



An Bille Craolacháin (Leasú), 2019
Broadcasting (Amendment) Bill 2019

Mar a tionscnaíodh

As initiated



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CONTENTS

Section

1. Definition
2. Amendment of section 2 of Act of 2009
3. Amendment of section 33 of Act of 2009
4. Amendment of section 71 of Act of 2009
5. Amendment of section 123 of Act of 2009
6. Amendment of section 153 of Act of 2009
7. Scheme for professional journalistic practices in certain sound broadcasters
8. Amendment of section 157 of Act of 2009
9. Amendment of section 159 of Act of 2009
10. Repeal of certain provisions of Copyright and Related Rights Act 2000
11. Short title, collective citation, construction and commencement

ACTS REFERRED TO

Broadcasting Act 2009 (No. 18)

Companies Act 2014 (No. 38)

Copyright and Related Rights Act 2000 (No. 28)



**AN BILLE CRAOLACHÁIN (LEASÚ), 2019
BROADCASTING (AMENDMENT) BILL 2019**

Bill

entitled

An Act to amend the Broadcasting Act 2009 to amend and extend the power of the Broadcasting Authority of Ireland to impose a levy on certain broadcasters; in relation to the levy, to amend provisions concerning exemptions, deferrals and refunds; to provide for payment to the Broadcasting Authority of Ireland of a portion of fees from television licences; to amend provisions concerning content provision contracts; to provide for a scheme of grants for promotion of professional journalistic practices in certain sound broadcasters; to amend the Copyright and Related Rights Act 2000; and to provide for related matters. 5 10

Be it enacted by the Oireachtas as follows:

Definition

1. In this Act “Act of 2009” means the Broadcasting Act 2009. 15

Amendment of section 2 of Act of 2009

2. Section 2 of the Act of 2009 is amended by the insertion of the following definition:

“ ‘levy order’ has the meaning assigned to it by section 33(1);”.

Amendment of section 33 of Act of 2009

3. Section 33 of the Act of 2009 is amended— 20

(a) by the substitution of the following subsection for subsection (1):

“(1) For the purposes of providing for the working capital requirements of the Authority and meeting expenses properly incurred by the Authority, the Contract Awards Committee and the Compliance Committee in the performance of their functions, the Authority shall make an order imposing a levy (in this Act referred to as a “levy order”) on public service broadcasters, community broadcasters, broadcasting contractors and holders of content provision contracts.”. 25

(b) by the insertion of the following subsections after subsection (1):

- “(1A) The amount of the levy referred to in subsection (1) shall be calculated in such manner that the levy imposed in respect of a particular financial year provides for the working capital requirements of the Authority and meets the expenses properly incurred by the Authority, the Contract Awards Committee and the Compliance Committee in the performance of their functions in the particular financial year. 5
- (1B) Public service broadcasters, community broadcasters, broadcasting contractors and holders of content provision contracts shall provide to the Authority the information required by the Authority to calculate the liability of each public service broadcaster, community broadcaster, broadcasting contractor and holder of a content provision contract to pay the levy referred to in subsection (1).” 10
- (c) by the substitution of the following subsection for subsection (2):
- “(2) Whenever a levy order is made there shall be paid to the Authority by a public service broadcaster, community broadcaster, broadcasting contractor or holder of a content provision contract such amount as is appropriate having regard to the terms of the levy order.” 15
- (d) by the substitution of the following subsection for subsection (3):
- “(3) The Authority may make separate levy orders for public service broadcasters, community broadcasters, broadcasting contractors or holders of content provision contracts or particular classes of public service broadcasters, community broadcasters, broadcasting contractors or holders of content provision contracts.” 20
- (e) by the insertion of the following subsection after subsection (3):
- “(3A) For the purposes of ensuring that the Authority has sufficient funds to provide for its working capital requirements and to meet expenses properly incurred by the Authority, the Contract Awards Committee and the Compliance Committee in the performance of their functions in the particular financial year in respect of which the levy is imposed, the Authority, in making a levy order, shall have regard to— 25
- (a) the most recent estimates of income and expenditure of the Authority submitted to the Minister under section 37(1),
- (b) the actual income and expenditure of the Authority in the previous financial year, and
- (c) the amount paid to the Authority under section 123 in respect of the particular financial year in respect of which the levy is imposed or, if none was paid in that financial year, in the previous financial year in which an amount was paid to the Authority under that section.” 30 35
- (f) by the substitution of the following subsection for subsection (4): 40
- “(4) (a) The Authority, in making a levy order shall calculate in accordance with this subsection the amount of the levy which public service broadcasters, community broadcasters, broadcasting contractors or

holders of content provision contracts are required to pay based on a percentage of the qualifying income of those public service broadcasters, community broadcasters, broadcasting contractors or holders of content provision contracts in the base year.

