



General Scheme for the Broadcasting Bill, 2006 RTÉ Response, October 2006

A. General comments

Introduction

RTÉ welcomes the publication of the *General Scheme for the Broadcasting Bill 2006*, for widespread consultation, as a precursor to the development of a Broadcasting Bill. In particular the consolidated approach adopted provides a good opportunity to update the legislation in what is a very challenging broadcasting environment and to future-proof it for the coming years; in this regard it is noted that the *General Scheme* is effectively silent on DTT.

RTÉ is fully committed to working with DCMNR, and all other relevant parties, in the development and progress of the Broadcasting Bill

The initial e-consultation period is brief for such a wide-ranging *General Scheme* and clearly RTÉ will be making more detailed comments following the publication of the draft Broadcasting Bill. This document highlights the proposed Heads where specific issues arises, in some instances seeking clarification, in others offering comments and/or suggested amendments.

RTÉ's role

Given RTÉ's role as a national Public Service Broadcaster (PSB), it is essential that it is independent of Government, from a legal point of view, and that it is seen to be so.

In many cases, the proposed Heads are closely based on precedents from legislation governing State-owned companies. In the case of RTÉ it is proposed the company will be established as a company limited by guarantee, but with the Minister as the sole member. For this reason, and for the critical reason that the independence of a national PSB must not only be real but must also be perceived, it may be that some of the provisions of the Heads, although suitable for other companies, are not suitable for RTÉ.

RTÉ's understanding of the reason it is proposed to convert it into a company is to ensure that the directors of the company will have all of the obligations and duties, which arise under company law. If that is to be the case, and given the onerous obligations on directors under company law, it is all the more important that the directors can discharge their duties without any risk of undue influence, and have the power to so discharge. RTÉ is fully committed to working closely with DCMNR, and all other appropriate bodies, to help ensure this understanding can be materialised in an appropriate way.

Many of the proposed changes are to be welcomed but the basic foundation of RTÉ in Irish life would be transformed if all of the proposals in the *General Scheme* were enacted. It is imperative that RTÉ's position as the national PSB is clearly enshrined in legislation. It would be of serious concern if there was any perception or creation of a state-controlled broadcaster, by commission or omission.

RTÉ's financial position

This is addressed throughout the General Scheme but of particular significance is Head 100 – Accounts and Audit.

The Notes to Head 100 indicate the purpose of it is to require the two Companies (RTÉ and Teilifís na Gaeilge) to maintain financial records and accounts and to prepare budgetary estimates. This is a norm that one would expect of any company and certainly for one incorporated under the Companies Acts, as proposed, so one would expect to see this provision.

The Notes go on to amplify that the Head also requires the two Companies to prepare a statement of revenues and costs distinguishing as between commercial and public service activities. RTÉ has developed a method for doing this over the past number of years, thus the general intent of this second additional requirement is not in itself unexpected, particularly in the context of an organisation that has a blend of commercial and public sector activities and where there is a requirement to ensure transparency of the use of public funding. Given the requirement to take guidance from the BAI as regards cost accounting principles the mechanism for achieving compliance with this second request, while at the same time fully complying with internationally accepted financial reporting and accounting standards, requires further detailed clarification.

Taking both of the reporting requirements of Head 100 together, one would expect to see a requirement to maintain Accounts in accordance with the Companies Acts (and by extension internationally accepted accounting and auditing standards) and separately to prepare bespoke disclosures, aimed at ensuring effective compliance with the requirements of EU transparency directive. However an initial reading of Head 100 is that it does not deliver this and it has, probably inadvertently, intermingled, these two differing requirements.

Also of significant importance are tax related issues. In general terms it is clear that in order to avoid significant tax charges arising from enactment of the proposed Heads of the *General Scheme*, the Bill will either need to include a large number of specific tax exemptions in respect of the transition arrangements, or alternatively adopt a different approach and simply incorporate the current RTÉ entity as a company under the Companies Acts. In addition, while the former approach will work from an Irish perspective, the foreign tax implications will also need to be considered.

It is noted that transition provisions in relation to Teilifís na Gaeilge are not included in the *General Scheme* so they cannot be addressed, even at a high level, at this stage.

BAI role and position

The *General Scheme* proposes the establishment of the BAI, a Contracts Committee and a Compliance Committee with a single Chief Executive who “...shall carry on and manage, and control generally...” the administration of all three bodies.

This proposal makes the operation of the Contract and Compliance Committees in an appropriately separate fashion impossible. It would also potentially open the Chief Executive to unfair and subtle pressures from Authority members in relation to work/projects being carried out by either of the two Committees at any particular point in time.

The Compliance Committee should be able to check how a broadcaster meets the terms of their contract quite independently of the Committee that awards the contract, initial or renewed, and can give derogations to it.

It would be more appropriate, and follow best practice, to have the Contract and Compliance Committees operate as two executive groups with independent administrations.

B. Comment on Legislative Structures in the *General Scheme*

The *General Scheme* operates on two levels. At one level individual policy changes are contained in each Head. At another level, policy is articulated by the structural change proposed by combinations of Heads.

In this section of the RTÉ Response some of the Heads are grouped and commented on to point out how in combination these Heads have an adverse effect upon the future of PSB.

Heads 24 to 27 (and Head 30): The Objectives, Functions and Duties of the BAI and its Statutory Committees

Heads 70 to 75, 80 & 89: The new RTÉ Company

Heads 78 & 89: The “Independence” of RTÉ and its directors

The following are some general observations of concern on the effect of what are the two central proposals of this General Scheme; the establishment of a new broadcasting regulator (encapsulated in Heads 24 to 27 and Head 30) and the significant proposal to change RTÉ from a statutory corporation to that of a company under the Companies Acts where a member of the Government will be in law capable of exercising all the functions of the new company. At the end of this legislative re-working RTÉ is expected to emerge with its independence guaranteed (Heads 78 and 89).

The establishment of a new regulator is a laudable objective, necessary because of the complex set of issues that broadcasting now presents to Irish society and because the current legislative structure is not designed to regulate or promote broadcasting as it evolves over coming years. The proposal to ensure that RTÉ is subject to the governance provisions of the Companies Acts is again laudable in so far as that legislation imposes standards of corporate behaviour.

However, RTÉ is convinced that the sum total of the *General Scheme* on both of these fronts is to create a form of broadcasting that is not so much PSB as State-controlled broadcasting and, in so far as it imposes a regime of control either by the State itself or by an over-empowered regulator, is a retrograde and unnecessary step.

It is imperative that due consideration is given to this concern. The enactment of the main thrust of the *General Scheme* will give Central Government close control over the running and operation of RTÉ and allied with an excessive empowerment of a regulator (for which no reasons have been articulated) will lead to an unhealthy state of affairs. One immediate comparison that can be made is with the situation in Britain. There the BBC is a corporation established by Royal Charter and Channel Four is a statutory corporation. In neither case does the unmediated power of a government minister exist by way of a company in which he is the sole member.

The bare statement of “independence” contained in Head 78 sits somewhat isolated in the *General Scheme* (it specifically excludes RTÉ being independent in the management of its affairs). In fact it is not so much a statement of fact as it is devoid of any real meaning - sitting as it does in the *General Scheme* surrounded by numerous instances of statutory intervention either by the BAI or by the Minister. To illustrate this point, RTÉ has attached three appendices to this document. One shows the current legislative regime with respect to the operation and management of RTÉ, the other two set out the proposed roles of the BAI and Central Government respectively.

C. Specific comments

These comments are relevant to individual Heads and for ease of reference they are inserted in black typeface following each Head on which we comment.

(The Heads are attached in red for ease of reference and are presented individually without notes.)

Head 6 - Body corporate and seal

1. The Authority is to be a body corporate, with perpetual succession and with the power to sue and be sued, and to acquire, hold and dispose of land and other property.

2. The Authority shall, as soon as may be after its establishment, provide itself with a seal.

3. The seal of the Authority shall be authenticated by the signature of—
(a) the chairperson of the Authority or another member of the Authority
(b) a member of the staff of the Authority, authorised by the Authority to act in that behalf.

4. Judicial notice shall be taken of the seal of the Authority and every document purporting to be an instrument made by the Authority and to be sealed with the seal of the Authority shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

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

6. The Contract Awards Committee and Compliance Committee shall perform their functions and exercise their powers under the seal of the Authority.

As the Contracts Awards Committee and the Compliance Committee operate under the seal of the BAI it, in effect, means that they are the BAI.

This raises crucial issues of independence, transparency and the necessary distance in operation between the Contracts Awards Committee and the Compliance Committee.

There is no detail, equivalent to Head 90 (2), as to how the seal shall be authenticated.

Head 9 - Terms and removal

1. There shall be paid to members of the Authority, Contract Awards Committee or Compliance Committee, out of moneys at the disposal of the Authority, such remuneration (if any) and allowances for expenses incurred by them as the Minister, with the consent of the Minister for Finance, from time to time determines.

2. Subject to the provisions of this Act, a member of the Authority, Contract Awards Committee or Compliance Committee shall hold office on such terms (other than the payment of remuneration and allowances for expenses) as the Minister determines at the time of his or her appointment.

3. The Minister shall cause a statement in writing specifying the terms of office and remuneration of the members of the Authority, Contract Awards Committee or Compliance Committee to be laid before both Houses of the Oireachtas.

4. A member of the Authority, Contract Awards Committee or Compliance Committee may at any time be removed from membership of the Authority, Contract Awards Committee or Compliance Committee by the Government if, in the Government's opinion, the member has become incapable through ill-health of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the Government to be necessary for the effective performance by the Authority, Contract Awards Committee or Compliance Committee of its functions, and only if, resolutions are passed by each House of the Oireachtas calling for his or her removal.

5. A member of the Authority, Contract Awards Committee or Compliance Committee shall cease to be and shall be disqualified from being a member of the Authority, Contract Awards Committee or Compliance Committee where such member –

- (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with creditors,
- (c) on conviction on indictment by a court of competent jurisdiction is sentenced to a term of imprisonment,
- (d) is convicted of an offence involving fraud or dishonesty, or
- (e) is disqualified or restricted from being a director of any company.

6. Where a member of the Authority, Contract Awards Committee or Compliance Committee fails –

- (a) to attend three consecutive meetings of the Authority, the Contract Awards Committee or the Compliance Committee, and no satisfactory reason can be given for such non-attendance.
- (b) to make a declaration in accordance with the requirements of subsections (1) and (3) of section 21
- (c) to comply with the requirements of subsection (1) of section 22
- (d) to make a declaration in accordance with the requirements of Section 17 of the Ethics in Public Office Act 1995. the Minister may with the consent of the Government by order remove the member from office.

7. Every order under subsection (6) shall be laid by the Minister before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House sits after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

8. If a member of the Authority, Contract Awards Committee or Compliance Committee dies, resigns, becomes disqualified or is removed from office or for any other reason ceases to be a member of the Authority, Contract Awards

Committee or Compliance Committee, the Government on the nomination of the Minister, may appoint a person to be a member of the Authority, Contract Awards Committee or Compliance Committee to fill the casual vacancy so occasioned and the person so appointed shall be appointed for the unexpired period of the term of membership of, and in the same manner as, the member of the Authority, Contract Awards Committee or Compliance Committee who occasioned the casual vacancy.

The phrase “... *three consecutive meetings*...” – suggest it should be amended

See comment on Head 81

Head 11 -

Exclusions from membership of the Authority, Contract Awards Committee or Compliance Committee

1. Where a member of the Authority, Contract Awards Committee or Compliance Committee is nominated as a candidate for election to the European Parliament or either House of the Oireachtas, he or she shall thereupon stand suspended from membership of the Authority, Contract Awards Committee or Compliance Committee and shall not be entitled to participate in meetings of the Authority, Contract Awards Committee or Compliance Committee or receive from, the Authority any remuneration or allowances in respect of the period commencing on such nomination and ending when such person is so regarded as not having been elected as the case may be.

2. Where a member of the Authority, Contract Awards Committee or Compliance Committee is—

- (a) is nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or as a representative in the European Parliament; or
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament to fill a vacancy. he or she shall thereupon cease to be a member of the Authority, Contract Awards Committee or Compliance Committee.

3. Where the person who is the chief executive officer or a member of the staff of the Authority is —

- (a) nominated as a member of Seanad Éireann; or
- (b) nominated as a candidate for election to either House of the Oireachtas or the European Parliament, or
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament

he or she shall thereupon stand seconded from employment by the Authority and shall not be paid by, or be entitled to receive from, the Authority any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected as the case may be, and ending when such person ceases to be a member of either such House or a representative in that Parliament.

4. A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament, shall, while so entitled or such a member, be disqualified from becoming a member of the Authority, Contract Awards Committee or Compliance Committee or the chief executive officer or a member of staff of the Authority.

5. Without prejudice to the generality of subsection (3), that subsection shall be construed as prohibiting, inter alia, the reckoning of a period mentioned in that subsection as service with the Authority for the purposes of any superannuation benefits.

6. A person who holds employment or an interest in a broadcast undertaking, including but not limited to Radio Teilifís Éireann, Teilifís na Gaeilge, an undertaking holding a contract to broadcast under the Act of 1988, the Act of 1990 or the Act of 2001 or this Act, shall be disqualified from becoming a member of the Authority, Contract Awards Committee or Compliance Committee.

7. A person who holds employment or an interest in an undertaking which publishes a newspaper in the State and which has ownership of an undertaking holding a contract to broadcast under the Act of 1988, the Act of 1990, the Act of 2001 or this Act, shall be disqualified from becoming a member of the Authority, Contract Awards Committee or Compliance Committee.

8. A person who holds membership of the Authority shall be disqualified from becoming a member of the Contract Awards Committee or Compliance Committee.

9. A person who holds membership of the Contract Awards Committee shall be disqualified from becoming a member of the Authority or the Compliance Committee.

10. A person who holds membership of the Compliance Committee shall be disqualified from becoming a member of the Authority or the Contract Awards Committee.

Advisory Committees, as defined in Head 16, should also be covered by exclusions identified under this Head.

Head 12 - Meetings of the Authority, Contract Awards Committee or Compliance Committee

1. The Authority, Contract Awards Committee and Compliance Committee shall hold such and so many meetings as may be necessary for the due fulfilment of their functions.
2. The Minister may fix the date, time and place of the first meeting of the Authority, Contract Awards Committee and Compliance Committee.
3. Subject to the provisions of this Act, the Authority, Contract Awards Committee and Compliance Committee shall regulate their procedure and practice by rules made under this section.
4. Any rules made under this section shall be published on a website to be maintained by the Authority.
5. At a meeting of the Authority, Contract Awards Committee or Compliance Committee -
 - (a) the chairperson of the Authority, Contract Awards Committee or Compliance Committee shall, if present, be chairperson of the meeting,
 - (b) if and so long as the chairman is not present or the office of chairman is vacant, the members of the Authority, Contract Awards Committee or Compliance Committee who are present shall choose one of their number to be the chairman of the meeting.
6. At a meeting of the Authority, Contract Awards Committee or Compliance Committee, each member of the Authority, Contract Awards Committee or Compliance Committee present, including the chairperson, shall have a vote and any question on which a vote is required in order to establish the Authority's, Contract Awards Committee's or Compliance Committee's view shall be determined by a majority of the votes of the members of the Authority, Contract Awards Committee or Compliance Committee present when the vote is called and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second and casting vote.
7. The quorum for a meeting of the Authority shall not be less than seven.
8. The quorum for a meeting of the Contract Awards Committee shall not be less than five.
9. The quorum for a meeting of the Compliance Committee shall not be less than five.
10. The Authority, Contract Awards Committee or Compliance Committee may act notwithstanding one or more vacancies among its members.

Sections 7, 8 and 9: Suggest amending by replacing numbers for a quorum to a percentage. Setting the quorums at defined numbers could lead to problems if there were a number of vacancies on the Authority or Committees at any one time.

