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Explanatory Memorandum](#)

**AN BILLE CRAOLACHÁIN (LEASÚ) 2006
BROADCASTING (AMENDMENT) BILL 2006**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

1. Short title, collective citation, construction and commencement.
2. Interpretation.
3. Additional functions of Authority.
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5. Duty of Commission for Communications Regulation in respect of digital terrestrial television multiplexes.
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15. Amendment to section 32 of Act of 2001.
16. Amendments to section 45 of Act of 2001.
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[No. 70 of 2006]

SCHEDULE
ENACTMENTS REPEALED

ACTS REFERRED TO

Broadcasting Act 1990	1990, No. 24
Broadcasting Act 2001	2001, No. 4
Broadcasting Authority Act 1960	1960, No. 10
Broadcasting Authority Acts 1960 to 2001	
Communications Regulation Act 2002	2002, No. 20
Radio and Television Act 1988	1988, No. 20
Wireless Telegraphy Act 1926	1926, No. 45
Wireless Telegraphy Acts 1926 to 1988	



AN BILLE CRAOLACHÁIN (LEASÚ) 2006
BROADCASTING (AMENDMENT) BILL 2006

BILL

entitled

5 AN ACT TO MAKE FURTHER PROVISION IN RELATION
TO BROADCASTING, FOR THAT PURPOSE TO MAKE
FURTHER PROVISION IN RELATION TO THE SUPPLY
OF PROGRAMME MATERIAL FOR THE PURPOSE OF
10 ITS BEING TRANSMITTED AND THE TRANSMISSION
OF SUCH MATERIAL AND RELATED AND OTHER
DATA BY DIGITAL MEANS, IN RELATION TO THE
COMBINATION OF SUCH PROGRAMME MATERIAL,
IN RELATION TO THE BROADCASTING OF CERTAIN
15 SERVICES TO IRISH COMMUNITIES OUTSIDE THE
ISLAND OF IRELAND, IN RELATION TO THE DISCON-
TINUANCE OF CERTAIN BROADCASTING SERVICES
TRANSMITTED BY ANALOGUE MEANS, TO CONFER
ADDITIONAL FUNCTIONS ON THE COMMISSION FOR
COMMUNICATIONS REGULATION, RADIO TELEFÍS
20 ÉIREANN, THE BROADCASTING COMMISSION OF
IRELAND AND TEILIFÍS NA GAEILGE, TO CONFER A
POWER SUBJECT TO LICENCE ON TEILIFÍS NA
GAEILGE, TO AMEND THE BROADCASTING AUTH-
ORITY ACTS 1960 TO 2001 AND CERTAIN OTHER
25 ENACTMENTS AND TO PROVIDE FOR RELATED
MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) This Act may be cited as the Broadcasting (Amendment)
Act 2006.

Short title,
collective citation,
construction and
commencement.

30 (2) The Broadcasting Authority Acts 1960 to 2001 and this Act
may be cited together as the Broadcasting Authority Acts 1960 to
2006.

(3) The Broadcasting Authority Acts 1960 to 2001, and this Act
(in so far as it amends or extends those Acts) shall be construed
35 together as one.

(4) This Act shall come into operation on such day or days as the
Minister may, by order or orders either generally or with reference
to any particular purpose or provision, appoint and different days
may be so appointed for different purposes or different provisions.

2.—In this Act—

- “the Act of 1960” means the Broadcasting Authority Act 1960;
- “the Act of 1988” means the Radio and Television Act 1988;
- “the Act of 1990” means the Broadcasting Act 1990;
- “the Act of 2001” means the Broadcasting Act 2001; 5
- “the Authority” means Radio Telefís Éireann;
- “the Commission” means the body established by section 3 (as adapted by section 10 of the Act of 2001) of the Act of 1988;
- “digital content contract” has the meaning assigned to it by section 12 of the Act of 2001; 10
- “the Minister” means the Minister for Communications, Marine and Natural Resources;
- “multiplex” means an electronic system which combines programme material and related and other data in a digital form and the transmission of that material and data so combined by means of wireless telegraphy directly or indirectly for reception by the general public; 15
- “programme material” means audio-visual material or, where used in the context of a sound broadcasting service, audio material and includes advertisements and material which, when transmitted, will constitute a direct offer to the public for the sale or supply to them of goods or other property (whether real or personal) or services; 20
- “Teilifís na Gaeilge” means the body established by section 44 of the Act of 2001;
- “television programme service contract” and “television programme service contractor” have the same meaning as they have in section 4(2)(b) of the Act of 1988. 25

