(4) If a respondent—

(a) states in writing that he or she does consent to an assessment being made of the complainant’s complaint, or

(b) fails to state in writing, in response to that notice, within the period specified in it, whether or not he or she does so consent,

then the Board shall arrange for an assessment to be made.

Assessment of complaint.

49E.—(1) In this section ‘assessment’, in relation to a complaint, means an assessment of the amount of damages the complainant is entitled to in respect of the complaint.

(2) An assessment of a complaint shall be made by the Board.

(3) An assessment shall be made on the same basis and by reference to the same principles governing the measure of damages in the law of tort and the same enactments as would be applicable in an assessment of damages were proceedings to be brought in relation to the relevant claim concerned.

(4) The Board may request the complainant or respondent to appear before them for the purpose of making a statement or responding to questions.

(5) The Board may request the complainant or respondent to furnish to them such information or documents as they consider necessary for the making of the assessment.

Notice of
assessment.

49F.—(1) Having made their assessment of a complaint the Board shall serve the assessment on the claimant and the respondent along with a notice requesting—

(a) in the case of a notice served on a complainant, the claimant to inform the Board in writing within 21 days, whether he or she accepts the assessment, and

(b) in the case of a notice served on a respondent, the respondent to inform the Board in writing within 21 days, whether he or she accepts the assessment.

(2) If the complainant fails to state in writing, within the specified period, whether or not he or she accepts the assessment he or she shall be deemed not to have accepted it.

(3) If a respondent fails to state in writing, within the specified period, whether or not he or she accepts the assessment, he or she shall be deemed to have accepted it.

Binding nature
of assessment.

49G.—The assessment shall become binding on the complainant and respondent where the complainant confirms his or her acceptance of the assessment under section 49F(2) and the respondent has confirmed or has failed to indicate his or her acceptance under section 49F(3).

Access to the
courts.

49H.—Nothing in this Part is to be read as affecting the right of a complainant or respondent to invoke the jurisdiction of any court.”.

PART 6

IRISH LANGUAGE RADIO

14.—The Principal Act is amended by inserting the following new section after section 116: New Irish language radio station.

5 “Irish language radio stations. 116A.—(1) With effect from 1 June 2013, Raidió Teilifís Éireann shall establish a new Irish language radio station with a target listenership of persons aged 18 to 34 years old.

(2) Raidió na Gaeltachta continues in being.”.

10

PART 7

BROADCASTING CHARGE CERTIFICATE

15.—The Principal Act is amended in subsection (1) of section 140 by: New definitions and amendment of existing definitions.

15 (a) inserting the following definition before the definition of “issuing agent”:

“‘broadcasting charge certificate’ means a certificate granted under section 143;”;

(b) inserting the following definition after the definition of “issuing agent”:

20 “‘occupier’ in relation to premises, means a person who as owner, tenant or otherwise is in occupation, whether solely, jointly or severally, of the premises;”;

(c) substituting the following for the definition of “premises”:

“‘premises’ means—

- 25 (a) land,
(b) a vehicle,
(c) a building,
(d) a structure of any kind whether attached or affixed to the land or not,

30 which is or is capable of being occupied as:

- (i) a separate dwelling, or
(ii) a place of business,

35 whether or not the occupier with any other person shares any portion of it or any accommodation, amenity or facility in connection with it, and includes a part of such land, vehicle, building or structure;”;

(d) substituting the following for the definition of “television licence”:

“ ‘television licence’ means a licence granted under section 142 prior to the passing of the *Broadcasting (Amendment) Act 2012*;”;

(e) substituting the following for the definition of “vehicle”:

“ ‘vehicle’ means a vehicle other than a mechanically propelled vehicle (within the meaning of section 3 of the Road Traffic Act 1961) which is capable of being lived in or capable of being utilised as a place of business.”;

(f) deleting the following definitions “apartment” and “television set”.

Obligation to have broadcasting charge certificate. **16.**—The Principal Act is amended by substituting for section 142 the following:

“Obligation to have broadcasting charge certificate. 142.—(1) Upon the expiration of a television licence in the year 2013, and in each subsequent year thereafter, each of the following class of persons shall hold a broadcasting charge certificate for the time being in force—

(a) each person who was, prior to the passing of the *Broadcasting (Amendment) Act 2012*, required to hold a television licence,

(b) each person who would, but for the repeal of the provision imposing a requirement to hold a television licence, be required to hold such a licence,

(c) other persons prescribed by the Minister.