Head 13 - Chief executive of the Authority

1. There shall be a chief executive officer of the Authority (who shall be known and is referred to in this Act as the ``chief executive``).
2. The chief executive shall carry on and manage, and control generally, the administration of the Authority, Contract Awards Committee and Compliance Committee and perform such other functions (if any) as may be determined by the Authority.
3. Subject to subsections (5) and (6), the chief executive shall be appointed by the Authority with the consent of the Minister.
4. The chief executive may be removed from office by the Authority with the consent of the Minister for stated reasons.
5. The Minister may, before the establishment day, designate a person to be appointed to be the first chief executive.
6. If, immediately before the establishment day, a person stands designated by the Minister under subsection (5), the Authority shall appoint that person to be the first chief executive.
7. The chief executive shall hold office under a written contract of service (which contract may be renewed) for such period as is specified in the contract, upon and subject to such terms and conditions (including terms and conditions relating to superannuation) as are so specified, being terms and conditions which are determined by the Authority with the consent of the Minister given with the concurrence of the Minister for Finance and shall be paid out of moneys at the disposal of the Authority.
8. The chief executive shall not hold any other office or employment or carry on any business without the consent of the Authority.
9. The chief executive shall furnish the Authority with such information (including financial information) in relation to the performance of his or her functions as the Authority may from time to time require.
10. The functions of the chief executive may be performed in his or her absence or when the position of chief executive is vacant by such member of the staff of the Authority as may, from time to time, be designated for that purpose by the Authority.

Section 2: states that the Chief Executive “...*shall carry on and manage, and control generally...*” the administration of all three bodies. The role of the Chief Executive appears to be defined as all pervasive and could place the office-holder in difficult conflict of interests/confidentiality situations and make the operation of ‘Chinese Walls’ between the Contract and Compliance Committees impossible.

Section 5: On what basis will the Minister designate a person to be the first Chief Executive? A public competitive selection process should be stipulated.

Head 16 - Advisory Committees

1. The Authority may establish advisory committees to advise and assist it in the performance of its functions.

2. Where advisory committees include members other than members of the Authority, Contract Awards Committee or Compliance Committee or staff of the Authority, such members may be paid such remuneration (if any) and expenses as the Authority considers reasonable subject to the consent of the Minister and the Minister for Finance.

3. The Authority may regulate the procedure of its committees, but subject to such regulation, a committee may regulate its own procedure.

4. The Authority and the chief executive shall have regard to, but shall not be bound by, the advice of any committee under this section.

See comment under Head 11, Advisory Committees should also be covered by exclusions identified under Head 11.

Head 18 - Accountability of chief executive officer to Committee of Public Accounts

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

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

**Section 2: Why is the CEO prohibited from expressing a view on broadcasting policy?
Propose that the section be amended to permit expression of views on broadcasting policy.
RTÉ has always been entitled to comment on broadcasting policy.**

Head 19 - Accountability of chief executive officer to other Oireachtas Committees

1. In this section ``Committee`` means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann) or a subcommittee of such a Committee.
2. Subject to subsection (3), the chief executive officer shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Authority, the Contract Awards Committee and the Compliance Committee.
3. The chief executive officer shall not be required to give account before a Committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.
4. Where the chief executive officer is of the opinion that a matter in respect of which the chief executive officer is requested to give an account before a Committee is a matter to which subsection (3) applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the chief executive officer is before it, the information shall be so conveyed in writing.
5. Where the chief executive officer has informed a Committee of his or her opinion in accordance with subsection (4) and the Committee does not withdraw the request referred to in subsection (2) in so far as it relates to a matter the subject of that opinion—
 - (a) the chief executive officer may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which subsection (3) applies, or
 - (b) the chairperson of the Committee may, on behalf of the Committee, make such an application, and the High Court may determine the matter.
6. Pending the determination of an application under subsection (5), the chief executive officer shall not attend before the Committee to give account for the matter the subject of the application.
7. If the High Court determines that the matter concerned is one to which subsection (3) applies, the Committee shall withdraw the request referred to in subsection (2), but if the High Court determines that subsection (3) does not apply, the chief executive officer shall attend before the Committee to give account for the matter.

Section 2: Why is the CEO confined to comment on administrative matters? See comment on Head 18

Head 24 - Objectives of the Authority

1. The Authority, and the statutory committees of the Authority, in exercising their functions shall endeavour to ensure—
 - (a) that the number and categories of broadcasting services made available in the State by virtue of the Act of 1988, the Act of 1990, the Act of 2001 or this Act best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity,
 - (b) that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression are upheld, and
 - (c) the provision of open and pluralistic broadcasting services.

2. Without prejudice to the generality of subsection (1), the Authority, and the statutory committees of the Authority, shall—
 - (a) stimulate the provision of high quality, diverse and innovative programming by commercial, community and public service broadcasters,
 - (b) promote diversity in control of the more influential commercial and community broadcasting services, and
 - (c) provide a regulatory environment that will facilitate the development of a broadcasting sector in Ireland that is responsive to audience needs.

3. The Authority, and the statutory committees of the Authority, in carrying out their functions shall seek to ensure that measures taken—
 - (a) are proportionate having regard to the objectives set out in this section,
 - (b) are applied across the range of broadcasting services according to the degree of influence that the different types of broadcasting services are able to exert to in shaping community views in Ireland,
 - (c) will produce regulatory arrangements that are stable and predictable, and
 - (d) will readily accommodate and encourage technological development, and its application, by the broadcasting sector.

Need clarification as questions of interpretation arise.

For example, what is meant by “... *shaping community views in Ireland...*”?

Section 1 (a): this section refers to “...languages and traditions and ... religious, ethical and cultural diversity.” Does it reflect ‘new languages, traditions, religions’ etc. in Ireland, north and south?

Section 1: suggest amendment by a new subsection (d) along the lines “ ... *that will be mindful of the objects and functions of the public service broadcasters as set out in section 109 and section 114.*”

Head 25 - Functions of the Authority

1. It shall be a function of the Authority to-
 - (a) Prepare a strategy for the provision of broadcasting services in the State additional to those provided by Radio Teilifís Éireann and Teilifís na Gaeilge;
 - (b) Prepare a statement under section 34(1),
 - (c) Direct the Contract Awards Committee to make arrangements, in accordance with the provisions of the Act of 1988, the Act of 1990, the Act of 2001 and this Act, to invite, consider and recommend to the Authority, and the Authority shall follow such recommendation, proposals for the provision of broadcasting services additional to any broadcasting services provided by Radio Teilifís Éireann or Teilifís na Gaeilge pursuant to this Act,
 - (d) Prepare or make codes or rules under section 41,
 - (e) Prepare and implement schemes for the granting of funds under the Act of 2003,
 - (f) Make an order under section 36(1),
 - (g) Prepare a scheme under section 45(3),
 - (h) Advise the Minister as to the sectoral impact of a proposal under sections 77(3), 87(1),(2),(3) and (4), 88(1), 99(3),(6), 100(2), 102(1), 103(5), 104(3), 106(3),(4) and (5), 107(6) and (10), and 113(5) of this Act,
 - (i) Consult with the Minister as to the public value and sectoral impact of a proposal under section 75, paragraphs (g), (h) or (i) of section 109(1) or section 114(1), section 110(4) and section 115(4) of this Act,
 - (j) Prepare and issue guidance to Radio Teilifís Éireann and Teilifís na Gaeilge as to the fulfilment of their obligations under sections 100(8), 103(1), 104(1) and 107(2) of this Act,
 - (k) Undertake a review under-
 - (i) subsection (3) of section 117, and
 - (ii) subsection (9) of section 117,
 - (i) subsection (6) of section 117, and
 - (ii) subsection (13) of section 117,
 - (m) Liaise and consult with the Commission for Communications Regulation in the preparation of the allocation plan for the frequency range dedicated to radio and television broadcasting, and
 - (n) Consult with the Commission for Communications Regulation as to the sectoral impact of the issue of a licence to Radio Teilifís Éireann under section 112.
2. The Authority shall have the following additional functions-
 - (a) To collect and disseminate information on the broadcasting sector in Ireland,
 - (b) To monitor developments in broadcasting internationally,
 - (c) To initiate, organise and facilitate research relating to broadcasting matters,
 - (d) To collect and disseminate information in relation to the skills requirements of the broadcasting sector,
 - (e) To co-operate with other bodies to promote training activities in relation to areas of skill shortages in the broadcasting sector,
 - (f) To co-operate with other bodies outside the State which perform similar functions to the Authority, and
 - (g) To bring about, or to encourage others to bring about, a better public understanding of-
 - (i) the nature and characteristics of material published by means of broadcast and related electronic media,
 - (ii) the processes by which such material is selected, or made available, for publication by broadcast and related electronic media, and
 - (iii) the available systems by which access to material published by means of the broadcast and related electronic media is or can be regulated.

3. The Minister may confer on the Authority by order such other additional functions as he or she may from time to time consider necessary which said order may be amended or revoked by order by the said Minister.

4. An order made under subsection (4) of this section by the Minister shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next twenty-one days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything done thereunder.

Section 1 (c): provides for the BAI directing the Contracts Awards Committee in its work and accepting the latter's recommendations. The BAI doesn't appear to have any similar role in relation to the Compliance Committee which takes its role and functions direct from the proposed new Act, which seems to indicate that it will be more independent of the BAI but which could also give rise to tensions between it and the BAI.

Section 1 (h): what criteria of "... *sectoral impact*..." and "...*public value*..." are to be used?

Section 1 (j): what regard must be given to the "... *guidance*..."? What is its force?

Need legal clarification - the boundaries of influence and control are vague as drafted here.

Head 26 - Functions of the Contract Awards Committee

1. It shall be a function of the Contract Awards Committee, at the direction of the Authority, to make arrangements, in accordance with the provisions of the Act of 1988, the Act of 1990, the Act of 2001 and this Act, to invite, consider and recommend to the Authority, and the Authority shall follow such recommendation, proposals for the provision of broadcasting services additional to any broadcasting services provided by Radio Teilifís Éireann or Teilifís na Gaeilge pursuant to this Act.

What regard must the contracts committee have for pre-existing PSB services?

The obligations imposed in Head 75 on the committee to consult with the Minister, RTÉ, Teilifís na Gaeilge, etc. and to consider the impact of additional services on those that already exist should be mirrored in this Head.

Head 27 - Functions of the Compliance Committee

1. It shall be a function of the Compliance Committee to-
 - (a) Monitor compliance by broadcasting contractors with the terms and conditions of any contract entered into by the Authority on the recommendation of the Contract Awards Committee under the Act of 1988, the Act of 1990, the Act of 2001 or this Act,
 - (b) Enforce the terms and conditions of any contract entered into by the Authority on the recommendation of the Contract Awards Committee under the Act of 1988, the Act of 1990, the Act of 2001 or this Act,
 - (c) Monitor compliance by broadcasters with the provisions of section 40,
 - (d) Enforce compliance by broadcasters with the provisions of section 40,
 - (e) Monitor compliance by broadcasters with any code or rule prepared or made under the Act of 1988, the Act of 1990, the Act of 2001 or section 41,
 - (f) Enforce compliance by broadcasters with any code or rule prepared or made under the Act of 1988, the Act of 1990, the Act of 2001 or section 41,
 - (g) Investigate and decide upon a complaint made under section 44, and
 - (h) Investigate and decide upon a request made under section 45(14).

2. The Compliance Committee shall have the following additional functions-
 - (a) At the request of the Minister, to report on compliance by the company with the requirements of-
 - (i) section 101(3),
 - (ii) section 107(9), and
 - (iii) section 100(10),
 - (b) At the request of the Minister, to report on the proportion of the television programme service of a broadcaster which is-
 - (i) produced in the State or in another Member State of the European Communities, and
 - (ii) devoted to original programme material produced therein by persons other than the broadcaster, his or her subsidiary, his or her parent or existing broadcasting organisations,
 - (c) At the request of the Minister, to report on compliance by the company with the requirements of section 77(12), and
 - (d) to make determinations in respect of disputes arising under section 37(7) of the Act of 2001.

Section 2 (c) and (d): see comments under Head 40 e.g. on the reasoning for a specialist channel like RTÉ lyric fm being required to comply with 20% news and current affairs quota.

Head 28 – Independence

1. Subject to this Act, the Authority, the Contract Awards Committee and the Compliance Committee shall be independent in the exercise of their functions.

This Head appears to contradict sections in other Heads – for example Head 6 and Section 1 (c) of Head 25.

Head 29 – Powers

1. The Authority, Contracts Award Committee and Compliance Committee shall have all the powers necessary, incidental or conducive to their functions and duties.

2. Without prejudice to the generality of subsection (1), the Authority shall have power necessary, incidental or conducive to its functions and duties–

- (a) to make contracts, agreements and arrangements;
- (b) to require broadcasting contractors to enter into financial bonds with the Authority on the recommendation of the Contract Awards Committee;
- (c) to acquire and make use of copyrights, patents, licences, privileges and concessions;
- (d) to compile, prepare, publish and distribute, with or without charge, printed, aural or visual material;
- (e) subject to the consent of the Minister, to arrange for the provision of broadcasting and related services for and on behalf of any Minister of the Government;
- (f) undertake, sponsor or commission research.

Section 2 (e): note that Head 31 (Emergencies) specifies competence only over “*broadcasting contractors*”; suggest amend the draft to clarify the limits of this competence.

Head 36 - Levy, charges and fees

1. For the purpose of meeting expenses properly incurred by the Authority, the Contract Awards Committee and the Compliance Committee in the discharge of their functions in relation to broadcasting, the Authority shall make an order imposing a levy on Radio Teilifís Éireann, Teilifís na Gaeilge and the holders of broadcasting contracts under the Act of 1988, the Act of 1990, the Act of 2001 and this Act.
2. Whenever a levy order is made there shall be paid to the Authority by Radio Teilifís Éireann, Teilifís na Gaeilge and each of the holders of broadcasting contracts under the Act of 1988, the Act of 1990, the Act of 2001 and this Act as the case may be such amount as shall be appropriate having regard to the terms of the levy order.
3. The Authority may make separate levy orders for Radio Teilifís Éireann, Teilifís na Gaeilge and particular classes of the holders of broadcasting contracts under the Act of 1988, the Act of 1990, the Act of 2001 and this Act.
4. The levy order will provide for the collection, payment and administration of a levy, including all or any of the following -
 - (a) the method of calculation of the levy;
 - (b) the times at which payment will be made and the form of payment;
 - (c) the keeping, inspection and provision of records; and
 - (d) any exemptions, deferrals or refunds of the levy
5. A levy order may be amended or revoked by the Authority.
6. Any surplus of levy income over the expenses incurred by the Authority in the discharge of its functions relevant to that levy in a particular financial year shall either-
 - (a) be retained by the Authority to be offset against levy obligations for the subsequent year, or
 - (b) be refunded proportionately to the providers of broadcasting services on whom the levy is imposed.
7. The Public Offices Fees Act, 1879, does not apply in respect of fees payable to the Authority pursuant to this Act.
8. The Authority may recover as a simple contract debt in any court of competent jurisdiction from the person by whom it is payable any amount due and owing to it under this section.
9. In this section "levy order" means an order imposing levy under subsection (1).
10. A fee or deposit may be payable, of such an amount as the Contract Awards Committee considers reasonable, in respect of an application made by a person to the Contract Awards Committee for the entry into, by the Authority, on the recommendation of the Contract Awards Committee, with that person, of-
 - (a) a contract under the Act of 1988, or
 - (b) a contract under the Act of 1990, or
 - (c) a contract under the Act of 2001, or
 - (d) a contract under this Act.
11. The Authority may charge fees for services or facilities provided by it.
12. Any surplus of income over the expenses incurred by the Authority in the discharge of its functions relevant to subsections 10 and 11 in a particular financial year shall be applied in such manner as the Minister, after consultation with the Authority and with the approval of the Minister for

Finance, may direct, and any such direction may require that all, or part as may be specified in the direction, of such excess be paid into the Central Fund.