3.—(1) Section 16 of the Act of 1960 is hereby amended—

(a) by substituting the following for subsection (1):

“(1) The Authority shall establish and maintain a national television and sound broadcasting service and shall establish, maintain and operate one or more national multiplexes and may establish and maintain broadcasting services of a local, community or regional character and shall have all such powers as are necessary for or incidental to those purposes.”, 30 35

(b) by inserting the following subsections after subsection (1):

“(1A) The Authority shall establish and maintain a television broadcasting service which shall be made available, in so far as the Authority considers reasonably practicable, to Irish communities outside the island of Ireland and the Authority shall have all such powers as are necessary for or incidental to that purpose. 40

(1B) The television broadcasting service established and maintained pursuant to subsection (1A) shall have the character of a public service. 45

5 (1C) The Authority shall endeavour to ensure that the programme schedules of the television broadcasting service established and maintained pursuant to subsection (1A) are, in so far as it is reasonably practicable, representative of the programme schedules of the national television broadcasting services referred to in subsection (1) of this section and subsection (1) of section 45 of the Act of 2001.

10 (1D) For the purposes of subsection (1C), Teilifís na Gaeilge shall provide to the Authority, in such amounts and at such times as may be agreed between them, programme material representative of the programme schedules of the national television broadcasting service referred to in subsection (1) of section 45 of the Act of 2001.”,

and

20 (c) in subsection (3) thereof by the insertion after “The” of “function conferred on the Authority by virtue of subsection (1) of this section to establish, maintain and operate one or more national multiplexes and the”.

(2) (a) A national multiplex established, maintained and operated by the Authority under section 16(1) of the Act of 1960 shall provide for the broadcasting by digital means—

25 (i) the national television broadcasting service commonly known as RTÉ One and RTÉ Two,

(ii) the national television broadcasting service established and maintained by Teilifís na Gaeilge under section 45(1) of the Act of 2001.

30 (b) Nothing in this subsection shall preclude the Authority from making provision in a multiplex established, maintained and operated by the Authority under section 16(1) of the Act of 1960 for the broadcasting by digital means of programme material and related and other data other than that broadcast as part of a service specified in *paragraph (a)*.

(3) Teilifís na Gaeilge shall make to the Authority such periodic or other payments in respect of any service provided by the Authority for the purposes of *subsection (2)(a)(ii)* as the Minister, after consultation with the Authority and Teilifís na Gaeilge, may direct.

40 (4) In the event that Teilifís na Gaeilge does not consider the digital capacity employed by the Authority for the purposes of *subsection (2)(a)(ii)* to be adequate, the Minister may, at the request of Teilifís na Gaeilge, direct the Authority to employ a specific amount of digital capacity.

45 (5) The Minister may, at the request of the Commission and after consultation with the Authority and the fulfilment by the Commission of its duty under *section 4(4)*, require the Authority to make provision in a multiplex established, maintained and operated by the Authority under section 16(1) of the Act of 1960 for the broadcasting
50 by digital means of the television programme service provided under the television programme service contract by the television programme service contractor.

(6) If the Minister makes a requirement of the Authority under subsection (5), the television programme service contractor shall make to the Authority such periodic or other payments in respect of any service provided by the Authority in meeting that requirement as the Minister, after consultation with the Authority and the television programme service contractor, may direct. 5

(7) If the Minister makes a requirement of the Authority under subsection (5) and the television programme service contractor does not consider the digital capacity employed by the Authority in respect of any service provided by the Authority in meeting that requirement to be adequate, the Minister may direct the Authority to employ a specific amount of digital capacity. 10

Additional functions of Commission.

4.—(1) It shall be the function of the Commission to arrange, in accordance with this Act, for the establishment, maintenance and operation of multiplexes, including national multiplexes, in addition to any multiplexes established, maintained and operated by the Authority under section 16(1) of the Act of 1960. 15

(2) For the purpose of subsection (1) the Commission shall, with persons (in this Act referred to as “multiplex contractors”), enter into contracts (in this Act referred to as “multiplex contracts”) under which the multiplex contractors have, subject to the provisions of this Act, the right and duty to establish, maintain and operate a multiplex in the area specified in the multiplex contract. 20

(3) It shall be a duty of the Commission to ensure that every multiplex contractor complies with the provisions of this Act. 25

(4) It shall be a duty of the Commission to endeavour to arrange for the broadcasting of the following services, namely:

(a) the television programme service provided under the television programme service contract by the television programme service contractor; and 30

(b) any television broadcasting service in Northern Ireland that is notified to the Commission by the Minister, being a service that is receivable throughout the whole of Northern Ireland and is provided by terrestrial means,

by digital means under a multiplex contract. 35

(5) The Commission shall have all such powers as are necessary for or incidental to the performance of its functions under this Act including, in particular, the power to consult with the Commission for Communications Regulation as it sees fit.

