



# Bill Digest

## Broadcasting (Amendment) Bill 2019

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### Abstract

The [Broadcasting \(Amendment\) Bill 2019](#) will amend the *Broadcasting Act 2009* and the *Copyright and Related Rights Act 2000* to achieve a number of aims, including, among other things:

- To enable the industry regulator – the Broadcasting Authority of Ireland (BAI) - to impose and/or reduce the (and in some cases exempt from) payment of the broadcasting levy by certain broadcasters for new services;
- To provide for part-funding of the BAI from TV licence receipts (to a maximum of 50% of its funding) with the intention of reducing the existing broadcasting levy burden on all broadcasters;
- To allow the BAI to accrue a level of working capital to meet its operational requirements;
- To provide flexibility to the BAI in how it charges the broadcasting levy; and
- To introduce a new broadcasting funding scheme, administered by the BAI, to provide a bursary grant scheme for professional journalists working in certain sound broadcasters at local or community level.

1 October 2019

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## Summary

- The primary purpose of the [Broadcasting \(Amendment\) Bill 2019](#) is to amend the [Broadcasting Act 2009](#) (the “2009 Act”) and the [Copyright and Related Rights Act 2000](#) with three primary purposes:
  1. To enable the Broadcasting Authority of Ireland (BAI) to impose, reduce (and in some cases eliminate / exempt) the payment of the broadcasting levy on certain broadcasters<sup>1</sup>;
  2. To provide flexibility to the Broadcasting Authority of Ireland (BAI) its application of the broadcasting levy; and
  3. To introduce a new broadcasting funding scheme, administered by the BAI, to provide grant scheme to professional journalists working in certain local and community sound broadcasters.
- The Bill, as published, **does not**:
  - Propose any changes to the existing TV licence fee charging regime (i.e. the device linked nature of the current licence fee), provide for the tendering of the licence fee collection agent (currently An Post) or include any other specific measures to tackle Ireland’s comparatively high level of licence fee evasion (estimated at between 12-14% of households in 2017). However, the [press release](#) accompanying the Bill’s publication states that an amendment to the *2009 Act* to provide for the commercial tendering of licence fee collection **will be introduced at the Committee stage**. The tendering is viewed as one solution to tackling the comparatively high levels of licence fee evasion in Ireland;
  - Include reference to retransmission fees which would, if introduced in Ireland, be payable by pay-TV platforms (e.g. Sky Ireland, Virgin Media, Eir, Vodafone TV) to the public service broadcasters for the right to distribute (or retransmit) the broadcasters’ channels;
- Two recent reports have informed the development of this legislation, namely the November 2017 report of the Joint Committee on Communications, Climate Action and Environment ‘[Future Funding of Public Service Broadcasting](#)’ and the April 2019 report of the subsequent [\(cross-Departmental\) Working Group on the Future Funding of Public Service Broadcasting](#);
- The latter (redacted) report recommends that:
  - A. The TV licence be put out to commercial, competitive tender (following enactment of enabling legislation) for a fixed 5-year contract (minimum); and that
  - B. At the end of this contractual period, the TV licence fee (as it currently stands) be replaced by a device-independent broadcasting charge (preparatory work for the introduction of this charge would be undertaken during this 5-year period)<sup>2</sup>.

Similar recommendations are also included in the [previous ‘Future Funding’ report of the Joint Committee](#).

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<sup>1</sup> ‘Free-to-air’ services are all subject to the payment of the levy to cover the operating expenses of the broadcasting regulator – the BAI (i.e. services / channels provided by the public service broadcasters RTÉ, TG4 and Oireachtas TV, and the national commercial broadcaster Virgin Media Limited, formerly TV3 Ireland). Services licensed under Section 71 of the *2009 Act* are not subject to a broadcasting levy and have fewer obligations.

<sup>2</sup> As detailed in the accompanying press release, available at <https://www.dccae.gov.ie/en-ie/news-and-media/press-releases/Pages/Minister-Bruton-Publishes-Broadcasting-Bill.aspx>

## Introduction

The Broadcasting (Amendment) Bill 2019 was published on 2 August 2019 by the Minister for Communications, Climate Action and Environment, Richard Bruton T.D. The aim of the Bill, according to the Minister is:

“...[to] enable the broadcasting levy to be reduced for all broadcasters and for some community broadcasters to be exempted entirely. It allows for the creation of a new funding scheme that would allow the granting of bursaries to journalists in local or community radio stations. We must support our local community radio stations and independent broadcasters.”