Section 1: Need for explicit provision of the right to appeal by PSB or a broadcasting contractor and for published principles associated with determining quantum of levy on individual contractor or PSB.

Section 12: Allows for consideration that any surplus be paid into the Central Fund. Consideration should be given to any surplus being paid to broadcasters, in same proportion as levies imposed.

Head 38 - Accounts and audits

1. The chief executive, following the agreement of the Authority, shall submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times, as may be required by the Minister and shall furnish to the Minister any information which the Minister may require in relation to such estimates, including proposals and future plans relating to the discharge by the Authority, the Contract Awards Committee and the Compliance Committee of their functions over a period of years, as required.

2. The chief executive, under the direction of the Authority, shall cause to be kept, on a continuous basis, all proper books and records of account of all income and expenditure of the Authority, and of the sources of such income and the subject matter of such expenditure, and of the property, assets and liabilities of the Authority and shall keep and shall account to the Authority for all such special accounts required by the Act of 2003, and as the Minister or the Authority, with the consent of the Minister, may from time to time direct should be kept.

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

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

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

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

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

7. The Authority shall publish, with the consent of the Minister and the Minister for Finance, on a website maintained by the Authority, part or all of such estimates of income and expenditure as are required to be prepared under subsection (1).

Section 4: It is not clear why the Comptroller and Auditor General is proposed, rather than an independent Auditor – given that proposed funding is from a levy rather than from public funds.

Section 5: Time frame for laying before the House of the Oireachtas should be specified, as in Head 39.

Head 40 - Duties of broadcasters

1. Every broadcaster shall ensure that—

(a) all news broadcast by him or her is reported and presented in an objective and impartial manner and without any expression of his or her own views;

(b) the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of his or her own views: Provided that should it prove impracticable in relation to a single broadcast to apply this paragraph, two or more related broadcasts may be considered as a whole, if the broadcasts are transmitted within a reasonable period of each other;

(c) in respect of sound broadcasters that a minimum of—

(i) not less than 20 per cent. of the broadcasting time, and

(ii) if the broadcasting service is provided for more than 12 hours in any one day, two hours of broadcasting time between 07.00 hours and 19.00 hours, is devoted to the broadcasting of news and current affairs programmes; provided a derogation from this provision is not authorised by the Authority under subsection (3);

(d) anything which may reasonably be regarded as offending against good taste or decency, or as being likely to promote, or incite to, crime or as tending to undermine the authority of the State, is not broadcast by him or her;

2. Nothing in subsection (1)(a) or (1)(b) shall prevent a broadcaster from transmitting political party broadcasts: Provided that a broadcaster shall not, in the allocation of time for such broadcasts, give an unfair preference to any political party.

3. Notwithstanding subsection (1)(c), the Authority may authorise a derogation from the requirement in question in whole or in part in the case of a sound broadcasting service but only if it is satisfied that the authorisation of such a derogation would be beneficial to the listeners of the sound broadcasting service.

4. A broadcaster shall ensure that the broadcast treatment of any proposal, being a proposal concerning policy as regards broadcasting, which is of public controversy or the subject of current public debate and which is being considered by the Government or the Minister, shall be reported and presented in an objective and impartial manner.

5. Paragraphs (a) and (b) of subsection (1), in so far as they require the broadcaster not to express his or her own views, shall not apply to any broadcast made under subsection (4).

6. Programmes broadcast in a broadcasting service may include advertisements inserted therein.

7. The total daily times for broadcasting advertisements in a sound broadcasting service provided pursuant to a sound broadcasting contract shall not exceed a maximum of 15 per cent. of the total daily broadcasting time and the maximum time to be given to advertisements in any hour shall not exceed a maximum of ten minutes.

8. In this section, references to advertisements shall be construed as including references to advertising matter contained in sponsored programmes, that is to say, in programmes supplied for advertising purposes by or on behalf of an

advertiser.

9. A broadcaster shall not broadcast an advertisement which is directed towards any religious or political end or which has any relation to an industrial dispute.

10. Subsection (9) shall not apply to advertisements broadcast at the request of the Referendum Commission in relation to a matter referred to in section 3 of the Act of 1998 concerning a referendum.

11. It shall be the duty of a broadcaster, by means of its own facilities and in a manner approved of for the purposes of this section by the Compliance Committee, to record for those purposes every broadcast made by the broadcaster or every item of programme material supplied by him or her under a contract entered into under the Act of 1988, the Act of 1990, the Act of 2001 or this Act.

12. Recordings made in compliance with subsection (11) of this section, shall be retained by the broadcaster for such period as stands determined by the Compliance Committee for the purposes of this section, and when a complaint is being investigated by the Compliance Committee under section 44, the recording of the broadcast to which the complaint relates, together with the recording, made and being retained pursuant to this section, of any other broadcast which in the opinion of the Compliance Committee is relevant to that broadcast, shall be supplied by the broadcaster to the Compliance Committee on a request made by the Compliance Committee at any time during such period.

13. The making or retaining of a recording in compliance with subsection (11) of this section shall not be a contravention of the Copyright or Related Rights Act, 2000.

14. Nothing in subsection (9) shall be construed as preventing the broadcasting of a notice of the fact—

(a) that a particular religious newspaper, magazine or periodical is available for sale or supply, or

(b) that any event or ceremony associated with any particular religion will take place, if the contents of the notice do not address the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation.

15. Subject to subsection (16), a television broadcaster, where practicable and by appropriate means, shall reserve for European works, a majority proportion of its transmission time, excluding the time appointed to news, sporting events, games, advertising and teletext services.

16. The apportionment of transmission time by a television broadcaster for the purposes of subsection (15) shall be made having regard to the television broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public.

17. Subject to subsection (18), a television broadcaster where practicable and by appropriate means, shall reserve at least 10 per cent of its transmission time, for European works created by producers who are independent of broadcasters, excluding the time appointed to news, sports events, games, advertising and teletext services or, reserve 10 per cent of its programming budget for European works which are created by producers who are independent of broadcasters.

18 The apportionment of the transmission time or the programming budget of a

television broadcaster shall have regard to a television broadcasters' informational, educational, cultural and entertainment responsibilities to its viewing public.

19 An adequate proportion of works referred to in subsection (17) shall comprise recent works, that is to say works which are transmitted within five years of their production.

20. A television broadcaster shall not broadcast programmes that might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence.

21 Other programmes which might impair the physical, mental or moral development of minors may only be shown where the television broadcaster ensures, by selecting the time of the broadcast or by any technical means, that minors would not normally be expected to hear or see such broadcasts.

22. A broadcast shall not contain any incitement to hatred on the grounds of race, sex, religion or nationality.

23. A television broadcaster on a request being made to him or her in that behalf by the Compliance Committee, shall furnish the Compliance Committee with the information necessary to enable the Minister to make a report to the European Commission on the application of subsections (15),(16),(17),(18) and (19).

24. A cinematographic work shall not be broadcast by a television broadcaster, unless otherwise agreed between its rights holders and the television broadcaster.

Section 1 (c): It does not seem appropriate that specialist channels such as RTÉ lyric fm be treated as National, Regional or Local general radio provision channels in regard to provision of News and Current Affairs. They must be treated in a different manner.

Section 7: RTÉ previously had permission to a maximum of 15 minutes across a two-hour period to “*facilitate programme flow and flexibility*”; this was granted June 30th 1993 by the then Minister. This should be maintained.

Head 43 - Complaints handling - code of practice

1. A broadcaster shall give due and adequate consideration to any complaint, which is not of a frivolous or vexatious nature, made by a member of the public in respect of the broadcasting service provided by the broadcaster and shall keep due and proper records of all such complaints and of any reply made thereto or of any action taken on foot thereof.
2. A broadcaster shall prepare and implement a code of practice for the handling of complaints in respect of the broadcasting service provided by the broadcaster. The code of practice shall make provision for the following matters-
 - (a) The initial point of contact for complainants,
 - (b) The time period within which the broadcaster shall respond to complaints, and
 - (c) The procedures to be followed by the broadcaster in the resolution of complaints.
3. A broadcaster shall publish on a website maintained by the broadcaster, and generally make available, a code of practice required under subsection (2).
4. The Compliance Committee may prepare and publish guidance for broadcasters for the purposes of ensuring compliance with subsection (2).
5. A broadcaster shall supply the information required under subsection (2) to the Compliance Committee who shall cause such information to be published on a website maintained by the Authority.
6. A broadcaster shall, if directed by the Compliance Committee make available for inspection by the Compliance Committee all records kept by him or her pursuant to subsection (1).

Section 1: clarification needed: what, if any, are the implications of this Head for the *Freedom of Information* legislation?

Section 1: Consider amending by adding the phrase “...and shall keep due and proper records of all such complaints and of any reply made thereto or of any action taken on foot thereof” to end of Section 2: this would mean it refers to all complaints handled under the code of practice.

It is not practicable to keep records of all complaints made by all members of public to any member of a broadcaster’s staff; e.g. a member of the audience can make a perfectly legitimate complaint about catering facilities at an event. It is not necessary that this be put on the record and held until responded to.

Section 1: states that “A broadcaster shall give due and adequate consideration to any complaint which is not of a frivolous or vexatious nature...” Who is to determine that a complaint is serious?

Head 45 - Right of Reply

1. For the purpose of this section-

"requester" means a person who makes a request under subsection 6;

"right of reply" shall mean the broadcast by a broadcaster of programme material prepared in accordance with a scheme under subsection (3) of this section.

2. Subject to the provisions of this section, any natural or legal person, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a broadcast shall have a right of reply.

3. The Authority shall prepare and, following a period of public consultation, within six months of the establishment of the Authority, submit to the Minister, for his or her approval, a scheme for the exercise of the right of reply.

4. A scheme under subsection (3) shall set out the procedures to be followed in the exercise of the right of reply.

5. In preparing a scheme the Authority shall ensure that-

(a) a requester may, at reasonable charge, receive from the broadcaster a copy of the recording of the part of a broadcast in which it is alleged that his or her legitimate interests have been damaged,

(b) a right of reply shall be broadcast within a reasonable time period subsequent to the request for a right of reply being made,

(c) a right of reply shall be broadcast at a time and in a manner appropriate to the broadcast to which the request refers,

(d) a right of reply shall-

(i) state to what extent the information contained in the broadcast under subsection (2) is incorrect or misleading,

(ii) be limited to factual assertions necessary to rectify an incomplete or

(e) a broadcaster shall, without charge, assist a requester in the recording of a reply.

6. A person who wishes to exercise a right of reply in accordance with a scheme under subsection (3) shall make a request in writing addressed to the broadcaster concerned-

(a) stating that the request is made under this section,

(b) containing sufficient particulars to enable the identification by the taking of reason damaging to the reputation and good name of the requester,

(c) contain the proposed wording of the right of reply, and

(d) if the requester requires the right of reply to be given in a particular form or manner (being a form or manner which is in accordance with the terms of any scheme approved by the Minister under subsection (3)), specifying the form or manner of the right of reply.

7. A request for a right of reply under a scheme made under subsection (3) shall be made not later than six months after the making of the broadcast referred to in the request, unless otherwise agreed between the requester and the broadcaster concerned.

8. Where a person who makes a request under section (6) subsequently dies or becomes incapacitated by reason of mental infirmity, consideration of the request by a broadcaster or the Compliance Committee shall be continued at the written request of the requester's personal representative.

9. The broadcaster shall, as soon as may be, but not later than 14 days, after the receipt of a request under subsection (6) -

(a) decide whether to grant or refuse to grant the request, and

(b) cause notice in writing of the decision to be given to the requester.

10. Where notice of a decision under subsection (9) is not given to the requester before the expiration of the period specified for that purpose, a decision refusing to grant the request under subsection (6) shall be deemed for the purposes of this section to have been made upon such expiration by the broadcaster concerned.

11. A broadcaster shall give due and adequate consideration to any request under subsection (6), which is not of a frivolous or vexatious nature, made by a member of the public in respect of the broadcasting service provided by the broadcaster and shall keep due and proper records of all such requests and of any reply made thereto or of any action taken on foot thereof.

12. A broadcaster shall, if directed by the Compliance Committee make available for inspection by the Compliance Committee all records kept by him or her pursuant to subsection (11).

13. No charge shall be made for the processing of a request under subsection (6) by a broadcaster.

14. Subject to the provisions of this section, the Compliance Committee, on application to them in that behalf, in writing, by a requester, may as soon as may be but not later than 28 days after the receipt of such an application, review a decision to refuse by a broadcaster under subsections (9) or (10) and as they consider appropriate-

- (i) affirm or vary the decision, or
- (ii) annul the decision and, if appropriate, make such decision in relation to the matter as it considers proper in accordance with this section.

15. An application under subsection (14) shall be made to the Compliance Committee not more than two months after receipt of a decision to refuse under subsections (9) or (10).

16. Where the Compliance Committee propose to investigate an application made under subsection (14), the Compliance Committee shall afford to the broadcaster to whom the application relates (hereafter in this section referred to as "the broadcaster concerned") an opportunity to comment on the application.

17. As soon as may be after they decide on an application made under subsection (14), the Compliance Committee shall send to-

- (a) the person who made the application, and
- (b) the broadcaster concerned, a statement in writing of their decision, including the reasons for their decision.

18. The Compliance Committee may reject any request for a right of reply-

- (a) Which is of a frivolous or vexatious nature, or
- (b) Is manifestly unnecessary owing to the minor significance of the error in the broadcast complained of, or
- (c) Where the proposed reply cites untrue information or assertions, or
- (d) Where the proposed reply is a personal opinion, or
- (e) Where the proposed reply is an assessment or warning against the future conduct of a person, or
- (f) Satisfaction of the proposed reply would involve a punishable act, or
- (g) Satisfaction of the proposed reply would transgress standards of public decency, or
- (h) Satisfaction of the proposed reply would render the broadcaster liable to civil law proceedings, or
- (i) Satisfaction of the proposed reply would breach a broadcaster's statutory obligation, or
- (j) Satisfaction of the proposed reply would breach the terms of a broadcaster's contract with the Authority, or

- (k) Where the person who was injured by the contested information has no legally justifiable actual interest in the distribution of a reply, or
- (l) Where the original broadcast also contained a statement from the person affected and such contents are equivalent to a right of reply, or
- (m) Where the original broadcast also contained a statement from the person affected and the text of the original statement had the prior agreement of the person who feels he or she has been injured, or
- (n) If an equivalent editorial correction has been made and the person affected informed, or
- (o) If the content of the proposed reply would violate the rights of a third party
- (p) Where the matter concerned relates to reports on public sessions of the Oireachtas or the Courts, or
- (q) Where the matter concerned relates to a party political broadcast, or
- (r) Where the matter concerned relates to a broadcast under section 3 of the Act of 1998, or
- (s) Where the Compliance Committee is of the opinion that the broadcast of a right of reply is not in the public interest, or
- (t) Where the person requesting the right of reply has exceeded the timelines for submitting a request or submitting the text of a reply under a scheme.

19. Where the Compliance Committee finds that the broadcaster has failed to comply with a decision under subsection (14) the Compliance Committee, shall notify the broadcaster of those findings and give the broadcaster an opportunity to make representations in relation to the notification or remedy any non-compliance, not later than

- (a) one month after issue of the notification, or
- (b) such period as is agreed by the Compliance Committee with the broadcaster concerned.

20. The Compliance Committee may amend or revoke any notification under subsection (19).

21. Where, at the end of the period referred to in subsection (19), the Compliance Committee is of the opinion that the broadcaster concerned has not complied with such notification, the Compliance Committee may recommend to the Authority, and the Authority shall follow such recommendation, that the Authority apply to the High Court for such order as may be appropriate by way of compliance with the obligation or notification. Where the application is made to the High Court, it shall be heard by a judge sitting alone. The Court may, as it thinks fit, on the hearing of the application make an order-

- (a) compelling compliance with the notification,
- (b) varying the notification, or
- (c) refusing the application.