Duty of Commission for Communications Regulation in respect of digital terrestrial television multiplexes.

5.—(1) It shall be a duty of the Commission for Communications Regulation, at the request of the Authority, to issue to the Authority under section 16(3)(a) of the Act of 1960 a licence to establish, maintain and operate a single television multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State. 40 45

(2) It shall be a duty of the Commission for Communications Regulation, exercisable only at the request of the Authority and after consultation with the Minister and the Commission, to issue to the Authority under section 16(3)(a) of the Act of 1960 a licence to 50

establish, maintain and operate one further television multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State.

5 (3) It shall be a duty of the Commission for Communications Regulation, at the request of the Commission, to issue to the Commission under the Wireless Telegraphy Acts 1926 to 1988, subject to the provisions of this Act, licences for the establishment, maintenance and operation of four television multiplexes, which multiplexes shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State, in accordance with contracts to be entered into by the Commission under *subsection (2) of section 4*.

15 (4) The Commission for Communications Regulation shall consult with the Commission regarding the desirability of it issuing to the Commission under the Wireless Telegraphy Acts 1926 to 1988, subject to the provisions of this Act, further licences for the establishment, maintenance and operation of additional television multiplexes, which multiplexes shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State, in accordance with additional contracts to be entered into by the Commission under *subsection (2) of section 4*.

25 (5) Nothing in this section shall be construed as preventing the Commission for Communications Regulation, following consultation with the Minister and with the Commission, from issuing under the Wireless Telegraphy Acts 1926 to 1988, other licences authorising the combination, by means of a multiplex other than a multiplex to which *subsections (1), (2) and (3)* relate of programme material and related and other data in a digital form, subject to such conditions as the Commission may consider necessary to impose in a contract entered into under section 12 of the Act of 2001.

35 (6) During the continuance of any emergency declared under section 10 of the Wireless Telegraphy Act 1926, the Minister may suspend any licence issued under this section and, while any such suspension continues, the Minister may operate any service which was provided under the suspended licence or require such service to be operated as he directs.

40 6.—(1) It shall be a duty of the Commission for Communications Regulation, at the request of the Authority, to issue to the Authority under section 16(3)(a) of the Act of 1960 a licence to establish, maintain and operate a single sound broadcasting multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State.

Duty of Commission for Communications Regulation in respect of digital terrestrial sound broadcasting multiplexes.

50 (2) It shall be a duty of the Commission for Communications Regulation, exercisable only at the request of the Authority and after consultation with the Minister and the Commission, to issue to the Authority under section 16(3)(a) of the Act of 1960 a licence to establish, maintain and operate one further sound broadcasting multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State.

(3) It shall be a duty of the Commission for Communications Regulation, at the request of the Commission, to issue to the Commission under the Wireless Telegraphy Acts 1926 to 1988, subject to the provisions of this Act, licences for the establishment, maintenance and operation of one sound broadcasting multiplex, which multiplex shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in the State, in accordance with contracts to be entered into by the Commission under *subsection (2) of section 4*. 5

(4) It shall be a duty of the Commission for Communications Regulation, at the request of the Commission, to issue to the Commission under the Wireless Telegraphy Acts 1926 to 1988, subject to the provisions of this Act, licences for the establishment, maintenance and operation of one or more sound broadcasting multiplexes, which multiplexes shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in an area of the State specified by the Commission, which area may consist of the whole or any part of the State, in accordance with contracts to be entered into by the Commission under *subsection (2) of section 4*. 10 15 20