In the press release accompanying the publication of the Bill, the Minister also referred to the report of the Joint Committee on Communications, Climate Action and Environment – ‘Future Funding of Public Service Broadcasting’, published in November 2017<sup>3</sup>. Subsequently, a cross-Departmental Working Group was established to further examine the issue in July 2018. The following is a timeline of recent publications and related events and resources relevant to this Bill:

**Table 1: Recent developments related to this Bill**

Date	Detail
May 2017	The Minister for Communications, Climate Action and Environment requests that the Joint Committee on Communications, Climate Action and Environment (“the Joint Committee”) scrutinise both the <a href="#">General Scheme of a Broadcasting (Amendment) Bill 2017</a> which would amend the <i>Broadcasting Act, 2009</i> and the <i>Communications Regulation (Postal Services) Act 2011</i> , and the separate issue of retransmission fees.
November 2017	The Joint Committee on Communications, Climate Action and Environment report on the <a href="#">‘Future Funding of Public Service Broadcasting’</a> is published.
March 2018	The Joint Committee report on the <a href="#">pre-legislative scrutiny (PLS) of the General Scheme of the Broadcasting (Amendment) Bill 2017 and the issue of Retransmission Fees</a> is published.
July 2018	Government agrees to establish a cross-departmental Working Group on the Future Funding of Public Service Broadcasting to examine options for the collection of the TV licence fee or its replacement, tendering for licence fee collection; and replacement of the licence fee with a Broadcasting Charge or a variation.
April 2019	The <a href="#">(cross-Departmental) Working Group on the Future Funding of Public Service Broadcasting reported</a> to the Minister. The recommendations of the Report are summarised <a href="#">here</a> .
August 2019	The <a href="#">Broadcasting (Amendment) Bill 2019</a> is published.

<sup>3</sup> Oireachtas (2017) *Report of the Joint Committee on the Future Funding of Public Service Broadcasting*, November 2017. Available at [https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint\\_committee\\_on\\_communications\\_climate\\_action\\_and\\_environment/reports/2017/2017-11-28\\_report-on-the-future-funding-of-public-service-broadcasting\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_communications_climate_action_and_environment/reports/2017/2017-11-28_report-on-the-future-funding-of-public-service-broadcasting_en.pdf)

### About the BAI

The *Broadcasting Act 2009* established the independent Broadcasting Authority of Ireland (BAI) in October 2009. Among its functions, the BAI acts as the regulator of the broadcasting industry in Ireland. Among its functions, under section 124(8) of the *2009 Act*, the BAI is required to conduct a five-year review of the funding of Public Service Broadcasters (PSBs). This review is in conjunction with annual / single year reviews required under Section 124(2) of the *2009 Act*. The *Act* requires the BAI to make a recommendation ‘as to the requisite level of public funding required to permit the corporation to fulfil its public service objects’ (for both RTÉ and TG4).

The BAI is funded by a broadcasting levy which is cost-recovery in nature as it is computed based on the operating costs of the Authority in the previous year. BAI operating costs were €4.48m in 2017 (the most recent year actual figures are available) and are estimated at €4.86m for 2018.<sup>4</sup>

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<sup>4</sup> See <https://www.bai.ie/en/about-us/levy/> for more information on the levy revenue and calculation.

Table 2 below details the provisions in this Bill.