- (b) (i) The levy order shall provide for what is to be included in income of a person or body liable to pay the levy for the purposes of the calculation of the amount of the levy, in this subsection referred to as “qualifying income”, including, but not limited to, the following: 5
- (I) public funding from sources including, but not limited to, income from television licence fees or grants; 10
 - (II) income from commercial communications;
 - (III) an amount estimated by the Authority to represent the value of non-cash consideration for commercial communications;
 - (IV) interactive income, excluding the value or cost of prizes awarded to participants borne by the broadcaster. 15
- (ii) Qualifying income shall not include the following income:
- (I) income received from the broadcasting funding scheme under section 154;
 - (II) income from a non-linear service. 20
- (c) The Authority shall—
- (i) provide in the levy order for the method of calculation of the levy, and
 - (ii) request from a person or body liable to pay the levy the information referred to in paragraph (d)(iii) and such other information, if any, as may be specified in the levy order. 25
- (d) A levy order shall provide for the collection, payment and administration of a levy, including all or any of the following—
- (i) the times at which payment shall be made, including whether it may be made in one payment or by instalments, and the form of payment, 30
 - (ii) exemptions from, or deferrals of payment of, the levy or payment of a reduced levy, and the application process for exemptions, deferrals, refunds or reduced levy,
 - (iii) the information required to be provided to the Authority as determined by the Authority for the purpose of the calculation of the levy, by a person or body liable to pay the levy, which shall include but is not limited to— 35
- (I) annual accounts and financial statements of the person or body audited in accordance with the Companies Act 2014 or, if exempt from audit under that Act, the annual accounts 40

- and financial statements laid before the company at the company's annual general meeting, in each case, for the base year,
- (II) management accounts of the person or body prepared since the most recent annual accounts and financial statements referred to in clause (I) for a financial period ending not earlier than 28 days before the date on which such management accounts are to be provided to the Authority, and 5
 - (III) a statement setting out the estimated qualifying income of the person or body in the base year, 10
- and
- (iv) the form of the information referred to in subparagraph (iii) and the period within which it is required to be furnished to the Authority.”, 15
- (g) by the insertion of the following subsections after subsection (4):
- “(4A) (a) The Authority may recalculate the levy payable by a person or body liable to pay the levy where further information, referred to in subsection (4)(d)(iii) or other information which is relevant to the calculation of the levy, is provided to it by that person or body and, where such a recalculation is made, subsections (3A), (4), (4B) and (5) shall apply to the recalculation of the levy as they apply to the calculation of the levy, with any necessary modifications. 20
 - (b) The Authority shall serve a notice on each person or body liable to pay a levy stating— 25
 - (i) that a levy is payable,
 - (ii) the amount of the levy,
 - (iii) the date by which the levy shall be paid, or, where a levy may be paid by instalments, the number of instalments, the amount of each instalment and the date on which each instalment is to be paid. 30
 - (c) Where the Authority recalculates the levy under paragraph (a), the Authority shall serve a revised notice on each person or body liable to pay a levy to whom the recalculation applies replacing the notice under paragraph (b). 35
 - (d) Where a levy is imposed on a person or body liable to pay a levy and the Authority recalculates the levy under paragraph (a), the Authority shall—
 - (i) where the amount of the recalculated levy is greater than the amount of the levy notified under paragraph (b) to the person or body and that person or body has paid the amount so notified, 40