22. As regards proceedings under this section, the Compliance Committee shall not have any power to award to any party costs or expenses.

23. A scheme submitted by the Authority to the Minister under subsection (3) may be amended or revoked by the Authority.

24. Any amendment or revocation of a scheme under subsection (23) shall be submitted by the Authority to the Minister for his or her approval.

25. The Minister may direct the Authority to revoke a scheme and the Authority shall comply with such a direction.

26. A scheme shall, if approved of by the Minister, be:

- (a) published by the Authority (including publication on a website maintained by the Authority), and

(b) carried out in accordance with its terms by the Compliance Committee.

27. (a) A scheme shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is made.
(b) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which a scheme was laid before it in accordance with paragraph (a), annul a scheme.
(c) The annulment of a scheme shall take 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.

28. The Authority shall review, and report to the Minister on the operation, effectiveness and impact of a scheme not later than 3 years from the date on which it comes into operation and every three years thereafter or at such time as may be requested by the Minister.

29. A copy of a report under subsection (28) shall be laid by the Minister before each House of the Oireachtas, as soon as may be, after it has been made to him or her.

What is the reason that a wider right of reply is proposed to be adopted than that already provided for in the Broadcasting Act 1990? The Notes to Head 45 do not specify any policy reason for this initiative.

The Council of Europe Committee of Ministers, in 1974 and again in 2004, made recommendations on the adoption by Member States of a right of reply in respect of “*all media without distinction*”. There is, therefore, no apparent justification for singling out broadcasters and diminishing their right of expression in this Head. In the absence of objective justification for not applying it to other media, implementation of this proposal will represent a disproportionate restriction on speech. The Committee should be aware that rights of reply in France and Germany are available to individuals in respect of newspaper publications concerning them. RTÉ is concerned at the inequality of treatment that will inevitably follow if this proposal is enacted as currently drafted.

This Head proposes a form of a Right of Reply which would be a radical departure from the existing mechanisms for resolving disputes over editorial matters. There is no evidence that the recourse that aggrieved parties already have to external adjudicators is insufficient; there may be a case for broadcasters drawing up more formal internal procedures for considering the question of a right of reply in any given case. Any new procedures should remain internal to each broadcaster.

Given that the request for a right of reply is analogous to civil proceedings for defamation, an equivalent provision should be inserted in Head 45 to that found in *section 7 of the Defamation Bill*, namely the requirement on a claimant to swear a verifying affidavit. *Section 7 of the Defamation Bill* criminalises the making of a false or misleading statement in a verifying affidavit. It is important that there are consequences for a requester who brings a false claim.

Section 2: the subject matter giving rise to an entitlement to a right of reply in Section 2 is not necessarily reflected in the language of Head 45, Section 5(d) which sets out what is to be contained in a right of reply. This needs to be clarified.

Section 5 (e): proposes the right to an unmediated broadcast, in the form of a right of reply. At present, the right to an unmediated broadcast exists only in exceptional circumstances such as a party political broadcast and certain Government announcements and a statutory right of reply to be exercised in this manner would be both disproportionate and highly impractical. It is an unwarranted intrusion on the editorial freedom of broadcasters, is unnecessary and disproportionate. Consideration should be given to its deletion from the text. The manner of a right of reply is important. We would recommend that the norm should be an agreed statement read out by the broadcaster, not the right to appear in an uncontested statement which is allowed for in the statement that a “... *broadcaster shall, without charge, assist a requester in recording a right of reply...*”.

Section 7: This proposal, that a request can be made for a right of reply up to six months after the complained of broadcast, runs contrary to the whole idea of a right of reply which requires the requester to ask for it promptly or within a reasonably short time after the publication concerned. The six months contemplated in this section undermines entirely the timely correction of incorrect facts that is the essence of a right of reply. It is suggested in this vein that the period should be no longer than one month.

The Notes to Head 45 set out a number of matters that are still the subject of consideration in terms of the effect on defamation law of having an operative right of reply. RTÉ will make further submissions on this in due course but would submit that the exercise of a right of reply must be of significant weight in terms of remedying damage to reputation.

Head 47 - Inquiry process

1. Whenever the Compliance Committee suspects on reasonable grounds that a broadcaster is committing or has committed a contravention of-
 - (a) a duty under subsections 1(c), 9, 11, 12, 15, 17, 20, 22, 23 or 24 of section 40,
 - (b) a broadcasting code under section 41, or
 - (c) a rule under subsection (5) of section 41 it may hold an inquiry to determine whether or not the broadcaster is committing or has committed the contravention.
2. Before holding an inquiry under subsection (1), the Compliance Committee shall give notice in writing of the proposed inquiry to the broadcaster concerned. The notice must-
 - (a) specify the grounds on which the Compliance Committee's suspicions are based, and
 - (b) specify a date, time and place at which the Compliance Committee will hold the inquiry, and
 - (c) invite the broadcaster concerned either to attend the inquiry or to make written submissions about the matter to which the inquiry relates.
3. Where the Compliance Committee holds an inquiry under subsection (1) and-
 - (a) a person employed by the broadcaster concerned, or
 - (b) if the making of any programme, the subject of such an inquiry, was commissioned by the broadcaster concerned, the person commissioned to make that programme-requests, for reasons specified by him or her, the Compliance Committee to afford to him or her an opportunity to comment on the matter of the inquiry, the Compliance Committee shall, having considered the reasons so specified, invite the person concerned either to attend the inquiry or to make written submissions about the matter to which the inquiry relates if, but only if, they are satisfied that, as appropriate-
 - (i) an interest of the person referred to in paragraph (a), being an interest which the Compliance Committee consider relevant to the person's employment by the broadcaster concerned, or
 - (ii) the prospects of the person referred to in paragraph (b) obtaining further commissions in respect of programmes from the broadcaster concerned, may, because of the matter of the investigation, be adversely affected.
4. Where the Compliance Committee holds an inquiry under subsection (1) as to non-compliance with a broadcasting code which provides for the matters referred to in paragraphs (g) and (h) of section 41(2), the Compliance Committee shall invite the advertiser concerned either to attend the inquiry or to make written submissions about the matter to which the inquiry relates.
5. The broadcaster, advertiser or person referred to in subsection (3) may, before the date of the inquiry, lodge with the Compliance Committee any written submissions that the broadcaster wishes that the Compliance Committee take into account when considering the matter to which the inquiry relates. This subsection applies whether or not the broadcaster has been invited to attend the inquiry.
6. The Compliance Committee may proceed with an inquiry in the absence of the broadcaster, advertiser or person referred to in subsection (3) so long as that broadcaster, advertiser or person referred to in subsection (3) has been given an opportunity to attend the inquiry or to make written submissions to it.
7. At the conclusion of an inquiry held under subsection (1) the Compliance Committee shall make a finding as to whether the broadcaster concerned is

committing or has committed the contravention to which the inquiry relates.

8. At the conclusion of an inquiry held under subsection (1), the Compliance Committee shall notify its decision to the broadcaster.

The decision must set out in writing—

- (a) its finding as to whether or not the broadcaster is committing or has committed the contravention to which the inquiry relates, and
- (b) the grounds on which its finding is based, and
- (c) if the Compliance Committee finds that the contravention is being or has been committed, the monetary penalty (if any) proposed under section 48 in respect of the contravention.

9. The Compliance Committee shall conduct an inquiry with as little formality and technicality, and with as much expedition, as a proper consideration of the matters before it will allow.

10. At an inquiry, the Compliance Committee shall observe the rules of procedural fairness, but is not bound by the rules of evidence.

11. The Compliance Committee may be assisted by a legal practitioner when conducting an inquiry.

12. A broadcaster who has, in accordance with subsection (2) been invited to attend an inquiry or a part of it is entitled to be represented at the inquiry or part by a legal practitioner or, with the leave of the Compliance Committee, by any other person.

13. Except as provided by subsection (14), the Compliance Committee shall hold its inquiries in public.

14. The Compliance Committee and the broadcaster to whom an inquiry relates may agree that the inquiry should be held in private, but even if they do not agree, the Compliance Committee may nevertheless decide to hold an inquiry in private if it is satisfied that—

- (a) evidence may be given, or a matter may arise, during the inquiry that is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence against a law of the State, or
- (b) a person's reputation would be unfairly prejudiced unless the Compliance Committee exercises its powers under this subsection.

15. The Compliance Committee may at any time vary or revoke a decision made under subsection (14).

16. The Compliance Committee may, on its own initiative or at the request of the broadcaster concerned, recommend to the Authority, and the Authority shall follow such recommendation, that the Authority refer to the Court for decision a question of law arising at an inquiry.

17. If a question has been referred under subsection (16), the Compliance Committee may not, in relation to a matter to which the inquiry relates—

- (a) give a decision to which the question is relevant while the reference is pending, or
- (b) proceed in a manner, or make a decision, that is inconsistent with the Court's opinion on the question.

18. If a question is referred under subsection (16)—

- (a) the Authority shall send to the Court all documents before the Compliance Committee that are relevant to the matter in question, and
- (b) at the end of the proceeding in the Court in relation to the reference, the Court shall cause the documents to be returned to the

Authority, who shall cause the documents to be returned to the Compliance Committee.

19. If on the holding of an inquiry under subsection (1) the Compliance Committee has found that a broadcaster is committing or has committed a contravention to which the inquiry relates, it shall publish the finding, and details of any monetary penalty proposed in consequence of the finding, in such form and manner as it thinks appropriate.

20. Where the Compliance Committee proposes to hold an inquiry under subsection (1) the broadcaster concerned shall co-operate in any such inquiry.

21. The Compliance Committee may prescribe guidelines with respect to the conduct of inquiries under this Part, and may for that purpose, incorporate by reference any procedure prescribed by Rules of the Superior Courts as in force at a specified time or as in force from time to time.

22. The Compliance Committee may at any time amend or revoke guidelines prescribed under this section.

23. Guidelines prescribed under this section, and any amendment to, or revocation of, those guidelines, must be in writing and be published in a manner determined by the Compliance Committee.

This Head contains extensive provisions on the inquiry process and the formal hearings after which a broadcaster may be sanctioned. The Notes refer to the fact that the text of the Head is based, in part, on section 10 of the *Central Bank and Financial Services Authority of Ireland Act 2004*, which contains extensive provisions dealing with inquiries for operators in the financial services industry. Neither the text of Head 47, nor the Notes to it, makes any reference to any form of appeal that might be available to a broadcaster found in breach and who may be subject to monetary penalty. Yet in respect of the financial services industry the *Central Bank and Financial Services Authority Act of Ireland Act 2003* contains extensive provisions on an appeals procedure by way of the Irish Financial Services Appeals Tribunal. It is suggested that urgent attention be given to proposals to provide an appeals process for the broadcaster.

Head 55 - Regulations in regard to television licences

1. The Minister may by order make regulations prescribing in relation to all licences granted under Part VI of this Act or any particular class or classes of such licences all or any of the matters following that is to say:

- (a) the form of such licences,
- (b) the period during which such licences continue in force,
- (c) the manner in which, the terms on which, and the period or periods for which such licences may be renewed,
- (d) the circumstances and manner in which such licences may be suspended or revoked by the Minister,
- (e) the terms and conditions to be observed by the holders of such licences and subject to which such licences are deemed to be granted,
- (f) the fees to be paid on the grant or renewal of such licences, including the discount of fees, and the time and manner at and in which such fees are to be paid,
- (g) any other matter relating to such licences in respect of which it shall appear to the Minister to be necessary or desirable to make provision by regulations made under this section.

2. Nothing in this Act shall prevent the Minister from making separate regulations as between persons and undertakings, including the fees to be paid on the grant or renewal of licences under Part VI of this Act.

3. No regulation shall be made under this section in relation to fees without the previous consent of the Minister for Finance.

4. 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.

Section 1 (f): This section allows for the introduction of a discount to the fee paid in certain cases and this is welcomed. Consideration should be given to amend the section to include the option to introduce late payment penalties.

Head 56 - Ministerial power to appoint an agent to act on his or her behalf

1. For the purposes of this section a "designated person" means an undertaking or a public body (including, but not limited to, An Post or Radio Teilifís Éireann), designated by the Minister to act on the Minister's behalf in connection with the operation of Part VI of this Act.
2. The Minister may by order empower a designated person to issue on his or her behalf, and on payment of the appropriate fee, licences for television sets in accordance with Part VI of this Act.
3. The Minister may by order empower the designated person to exercise the functions conferred on him or her by or under Part VI of this Act in relation to the collection of fees for and sale of television set licences, the identification of persons who have television sets not authorised by a licence for the time being in force, the serving of special notices under section 57 and the operation of a search warrant under section 58.
4. The Minister, after consultation with the designated person, may by order amend or revoke an order under the previous provisions of this section.
5. The designated person shall furnish such information, and in such format (including electronic formats), as the Minister may require in relation to the exercise of functions assigned to him or her under this section.
6. Where an order under subsection (3) is in force, summary proceedings may be brought and prosecuted by the designated person for the following offences under this Act-
 - (a) an offence under subsection (3) of section 57
 - (b) an offence under section 59
7. The designated person shall pay to the Minister promptly the amounts collected by the designated person in respect of the issue of television set licences.
8. The manner of payment, and the periods for which payments are to be made in respect of the issue of television set licences, shall be decided by the Minister after consultation with the designated person.
9. The Minister shall pay to the designated person an appropriate sum in respect of work done by the designated person in the exercise of powers conferred on the designated person under this section.
10. The appropriate sum payable by the Minister to the designated person and the manner in which and the intervals at which it is to be paid shall be decided by the designated person with the consent of the Minister.
11. The designated person may, with the consent of the Minister, appoint an agent to perform any acts and discharge any functions authorised by this section to be performed or discharged by the designated person.
12. Anything commenced before the commencement of this Act by or under the authority of the Minister may, in so far as it relates to the functions under this section, be carried on or completed on or after such commencement by the designated person.

Suggest that this Head be amended to include the possibility of acquiring information from cable /satellite suppliers.

The Head drops the requirement for TV sellers to make returns of sales which would appear to be a retrograde step and should be re-considered. In the past, this data proved unreliable but increasingly this information is captured as a matter of course and modern CRM systems would facilitate its use.

Section (1): Needs clarification: Can the Minister award the contract to collect the licence fee, to either to RTÉ or An Post without having a public tender process under EU rules?

Head 70 - Formation of the company

1. In this section "a company" shall mean Radio Teilifís Éireann or Teilifís na Gaeilge.
2. The Minister, after consultation with the Minister for Finance, shall cause a company limited by guarantee without share capital conforming to the conditions laid down in this Act to be formed and registered under the Companies Acts.
3. The company shall not be wound-up unless the Minister shall have given, with the consent of the Minister for Finance, his or her prior approval by order thereto.
4. Where the Minister proposes to make an order under subsection (3) he or she shall cause a draft of the order to be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

Head 70 proposes the establishment of a company limited by guarantee as the corporate entity that will take over from the current statutory corporation. Clearly this company will function under the auspices of the law provided under the Companies Acts now and in the future. As proposed by Head 70, however, a member of the Cabinet will become the company "member" or person who can ultimately exercise all the functions of this company (just like a shareholder if this company had transferable ownership). This would represent a highly significant change to the way Ireland has established its national public broadcaster whose institutional basis is one where both institution and employees operate in a defined and secure legal environment outside the control of political office holders. This proposal removes the current guarantee to the public of RTÉ being outside the machinery of the State.

RTÉ appreciates and understands the public policy move to adopt a corporate structure under the Companies Acts. However, RTÉ believes that the important legislative safeguard for the public that its current form represents (a company that cannot be directed by a Minister or Ministers as such) must be preserved. RTÉ is committed to work with DCMNR to put forward proposals that can achieve all aims in relation to the corporate structure of RTÉ.