**Table 2: Table of provisions**

Section	Title	Explanation
1	Definition	This Section sets out the definitions used in this Bill. It states that the “Act of 2009” refers to the <i>Broadcasting Act 2009</i> .
2	Amendment of Section 2 of Act of 2009	This Section provides for the amendment of Section 2 of the 2009 Act to insert the definition of “levy order” as set out in Section 33(1) of the 2009 Act (amended by Section 3, below).
3	Amendment of Section 33 of the Act of 2009	<p>This section provides for the amendment of Section 33 of the 2009 Act. This Section empowers the Broadcasting Authority of Ireland (BAI) to impose a levy on broadcasters to meet its expenses. There are three main amendments to section 33.</p> <ol style="list-style-type: none"> <li>1. <b>Working capital:</b> To allow the BAI to raise adequate working capital <u>as well as</u> to meet expenses properly incurred (current legislative position);</li> <li>2. <b>Content Provision Contracts / Section 71 Licences:</b> To allow holders of a ‘content provision contract’ (rather than a ComReg broadcasting licence which is subject to more onerous obligations) to supply programme material for certain purposes. The intention of Section 71 is to encourage new market entrants, particularly with regard to new forms of media with appeal to smaller audience segments.</li> <li>3. <b>Funding the levy from TV Licence receipts:</b> To allow for the expenses of the BAI to be part funded by monies from the TV licence receipts.</li> </ol>
4	Amendment of Section 71 of the Act of 2009	This Section clarifies that a Section 70 contract holder would require Section 71 contract from the BAI for any new services but not existing services.
5	Amendment of Section 123 of the Act of 2009	This Section provides for the funding from TV licence receipts of the expenses of the BAI incurred in conducting its regulatory functions, capped at 50%.
6	Amendment of Section 153 of the Act of 2009	This Section amends the definition of ‘scheme’ to include the new scheme as set out in Section 7.
7	Scheme for professional journalistic practices in certain sound broadcasters	<p>This Section introduces a new Section 156A to the 2009 Act. Under Section 156 of the 2009 Act, 7% of net TV licence receipts (€14.5m approx.) are allocated to the Broadcasting Fund, from which the Sound and Vision Scheme is funded.</p> <p>This new Section provides for the establishment of a new BAI Broadcasting Funding Scheme which will provide grants to journalists in local or community radio stations as a means of promoting the development of good journalistic practices and standards.</p>
8	Amendment of section 157 of Act of 2009	These Sections provide for technical amendments of the 2009 Act to take account of the new Broadcasting Funding Scheme.
9	Amendment of section 159 of Act of 2009	
10	Repeal of certain provisions of Copyright and Related Rights Act 2000	This Section repeals Section 103 and 251 of the <i>Copyright and Related Rights Act 2000</i> as these are deemed to serve no public policy objective. Section 103 creates an exception to copyright protection in respect of broadcasts in a cable programme service
11	Short title, collective citation, construction and commencement	This section details standard provisions setting out title and commencement matters. This Act may be cited as the Broadcasting (Amendment) Act 2019.

## Pre-legislative scrutiny (PLS)

In a letter to the Joint Committee on 31 May 2017, the then Minister for Communications, Climate Action and Environment, Denis Naughten T.D. requested that the Joint Committee scrutinise both the General Scheme of a Broadcasting (Amendment) Bill 2017<sup>5</sup> which would amend the *Broadcasting Act 2009* and the *Communications Regulation (Postal Services) Act 2011* for the purposes of pre-legislative scrutiny (PLS) and the separate issue of retransmission fees. The Joint Committee decided to undertake PLS of the General Scheme and consideration of the issue of retransmission fees in tandem with its ongoing consideration of the future funding of Public Service Broadcasting which was already part of the Joint Committee's work programme. The Joint Committee held two public hearings on [11 July](#) and [3 October 2017](#). The PLS report was published in March 2018. The report contains several key issues / recommendations which were submitted to the Minister for consideration. Each key issue / recommendation (as it ascribes to the Bill, as published) will be examined thematically in this section.

## Payment of the broadcasting levy, BAI working capital and funding the BAI from TV licence fee receipts

The following is a background to the levy and a contextual summary of proposed changes relevant to the BAI levy.

### The Broadcasting Authority of Ireland (BAI) levy

The BAI levy is imposed on each public service broadcaster (i.e. RTE, TG4 and Oireachtas TV) and broadcasting 'contractor' including Virgin Media Limited (formerly TV3 Ireland). The details of the BAI levy<sup>6</sup> are set out in Section 33 of the *2009 Act*. Generated from public service broadcasters and broadcasting contractors, it is the BAI's main source of income raising **€4.7m** in 2017. The levy is cost recovery in nature as it is designed to recover the operational expenses incurred by the BAI each year in the discharge of its functions. It also ensures that broadcasters pay for their own regulation.

Levies payable by each broadcaster are calculated based on two elements:

- The budgeted (forecast) operating costs of the BAI for the year; and
- The estimated qualifying income (scaled) of the relevant broadcasters for the preceding calendar year (for de-minimum levy payers, where qualifying income is not more than €250,000, the minimum levy is €750);

Any surplus of levy income (€200,000 in 2017) is either retained and offset against future expected levy obligations or refunded proportionally to those providers on whom the levy is imposed.

Currently, the BAI does not receive any funding from TV licence fee receipts. However, it could be argued that a portion of the licence fee is effectively paid to the BAI by RTÉ and TG4 as the primary recipients of licence fee monies (88% of the total in 2017).