deduct that amount from the amount of the recalculated levy which is payable, or

- (ii) where the amount of the recalculated levy is less than the amount of the levy notified under paragraph (b) to the person or body and that person or body has paid the amount so notified, refund that person or body the amount of the levy so paid in excess of the amount of the recalculated levy. 5
- (e) Where a person or body liable to pay a levy on whom a levy has been imposed fails to pay the levy on or before the date on which the levy is due or, where the levy is payable by instalments, on or before the date on which an instalment is due, that person or body shall be liable to pay interest on the amount of the levy so payable from the date the levy fell due until the date of payment at an annual rate of 3 per cent over the three month Euribor rate, and where the failure continues for a period or periods of more than 3 months the interest on the amount of the levy so payable shall be calculated by reference to the three month Euribor rate applicable at the date of the start of each such period of 3 months. 10 15
- (4B) (a) Without prejudice to the generality of subsection (4)(d)(ii), a levy order may provide for the granting of exemptions from, or deferrals of payment of, a levy or payment of a reduced levy, in respect of any class or classes of community broadcaster, broadcasting contractor or holder of a content provision contract. 20
- (b) The Authority shall, in deciding whether to grant an exemption from, or deferral of payment of, a levy or payment of a reduced levy, have regard to any or all of the following— 25
 - (i) the size and scale of a community broadcaster, broadcasting contractor or holder of a content provision contract or class of community broadcaster, broadcasting contractor or holder of a content provision contract, 30
 - (ii) the nature of the broadcasting service or services being offered such as radio, television or digital audio broadcasting,
 - (iii) the desirability of promoting new or innovative services,
 - (iv) whether or not a community broadcaster, broadcasting contractor or holder of a content provision contract or class of community broadcaster, broadcasting contractor or holder of a content provision contract is in receipt of public funding from sources including, but not limited to, income from television licence fees or the broadcasting funding scheme under section 154, and the level of that funding or income, 35 40
 - (v) whether or not a community broadcaster, broadcasting contractor or holder of a content provision contract or class of community broadcaster, broadcasting contractor or holder of a content provision contract is in receipt of commercial revenue,

- income or funding from commercial sources and the level of that revenue, income or funding, and
- (vi) the qualifying income of a community broadcaster, broadcasting contractor or holder of a content provision contract in the base year in respect of which the levy is calculated. 5
- (c) (i) The Authority may determine, in the levy order, a minimum level of qualifying income, which level shall not exceed €250,000, below which a community broadcaster, broadcasting contractor or holder of a content provision contract shall be exempt from payment of the levy. 10
- (ii) Where the Authority has not made a determination referred to in subparagraph (i), and the qualifying income of a community broadcaster, broadcasting contractor or holder of a content provision contract does not exceed €250,000, the community broadcaster, broadcasting contractor or holder of a content provision contract concerned shall be exempt from payment of the levy. 15
- (d) The levy order may, for the purposes of this subsection, provide for the following matters:
- (i) the procedure to be followed by a community broadcaster, broadcasting contractor or holder of a content provision contract in making an application to the Authority for an exemption from, or deferral of payment of, a levy or for payment of a reduced levy; 20
 - (ii) the information and supporting documentation which shall be provided with an application referred to in subparagraph (i); 25
 - (iii) the period for which an exemption from, or deferral of payment of, a levy or payment of a reduced levy shall apply;
 - (iv) such other matters as the Authority may consider relevant for the purposes of this section.”, 30
- (h) by the substitution of the following subsection for subsection (5):
- “(5) Any surplus of levy income which remains at the end of a financial year after the working capital requirements of the Authority and the expenses properly incurred by the Authority, the Contracts Award Committee and the Compliance Committee, in the performance of their functions in that financial year, have been met, shall, as the Authority considers appropriate— 35
- (a) be retained by the Authority to be offset against any liability to pay the levy imposed on a community broadcaster, broadcasting contractor or holder of a content provision contract for the subsequent year, or 40

(b) be refunded proportionately to the community broadcaster, broadcasting contractor or holder of a content provision contract on whom the levy has been imposed.”,

and

(i) by the substitution of the following subsection for subsection (8): 5

“(8) In this section—

‘annual general meeting’ shall be construed in accordance with section 175 of the Companies Act 2014;

‘base year’ in relation to a year in which a levy is payable means the year preceding that year or, where a person or body liable to pay the levy has been in operation for part only of the year preceding such year, that part of that year; 10

‘commercial communication’ means images with or without sound and radio announcements which are designed to promote, directly or indirectly, the products, services or image of a person pursuing an economic activity and which accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes, and forms of audiovisual commercial communication include advertising, sponsorship, teleshopping and product placement but do not include public service announcements or charity appeals broadcast free of charge; 15 20

‘financial statement’ in relation to a person or body liable to pay the levy means a summary (as at a particular date) of the assets, liabilities and financial position of the person or body together with the profit or loss, since the date of the previous financial statements and shall comprise— 25

(a) a balance sheet as at the end of the financial year,

(b) a profit and loss account for the financial year, and

(c) any other additional statements and information attached to the balance sheet and profit and loss account and forming part of them; 30

‘financial year’ (other than in the definition of ‘financial statement’) means a period of 12 months ending on 31 December in any year;

‘interactive income’ means income generated by a broadcaster from listener or viewer response to a broadcast including, without limitation, telephony income and income from online payments; 35

‘non-linear service’ means a service provided by a broadcaster whereby a person may view or listen to programmes at the moment chosen by the user and at his or her individual request on the basis of a catalogue of programmes selected by the broadcaster;

‘qualifying income’ shall be construed in accordance with subsection (4)(b); 40

‘three month Euribor’ means the Euro Interbank Offered Rate with a maturity date of three months as published by the European Banking Federation.”.