See comment on Head 78

Head 73 - Membership of the company

1. The Minister shall act as the member of the company.
2. The Minister may exercise, in respect of his or her membership, all the rights and powers of a guarantor of the capital of the company, including exercise of such rights and powers by attorney, where applicable.
3. The Minister shall not transfer or alienate his or her guarantee to the company.
4. The cost of meeting the guarantee in the event of the company being wound up shall be advanced to the Minister from the Central Fund or the growing produce thereof.
5. Any money arising from membership of the company is to be paid into or disposed of for the benefit of the Exchequer, as the Minister for Finance may decide.

See note on Head 70

Head 74 - Form of memorandum of association of the company

1. The memorandum of association of the company shall be in such form consistent with this Act as may be approved of by the Minister with the consent of the Minister for Finance, by order.

2. An order made under this section shall be laid by the Minister before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House sits after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

See note on Head 70

Head 75 - Supplementary services, variation in channels and "sub-contracting"

1. For the purposes of this section "supplementary services" shall mean the provision by the company of services, which are in accordance with the objectives conferred on the company under paragraphs (a),(b),(c),(d),(e),(f),(g),(h),(i) and (j) of section 109(1) or paragraphs (a),(b),(c),(d),(e),(f),(g),(h),(i) and (j) of section 114, which the company has not engaged in a significant manner in the previous five years, and which require expenditure in excess of €5 million per annum.
2. Subject to the consent of the Minister, the company may vary the number of channels it operates.
3. Subject to the consent of the Minister, the company may delegate the performance of a significant function required in pursuance of its objectives under section 109(1) or section 114(1) to an agent.
4. Subject to the consent of the Minister, the company may, with the consent of the Minister, undertake supplementary services.
5. Where the Minister proposes to give his consent under this section, or paragraphs (g), (h) and (i) of section 109(1) or paragraphs (f), (g), (h) and (i) of section 114(1) the Minister shall—
 - (a) consult with the company, and such other persons as he or she considers appropriate,
 - (b) consult with the Authority as to the public value and sectoral impact of the granting of such consent, and
 - (c) publish in such manner as he or she considers appropriate a statement outlining the consultations that have been carried out under paragraphs (a) and (b) and indicating a place at which any document furnished to the Minister by a person referred to in paragraphs (a) or (b) in the course of consultations under these paragraphs may be inspected.

Section 5: The requirement here is that the Minister shall consult when he "... proposes to give consent...". There is a need to ensure that the "onus of proof" remains on the BAI when giving guidance "...as to the public value and sectoral impact..."

See note on Head 26 above – there should be no stranglehold on development of PSB and public value services being exercised.

Head 77 - Duty to maintain archives

1. The company shall at its own expense, itself or with such person or persons as it chooses, establish and maintain to commonly accepted standards an archive or archives of the sound and television programmes commissioned, broadcast or transmitted by the company, and other recorded and printed matter, over which it holds copyright and related rights.

2. The company shall make reasonable arrangements, itself or with such person or persons as it chooses, for public access to the archive or archives established under subsection (1) with or without charge, such charge not to exceed the estimated cost of the search for and retrieval of items contained in the archive or archives.

3. The company shall prepare and submit to the Minister for his or her approval, and exploitation by third parties of sound and television recordings over which the company holds copyright and related rights.

4. A scheme prepared under subsection (3) shall provide separate terms and conditions of licencing for -

- (a) non-commercial educational and research purposes, and
- (b) commercial purposes.

5. Without prejudice to generality of subsection (4) the company may attach to any particular under a scheme such particular terms or conditions as it considers appropriate in the circumstances.

6. A scheme submitted by the company to the Minister under subsection (3) may be amended or revoked by the company.

7. The Minister may direct the company-

- (a) to prepare and submit to the Minister a scheme relating to any matter in subsection (3), or
- (b) to amend or revoke a scheme.

The company shall comply with a direction under this subsection.

8. Any amendment or revocation of a scheme under subsection (3) shall be submitted by the company to the Minister for his or her approval.

9. A scheme shall, if approved of by the Minister, be-

- (a) published (including publication on a website maintained by the company), and
- (b) carried out in accordance with its terms, by the company.

10. (a) A scheme shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is made.

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

(c) The annulment of the 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.

11. The company shall ensure that provision is made for resolving disputes arising in respect of the operation of a scheme under subsection (3) (by independent arbitration or otherwise) in a manner that appears to the Authority to be appropriate.

12. The Compliance Committee shall, at the direction of the Minister, report to the Minister on compliance by the company with this section.

Section 1: suggest amending by adding a statement such as *“Nothing in this Act will prevent the PSB from receiving financial support from an Archive Fund.”*

Section 1: the statement *“...establish and maintain to commonly accepted standards...”* could be amended to *“...make reasonable arrangements to establish and maintain to commonly accepted standards...”* to recognise that frequently a judicious process of evaluation and selection is necessary to ensure that the most important material receives priority in terms of archival processing.

Section 1: suggest amending by substituting *“...and other recorded and printed matter ...”* with *“... and other relevant recorded or supporting material, as the company deems appropriate.”* It is not possible, or indeed advisable, to retain all such records (e.g. rushes) and is not always possible to recover all documentation relating to programming, especially in the case of commissioned or independent productions.

Section 1: the phrase *“...over which it holds copyright and related rights...”* is unnecessarily restrictive and consideration should be given to amending e.g. *“...over which it holds copyright and related rights or has the express approval of the copyright holder or the copyright holder has not been identified”*. Audio-visual material may be donated to the Company for conservation and access processing; the work of archiving is carried out though the Company may not hold rights in the archived material.

Section 2: Consideration should be given to amending this section as specific difficulties arise with it in relation to the mandatory provision of archives and the charges being confined to no more than search and retrieval costs. For example, in relation to provision there will be occasions when it is not appropriate for a PSB to make available archives, over which it holds copyright, e.g. for scheduling or future programming reasons. In relation to charges there must be the possibility of recouping more than search and retrieval costs; there is also an apparent conflict with the Broadcasting Act 2001, which obliges the PSB to charge market-rate research fees to commercial clients.

Section 3: the use of the word *“...a scheme...”* could be replaced by *“...a scheme or rate card...”*. RTÉ assumes that its current rate card is such a scheme.

Sections 4 through to 12: it appears that through these Subsections the Minister gains an executive role in the management of RTÉ’s rate card, and therefore some degree of control over an important source of the archives’ funding. Is this intended? Responsible financial planning requires set or fixed review dates, rather than the current proposal to allow for more unpredictable amendment or revocation. Annual rate card or “scheme” reviews should allow for more rational financial management that would benefit both archivists and clients.

Section 10: laying the scheme before both houses of the Oireachtas seems unnecessary.

Head 78 - Independence

1. Subject to the requirements of this Act the company shall be independent in all matters concerning the content of its programmes and the times at which they are broadcast or transmitted.

The Appendix contains attachments which list the function of the Minister/Government (Attachment A), and the BAI (Attachment B) under the proposed terms of this *General Scheme* which are relevant to the RTÉ company. For comparison purposes Attachment C lists the functions that the Minister/Government/BCI/BCC/ComReg have in relation to RTÉ under existing legislation.

The Notes to Head 78 state that the text draws on section 2.1 of the agreement between the British Secretary of State of Heritage and the BBC. The text of section 2.1 of that agreement states: “*The Corporation shall be independent in all matters concerning the content of its programmes and the times at which they are broadcast or transmitted and in the management of its affairs.*” (our emphasis).

The language used means that the independence contemplated is limited and circumscribed and relates in essence to the content of programmes and the times at which those programmes are broadcast. Secondly, the omission of the text underlined above, in the British equivalent, means in fact that the company is not independent save in respect of the specific matters identified.

Head 79 - Emergencies

1. During the continuance of any emergency declared under Section 10 of the Wireless Telegraphy Act 1926 the Minister may suspend the licence issued under section 112 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 or she directs.

2. It shall be a duty of the company, at the direction of the Minister, to make its best endeavours to assist and to co-operate with the relevant public bodies in the preparation for, and execution of, the dissemination of relevant information to the public in the event of a major local, national or regional emergency.

3. If and whenever the Minister shall exercise the powers conferred on him under subsection (1) the company shall be entitled to receive from the Minister, with the consent of the Minister for Finance-

(a) such sums as are required to defray any expenses which, regard being had to the nature of the emergency, have been properly and necessarily incurred by the company and for meeting which revenue is by reason of the exercise of such powers not otherwise available to the company; and

(b) compensation for any damage done to any property of the company, being damage directly attributable to the exercise of such powers.

4. The Minister may direct the company to allocate broadcasting time for announcements for and on behalf of any Minister of State, in the event of a major local, national or regional emergency, in connection with the functions of that Minister of State, and the company shall comply with the direction. The company may broadcast whether or not it has received such a direction from the Minister.

5. The Government may direct the company in writing to allocate broadcasting time for any announcements which are in the public interest, by or on behalf of any Minister of State in connection with the functions of that Minister of State, and the company shall comply with the direction. The company may broadcast whether or not it has received such a direction from the Government.

6. The Government shall cause every direction issued under subsection (5), and the reasons for such direction, to be laid before each House of the Oireachtas as soon as may be after it is made.

See note on Head 29

Head 81 - Chairperson and directors

1. The articles of association of the company shall provide that -
 - (a) The number of directors including the chairperson shall not be more than 12.
 - (b) That not less than 5 of the directors shall be men and not less than 5 of them shall be women.
 - (c) The chairperson and other directors shall be appointed by the Government on the nomination of the Minister.
 - (d) Each director of the company shall be appointed for a period not exceeding four years.
 - (e) A director of the company whose term of office expires by the effluxion of time shall be eligible for re-appointment.
 - (f) A director of the company shall not serve more than two terms of office.
 - (g) Within two years of the establishment day and, every two years thereafter not less than four directors of the company, shall retire from office.
 - (h) The directors required to retire by virtue of paragraph (g) in any year shall be those who have served longest as a director of the company since last appointed.
 - (i) Where in determining which director or directors are required to retire by virtue of paragraph (g) there is more than one director who was appointed to the company on the same day then as respects such directors appointed on the same day the director or directors to retire shall be determined by lot unless such directors otherwise agree.
 - (j) A director of the company may at any time resign his or her office by letter addressed to the Government and the resignation shall take effect on the date specified therein or upon receipt of the letter by the Government, whichever is the later.
 - (k) There shall be paid to directors of the company, out of moneys at the disposal of the company, such remuneration (if any) and allowances for expenses incurred by them as the Minister, with the consent of the Minister for Finance, from time to time determines.
 - (l) Subject to the provisions of this Act, a director of the company shall hold office on such terms (other than the payment of remuneration and allowances for expenses) as the Minister, with the consent of the Minister for Finance, from time to time determines.
 - (m) The Minister shall cause a statement in writing specifying the terms of office and remuneration of the directors of the company to be laid before both Houses of the Oireachtas.
 - (n) A director of the company may at any time be removed from directorship of the company by the Government if, in the Government's opinion, the director has become incapable through ill-health of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the Government to be necessary for the effective performance by the company of its functions, and only if, resolutions are passed by each House of the Oireachtas calling for his or her removal.
 - (o) A director of the company shall cease to be and shall be disqualified from being a director of the company where such director -
 - (i) is adjudicated bankrupt,
 - (ii) makes a composition or arrangement with creditors,
 - (iii) on conviction on indictment by a court of competent jurisdiction is sentenced to a term of imprisonment,
 - (iv) is convicted of an offence involving fraud or dishonesty, or
 - (v) is disqualified or restricted from being a director of any company.
 - (p) Where a director of the company fails -
 - (i) to attend three consecutive meetings of the company, and no satisfactory reason can be given for such non-attendance.

(ii) to make a declaration in accordance with the requirements of subsections (1) and (4) of section 94

(iii) to comply with the requirements of subsection (1) of section 95

(iv) to make a declaration in accordance with the requirements of Section 17 of the Ethics in Public Office Act 1995. the Minister may with the consent of the Government by order remove the director from office.

(q) Every order under paragraph (p) shall be laid by the Minister before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House sits after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

(r) If a director of the company dies, resigns, becomes disqualified or is removed from office or for any other reason ceases to be a director of the company, the Government on the nomination of the Minister, may appoint a person to be a director of the company to fill the casual vacancy so occasioned and the person so appointed shall be appointed for the unexpired period of the term of directorship of, and in the same manner as, the director of the company who occasioned the casual vacancy.

(s) The Government shall from time to time as occasion requires appoint, on the nomination of the Minister, a director of the company to be chairperson thereof.

(t) The chairperson of the company shall, unless he or she sooner dies, resigns the office of chairperson or ceases to be chairperson under paragraph (v), hold office until the expiration of his or her period of office as a director of the company.

(u) The chairperson of the company may at any time resign his or her office as chairperson by letter sent to the Government and the resignation shall, unless it is previously withdrawn in writing, take effect at the commencement of the meeting of the company held next after the company has been informed by the Government of the resignation.

(v) Where the chairperson of the company ceases during his or her term of office as chairperson to be a director of the company he or she shall also cease to be chairperson of the company.

(w) The director general, employee director or other executive director appointed by the Government shall not be appointed as chairperson of the company.

(x) A person shall not be appointed to be a director of the company unless he or she has experience of or shown capacity in -

- (i) media or commercial affairs,
- (ii) digital broadcasting and digital media technologies,
- (iii) legal matters,
- (iii) trade union affairs or
- (iv) social, cultural, educational or community activities or Gaeltacht affairs relevant to the oversight of a public service broadcaster.

This paragraph does not apply to the director general or staff director.

(y) A person shall not be appointed to be a director of Teilifís na Gaeilge unless the or she is able to speak proficiently in the Irish language.

(z) Paragraphs (d) and (g) shall not apply to the directorship of the director general of the company.

(aa) The Government in setting a term of appointment under paragraph (d) shall consider the need for continuity of membership of the board of the company.

Section 1 (i): Provision of removal from office if three consecutive meetings missed with no satisfactory reason is perhaps insufficient. Suggest omit altogether, as current 'name and

shame' approach, by listing in the Annual Report, may be just as effective; or make a requirement to attend at least 75% of meetings per annum.

Section 1 (y): "speak proficiently" – by what test? Needs clarification

Head 82 - Appointment of staff director

1. The articles of association of the company shall provide that the Government shall appoint to be a director of the company one member of staff of the company who is elected in accordance with this section and who may not act as chairperson of the company.
2. An appointment under this section shall be in writing and shall specify the day on and from which and the period during which it is to have effect, which period shall be determined by the Government.
3. The term of office of a director of the company who is appointed under this section shall, unless, he or she sooner dies, resigns, ceases to be a member of staff of the company, becomes disqualified or is removed from office, terminate on the expiration of the period for which he or she was appointed.
4. The Government may appoint a member of staff of the company eligible to be nominated as a candidate at an election under this section to fill a casual vacancy arising by reason of an event mentioned in subsection (3) for the remainder of the term of office of the director whose vacancy is to be filled.
5. A director of the company appointed under this section shall, subject to this section, be eligible for nomination as a candidate and for election at an election for the purposes of this section.
6. An election for the purposes of this section shall be held within 6 months after vesting day or such longer period as may be agreed between the company and recognised trade unions and staff associations.
7. Subsections (8) to (22) shall apply for the purposes of an election under this section.
8.
 - (a) The Secretary of the company (or a person selected by him or her after consultation with representatives of the employees) shall be the returning officer for each election of a staff director of the company.
 - (b) The returning officer shall not be entitled to be nominated as, or to nominate, act as agent for or promote the interests of, a candidate at the election.
 - (c) The returning officer may authorise any person to exercise designated functions on his behalf and paragraph (b) shall apply to any such person.
9.
 - (a) A poll shall be conducted where there is more than one candidate.
 - (b) Voting shall be by secret ballot and on the basis of proportional representation by means of a single transferable vote.
 - (c) Presiding officers at the poll and polling clerks shall be appointed by the returning officer.
 - (d) The election shall be held in accordance with arrangements made by the returning officer.
 - (e) The returning officer shall be required to give due notice of these arrangements to the electorate and to designate premises as an election office.
 - (f) All arrangements for an election shall be subject to the consent of the Government.
10.
 - (a) The returning officer shall fix the nomination day and give notice of the election not later than 8 weeks before that day.
 - (b) The nomination day shall be not earlier than 6 weeks after the day on which eligibility of voters and candidates is determined in accordance with subsections (18) and (19), respectively.