The current design of the BAI levy has created two major issues:

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<sup>5</sup> DCCAE (2017) General Scheme of a Broadcasting (Amendment) Bill 2017 – available at <https://webarchive.oireachtas.ie/parliament/media/committees/communicationsclimatechangenaturalresources/publicservicebroadcasting/gsbroadcastingamendmentbill2017/gsbroadcasting--amendment--bill-2017.pdf>

<sup>6</sup> See also <https://www.bai.ie/en/about-us/levy/>



1. Due to the design of the levy as indicated previously, the BAI is unable to accrue a level of **working capital** to enable it to meet its day-to-day operational requirements without having to resort to borrowing at certain points in the levy cycle; and
2. The levy is currently paid **by public service broadcasters** (e.g. RTÉ, TG4), the **commercial broadcaster** (e.g. Virgin Media Limited) and **'broadcasting contractors'** (e.g. community / local radio stations). For smaller 'contractors', payment of the levy may represent a significant financial burden;

### Proposed changes(s) and pre-legislative scrutiny (PLS)

This Bill proposes to amend sections 33 and 123 of the *2009 Act* to provide for part-funding of the BAI from TV licence receipts and to enable the BAI to meet its operational funding requirements without recourse to borrowing. Two amendments to section 33 are notable with regard to the BAI levy:

- To allow the BAI to raise adequate **working capital** as well as to meet expenses properly incurred (current legislative position);
- To allow for the **part funding of the BAI levy from TV Licence receipts (up to 50% of the required amount to fund the BAI's operating expenses)**<sup>7</sup> as well as from broadcasters (current legislative position). This will reduce the financial burden on broadcasters / contractors while also maintaining a certain contribution from broadcasters to the levy in line with the principle that the relevant market players should fund the costs of their own regulation. However, in the absence of a compensation mechanism, it may also reduce the amount of funding available to the current recipients of licence fee monies, notably RTÉ;

An analysis of the proposed changes and the Joint Committee recommendations at pre-legislative scrutiny stage (PLS) is provided below (it is particularly notable that the Committee recommended a compensation mechanism in respect of the potential impact of reduced funding to RTÉ/TG4).

**Table 3: Changes to the BAI levy and Committee recommendations at PLS stage (March 2018)**

Report	Recommendation / key issue
<b>Joint Committee PLS Report on the General Scheme of a Broadcasting (Amendment) Bill (March 2018)</b>	<p>The Joint Committee agrees in principle with the proposed amendments to section 33 of the <i>Broadcasting Act 2009</i>.</p> <p>However, The Joint Committee considers that the potential consequences of part-funding the BAI through TV licence fee monies merits more detailed scrutiny considering the identical public reservations raised by both the beneficiary of the change (the BAI) and the party which is most likely to be negatively impacted by the change (RTÉ).</p> <p>The Joint Committee further recommends that a compensation mechanism be appropriately detailed in the Bill, or whether a commitment should be provided by the Minister to RTÉ to establish such a mechanism prior to the Bill's enactment / commencement, and/or</p> <p>that a compensation mechanism should take full account of existing BAI recommendations regarding proposed additional funding for RTÉ.</p>

<sup>7</sup> This proposal would also have the effect, according to the Minister in his response to a parliamentary question, of reducing the amount (currently) payable by broadcasters by 50%, equally applied. See: <https://www.kildarestreet.com/wrans/?id=2019-07-11a.2117>



## Section 70 and Section 71 (of the *Broadcasting Act 2009*) contracts

The *2009 Act* sets out a range of general and specific objectives for the BAI, including the licensing of TV channels in the State. Two types of licence are issued by the BAI under sections 70 and 71 of the *2009 Act*.

### Section 70 (Television Programme Service Contract – Virgin Media, formerly TV3 Ireland)

The sole holder of a **section 70** contract (defined as a ‘television programme service contract’ or TPS contract) under the *2009 Act* was originally TV3 Television Network Limited trading as TV3, now Virgin Media Limited.<sup>8</sup> Though a commercial television service, a section 70 contract, among other things, obliges the holder to offer (“must offer”) its services as free-to-air (FTA) while also obliges broadcasting platforms and service operators (e.g. Eir, Virgin Media Ireland, Sky Ireland, Vodafone) to carry (“must carry”) these FTA channels. This is the same situation as with public service broadcasters (RTÉ, TG4 and Oireachtas TV).