(5) The Commission for Communications Regulation shall consult with the Commission regarding the desirability of it issuing to the Commission under the Wireless Telegraphy Acts 1926 to 1988, subject to the provisions of this Act, further licences for the establishment, maintenance and operation of additional sound broadcasting multiplexes, which multiplexes shall, in so far as it is reasonably practicable, be capable of being transmitted by digital terrestrial means to the whole community in an area of the State specified by the Commission, which area may consist of the whole or any part of the State, in accordance with additional contracts to be entered into by the Commission under *subsection (2) of section 4*. 25 30

(6) Nothing in this section shall be construed as preventing the Commission for Communications Regulation, following consultation with the Minister and with the Commission, from issuing under the Wireless Telegraphy Acts 1926 to 1988, other licences authorising the combination, by means of a multiplex other than a multiplex to which *subsections (1), (2), (3) and (4)* relate of programme material and related and other data in a digital form, subject to such conditions as the Commission may consider necessary to impose in a contract entered into under section 12 of the Act of 2001. 35 40

(7) During the continuance of any emergency declared under section 10 of the Wireless Telegraphy Act 1926, the Minister may suspend any licence issued under this section and, while any such suspension continues, the Minister may operate any service which was provided under the suspended licence or require such service to be operated as he directs. 45

Regulations
prescribing fees.

7.—(1) Every licence under the Act of 1960, the Act of 1988, the Act of 1990 and this Act shall be issued on payment of such fees as may be prescribed by the Commission for Communications Regulation, with the consent of the Minister, in regulations made under this section. 50

(2) Regulations made under this section may prescribe in relation to all such licences or any particular class or classes of such licences—

(a) the fees to be paid on the grant or renewal of such licences, and 55

(b) the time and manner at and in which such fees are to be paid.

5 (3) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and if either such House shall, within twenty one days on which either such House has sat next after the regulation was laid before such Houses, pass a resolution annulling such regulation, such regulation shall be annulled accordingly but without prejudice to the validity of anything previously done under such regulation.

10 8.—(1) In order to secure the orderly establishment, maintenance and operation of multiplexes, the Commission shall as soon as may be after this section has come into force and may thereafter, from time to time having regard to the availability of radio frequencies for multiplexes, invite applications for multiplex contracts and, subject to the provisions of this Act, may enter into such contracts. Applications for multiplex contracts.

15 (2) Where the Commission invites applications for a multiplex contract it shall by public notice specify the coverage area (which area may consist of the whole or any part of the State) in which the programme material and related and other data shall be broadcast pursuant to such contract (in this section referred to as “the maximum coverage area”) and by such notice shall invite persons interested in establishing and maintaining a multiplex to apply for such contract.

(3) Every notice under *subsection (2)* shall—

- 25 (a) be published in at least one national newspaper,
- (b) specify the procedure to be followed in order to make an application, and
- (c) specify any other matters which appear to the Commission to be necessary or relevant.

30 (4) The Commission may, in a notice under *subsection (2)*, specify the minimum coverage area in which the programme material and related and other data shall be broadcast under the contract, which coverage area may be less than that of the maximum coverage area specified in the notice.

35 (5) Notwithstanding *subsection (2)*, where a minimum coverage area is specified in a notice under that subsection the coverage area in which the programme material and related and other data shall be broadcast pursuant to any contract entered into on foot of such notice shall be the minimum coverage area so specified, subject to the requirement that every effort is made by the person to whom the contract is awarded to ensure that the programme material and related and other data is broadcast in as much of the maximum coverage area as is practicable.

45 9.—(1) The Commission shall, in accordance with the provisions of this Act consider every application for a multiplex contract received by it pursuant to a notice under *section 8* for the purpose of determining the most suitable applicant, if any, to be awarded a multiplex contract. Determination of applications for award of multiplex contracts.

(2) In the consideration of applications received by it and in determining the most suitable applicant to be awarded a multiplex contract, the Commission shall have regard to—

- (a) the character of the applicant or, if the applicant is a body corporate, the character of the body and its directors, manager, secretary or other similar officer and its members and the persons entitled to the beneficial ownership of its shares, 5
- (b) the adequacy of the expertise and experience and of the financial resources that will be available to each applicant and the extent to which the application accords with good economic principles, 10
- (c) the range and type of the programme material or compilations of programme material proposed to be included in the multiplex by each applicant or, if there is only one applicant, by that applicant, 15
- (d) any proposals by the applicant for promoting the acquisition by persons in the proposed coverage area of the multiplex of equipment capable of receiving all of the multiplexes available in that area, 20
- (e) in the event that the Commission has specified a minimum coverage area pursuant to *section 8(4)*, the extent of the coverage area proposed to be achieved by the applicant,
- (f) the technical proposals regarding the establishment, maintenance and operation of the proposed multiplex, 25
- (g) the duty imposed on the Commission under *section 4(4)*, and
- (h) any other matters which the Commission considers to be necessary to secure the orderly establishment, maintenance and operation of multiplexes. 30

Terms and conditions of multiplex contracts.