(2) In making regulations pursuant to subsection (1)(c), the Minister shall have regard to the following considerations—

(a) the need to take account of developments in technology, particularly concerning the accessibility of programming by means other than a television,

(b) the desirability of broadening the base so as to facilitate a reduction in the fee payable in respect of a broadcasting charge certificate, and

(c) the desirability of ensuring that the obligation to pay derives from occupation of a premises.

(3) The Minister shall make regulations under subsection (1)(c) within three months of the passing of the *Broadcasting (Amendment) Act 2012* and periodically thereafter.”.

17.—The Principal Act is amended by substituting for section 143 the following:

Grant of
broadcasting charge
certificate.

“Grant of
broadcasting
charge
certificate.

143.—(1) The Minister may, subject to this Part and on payment of the prescribed fee (if any) grant to any person a broadcasting charge certificate, in this Part referred to as a ‘certificate’.

(2) Every broadcasting charge certificate shall be in such form, continue in force for such period, and be subject to such conditions and restrictions (including conditions as to suspension and revocation) as prescribed in regulations made under section 144.

(3) On the passing of this Act section 5 of the Act of 1926 does not apply to a premises.”.

18.—(1) The Principal Act is amended in subsection (1) of section 144 by:

Consequential
amendments to
section 144 of
Principal Act.

(a) substituting “broadcasting charge certificate” for all occurrences of “television licence”;

(b) substituting “certificate” for all occurrences of “licence”.

(2) The Principal Act is amended in section 144 by substituting the following for subsection (2):

“(2) Where regulations are made under this section prescribing fees to be paid on the grant of a broadcasting charge certificate, different fees may be prescribed in respect of different classes of certificates granted.”.

(3) The Principal Act is amended in section 144 by substituting the following for subsection (4):

“(4) On the passing of this Act section 6 of the Act of 1926 does not apply in relation to broadcasting charge certificates and any regulations made under that section before such passing and which are in force on such passing continue as if made under this section.”.

19.—(1) The Principal Act is amended in subsection (1) of section 145 by substituting “broadcasting charge certificate” for “television licence”.

Consequential
amendments to
section 145 of
Principal Act.

(2) The Principal Act is amended in section 145 by substituting the following for subsection (4):

“(4) An issuing agent may—

(a) collect fees in respect of broadcasting charge certificates, and

(b) identify persons who do not hold a broadcasting charge certificate for the time being in force,

on such terms and conditions as the Minister may decide.”.

(3) The Principal Act is amended in subsection (7) of section 145 by substituting “broadcasting charge certificate” for “television licence”.

(4) The Principal Act is amended in subsection (8) of section 145 by substituting “broadcasting charge certificates” for “television licences”.

(5) The Principal Act is amended in subsection (12) of section 145 by substituting “Free Broadcasting Charge Certificate” for “Free Television Licence”.

(6) The Principal Act is amended in subsection (13) of section 145 by substituting “broadcasting charge certificate” for “television licence”.

(7) The Principal Act is amended in subsection (15) of section 145 by substituting “certificate” for “licence”.

Amendments to
section 146 of
Principal Act.

20.—(1) The Principal Act is amended in subsection (2) of section 146 by substituting “such certificate of appointment” for “such certificate”.

(2) The Principal Act is amended in section 146 by substituting the following for subsection (3):

“(3) An officer of an issuing agent may enter at any reasonable time any premises or specified place for the purposes of ascertaining whether there is a broadcasting charge certificate for the time being in force.”.

(3) The Principal Act is amended in section 146 by substituting the following for subsection (4):

“(4) An officer of an issuing agent may request any person on the premises to produce the broadcasting charge certificate for the time being in force for inspection by the officer.”.

Amendments to
section 147 of
Principal Act.

21.—(1) The Principal Act is amended in section 147 by substituting the following for subsection (2):

“(2) The matters which a person may be required under this section to state in a declaration are—

(a) whether he or she falls within the terms of section 142,

(b) whether he or she has or has not a broadcasting charge certificate then in force,

(c) if he or she has such a certificate, the number, date or other identifying information in respect of such certificate, and

(d) any other matter relating to compliance with the terms of section 142.”.