The sole holder of a TPS contract (the *2009 Act* only allows one such section 70 licence) is exempted from the requirement to apply for a licence for any additional services / channels it offers. It also pays the BAI levy. Section 4 of the Broadcasting (Amendment) Bill 2019 proposes to clarify that any **new services** will now require a Section 71 contract from the BAI.

### Section 71 (Content Provision Contract)

Services licenced under **section 71** (defined as ‘content provision contract’ or CP contract) are not subject to a BAI levy. The purpose of the section 71 licencing is to encourage, through a financial incentive (i.e. an exemption from payment of the levy) new market entrants with particular emphasis on encouraging new and innovative forms of audio-visual media that may have limited audience appeal. However, due to the likelihood of Brexit and in anticipation of additional broadcasters being attracted to operate in the Irish market, an amendment is required to provide the BAI with enhanced flexibility and discretion to make a determination on the classes or types of section 71 contracts that may be issued to new entrants and to bring section 71 broadcasters within the scope of the BAI levy (or continue to be exempted / or have payment obligations deferred)<sup>9</sup>.

Section 71 is the only section under which new entrants can obtain the right to engage in television broadcasting in Ireland as was shown when UTV Ireland sought to enter the market.<sup>10</sup> Though it is not known what type of broadcaster might chose to locate in Ireland and what extent of regulation is required, the Department described this proposed change at pre-legislative scrutiny (PLS) stage to be a “sensible precautionary measure”.

## Proposed changes(s) and pre-legislative scrutiny (PLS)

This Bill proposes to amend section 71 of the *2009 Act* to ensure that a section 70 contract holder (of which there is only one, Virgin Media Ireland) would require a section 71 contract from the BAI

<sup>8</sup> Virgin Media Limited is a wholly-owned indirect subsidiary of UK-based Liberty Global plc. Liberty Global acquires TV3 Network Limited in 2015 from Doughty Hanson & Co. IV. The TV3 Group was rebranded as Virgin Media Television in August 2018 – see <https://www.virginmedia.ie/about-us/press/2018/tv3-group-to-rebrand-as-virgin-media-television/>. A determination of merger was published by the Competition and Consumer Protection Commission in October 2015 – see <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-15-039-Liberty-Global-TV3.pdf>

<sup>9</sup> Oireachtas (2018) *Report of the Joint Committee on the Pre-Legislative Scrutiny of the General Scheme of the Broadcasting (Amendment) Bill 2017 and Retransmission Fees*, March 2018. Available at [https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint\\_committee\\_on\\_communications\\_climate\\_action\\_and\\_environment/reports/2018/2018-03-08\\_report-pre-legislative-scrutiny-of-the-general-scheme-of-a-broadcasting-amendment-bill-2017-and-retransmission-fees\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_communications_climate_action_and_environment/reports/2018/2018-03-08_report-pre-legislative-scrutiny-of-the-general-scheme-of-a-broadcasting-amendment-bill-2017-and-retransmission-fees_en.pdf)

<sup>10</sup> Ibid.

for new services. Existing services are not affected. A new section (s71(8)) provides to the BAI the flexibility to charge a fee for a section 71 licence while section 71(8A) provides the BAI with the discretion to reduce the levy payable to compensate for the fee paid.

**Table 4: Pre-legislative scrutiny (PLS) – Sections 70 and 71 contracts**

Report	Recommendation / key issue
<b>Joint Committee PLS Report on the General Scheme of a Broadcasting (Amendment) Bill (March 2018)</b>	<p>The Committee notes section 70 of the <i>Broadcasting Act 2009</i>, and the new section 71 re “BrExit” entrants.</p> <p>The Joint Committee recommended that further exploration (and detailed scrutiny) is required to identify the potential opportunities and threats for Ireland in seeking to become a post-Brexit base for cross-border broadcasters under the EU’s Country of Origin (COO) principle. The Joint Committee also recommended that a more proactive approach is merited to actively attract cross-border licencing business by promoting Ireland as a desirable location for relocating broadcasters seeking to remain active in and across the EU.</p>

### Bursary / grant scheme for local journalists in sound broadcasters

Currently, local and community radio / sound broadcasters are contractually obliged under the existing licencing system (section 39 of the *2009 Act*) to dedicate 20% of their airtime to news and current affairs. Such services receive no direct public funding (i.e. a portion of TV licence fee monies) but may access additional funding through the BAI’s Sound and Vision Fund.<sup>11</sup>

Under Section 154 of the *2009 Act*, the BAI may establish a funding “scheme” (as defined in that section), subject to the Minister’s approval, for a prescribed purpose. In particular, Section 154 (5) of the *2009 Act* states that the BAI in preparing a scheme may have regard to the developmental needs of community broadcasters.