10.—(1) Every multiplex contract may contain such terms and conditions as the Commission considers appropriate and specifies in the contract.

(2) Without prejudice to the generality of *subsection (1)*, the Commission may specify in a multiplex contract all or any of the following terms or conditions: 35

- (a) the period during which the contract shall continue in force;
- (b) whether the contract may be renewed and, if so, the manner in which, the terms on which, and the period for which, the contract may be so renewed; 40
- (c) a condition prohibiting the assignment of the contract or of any interest therein without the prior approval of the Commission;
- (d) if the multiplex contractor be a company, a condition prohibiting any alteration in the Memorandum or Articles of 45

Association of the company or in so much of that Memorandum or of those Articles as may be specified or prohibiting any material change in the ownership of the company without the prior approval of the Commission;

- 5 (e) a condition requiring the multiplex contractor to provide the range and type of programmes which he proposed to offer in his application for the award of the contract;
- 10 (f) a condition requiring the multiplex contractor to implement any proposals made in his application for the coverage area of the multiplexes;
- 15 (g) following consultation with the Commission for Communications Regulation, a condition requiring the multiplex contractor to implement the proposals made in his application for the award of the contract for promoting the acquisition, by persons in the proposed coverage area of the multiplex, of equipment capable of receiving all of the multiplexes available in that area;
- (h) any condition which the Commission considers appropriate having regard to its duty under *section 4(4)*;
- 20 (i) following consultation with the Commission for Communications Regulation, any condition requiring the multiplex contractor to comply with any technical condition as the Commission for Communications Regulation may require in the exercise of its functions.

25 (3) If a multiplex contract does not contain a condition of the type specified in *paragraph (c) or (d) of subsection (2)*, the following provisions shall have effect:

- 30 (a) a multiplex contract, or any interest in a multiplex contract, shall not be assignable, nor shall any alteration be made in the Memorandum or Articles of Association of any company which is a multiplex contractor, nor shall there be any material change in the ownership of such a company, without the previous consent in writing of the Commission, and the Commission may, if it considers it reasonable so to do, refuse such consent;
- 35 (b) in considering whether to grant its consent to an assignment of a multiplex contract, a change in the Memorandum or Articles of Association of a company which is a multiplex contractor, or a material change in the ownership of such a company, the Commission shall have regard to the criteria specified in *section 9(2)*.
- 40

(4) Every multiplex contract shall—

- (a) provide that the Commission may, at its discretion, suspend, reduce the term of or terminate the contract—
- 45 (i) if any false or misleading information was given to the Commission by or on behalf of the multiplex contractor prior to the making of the contract,
- (ii) if the multiplex contractor has, in the opinion of the Commission, committed serious or repeated breaches of his obligations under the multiplex contract or under this Act,
- 50

(b) provide that a multiplex contractor shall pay to the Commission the fees (if any) specified therein, including any fees payable by the Commission to the Commission for Communications Regulation under *section 7* and any regulations made thereunder, and 5

(c) provide that the multiplex contractor shall provide such information (including copies of his accounts) as the Commission may consider it requires in order to enable it carry out its functions under this Act.

(5) Every multiplex contract shall be open to inspection by members of the public at the Commission's registered office and the Commission shall, on request made by any person and on payment of such sum (if any) as the Commission may reasonably require, furnish to that person a copy of that contract. 10

Analogue switch-off.

11.—(1) For the purpose of considering for how long it would be appropriate for television broadcasting services to continue to be provided by analogue means, the Minister— 15

(a) shall keep under review the extent of—

(i) the availability of multiplexes in the State,

(ii) the availability in the State by digital means of the services specified in *subsection (2)*, 20

(iii) the ownership or possession in the State of equipment capable of receiving the services specified in *subsection (2)* when transmitted by digital means,

(iv) the likely future extent of such availability and such ownership or possession, 25

and

(b) shall, at such time or times as he considers fit and, in any case, on or before the second anniversary of the day on which the first multiplex contract is awarded under this Act, require the Commission and the Authority to report to him on the matters referred to in *paragraph (a)*. 30

(2) The services specified for the purposes of *subsection (1)(ii)* are—

(a) the national television broadcasting service commonly known as RTÉ One and RTÉ Two established and maintained by the Authority, 35

(b) the national television broadcasting service established and maintained by Teilifís na Gaeilge under *section 45(1)* of the Act of 2001, and 40

(c) the television programme service provided under the television programme service contract by the television programme service contractor.