Amendment of section 71 of Act of 2009

4. Section 71 of the Act of 2009 is amended in subsection (3)— 5
- (a) in paragraph (a), by the deletion of “or”,
 - (b) by the substitution of the following paragraph for paragraph (b):
 - “(b) RTÉ, TG4, Houses of the Oireachtas Channel or the Irish Film Channel, or”,
- and 10
- (c) by the insertion of the following paragraph after paragraph (b):
 - (c) the holder of a television programme service contract under section 70 for the purposes of a free-to-air service where that contract was entered into on or before the coming into operation of section 3 of the *Broadcasting (Amendment) Act 2019*.”, 15
- and
- (d) by the insertion of the following subsection after subsection (8):
 - “(8A) Where a holder of a content provision contract pays a fee to the Authority under subsection (8) and becomes liable, pursuant to a levy order, to pay— 20
 - (a) a levy in respect of which the holder has not been granted an exemption from, or deferral of, its payment, or
 - (b) a reduced levy under the order,
- the Authority shall—
- (i) where the fee paid is less than the amount of the levy or reduced 25
 - levy the holder of the content provision contract is liable to pay pursuant to a levy order, deduct the amount of the fee from the amount of the levy or reduced levy so payable, or
 - (ii) where the fee paid is more than the amount of the levy or 30
 - reduced levy the holder of the content provision contract is liable to pay pursuant to a levy order, refund the amount of the fee in excess of the amount of the levy or reduced levy so payable to the holder.”.

Amendment of section 123 of Act of 2009

5. (1) Section 123 is amended— 35
- (a) by the substitution of the following subsection for subsection (1):

“(1) The Minister, with the approval of the Minister for Public Expenditure and Reform, may pay to RTÉ, TG4 and the Authority out of monies provided by the Oireachtas, in respect of each financial year beginning with the financial year commencing on the 1st day of January in the year following the year in which *section 5* of the *Broadcasting (Amendment) Act 2019* comes into operation, an amount equal to the total of the receipts in that year in respect of television licence fees apportioned to RTÉ, TG4 and the Authority as the Minister determines in accordance with subsection (1A) less—

(a) 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, and

(b) any amount paid under section 156(2).”

and

(b) by the substitution of the following subsection for subsection (1A):

“(1A) (a) The Minister shall, after consultation with the Minister for Public Expenditure and Reform, determine the portion of the amount referred to in subsection (1) to be paid to RTÉ, TG4 and the Authority respectively.

(b) When making a determination for the purposes of paragraph (a), the Minister shall—

(i) have regard to the ability of RTÉ and TG4 to fulfil their public service objects, and

(ii) ensure that the amount, if any, to be paid to the Authority under subsection (1) shall not exceed 50 per cent of the estimate of the expenses of the Authority for the financial year concerned as set out in its estimates of income and expenditure submitted to the Minister under section 37(1) in the financial year immediately preceding the year in which an amount under subsection (1) is to be paid.”

(2) The amendment of section 123 of the Act of 2009 by subsection (1) shall not have effect and the Minister shall not pay to the Authority an amount under subsection (1) of section 123 of the Act of 2009 before the Authority first makes a levy order under section 33 of the Act of 2009 after the coming into operation of *section 3*.

Amendment of section 153 of Act of 2009

6. Section 153 of the Act of 2009 is amended by the substitution of the following definition for the definition of “scheme”:

“ ‘scheme’ means a scheme prepared under section 154 or section 156A, or both, as the case may be.”