### Proposed changes(s) and pre-legislative scrutiny (PLS)

It is proposed under this Bill to expand this definition of “scheme” to include section 154 (the Broadcasting Fund comprising receipts from the BAI levy) and a new section 156A. This new section provides for the establishment of a new broadcasting funding scheme (or schemes) to provide grants to journalists in local or community radio stations as a means of (specifically) promoting the development of good journalistic practices and standards and also contributing “towards the cost of such ancillary measures as are necessary to support such a scheme or schemes” including training and professional development.

At PLS stage, the establishment of such a scheme was supported by both the BAI and RTÉ. However, the Joint Committee noted that the proposed scheme “represents a missed opportunity to provide a more comprehensive solution to address the problem of sustainability of funding of community media, particularly in respect of their contractual 20% public service obligation to

<sup>11</sup> The BAI operates the ‘Sound and Vision Scheme’ which supports the production and transmission of high-quality programming based on Irish culture and heritage. Such a scheme is provided for under Section 154 of the *2009 Act*. Under Section 156 of the *2009 Act*, 7% of net TV licence receipts (€14.5m approx.) are allocated to the Broadcasting Fund, from which the Sound and Vision Scheme is funded.

provide news and current affairs.” The Joint Committee made a number of recommendations in respect of the design of the scheme. These are summarised below:

**Table 5: Pre-legislative scrutiny (PLS) – bursary scheme for local journalists**

Report	Recommendation / key issue
<b>Joint Committee PLS Report on the General Scheme of a Broadcasting (Amendment) Bill (March 2018)</b>	<p>The Joint Committee recommends the following:</p> <ol style="list-style-type: none"> <li>1. That additional detail on the proposed scheme should be set out in primary legislation to ensure that the scheme meets its stated objectives and the expectations of all stakeholders concerned;</li> <li>2. That funding through the existing Broadcasting Fund is appropriate or desirable considering its likely ‘knock-on’ impact on existing schemes;</li> <li>3. That the Department / BAI should explicitly detail how performance of this scheme will be measured;</li> <li>4. That specific criteria will be devised by the BAI and whether certain applications will be prioritised (e.g. will those journalists working for established stations in receipt of other funding be applicable)?</li> <li>5. The Committee believes that the proposed bursary scheme represents a missed opportunity to provide a more comprehensive solution to address the problem of sustainability of funding of community media, particularly in respect of their contractual 20% public service obligation to provide news and current affairs.</li> <li>6. The Committee makes the following recommendations in relation to Bursaries: <ul style="list-style-type: none"> <li>▪ The Committee recommends that the funding should be extended to local radio stations to cover their Public Service remit;</li> <li>▪ The Committee is not in favour of an apprenticeship scheme and recommends that the Minister establish a new scheme to assist these radio stations in the provision of local news and current affairs programmes. The scheme envisaged would be administered by the Broadcasting Authority of Ireland (BAI) and would be limited to independent radio stations.</li> </ul> </li> </ol>

### **Repeal of section 103 of the *Broadcasting Act 2009* (Cable copyright exemption)**

Currently, copyright exemption applies to cable operators. Section 103 of the *Copyright and Related Rights Act 2000* creates an exemption to copyright protection in respect of the inclusion of broadcasts in a cable programme service. The Department highlighted at PLS stage that this exemption no longer serves a public policy objective and should be removed. As summarised by the Department during the PLS hearings:

“This exemption was originally introduced in the late 1980s to support the roll-out of cable television services in Ireland. This task has largely been achieved and, in any case, television services are now available over a wide range of platforms, including satellite. The exemption only relates to Irish broadcasters. The cable operators are not exempt from clearing rights in respect of any of the UK channels that they carry. The way the system currently works is that RTE, TV3 and TG4 clear both the broadcast rights and the content rights for all platforms. By repealing this provision, the rights holders for the content would have the flexibility to negotiate the clearance of their rights with the broadcasters or directly with the platform operators, whichever was deemed most beneficial to them. The

broadcasters would also be free of the onus to clear all of the rights for every platform. The amendment would also remove the anomalous situation where a platform operator can exploit this provision to retransmit content which the public service broadcasters do not have the right to broadcast outside of their own network. It is worth noting that a similar approach has been taken in the UK Digital Economy Act<sup>12</sup>, which was enacted at the end of April this year [2017]. “

### Proposed changes(s) and pre-legislative scrutiny (PLS)

Section 10 of the Bill proposes to repeal sections 103 and 251 of the *Copyright and Related Rights Act 2000*.