(3) If the Commission or the Authority is required to submit a report under *subsection (1)(b)*, they shall submit the report within six months of the date of the requirement. 45

(4) Before making any report under *subsection (1)(b)*, the Commission shall consult with—

- (a) the holders of all multiplex contracts,
- (b) the holders of all digital content contracts,
- 5 (c) the television programme service contractor,
- (d) the Commission for Communications Regulation, and
- (e) such other persons as the Commission considers fit,

and the Commission shall include in their report a summary of any representations made to them by the persons consulted.

10 (5) For the purpose mentioned in *subsection (1)*, the Minister shall, on requiring reports under *subsection (1)(b)*, consult with—

- (a) such persons as appear to the Minister to represent viewers as the Minister considers fit, and
- (b) such other persons as the Minister considers fit,

15 regarding the matters referred to in *subsection (1)(a)* and also, if the Minister considers fit, regarding the likely effects on viewers of any of the services referred to in *subsection (2)* ceasing to be broadcast by analogue means.

20 (6) The Minister may, at any stage or following consideration of a report under *subsection (1)(b)*, issue a policy direction under section 13 of the Communications Regulation Act 2002 regarding the date or dates after which the Commission for Communications Regulation may no longer grant licences under section 16(3) of the Act of 1960 or section 4(3) of the Act of 1988 in respect of the
25 provision of any of the services referred to in *subsection (2)* by analogue means.

(7) The Commission for Communications Regulation may under section 7(1) of the Act of 1988 vary a term or condition of a licence issued under section 4(3) of that Act to ensure that—

- 30 (a) any contract for the provision by analogue means of a service referred to in *subsection (2)(c)* that is renewed by the Commission shall contain a condition that after a date specified in the contract the service may no longer be provided by analogue means, and
- 35 (b) any new contract entered into by the Commission for the provision of such a service by analogue means shall contain such a condition or, if no such date has been decided upon, a condition that the service may no longer be provided by analogue means after a date to be announced
40 by the Minister in due course.

12.—Section 12 of the Act of 2001 is hereby amended—

Amendments to section 12 of Act of 2001.

- 45 (a) in subsection (1) by the substitution for “for the purpose of any arrangements to be entered into by him or her under paragraph (a) or (b) of section 14(1)” of “for inclusion as part of a multiplex”, and

(b) in paragraph (b) of subsection (2) by the deletion of “by the designated company”.

Amendments to section 16 of Act of 2001.

13.—Section 16 of the Act of 2001 is hereby amended—

(a) in subsection (7) by the substitution for “transmitted by the transmission company pursuant to arrangements under section 14(1) and” of “included as part of a multiplex, within the meaning of the *Broadcasting (Amendment) Act 2006*, and transmitted by”, and 5

(b) by the substitution for subsection (9) of the following subsection: 10

“(9) The Commission may give a direction to—

(a) a multiplex contractor, within the meaning of the *Broadcasting (Amendment) Act 2006*, requiring that contractor to include as part of a multiplex, within the meaning of that Act, the electronic programme guide or guides prepared under the programme guide contract referred to in *subsection (8)*, and 15

(b) each holder of a licence referred to in section 37(1) requiring him or her to transmit the said guide or guides, 20

and the said contractor and each such holder shall comply with such a direction.”.

Amendments to section 28 of Act of 2001.

14.—Section 28 of the Act of 2001 is hereby amended—

(a) by substituting the following for paragraph (c) of subsection (8): 25

“(c) exercising all or any of the powers conferred on it by subsection (2) (other than paragraphs (bb) and (bbb) (inserted by this Act) thereof) of section 16 of the Act of 1960,” 30

(b) by inserting the following after paragraph (d) of subsection (8):

“(e) providing a service under subsection (1A) of section 16 of the Act of 1960, and

(f) the establishment, maintenance and operation of one or more national multiplexes pursuant to subsection (1) of section 16 of the Act of 1960.”, 35

and

(c) by substituting the following for subsection (10): 40

“(10) Without prejudice to sections 25(1) and 26 of the Act of 1960, the Authority shall, as soon as may be after the end of each financial year, make a report to the Minister of the use it has made with regard to, respectively, the television broadcasting service and the sound broadcasting 45

5 service referred to in subsection (1) and the television
broadcasting service referred to in subsection (1A) of
section 16 of the Act of 1960, of the moneys paid to it
under section 8 of the Act of 1976 in that year for the
purpose of the activities, during that year, referred to in
paragraphs (a), (b) and (c) of subsection (2) and para-
graphs (d) and (e) of subsection (8).”.