11. The returning officer may declare a candidate elected if the number of candidates standing duly nominated does not exceed one.
12. (a) The returning officer may take a preliminary poll, at the request of one or more recognised trade unions or staff associations representing at least 15 per cent. of the electorate, to ascertain whether or not a majority of the electorate is in favour of proceeding with the election.
(b) The preliminary poll shall be undertaken in accordance with arrangements made by the returning officer and duly notified to the electorate.
(c) If a majority at the preliminary poll opposes the election, the holding of the election shall be deferred for 3 years.
(d) The arrangements for a preliminary poll shall be subject to the consent of the Government.
13. If the nomination of candidates or any poll is interrupted or cannot be proceeded with the returning officer may adjourn the nomination or poll for such period as he considers appropriate to enable him, on its expiration, to proceed with or complete the nomination or poll.
14. On receipt of a notification from the returning officer of the name of the candidate elected or declared to be elected under subsection (11), the Government shall, in accordance with this section, appoint the candidate as a director of the company.
15. The returning officer shall place the remaining candidates in order of votes credited to each at the last count in which he or she was involved.
16. In choosing a person to fill a casual vacancy the Government shall select the next eligible candidate, if any, on the voting list under subsection (15). Where two or more candidates are credited with an equal number of votes the Government shall select one of them by lot.
17. The company shall bear the cost of holding the election except costs incurred by candidates expressly on their own behalf.
18. Every employee of the company who, on the day specified by the returning officer and on the day on which the poll is taken—
(a) is not less than eighteen years of age, and
(b) has been an employee of the company for a continuous period of not less than one year, shall be entitled to vote at an election or preliminary poll.
19. (a) Every employee of the company who, on the day specified by the returning officer under subsection (18), is not less than eighteen years of age and has been an employee of the company for a continuous period of not less than three years shall be eligible to be nominated as a candidate at the election.
(b) Nominations shall be made in the manner prescribed by the returning officer.
(c) A candidate may be nominated by a recognised trade union or staff association or jointly by two or more such bodies but no such body shall be entitled both to nominate one or more candidates of its own accord and to nominate one or more candidates jointly with another such body or bodies.
(d) The returning officer shall rule on the validity of nominations. His or her decision shall be final.
20. Prior service (for a continuous period ending on the vesting day) with the Authority for staff transferred to the company on the vesting day shall be reckonable as service with the company for the purposes of subsections (18) and

(19).

21. The returning officer shall prepare and maintain a list of eligible voters and candidates.

22. The returning officer shall prepare and maintain a list of recognised trade unions and staff associations for the purposes of this section.

Section 4: would interim appointment of a candidate eligible for election confer an unmerited advantage? (for any subsequent election). Consideration should be given to appointment of number 2 in the election.

Section 19 (C): consideration should be given to amending to allow for nomination of candidates by other than “... a recognised trade union or staff association...”; c50% of current RTÉ staff are not members of either.

Section 22: consideration should be given to amending as Section 19 above.

Head 84 - Director general

1. The articles of association of the company shall provide that -

(a) The company shall from time to time appoint a person to be the chief further period of no more than three years, and such person shall be known, and is in this Act referred to, as the "director general".

(b) The director general shall carry on and manage, and control generally, the administration of the company and perform such other functions (if any) as may be determined by the board of the company.

(c) The consent of the Government shall be necessary before the company appoints or removes the director general, or alters his or her remuneration or his or her terms and conditions of holding office.

(d) The person who, immediately before the vesting day, was the director general of the Radio Éireann, shall be deemed to be appointed as director general of Radio Teilifís Éireann upon that day and shall stand appointed on the same terms and conditions on which he or she was previously retained and shall not be subject to the fixed term as required in paragraph (a).

(e) The director general shall not hold any other office or employment or carry on any business without the consent of the board of the company.

(f) The director general shall furnish the board of the company with such information (including financial information) in relation to the performance of his or her functions as the board of the company may from time to time require.

(g) The functions of the director general may be performed in his or her absence or when the position of director general is vacant by such member of the staff of the company as may, from time to time, be designated for that purpose by the board of the company.

Section 1 (b): Need for reference to day-to-day responsibilities of Director-General as Editor-in-Chief; link with Section 1 (b) and (c) of Head 89.

Head 86 - Meetings

1. The company shall hold such and so many meetings as may be necessary for the due fulfilment of its functions.
2. The Minister may fix the date, time and place of the first meeting of the company.
3. At a meeting of the company –
 - (a) the chairperson of the company shall, if present, be chairperson of the meeting; and
 - (b) if and so long as the chairperson of the company is not present or if the office of chairperson is vacant, the directors of the company who are present shall choose one of their number to be chairperson of the meeting.
4. Every question at a meeting of the company shall be determined by a majority of the votes of the directors present and voting on the question, and in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.
5. The company may act notwithstanding one or more vacancies among its members.
6. Subject to the provisions of this Act, the company shall regulate its procedure by rules.
7. The quorum of the company shall be seven.

Section 7: Suggest amending by replacing “*The quorum of the company shall be seven*” by a phrase like “*The quorum of the Company shall be 50% plus one of the then current membership*”. Setting the quorum at 7 could lead to problems if there were a number of vacancies on the Board at any one time.

Head 87 - Establishment of subsidiaries, investments and joint ventures

1. Such functions of the company as it may determine may be performed by a subsidiary and, accordingly, the company may, with the consent of the Minister and the Minister for Finance, the Minister having consulted with the Authority, for the purpose of such performance, acquire or form and establish one or more subsidiaries.
2. The company or a subsidiary may, either by itself or with another person, with the consent of the Minister and the Minister for Finance, the Minister having consulted with the Authority, promote or take part in the formation or establishment of a company, enter into joint ventures or partnerships for the purpose of fulfilling any of its functions.
3. The company may, with the consent of the Minister and the Minister for Finance, the Minister having consulted with the Authority, acquire, hold and dispose of shares or other interests in a company and become a member of a company.
4. The memorandum and articles of association of a subsidiary shall be in such form as may be determined by the company with the consent of the Minister and the Minister for Finance, the Minister having consulted with the Authority.
5. The Minister may give a direction in writing to the company on any matter relating to a subsidiary and the company shall comply or, as may be appropriate, secure compliance with the direction.
6. A direction under this section in relation to the disposal of any assets or surpluses of a subsidiary shall not be given without the consent of the Minister for Finance, the Minister having consulted with the Authority.
7. In this section "subsidiary" means a subsidiary (within the meaning of section 155 of the Companies Act 1963) of the company.

This requirement already exists in the *Code of Practice for State Bodies* so could be considered superfluous; also emphasises the Minister's powers to give directions to subsidiaries on any matters which would normally be a Board function. Once again the BAI will have to be consulted by the Minister.

**Head 88 - Restriction on alteration of memorandum or articles of association
(4/25-95)**

1. No alteration to the memorandum of association of the company shall have effect unless the Minister shall, having consulted with the Authority, have given his or her prior approval with the consent of the Minister for Finance by order thereto.

2. No alteration to the articles of association of the company shall have effect unless the Minister shall have given his or her prior approval with the consent of the Minister for Finance by order thereto.

3. Where the Minister proposes to make an order under subsection (1) he or she shall cause a draft of the order to be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly.

Section 1: Suggest amending to make it explicitly clear that the Company has an appropriate role with regard to changes in its memorandum and articles of association.

Section 1: Any amendment should also clarify what role the Authority plays in the consultation and what, if any, weight attaches to that consultation.

Head 89 - Duties of directors

1. Subject to the requirements of this Act every director of the company shall
 - (a) ensure that the activities of the company in pursuance of its objectives as set out in section 109(1) or 114(1) are performed efficiently,
 - (b) to ensure that the gathering and presentation by the company of news and current affairs is accurate and impartial according to the recognised standards of objective journalism, and
 - (c) to ensure the independence of the company regarding the conception, content and production of programmes, the editing and presentation of news and current affairs programmes and the definition of programme schedules from State, political and commercial influences.

Section 1 (b): Reference to “... *recognized standards of objective journalism* ...”; there are various (and contradictory) interpretations of this phrase. It is a problematic form of words and needs to be clarified.

Section 1 (b) and (c): Consider amendment to recognise that the day-to-day responsibilities rest with the Director-General who shall also be recognised as the Editor-in-Chief.

Head 91 - Staff

1. The company shall, as well as appointing the director general, appoint such and so many persons to be members of the staff of the company as it may from time to time determine but, subject to subsection (2) of this section, a person shall not be appointed under this section to be a member of staff of the company unless he or she has been selected by means of a public competition.

2. The requirement under subsection (1) of this section of being selected by means of a public competition shall not apply in relation to:

(i) a person who, immediately before vesting day, was a member of staff of Radio Éireann,

(ii) an appointment consisting of the promotion of a person who is already a member of staff of the company,

(iii) an office for which, in the opinion of the company, specialised qualifications not commonly held are required, or

(iv) an office to which appointments are made for limited periods only, being periods not exceeding two years.

3. A member of staff of the company shall hold his or her employment on such terms and conditions as the company from time to time determines.

4. There shall be paid by the company to its members of staff such remuneration and allowances as the company from time to time determines.

5. The company may at any time remove any member of staff of the company from being a member of staff.

6. The company may perform any of its functions through or by any of its members of staff duly authorised by the company in that behalf.

7. The company shall accept into its employment on vesting day in accordance with the terms of this Act every person who immediately before establishment is a member of staff of Radio Éireann.

8. Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a member of staff of Radio Éireann who is transferred, on vesting day to the company shall not, while in the service of the company, receive a lesser scale of pay or be brought to less beneficial conditions of service than the scale of pay to which he or she was entitled and the conditions of service to which he or she was subject immediately before vesting day.

9. Until such time as the scales of pay and conditions of service of members of staff so transferred are varied by the company, following consultation with recognised trade unions and staff associations, the scales of pay to which they were entitled and the conditions of service, restrictions, requirements and obligations to which they were subject before their transfer shall continue to apply to them and may be exercised or imposed by the board or the director general, as the case may be, of the company while they are in its service. As provided in subsection (8), no such variation shall operate to worsen the scales of pay and conditions of service applicable to such members of staff immediately before establishment, save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned.

10. The conditions in regard to tenure of office which are granted by either company in relation to a member of staff so transferred shall not, while he or she is in the service of the company, be less favourable to him or her than those prevailing on establishment in Radio Éireann; any alteration in the conditions in regard to tenure of office of any such member shall not be less

favourable to him or her than the prevailing conditions in Radio Éireann at the time of such alteration, save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned. If a dispute arises between the company and any such member of staff as to conditions, prevailing in Radio Éireann, the matter shall be determined by the Minister for Finance.

Section 6: suggest amendment to refer to all other legal obligations and requirements.

Head 92 - Superannuation

1. As soon as may be after vesting day, the company, with the approval of the Minister and the consent of the Minister for Finance, shall make a scheme or schemes for the granting of superannuation benefits to or in respect of the members of staff, including the director general, of the company.
2. A scheme under this section shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons.
3. The company may, with the approval of the Minister and the consent of the Minister for Finance, make a scheme amending or revoking a scheme under this section including a scheme under this subsection.
4. A scheme submitted by the company under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the company in accordance with its terms.
5. Each superannuation scheme shall include a provision for appeals from a decision relating to a superannuation benefit under the scheme.
6. No superannuation benefits shall be granted by the company to or in respect of a person on ceasing to be director general or a member of the staff of the company otherwise than
 - a) in accordance with a scheme or schemes under this section, or
 - (b) with the consent of the Minister and the Minister for Finance.
7. Every scheme under this section shall provide for not less favourable conditions in respect of persons who, immediately before vesting day, were members of staff of Radio Éireann than those to which they were entitled immediately before vesting day.
8. Disbursement of superannuation benefits which may be granted to or in respect of persons who, immediately before vesting day, were members of staff of Radio Éireann or who, immediately before the establishment day of Radio Éireann, were officers and servants of the Minister, shall not be on less favourable conditions than would apply if the benefits referred to had continued to be paid out of moneys provided by Radio Éireann or the Oireachtas.
9. Where a superannuation benefit falls due for payment to or in respect of a person to whom subsection (7) applies in the period beginning on vesting day and ending immediately before the coming into operation of a scheme submitted by the company and approved of under this section, the allowance shall be calculated and paid by the company in accordance with such superannuation scheme or such enactments in relation to superannuation, as applied to such person immediately before vesting day and, for that purpose, his or her pensionable service with the company shall be aggregated with his or her previous pensionable service.
10. The Minister for Finance shall make such contribution as may, with his or her consent, be specified in a scheme or schemes under this section towards the superannuation benefits related to reckonable service given before the establishment day of Radio Éireann which may be granted to or in respect of persons who, immediately before that day, were officers and servants of the Minister, and such scheme or schemes shall, with the like consent, fix the manner and times of the payment of such contribution.
11. Moneys required to be paid by the Minister for Finance under this section shall be advanced out of the Central Fund or the growing produce thereof.

12. A scheme under this section, including an amendment of a scheme, shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Appears to have been drafted without reference to de facto situation vis-à-vis the Company's Pension Schemes and further consultation will be essential in drafting of the Bill.

To avoid confusion consideration should be given to replacing the term “*Superannuation*” with the phrase “*Occupational Pension Schemes within the meaning of the Pensions Act 1990 as amended.*”

Head 94 - Declaration of interests

1. On establishment of the company, the director general and each director of the company and any subsidiary of the company shall make a declaration in writing of his or her interests to the Minister, in such form as the Minister, following consultation with the Minister for Finance, may specify.
2. On his or her appointment, each adviser and member of the staff of the company and any subsidiary of the company, at a grade or level specified before the appointment by the company, following consultation with the Minister, shall declare his or her interests in writing to the chairperson of the company and the chairperson shall inform the company at its next meeting of the interests declared and the names of those making the declarations.
3. On engagement each contractor for services in a category specified before engagement by the company or any subsidiary of the company, following consultation with the Minister, shall declare his or her interests in writing to the chairperson of the company and the chairperson shall inform the company at its next meeting of the interests declared and the names of those making the declarations.
4. A person or undertaking to whom subsection (1), (2) or (3) applies shall, throughout the tenure of his or her appointment or engagement, amend and update his or her declarations of interests as required by the Minister or the company, as the case may be, of any changes in the interests held by the person or undertaking.
5. (a) A statement of the interests declared under subsection (1) shall be included in the next report prepared in accordance with section 105 following the making of the declaration and any subsequent changes in a declaration shall also be included in a statement in the next available report.
(b) The form and content of the statement to be included in such report shall be agreed between the chairperson of the company and the Minister.
(c) Notwithstanding the provisions of paragraph (a), it shall not be necessary to specify in a statement in such report the amount or monetary value of any interest, or the remuneration of any trade, profession, or employment included in the statement.
6. The company shall, for the purposes of this section, keep a register (which is in this section referred to as the "register of interests") and shall enter therein the particulars contained in declarations given to the Minister or the company under this section.
7. The register of interests shall be available for inspection by any person at the company's headquarters during office hours and a copy of the register or any entry in the register may be obtained by any person on the payment to the company of such fee (if any) as the company shall fix not exceeding the reasonable cost of making a copy.
8. Where a person to whom subsection (1) applies fails to make a declaration in accordance with that subsection or to update such declaration in accordance with subsection (4), the Minister shall decide the appropriate course of action (including removal from office) to be taken.
9. Where a person to whom subsections (2) or (3) apply fails to make a declaration in accordance with that subsection or to update such declaration in accordance with subsection (4), the company shall decide the appropriate course of action (including removal from office or termination of contract) to be taken.