### Tendering of the TV licence fee collection agent

The tendering of the TV licence fee collection agent was **not included** in the Bill as published. As stated in the press release accompanying the publication of the Bill:

“It is also intended that the Bill will provide for the option to put collection of the licence fee out to public tender and this will **be introduced at the Committee stage of the legislative process**”

The *2009 Act* currently allows the Minister to designate another person as the debt collection agent / agency. However, section 145 of the *2009 Act* does not currently provide for a commercial tender.<sup>13</sup> The chief aim of a commercial tender would be to lower the evasion rate. As summarised by the cross-Departmental Working Group report:

“A competitive tender could drive a lower evasion rate by bringing market forces to bear and could include performance and delivery metrics such as targets for evasion reduction, cost reduction, increased sales and quality customer service. Any tender could include a requirement to redesign the TV Licence Database.”

It is envisaged, as detailed in the cross-Department report, that the contract would be for a fixed term of 5 years, with the potential for extension.

An Post has been responsible for the administration of the TV licencing system and in pursuing licence fee evaders since the introduction of the fee in 1962. Under the *2009 Act*, An Post is the designated collection agent responsible for the issuance and sale of TV licences and revenue on behalf of the Department of Communications, Climate Action and Environment (DCCAE).

Currently, An Post's TV licence activities comprise 3 areas, as follows:

- **Activity 1:** Issuance / sale of licences;
- **Activity 2:** Database management and marketing; and
- **Activity 3:** Debt collection.

DCCAE pays commission to An Post for the total TV licence sales based on a contract. Licence fee revenue is also payable monthly by the Department of Employment Affairs and Social Protection (DEASP) to DCCAE on behalf of individuals eligible for a “free” television licence.

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<sup>12</sup> Available at <http://www.legislation.gov.uk/ukpga/2017/30/contents/enacted>

<sup>13</sup> Confirmed by the report of the cross-Departmental Working Group on the Future Funding of Public Service Broadcasting (April 2019) available at [https://www.dccae.gov.ie/documents/Working\\_Group\\_on\\_Future\\_Funding\\_of\\_Public\\_Service\\_Broadcasting-Final\\_Report\\_2019.pdf](https://www.dccae.gov.ie/documents/Working_Group_on_Future_Funding_of_Public_Service_Broadcasting-Final_Report_2019.pdf)

**Box 1: A statistical review of the TV licence fee**

- A total of **1,038,986 licences** were sold in 2018<sup>14</sup>;
- €221m in licence fee revenue was collected in 2018. €189.1m (86%) was received by RTÉ;<sup>15</sup>
- An Post collection costs and related charges amounted to €9.6m (or 4.3% of total licence fee revenue);
- In recent years the rate of compliance has increased from **84.5%** in 2013 to **87.2%** in 2018;
- €55m was spend on 'free' TV licences in 2018 under the Household Benefits Package (Department of Employment Affairs and Social Protection).

To tackle evasion, in 2000 RTÉ proposed that a public tender competition for the licence collection agent be carried out.<sup>16</sup> A 2002 review of broadcasting policy and operations proposed that responsibility for collection of fees would remain with An Post. Subsequently, in 2004, An Post questioned the appropriateness of a company like An Post being in the “business of debt collection” considering the impact on its brand and positioning and also highlighted that that activity is not profit-making for the company.<sup>17</sup> However, no change was made.

The General Scheme (Head 5) proposed that the responsibility for issuing / selling licences (**Activity 1**) remain with An Post.

**Table 6: Pre-legislative scrutiny (PLS) – tendering of the collection agent**

Report	Recommendation / key issue
<b>Joint Committee Report on the Future Funding of Public Service Broadcasting</b> (November 2017)	Recommendation 3: That the responsibility for the collection of the TV Licence Fee be assigned to the Office of the Revenue Commissioners.
<b>Joint Committee PLS Report on the General Scheme of a Broadcasting (Amendment) Bill</b> (March 2018)	Further clarification is required from the Department, specifically relating to the enforcement powers of an issuing agent appointed following a public competition and, in particular, explanation as to how these powers may change over time, if enforcement powers are not set down in primary legislation.