15 **15.**—Section 32 of the Act of 2001 is hereby amended by substituting the following for subsection (1):

Amendment to
section 32 of Act of
2001.

10 “(1) The function conferred on the Minister by section
25(1) of the Act of 1960 with respect to directing (whether on
the Minister’s own motion or at the request of the Minister for
Finance) the Authority to keep special accounts includes a
15 power (exercisable on the Minister’s own motion or at the
request of the Minister for Finance) to direct the Authority to
keep a special account showing the manner, with regard to,
respectively, the television broadcasting service and sound
broadcasting service referred to in subsection (1) of section 28
20 and the television broadcasting service referred to in subsection
(1A) of section 16 of the Act of 1960, in which the moneys paid
to it under section 8 of the Act of 1976 in the year concerned
have been appropriated for the purpose of the activities of the
Authority, during that year, referred to in paragraphs (a), (b)
25 and (c) of subsection (2) and paragraphs (d) and (e) of subsec-
tion (8) of section 28.”.

16.—(1) Section 45 of the Act of 2001 is hereby amended—

Amendments to
section 45 of Act of
2001.

(a) by inserting the following after paragraph (j) of subsection (8):

30 “(k) to establish, maintain and operate broadcasting
stations and to acquire, install and operate
apparatus for wireless telegraphy.”,

and

(b) by inserting the following after subsection (8):

35 “(9) (a) The powers conferred on Teilifís na Gaeilge by
virtue of paragraph (k) of subsection (8) of this
section shall not be exercised save under
licence issued by the Commission for
Communications Regulation and in accordance
40 with any conditions attached by the Com-
mission for Communications Regulation to
such licence.

45 (b) During the continuation of any emergency
declared under section 10 of the Wireless Tel-
egraphy Act 1926, the Minister may suspend
any licence under this subsection and, while
any such suspension continues, the Minister
may operate any service which was provided
50 by Teilifís na Gaeilge under the suspended
licence or require such service to be operated
as he directs.

(c) A copy of every licence under this subsection shall be laid before each House of the Oireachtas as soon as may be after the issue of the licence.”.

Repeals. **17.**—The enactment mentioned in the *Schedule* is hereby repealed to the extent specified in the *third column* of the *Schedule* . 5

Expenses. **18.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Section 17.

SCHEDULE

10

ENACTMENTS REPEALED

Number and year	Short title	Extent of repeal
No. 4 of 2001	Broadcasting Act 2001	In section 2 the definitions of “digital multiplex licence”, “DTT licence”, “multiplex”, “the multiplex company” and “the transmission company”
		Sections 5 to 9
		Sections 13 to 15

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**AN BILLE CRAOLACHÁIN (LEASÚ) 2006
BROADCASTING (AMENDMENT) BILL 2006**

EXPLANATORY AND FINANCIAL MEMORANDUM

[This Memorandum is not part of the Act and does not purport to be a legal interpretation.]

Introduction

The Broadcasting (Amendment) Bill seeks to establish a more flexible and market-responsive model for licensing DTT in Ireland and to allow for progress to be made towards analogue switch-off. Ensuring that the Irish public continues to have access to a range of quality programming on a universal and free-to-air basis is a core broadcasting policy objective. The development of a DTT platform will involve an upgrade from a legacy analogue system to a modern digital system, which can allow broadcasters to offer more, in terms of content and services, to Irish viewers.

In addition, the Bill will also amend the remit of RTÉ to allow it to utilise public funding in the provision of a broadcasting service to Irish emigrant communities abroad.

Provisions of Bill

There are 18 Sections in the Bill and one Schedule to the Bill.

Section 1 provides for the short title, collective citation, construction and commencement. These are standard provisions in legislation.

Section 2 provides for interpretation and provides definitions for a number of terms used throughout the Bill.