(2) The Principal Act is amended in section 147 by substituting the following for subsection (4):

“(4) Where a person fails or neglects, within 28 days of service, to duly complete the form of declaration accompanied

or annexed to a notice given or sent to him, it shall be presumed, unless the contrary is shown, that a broadcasting charge certificate is not in force.”.

5 (3) The Principal Act is amended in subsection (5) of section 147 by substituting “broadcasting charge certificates” for “television sets”.

22.—The Principal Act is amended in section 148 by substituting “contravenes the terms” for “keeps, has in his or her possession or uses a television set in contravention”.

Amendments to section 148 of Principal Act.

10 23.—(1) The Principal Act is amended by substituting the following for subsection (1):

Amendments to section 149 of Principal Act.

15 “(1) An officer of the issuing agent may, if and whenever he or she thinks proper so to do, send by post or deliver personally a notification in writing (‘reminder notification’) to any person whom he or she believes to be in contravention of section 142.”.

(2) The Principal Act is amended in subsection (2) of section 149 by substituting “broadcasting charge certificate” for each occurrence of “television licence”.

20 (3) The Principal Act is amended in subsection (3) of section 149 by substituting “broadcasting charge certificate” for each occurrence of “television licence”.

(4) The Principal Act is amended in subsection (7) of section 149 by:

25 (a) substituting “broadcasting charge certificate fee” for “television licence fee”, and

(b) substituting “broadcasting charge certificates” for “television licences”.

24.—The Principal Act is amended by substituting the following for section 150:

Amendments to section 150 of Principal Act.

30 “Reminder notification. 150.—(1) Where a person has received a first reminder notification and the person—

35 (a) has held a broadcasting charge certificate, within the 12 month period previous to the reminder notification, in respect of compliance with section 142, any renewal of the certificate takes effect from the expiration of the previous certificate, unless the person can satisfy the issuing agent that he or she was not the owner or occupier of the premises or place during the material time after the expiration of the previous certificate, or

45 (b) has not held such a certificate, any broadcasting charge certificate obtained by the person in respect of compliance with section 142 takes

effect from the date of the notification
or such later date as the issuing agent
may decide.

(2) Where a person having received a first
reminder notification obtains a broadcasting
charge certificate after the notification, which is
not in accordance with subsection (1), the certi-
cate is deemed to have effect from the date of
expiration of the previous certificate or the first
notification or such later date as the issuing agent
may decide, as the case may be. The issuing agent
may alter accordingly any certificate so obtained.

(3) An issuing agent may recover, as a simple
contract debt in any court of competent juris-
diction, any fee owing by a person in respect of a
broadcasting charge certificate which has not been
obtained by the person at any material time.”.

Amendments to
section 151 of
Principal Act.

25.—The Principal Act is amended by substituting the following
for section 151:

“Prosecution
of offences.

151.—(1) Summary proceedings for an offence
under this Part may be brought by the Minister or
the issuing agent concerned.

(2) In a prosecution for an offence under
section 148 it shall be presumed, until the contrary
is shown by the defendant, that he or she did not
at such time hold a broadcasting charge certificate
then having effect.

(3) In a prosecution for an offence under
section 148 in which it is shown that a notice under
section 147 has been sent by registered post it shall
be presumed, until the contrary is shown by the
defendant, that the person to whom the notice was
so sent has not complied with the requirements of
that section.

(4) Where an offence under this Part which has
been committed by a body corporate is proved to
have been committed with the consent or conniv-
ance of, or to be attributable to any neglect on
the part of, a director, manager, secretary or other
similar officer of the body corporate, or any per-
son who was purporting to act in any such capa-
city, he or she, as well as the body corporate, com-
mits that offence and is liable to be proceeded
against accordingly.”.

Preservation of
prosecutions.

26.—Notwithstanding the repeal of the requirement to hold a tele-
vision licence, any proceedings initiated or criminal prosecutions
instituted under the Principal Act or this Act may be commenced,
continue and shall be determined as if the relevant provisions of Part
9 of the Principal Act had not been repealed or amended and any
order made or fine or penalty imposed shall have effect accordingly.