## Other aspects

A number of other recommendations were made by the Joint Committee in its PLS report referring to proposed legislative changes which were included in the General Scheme but not included in the Bill as published.

<sup>14</sup> <https://www.oireachtas.ie/en/debates/question/2019-06-27/219/>

<sup>15</sup> RTÉ (2019) Annual Report 2018, available at [https://www.rte.ie/annualreport/pdfs/RTE\\_annual\\_report\\_2018.pdf](https://www.rte.ie/annualreport/pdfs/RTE_annual_report_2018.pdf)

<sup>16</sup> Comptroller and Auditor General (2004) [Television Licence Fee Collection – Report on Value for Money Examination](#), January 2004.

<sup>17</sup> Oireachtas (2004) [Debate: An Post: Presentation](#) – Joint Committee on Communications, Marine and Natural Resources, 8 January 2004.



## Retransmission fees

Retransmission fees are paid by pay-TV platforms to public service broadcasters for the right to distribute (or retransmit) the broadcasters' channels. Under section 77 of the 2009 Act, the 'must-offer, must carry' obligations apply whereby RTÉ, TG4 and Virgin Media Ireland (formerly TV3) "must offer" their free-to-air channels to the pay-TV platforms (e.g. Eir, Sky, Virgin Media, Vodafone) that then "must carry" these channels. However, the pay-TV operators do not pay retransmission fees to the broadcasters.<sup>18</sup>

Though retransmission fees were not included in the General Scheme, the Minister requested that retransmission fees be considered as part of the PLS process.

**Table 7: Pre-legislative scrutiny (PLS) – retransmission fees**

Report	Recommendation / key issue
<b>Joint Committee Report on the Future Funding of Public Service Broadcasting</b> (November 2017)	<p>The Joint Committee agree in principle to the introduction of retransmission fees and give RTÉ the capacity to negotiate with suitable platform providers (without prejudice to meeting their public service obligations)<sup>5</sup><sup>6</sup>. Under Section 114(f) of the <i>Broadcasting Act 2009</i> RTÉ is obligated "to establish, maintain and operate a television broadcasting service and a sound broadcasting service which shall have the character of a public service, which services shall be made available, in so far as RTÉ considers reasonably practicable, to Irish communities outside the island of Ireland."</p> <p>The Joint Committee also consider that a provision be included to review the negotiation process in relation to retransmission fees.</p>
<b>Joint Committee PLS Report on the General Scheme of a Broadcasting (Amendment) Bill</b> (March 2018)	<p>The Joint Committee made four main recommendations in respect of retransmission fees.</p> <ol style="list-style-type: none"> <li>1. The Committee recommends that measures to tackle evasion should be prioritised and evaluated prior to consideration of amending the legislation to provide for the capacity to negotiate [i.e. introduction of retransmission fees] to be provided to the Public Service Broadcasters;</li> <li>2. The Committee recommends that detailed regulatory impact analysis be conducted examining all potential financial and economic implications of introducing retransmission fees, including on             <ol style="list-style-type: none"> <li>(a) The public service broadcasters (PSBs);</li> <li>(b) The pay-TV operators;</li> <li>(c) New / potential entrants; and</li> <li>(d) The broadcasting industry as a whole.</li> </ol> </li> <li>3. The Committee recommends that clarification be provided as to whether the revenue generated by the introduction of retransmission fees would be distributed proportionally to all licence fee recipients under the existing formula or be used for another purpose.</li> <li>4. That the 'must offer / must carry' provision be scrutinised as the introduction of retransmission fees combined with this statutory obligation creates an effective levy on pay-TV operators which, if distributed proportionally, will accrue mainly to RTÉ.</li> </ol>

<sup>18</sup> A summary of the main arguments for and against the introduction of retransmission fees and stakeholder commentary is included in the Joint Committee PLS report (p. 34) available at [http://opac.oireachtas.ie/AWData/Library3/GS\\_Broadcasting\\_Bill\\_2017\\_Laid\\_8\\_March\\_2018\\_140040.pdf](http://opac.oireachtas.ie/AWData/Library3/GS_Broadcasting_Bill_2017_Laid_8_March_2018_140040.pdf)

## Criticism



## **Appendix 1: Joint Committee Recommendations at PLS stage**

This page will be included separately as the information was not available at time of printing (1 October 2019).



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