Section 3 provides for the Authority (RTÉ) to establish and maintain multiplexes, and sets out a provision for RTÉ and TG4 channels, which ensures that these services are carried on the first multiplex. It also sets out a fall-back provision for TV3 if certain conditions in Section 4 are not met. It provides that TG4 and TV3 may make payments to the Authority in respect of this must-carry provision and may request an increase in capacity for the carriage of their service.

This section also provides for the Authority to establish and maintain a broadcasting service of a public service character that reflects the RTÉ services and TG4, to Irish communities outside the Island of Ireland.

Section 4 outlines the functions of the Broadcasting Commission of Ireland (BCI) with regard to arranging for and entering into contracts with multiplex contractors to provide additional multiplexes of programming (bundles of channels and content, on both digital terrestrial television and digital terrestrial radio). The BCI will be required to ensure compliance by contractors with the provisions of this Act. It also sets out the conditions to allow for provision of the analogue commercial licensee (TV3) services on the DTT platform, and for any Northern Ireland service that could be designated by the Minister in the future.

Section 5 provides that the Commission for Communications Regulation (ComReg) is required to make available licences for DTT services, for both RTÉ, and other multiplex service providers. These licences shall allow for the possibility that multiplexes may, so far as it is reasonably practicable to do so, be made available to the whole community in the State. In addition, this Section allows for the possibility that ComReg may allocate further licences for DTT, to be contracted by the BCI, and also other services. It also provides for the Minister to make provisions for the use of services under *Section 5* in the event of a declared emergency.

Section 6 provides that the Commission for Communications Regulation (ComReg) is required to make available licences, both to RTE and other providers, in a similar arrangement to that of *Section 5* but for digital sound broadcasting.

Section 7 provides for ComReg to levy fees by regulation in relation to various broadcasting licences, including multiplex licences, with the Minister's consent.

Section 8 provides that the BCI should run a competition for the awarding of multiplex contracts (both TV and radio), which should be publicly advertised. The competition (applications procedure) can be initiated by the Commission as frequencies become available. Under this provision the BCI has discretion to set the coverage area for any multiplex services and services can include regional and local digital services.

Section 9 sets out the criteria to be considered by the BCI when awarding contracts to multiplex contractors. The BCI is also empowered to include additional criteria when deemed necessary.

Section 10 allows the BCI to set out the terms and conditions for multiplex contracts and sets out a number of terms and conditions which may or may not be included. In addition, it provides that the Commission may suspend or terminate the contract under certain conditions, that the contractor may pay fees to the Commission and that each multiplex contract shall be open to inspection by the public.

Section 11 sets out the provisions to allow consideration by the Minister for Communications, Marine and Natural Resources of a date for analogue switch-off, having consulted with all relevant stakeholders. It provides for the Minister, following consideration of a report from the Commission or the Authority, or at any stage, to issue a policy direction in this regard.

Sections 12 and 13 give effect to various minor amendments to the 2001 Broadcasting Act in relation to DTT and the new licensing model proposed, in particular with regard to Electronic Programme Guides and the application of BCI Codes and Rules.

Sections 14 and 15 allow the use of public moneys by the Authority (RTÉ) in both maintaining multiplexes for public services and in broadcasting to Irish communities abroad.

Section 16 provides for an analogue broadcasting licence for TG4 after TG4 is separated from RTÉ.

Section 17 provides for the repeal of sections of the Broadcasting Act 2001, so the new alternative licensing regime can apply

Section 18 allows for the Minister's costs in the administration of this Act.

The Schedule sets out the sections of the Broadcasting Act 2001 that are repealed by section 17, so the new alternative licensing regime can apply.

Financial Implications

No financial implications to the Exchequer are foreseen. The amendments to the remit of RTE will mean that RTE will engage in various activities including the provision of services to Irish communities abroad and the transmission of broadcasting services that are provided across multiplexes. The overall funding mechanism for RTE's public service broadcasting is through the television licence fee and through commercial income. Commercial broadcasters who decide to provide services across multiplexes will meet the costs of transmission by their own means. Some broadcasters will need to meet through their own means the costs of transmission by both analogue and digital means during the simulcast period, before analogue switch-off. As digital transmission entails a more efficient use of spectrum and lower powers it is likely to be a more economical means of transmission in the long term for broadcasters.

*An Roinn Cumarsáide, Mara agus Acmhainní Nádurtha,
Nollaig 2006.*