Section 7: Suggest amend by replacing public access provision with some phrase such as “... shall be available to Chairman, Director-General, Minister or BAI for stated reason...”
Making the registers available for public inspections may be considered an invasion of privacy.

Head 95 - Disclosure by members of the company of certain interests

1. Where at a meeting of the company any of the following matters arise, namely—
 - (a) an arrangement to which the company is a party or a proposed such arrangement, or
 - (b) a contract or other agreement with the company or a proposed such contract or other agreement, then, any member of the company present at the meeting who otherwise than in his or her capacity as such a member has an interest in the matter shall—
 - (i) at the meeting disclose to the company the fact of such interest and the nature thereof,
 - (ii) neither influence nor seek to influence a decision to be made in relation to the matter,
 - (iii) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed,
 - (iv) take no part in any deliberation of the company relating to the matter, and
 - (v) not vote on a decision relating to the matter.
2. Where an interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being considered or discussed by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.
3. Where at a meeting of the company a question arises as to whether or not a course of conduct, if pursued by a member of the company, would constitute a failure by him or her to comply with the requirements of subsection (1), the question may be determined by the company, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.
4. For the purposes of this section and section 96 a person shall not be regarded as having an interest in any matter by reason only of an interest of that person, or of any company in which he or she has an interest, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question relating to the matter, or in performing any function in relation to that matter.

Seems to be confusion of terminology as it is proposed that the Company will have only one member. The Notes indicate that it is the Directors of the company that this Head covers.

Head 96 - Disclosure by staff and contractors for services of certain interests

1. Where a member of the staff of the company or a subsidiary of the company or a contractor for services, in a category specified before engagement by the company, following consultation with the Minister, has an interest, otherwise than in his or her capacity as such in any, or any proposed contract, agreement or arrangement, to which the company is or is proposed to be a party, that person—

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

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

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

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

2. Subsection (1) does not apply to a person as regards a contract or proposed contract of employment of that person as a member of the staff of the company or as regards a contract or proposed contract for services of that person as a contractor for services to the company.

3. In this section ``member of staff`` includes the director general.

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

Section 1: Requirement for the Company to specify the categories is appropriate; involvement of the Minister is not.

Head 99 - Power to borrow

1. Radio Teilifís Éireann may, for the purpose of providing for current or capital expenditure, from time to time, borrow money (whether on the security of the assets of the company or otherwise), not exceeding in the aggregate €X without requiring the consent of Minister and the Minister for Finance.

2. Teilifís na Gaeilge may, for the purpose of providing for current or capital expenditure, from time to time, borrow money (whether on the security of the assets of the company or otherwise), not exceeding in the aggregate €X without requiring the consent of Minister and the Minister for Finance.

3. Radio Teilifís Eireann and Teilifís na Gaeilge may, with the consent of the Minister for Finance and the Minister, the Minister having consulted with the Authority, borrow money exceeding an amount specified in subsections (1) or (2) by means of the creation of stock or other forms of security to be issued, transferred, dealt with and redeemed in such manner and on such terms and conditions as the company with the consents aforesaid, may determine.

4. The borrowing powers conferred by subsection (3) on the company may be exercised for any purpose arising in the performance of its functions, but there may be attached to consent to borrow the condition that the moneys shall be utilised only for the purpose of a programme of capital works approved of by the Minister.

5. The terms upon which moneys are borrowed under subsection (3) may include provisions charging the moneys and interest thereon upon all property of whatsoever kind for the time being vested in the company or upon any particular property of the company and provisions establishing the priority of such charges amongst themselves.

6. The company may, with the consent of the Minister for Finance and the Minister, the Minister having consulted with the Authority, borrow temporarily by arrangement with bankers such sums as it may require for the purpose of providing for current expenditure.

This is an unwarranted role for the BAI; the Minister should retain power in this regard.

Head 100 - Accounts and Audit

1. The company shall submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times, as may be required by the Minister and shall furnish to the Minister any information which the Minister may require in relation to such estimates, including proposals and future plans relating to the discharge by the company of its functions over a period of years, as required.
2. The company shall cause to be kept, in such form as shall be approved by the Minister, after consultation with the Authority, on a continuous basis and in either or both a legible and a machine readable form, all proper books and records of account of all income and expenditure of the company, and of the sources of such income and the subject matter of such expenditure, and of the property, assets and liabilities of the company, and, in particular, shall keep in such form all such special accounts as the Minister shall from time to time direct.
3. Accounts prepared by the company in accordance with subsection (2) shall distinguish between moneys received or expended on-
 - (a) activities in pursuance of the objectives outlined in paragraphs (a), (b), (c), (d), (e), (f), (g), (h) and (i) of section 109(1) or 114(1), and
 - (b) activities in pursuance of the objectives outlined in paragraph (j) of section 109(1) or 114(1).
4. The company shall submit annually for audit to such duly qualified auditors as the company may appoint, subject to the consent of the Minister, for the purposes of this Act.
5. Immediately after each audit of its accounts, the company shall send to the Minister-
 - (a) a copy of the income and expenditure account and balance sheet as certified by the auditors,
 - (b) a copy of the auditors' report, from-
 - (i) activities in fulfillment of paragraphs a), (b), (c), (d), (e), (f), (g), (h) and (i) of section 109(1) or 114(1), and
 - (ii) activities in fulfillment of paragraph (j) of section 109(1) or 114(1)
 - (d) copies of such of the accounts submitted for audit as the Minister may appoint as accounts of which copies are to be furnished to him or her.
6. Without prejudice to subsection (2) and section 105, the Company 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, of the moneys paid to it under section 116 in that year, in pursuance of the objectives outlined in paragraphs (a), (b), (c), (d), (e), (f), (g), (h) and (i) of section 109(1) or 114(1)
7. A statement prepared under paragraph (c) of subsection (5) shall be certified by the auditors in respect of its compliance with the company's statement of cost accounting principles and methods prepared under subsection (9).
8. The Authority, having consulted with the Minister and the company, shall prepare and publish guidance for the company as regards the cost accounting principles and methods to be considered by the company in preparing a statement under paragraph (c) of subsection (5).
9. The company shall include in the statement required under paragraph (c) of subsection (5), a statement of the cost accounting principles and methods by which costs and revenues have been assigned to such activities.
10. The Compliance Committee, at the direction of the Minister, shall review and

report to the Minister the extent to which a statement prepared under paragraph (c) of subsection (5) complies with the guidance issued by the Authority under subsection (8).

11. The Minister may direct the company as to the format of a statement prepared under paragraph (c) of subsection (5).

12. The Minister shall cause the documents furnished to him or her under this section to be laid before each House of the Oireachtas.

13. The financial year of the company shall be the period of 12 months ending on 31 December in any year, and for the purposes of this section the period commencing on the vesting day and ending on the following 31 December shall be deemed to be a financial year.

14. (a) The company, the director general and any relevant member of the staff of the company shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the books or other records of account of the company in respect of any financial year or other period and shall facilitate any such examination, and the company shall pay such fee therefore as may be fixed by the Minister.

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

Section 2: Clarification needed as this section requires the company to keep proper books and records and states "...and in particular shall keep special accounts as the Minister shall from time to time direct" which seems to imply that the legislation would provide for a form of accounting that is beyond that contemplated in the Companies Acts (and by extension not governed by published and internationally accepted accounting standards).

Section 3: Clarification needed as this section gives rise to the intermingling of normal Companies Act reporting and additional bespoke reporting, presumably broadly aimed at ensuring compliance with the requirements of the EU transparency directive in so far as this expenditure may relate to the use of public funds for broadcasting purposes by RTÉ.

The section requires that the accounts prepared by the Company "... in a manner approved by the Minister..." shall reflect particular matters that are more appropriate to a separate and possibly additional set of specified disclosures.

This Section would result in the Company having to provide levels of details very far beyond that reported by comparator companies and well outside the normal formats of Companies Acts accounts but without clarifying the structure and form of such disclosures.

Section 5 (a): suggest amendment by requiring that a copy of the audited financial statements of the company for the period to be submitted to the Minister.

Section 5 (c): seems to require a statement of total revenues and costs, as contemplated under Section 3 above, but appears to require it to be submitted separately whereas Section 3 requires it to be imbedded in the accounts referred to in Section 5 (a), i.e. the company's primary accounts.

Section 6: requires a separate report to be made to the Minister of much of the information that it appears is required to be incorporated as part of the Company's primary financial statements and has also been required to be reported separately under Section 5.

Section 7: Clarification needed as this requires that these revenue and cost statements be certified by auditors to be in compliance with cost accounting principles and methods. We are advised that:

(a) Auditors, as a matter of course, will not provide certificates in relation to financial statements or financial information unless they can verify and check 100% of the transactions and balances that underly such statements

(b) Such a certification would require the application of cost accounting principles to information which, it appears is required to be included in the company's primary financial statements. Without knowing what they are, it is quite possible that these cost accounting principles may be incompatible with published financial reporting standards and thus may result in an inability of the auditors to provide unqualified audit opinions on the company's primary financial statements.

Section 13: Clarification needed – on (a) the manner in which the assets/liabilities of the old RTÉ become vested in the new RTÉ and any legal/accounting consequences; (b) whether the process of vesting implies an acquisition by the new company of the assets and liabilities of the old RTÉ and if so are there any acquisition accounting implications?

Head 101 - Transactions between public service and commercial opportunities

1. The commercial activities undertaken by the company in pursuance of paragraph (j) of section 109(1) or 114(1) shall-
 - (a) be operated in an efficient manner so as to maximise revenues, and
 - (b) be used to subsidise the public service objectives outlined in paragraphs (a) to (i) of section 109(1) or 114(1)
2. All transactions or arrangements entered into by the company as between the activities arising from-
 - (i) Paragraphs (a),(b),(c),(d),(e),(f),(g),(h) and (i) of section 109(1) or 114(1), and
 - (ii) Paragraph (j) of section 109(1) or 114(1) shall be made at arm's length.
3. On the direction of the Minister, the Compliance Committee shall prepare and submit to the Minister a report on compliance by the company with the requirements of subsection (2) of this section.

Having regard to the duty to operate these activities in an efficient manner as required under section 1 (a), the arm's length requirement under section 2 (ii) should be interpreted in such a manner as not to preclude the Company from:

- 1. directly, itself or through its subsidiaries, undertaking the management, operation and support of activities carried out in pursuance of Head 109, section 1(j)**
- 2. where it is cost effective to do so providing support to these activities from common shared services units which also provide supports to activities carried out under Head 109, section 1 (a) to (i)**
- 3. for the purpose of the report under Head 109, section 5 (c) allocating the costs of such common shared services between public service and commercial exploitation activities using an appropriate full cost absorption cost allocation methodology.**

It is recognised that the conduct of these commercial exploitation activities and the delivery of the specified public services are integral to the operation of a dual-funded PSB. Notwithstanding the arms length relationship the operation of both activities is therefore recognised as forming a single trade for tax purposes.

Head 102 - Strategic plans

1. As soon as may be, but not later than 6 months after vesting day, and thereafter as requested by the Minister, the company shall prepare and present to the Minister in such form as shall be approved by the Minister and the Authority, strategic, business and financial plans or any revisions to those plans.

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

Suggest amending by addition of a clause to protect the Company's commercial interests

Head 103 - Public service broadcasting charter

1. The Authority, at the direction of the Minister, and having consulted with the Minister and the company, shall prepare and issue guidance to the company on the format of a public service broadcasting charter to be prepared by the company.

2. The company following a public consultation, and having considered the guidance received under subsection (1) shall prepare, not later than 12 months after vesting day, and every five years thereafter, or as required by the Minister, a public service broadcasting charter, not in conflict with this Act, setting out the principles to be observed, and activities to be undertaken by the company in order to fulfil the objects set for the company under sections 109, 110, 114 or 115.

3. A public service broadcasting charter prepared by the company under subsection (2) shall address, inter alia, the number of channels operated by the company.

4. The company shall submit a public service broadcasting charter prepared under subsection (2) to the Minister.

5. The Minister, having consulted with the Authority, and having reviewed a public service broadcasting charter received from the company under subsection (4) against the requirements of sections 109, 110, 114 or 115 of this Act, may approve such a public service broadcasting charter.

6. The Minister shall on approval of a public service broadcasting charter, or any revision thereto cause a copy of same to be laid before each House of the Oireachtas.

Disconnect between Sections 1 and 2 – Section 2 timeframe should be within 12 months of the issuing of guidelines (not within 12 months after vesting date)

Section 2: A five-year charter cannot set out exhaustively the activities and commitments that the companies will undertake and fulfil in the term of the charter

There should be a requirement that an annual report on performance in compliance with the charter is to be included in the Annual Report.

See also Head 105

Head 105 - Reports and information

1. The company shall, not later than 30 June in each year make a report to the Minister (in this section referred to as the "annual report") in such form as the Minister may approve, on the performance of its functions and activities during the preceding year, and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.
2. Whenever the Minister so directs, the annual report shall also include information on the performance of its functions and activities during the preceding year as the Minister may specify.
3. The Company shall submit to the Minister such information regarding the performance of its functions as he or she may from time to time require.
4. The Company shall submit to the Minister such information regarding the remuneration of staff, contractors for services, consultants or advisers of the company as the Minister may require.
5. The Company shall submit to the Authority such information regarding the performance of its functions as the Authority may from time to time require.
6. The Company shall submit to the Authority such information regarding the remuneration of staff, contractors for services, consultants or advisers of the company as the Authority may require in the performance of its functions.

Appears to establish "two masters" for the Company. The BAI should request reports via the Minister.

Head 106 - Advertisements

1. The company may broadcast advertisements, broadcast acknowledgements of sponsorship, may fix charges and conditions for such broadcasts and, in fixing the charges, may provide for different circumstances and for additional special charges to be made in special cases.
2. The company may reject any advertisement presented for broadcast in whole or in part.
3. The total daily time fixed by the company for broadcasting advertisements, broadcasting of acknowledgements of sponsorship, and the distribution, determined by the company, of that time throughout the programmes, shall be subject to the approval of the Minister, following consultation with the Authority.
4. In the case of a broadcasting service provided by the company (not being a broadcasting service which consists of programme material supplied by it pursuant to a contract entered into under this Act), the total daily times for broadcasting advertisements, teleshopping material and broadcasting of acknowledgements of sponsorship, fixed by the company and the maximum period so fixed to be given to advertisements and broadcasts of acknowledgements of sponsorship, in any hour shall be subject to the approval of the Minister, following consultation with the Authority.
5. In this section references to advertisements shall be construed as including references to teleshopping material.
6. The Minister, if so requested by the Referendum Commission following consultation by the Referendum Commission with the company and consideration of any proposals of the company for broadcasts in connection with the referendum that it communicates to the Referendum Commission, shall direct the company in writing to allocate broadcasting time to facilitate the Referendum Commission in performing its functions, and the company shall comply with a direction under this subsection.
7. Charges and conditions referred to in subsection (1) of this section may be fixed subject to variations benefiting advertisers who use the Irish language in their advertisements.
8. A power under this section to fix charges and conditions shall be construed as including a power to cancel or vary any charges or conditions fixed under such power and, where charges or conditions are cancelled, to fix other charges or conditions in lieu of those cancelled.
9. In this section references to advertisements shall be construed as including references to advertising matter in sponsored programmes, that is to say, programmes supplied for advertising purposes by or on behalf of an advertiser.

Section 2: states that “.. *the company may reject any advertisement...*”; no system is identified. There is now an opportunity for a Central Copy Clearance across all broadcast media.