Scheme for professional journalistic practices in certain sound broadcasters

7. The Act of 2009 is amended by the insertion of the following section after section 156:

- “156A.** (1) The Authority shall prepare and submit to the Minister for his or her approval a scheme or a number of schemes for the provision of funds towards annual grants to be awarded to local or community sound broadcasters for the purposes of supporting and promoting good professional journalistic practices and standards in local and community sound broadcasting and towards the cost of such ancillary measures as are necessary to support such a scheme or schemes. 5
- (2) A scheme of grants under subsection (1)— 10
- (a) may provide for—
- (i) the number of grants to be awarded in a year,
- (ii) the procedures for the making of applications for grants by local and community sound broadcasters,
- (iii) the amount which may be awarded in respect of each grant, 15
- (iv) the terms and conditions subject to which a grant may be awarded, and
- (v) a requirement that the local or community sound broadcaster shall apply the grant to the costs of providing appropriate training and professional development for persons employed by, or providing services to, the broadcaster for the purposes referred to in subsection (1) and to co-fund the costs of that training, 20
- and
- (b) shall have regard to the objective of the Authority set out in section 25(2)(d). 25
- (3) The Authority, in preparing a scheme under this section and in considering applications for funding, shall have regard to the purposes referred to in subsection (1).
- (4) The Authority in preparing a scheme under this section, may have regard to the developmental needs of local or community broadcasters. 30
- (5) The Minister may direct the Authority—
- (a) to prepare and submit to him or her a scheme relating to any matter referred to in subsection (1), or
- (b) to amend or revoke the scheme, 35
- and the Authority shall comply with any such direction.
- (6) A scheme of grants under subsection (1) shall, if approved of by the Minister, be—
- (a) published (including publication by electronic means capable of being read in legible form), and 40

(b) carried out in accordance with its terms,
by the Authority.

(7) (a) A scheme of grants under subsection (1) shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is made. 5

(b) Either House of the Oireachtas may, within 21 sitting days after the day on which a scheme was laid before it in accordance with paragraph (a), pass a resolution annulling the scheme.

(c) The annulment under paragraph (b) of a scheme takes effect immediately on the passing of the resolution concerned but does not affect anything that was done under a scheme before the passing of the resolution. 10

(8) Where a person or body to whom a grant has been awarded—

(a) has submitted information in their application for the grant, material that is incomplete or inaccurate in a material respect and in relation to which the Authority has relied in awarding the grant to that person or body, or 15

(b) has not complied with the conditions subject to which the grant was awarded,

the Authority may recover as a simple contract debt in any court of competent jurisdiction from that person or body any amount due and owing in respect of the whole or part of a grant awarded to that person or body by the Authority under this section.”. 20

Amendment of section 157 of Act of 2009

8. Section 157 of the Act of 2009 is amended by the insertion in subsection (3) of “or section 156A” after “under section 154”. 25

Amendment of section 159 of Act of 2009

9. Section 159 of the Act of 2009 is amended by the insertion in subsection (3) of “and section 156A” after “under section 154”.

Repeal of certain provisions of Copyright and Related Rights Act 2000

10. Sections 103 and 251 of the Copyright and Related Rights Act 2000 are repealed. 30

Short title, collective citation, construction and commencement

11. (1) This Act may be cited as the Broadcasting (Amendment) Act 2019.

(2) The Broadcasting Act 2009 and this Act may be cited together as the Broadcasting Acts 2009 to 2019 and shall be construed together as one. 35

(3) This Act shall come into operation on such day or days as the Minister for Communications, Climate Action and Environment may by order or orders appoint

either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do leasú an Achta Craolacháin, 2009 chun cumhacht Údarás Craolacháin na hÉireann maidir le tobhach a fhorchur ar chraoltóirí áirithe a leasú agus a leathnú; i ndáil leis an tobhach, do leasú forálacha a bhaineann le díolúintí, iarchur agus aisíocaíochtaí; do dhéanamh socrú maidir le cion de tháillí ó cheadúnais teilifíse a íoc le hÚdarás Craolacháin na hÉireann; do leasú forálacha a bhaineann le conarthaí soláthair lánais; do dhéanamh socrú maidir le scéim deontas chun cleachtais iriseoireachta ghairmiúla a chur chun cinn i ggraoltóirí fuaimne áirithe; do leasú an Achta Cóipchirt agus Ceart Gaolmhar, 2000; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

An tAire Cumarsáide agus Gníomhaithe ar son na hAeráide agus Comhshaoil a thíolaic,

31 Iúil, 2019

BILL

(as initiated)

entitled

An Act to amend the Broadcasting Act 2009 to amend and extend the power of the Broadcasting Authority of Ireland to impose a levy on certain broadcasters; in relation to the levy, to amend provisions concerning exemptions, deferrals and refunds; to provide for payment to the Broadcasting Authority of Ireland of a portion of fees from television licences; to amend provisions concerning content provision contracts; to provide for a scheme of grants for promotion of professional journalistic practices in certain sound broadcasters; to amend the Copyright and Related Rights Act 2000; and to provide for related matters.

Presented by the Minister for Communications and Climate Action and Environment,

31st July, 2019

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