Section 3 and Section 4: the Bill should follow Head 75; where the Minister proposes to approve a change in minutage, the views of the BAI should be sought at that point.

Section 3: This introduces Ministerial approval for Sponsorship – seems unnecessary. There has never been an allocation of time in relation to Sponsorship – is it to be included in advertising minutage?

Section 3: “Distribution” is unclear and should be clarified. Furthermore, there has never been an allocation of time in relation to Sponsorship, which may now be included in advertising minutage.

Section 3: the Company currently has permission to operate promotions for payment of Licence Fee, granted May 2003, and Supporting The Arts, granted April 2000, outside of minutage; these should continue.

Section 4: Requires the company to have Ministerial approval for advertising on non-broadcast services once they contain programme material. This will potentially affect streaming on the web, mobile downloads etc. The EU rules apply and it would seem unnecessary to have a domestic reference. Suggest deletion of this section.

Section 6: Is special dispensation for the Referendum Commission appropriate to the exclusion of others?

Section 7: In recognition of the multi-cultural nature of Ireland perhaps ads in languages such as Polish or Mandarin could be included?

Section 9: This section is confusing as a sponsored programme is not necessarily “... *supplied for advertising purposes by or on behalf of an advertiser*”. It may be intended to refer to give-aways, promotions and competitions for a sponsor within the programme they sponsor. Existing EU regulations clearly distinguish between Advertising and Sponsorship and they should be applied to the Irish market

Head 107 - Code of fair trading practice

1. It shall be the duty of the company to prepare and publish, within twelve months of the coming into force of this Act, and every fourth year thereafter, a code of fair trading practice (in this section referred to as the "code") setting out the principles that it shall apply when agreeing terms for the commissioning of television and radio programming from independent producers.
2. The Authority, having consulted with the Minister, the company, and independent producers (or such persons appearing to the Authority to represent them), shall within twelve months of the coming into force of this Act and every fourth year thereafter, prepare and issue guidance to the company on the format of a code required under subsection (1).
3. The guidance issued by the Authority under subsection (2) shall be general in nature and shall not specify the particular items to be included in agreements to which the guidance relates.
4. The company, having considered the guidance received under subsection (2), shall prepare and submit for approval to the Minister a code.
5. A code prepared under subsection (4) shall include reference to the company's approach to:-
 - (a) multi-annual commissioning;
 - (b) acquisition of rights; and
 - (c) timetable for negotiations.
6. The Minister shall, in considering a code under subsection (4), consult with the Authority.
7. On approval by the Minister a code shall be deemed as having come into force and the company shall comply with such a code.
8. The company shall ensure that provision is made for resolving disputes arising in respect of the provisions of a code (by independent arbitration or otherwise) in a manner that appears to the Authority to be appropriate.
9. The Compliance Committee shall at the end of each four year period report to the Minister on compliance by the company with a code prepared under this section.
10. The company may with the approval of the Minister, having consulted with the Authority, revise and publish amendments to a code.

In general this Head proposes direct Ministerial involvement, and control, over what is a standard business/commercial negotiation between the Company and a group of suppliers. This seems entirely inappropriate but is likely based on the UK situation, where the regulator, OFCOM, has a major role in matters concerning independent commissions, but it is entirely untypical of the rest of Europe. Ireland should not model its arrangements on the UK situation, where the market is entirely different in scale to Ireland.

The negotiation of the Code is a business matter, and should be left to the Company and its suppliers; in this case the suppliers' representative body, SPI. Giving the Minister a role in relation to the development of a Code and/or the right of approval over it creates a situation open to lobbying of the Minister, politicians and civil servants on a commercial relationship between RTE and its suppliers.

It is also inappropriate for the BAI to have any role in a standard commercial relationship between the company and its suppliers.

Head 108 - Audience council

1. The company shall establish for the purposes of this section, a committee, and such committee shall be known, and is in this section referred to, as the "audience council".
2. The audience council shall consist of 15 members.
3. 7 members of the audience council shall be appointed by the Minister to represent specialist programming interests and needs.
4. 7 members of the audience council shall be appointed by the Minister to represent the interests and needs of the general viewing or listening public.
5. The directors of the company shall appoint one of their number to serve as an ex officio member of the audience council.
6. The Minister shall from time to time appoint as occasion requires a member of the audience council to be chairperson thereof.
7. A director of the company may not act as chairperson of the audience council.
8. The membership of the audience council shall be appointed for such respective periods, not exceeding four years, as the Minister may think fit. Any such member who is appointed for a period of less than four years shall be eligible for re-appointment for the remainder of the period of four years from the beginning of his or her appointment, or for any shorter period.
9. A member of the audience council may at any time by notice in writing to the Minister resign his or her membership. The membership of any member may at any time be terminated by notice in writing given to him or her by the Minister.
10. The function of the audience council shall be to represent to the board of the company the views, interests and needs of the general public with regard to public service broadcasting by the company.
11. In order to exercise its functions under subsection (10) the audience council may:-
 - (a) make arrangements for ascertaining and monitoring the state of public opinion about programmes and services broadcast or transmitted by the company and for ascertaining the needs and interests of members of the public,
 - (b) monitor the extent to which comments, proposals or complaints made by audiences are given due consideration by and are properly handled by the company,
 - (c) hold public meetings, and
 - (d) require that the company provide the equivalent of up to six hours per annum of television and radio programme material for the purposes of the exercise of the functions of the audience council, and that the company shall broadcast same, at such times as are agreed between the company and the audience council.
12. The audience council shall have the power to regulate its own procedure and to fix its quorum, provided that the Chairperson may call a meeting of the audience council whenever he or she thinks fit, and shall call a meeting thereof when required so to do by any three members.
13. The audience council shall make an annual report to the Minister, the board of the company and the Authority, of their proceedings during the preceding financial year. The audience council may, and if requested to do so by the Minister shall, make special reports to the Minister during any year.

14. At least once in each year the director general shall meet with the audience council.

15. At least once in each year the audience council shall meet with the board of the company.

16. The company shall afford to the audience council the use of such resources and information as are requisite for the proper performance of the functions of the audience council.

17. The company shall pay to each member of the audience council such out-of-pocket expenses as such member may reasonably incur in the performance of his or her functions.

It is notable that this Head is in part based on the BBC structure – which is now being moved away from; it is open to the danger of attempting “scheduling by lobbyists.”

The proposed Council is less representative and democratic than the current RTÉ Audience Council.

The type of wording in Head 8, Section 3, or similar, should be included in this Head to ensure an element of continuity in membership of the Audience Council. This should take cognisance of the “institutional memory” of the current Council.

Significant investment in research into public opinion is essential to fulfil the requirements of this Head.

It is imperative to include definition of a quorum

Attendance requirement should mirror that of the Board – RTÉ has suggested 75% of current membership

Section 3: will Comhairle Raidió na Gaeltachta be subsumed into the new Audience Council? If so, the level of representation will fall steeply.

Section 3: need for definition or clarification of “... *specialist programming interests and needs...*”

Section 11 and Section 16: how are the bounds of these activities to be set?

Section 13: suggest amendment to “... *the Council shall make a report to the board of the Company and the Minister which will be published annually.*”

Head 109 - Principal objects and associated powers of Radio Teilifís Éireann

1. The objects of Radio Teilifís Éireann shall be stated in its memorandum of association to be-

(a) To establish and maintain a national television and sound broadcasting service which shall have the character of a public service, be a free-to-air service and be made available, in so far as it is reasonably practicable, to the whole community on the island of Ireland.

(b) To establish and maintain a website and teletext services in connection with the services of Radio Teilifís Éireann under paragraphs (a), (c), (d), (e), (f), (g), (h) and (i) of this subsection.

(c) To establish and maintain orchestras, choirs, composers, music libraries and other cultural performing groups in connection with the services of Radio Teilifís Éireann under paragraphs (a), (f), (g), (h) and (i) of this subsection.

(d) To assist and co-operate with the relevant public bodies in preparation for, and execution of, the dissemination of relevant information to the public in the event of a major local, regional or national emergency.

(e) To establish and maintain libraries and archives containing materials relevant to the objects of Radio Teilifís Éireann under this subsection.

(f) To establish and maintain, in so far as it is reasonably practicable, broadcasting services, which shall have the character of a public service, for reception by Irish communities living outside of the island of Ireland.

(g) Subject to the consent of the Minister, the Minister having consulted with the Authority, to establish and maintain, community, local, or regional broadcasting services, which shall have the character of a public service, and be free-to-air.

(h) Subject to the consent of the Minister, the Minister having consulted with the Authority, to establish and maintain non-broadcast non-linear audio-visual media services, in so far as it is reasonably practicable, which shall have the character of a public broadcasting service.

(i) Subject to the consent of the Minister, the Minister having consulted with the Authority, to establish and maintain, in so far as it is reasonably practicable, broadcasting services which are of a special interest to only certain members of the community and which are made available on a subscription or pay-per-view basis (within the meaning of the Broadcasting Act, 2001), which shall have the character of a public service.

(j) So far as it is reasonably practicable, to exploit such commercial opportunities arising in pursuit of the objects outlined in paragraphs (a), (b), (c), (d), (e), (f), (g), (h) and (i) of this subsection.

2. In pursuit of the objects outlined in subsection (1) of this section Radio Teilifís Éireann shall-

(a) be responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Irish language,

(b) uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, and

(c) have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of such countries which are members of the European Union.

3. Without prejudice to the generality of subsection (1), Radio Teilifís Éireann shall ensure that the programme schedules of the broadcasting services referred to in that subsection—

(a) provide a comprehensive range of programmes in the Irish and English include, both on television and radio (and also, where appropriate, any means of transmission referred to in subsections (4)(p) and (q) of this section) programmes that entertain, inform and educate, provide coverage of sporting, religious and cultural activities and cater for the expectations of the community generally as well as members of the community with special or minority interests and which, in every case, respect human dignity,

(b) provide programmes of news and current affairs in the Irish and English languages, including programmes that provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament, and

(c) facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting.

4. The principal express powers of Radio Teilifís Éireann in pursuance of the objects outlined in subsection (1) of this section shall be stated in its memorandum of association to be—

(a) to establish, maintain and operate broadcasting stations and to acquire, install and operate apparatus for wireless telegraphy,

(b) subject to any regulations under the Wireless Telegraphy Act, 1926, which are for the time being in force, to provide for the distribution by means of wired broadcast relay stations of programmes broadcast by Radio Teilifís Éireann and such other programmes as Radio Teilifís Éireann may decide;

(c) to provide, broadcasting services which are of a special interest to only certain members of the community and which are made available on a subscription or pay-per-view basis (within the meaning of the Broadcasting Act, 2001),

(d) to originate programmes and procure programmes from any source,

(e) to make contracts, agreements and arrangements incidental or conducive to the objects of Radio Teilifís Éireann,

(f) to acquire and make use of copyrights, patents, licences, privileges and concessions,

(g) to collect news and information and to subscribe to news services and such other services as may be conducive to the objects of Radio Teilifís Éireann,

(h) to subscribe to such international associations, and to such educational, musical and dramatic bodies and such other bodies promoting entertainment or culture, as may be conducive to the objects of Radio Teilifís Éireann,

(i) to organise, provide and subsidise concerts and other entertainments in connection with the broadcasting service or for any purpose incidental thereto and, in relation to any such concert or entertainment, to provide or procure accommodation and, if desired, to make charges for admission,

(j) to prepare, publish and distribute, with or without charge, such magazines, books, papers and other printed matter as may seem to Radio Teilifís Éireann to be conducive or incidental to its objects,

(k) to arrange with other broadcasting companies or authorities for the distribution, receipt, exchange and relay of programmes (whether live or recorded),

(l) to compile, publish and distribute, with or without charge, recorded aural and visual material,

(m) provide programmes of news and current affairs in the Irish and English languages, including programmes that provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament,

(n) facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting,

- (o) to establish and maintain a website,
- (p) to establish and maintain an electronic communications network within the meaning of Section 2 of the Communications Regulations Act 2002, subject to the provisions of any enactment or rule of law, and
- (q) to procure an "electronic communications service" meaning a service provided for remuneration by another party which consists wholly or mainly in the conveyance of signals on electronic communications networks, subject to the provisions of any enactment or rule of law.

5. Nothing in this section shall be construed as preventing Radio Teilifís Éireann from including in the programme schedules programmes made outside the State.

6. Radio Teilifís Éireann may include in its memorandum of association all such objects and powers as are reasonably necessary for or incidental to the attainment of the objects under subsection (1), and which are not inconsistent with this Act.

7. Radio Teilifís Éireann shall have power to do anything which appears to it to be necessary, or to facilitate the pursuance of its objects and which is not inconsistent with this Act.

See comments under Head 101.

Section 1 (c): suggest amendment, by deletion on composers; its inclusion in this section is anomalous.

Section 1 (c): suggest amendment, by addition of underlined phrase - ‘... *in connection with the services of RTÉ under paragraphs ... (a), (f), (g), (h) and (i) of this subsection, and to play a key role in national cultural life.*’

Section 1 (f): replace “...*To establish and maintain ...in so far as it is reasonably practicable, broadcasting services...*” by something like ‘*to ... make RTÉ programming available on a linear or non-linear basis, in so far as it is reasonably practicable ...*’.

With both rights and platform problems, a traditional linear model may be very problematic. A non-linear service may be easier to launch.

Section 1 (h): “... *to establish and maintain non-broadcast non-linear audio-visual media services...*” is an unnecessary constraint as it would affect the Company’s freedom to develop new products, such as Mobile TV and News SMS services. It would not be practical to seek Ministerial consent, involving consultation with the Authority, on each occasion.

Section 4 (i): suggest amendment, by addition of underlined phrase, which more properly reflects current activities - ‘...*to organise, provide and subsidise concerts, entertainments, education and other activities in connection...*’.

The Notes to Head 109 contain the following: “*The second category of objectives includes objectives that may not be pursued by RTÉ without ministerial consent, the Minister having first consulted with the BAI on the public value of and sectoral impact of the proposal. ... This category includes ... (c) the making of non-broadcast content available on the internet e.g. additional footage which may have been edited from a broadcast programme.*”

This is probably unintentionally restrictive. It would, for example, preclude such initiatives as the Road Safety website on RTÉ.ie, where full interviews with victims and their families

are made available and the webcasting of events such as the Munster Senior Football GAA Championship final replay, which was not broadcast on Television due a clash with the broadcast of the Leinster final.

Head 110 - Alterations by Minister to the remit of Radio Teilifís Éireann

1. Subject to subsections (3) to (5), the Minister may, for the purpose of ensuring that the character, as a public service, of the broadcasting service referred to in section 109 is maintained, by order modify section 109(3) –

(a) by adding thereto provisions specifying categories of programmes that shall be included in the programme schedules referred to in that subsection, and

(b) by making such other alterations to section 109 as are necessary or expedient in consequence of the addition of such provisions.

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

3. Nothing in subsection (1) or (2) shall be construed as enabling a requirement to be imposed on Radio Teilifís Éireann with respect to the manner in which any particular programme broadcast on the broadcasting service referred to in subsection (1) is made or the manner in which any decision of an editorial nature relating to the broadcasting of such a programme is made.

4. Where the Minister proposes to make an order under this section, the Minister shall–

(a) consult with Radio Teilifís Éireann, and such other persons as he or she considers appropriate,

(b) consult with the Authority as to the public value and sectoral impact of such an order,

(c) publish a notice of his or her intention to make such an order in at least one newspaper circulating in the State,

(d) invite, by means of that notice or such other means as he or she considers appropriate, comments from members of the public in relation to the order proposed to be made, and

(e) publish in such manner as he or she considers appropriate a statement outlining the consultations that have been carried out under paragraphs (a) and (b) and any comments received by him or her pursuant to the invitation referred to in paragraph (d) and indicating a place at which any document furnished to the Minister by a person referred to in paragraph (a) or (b) in the course of consultations under those paragraphs or by a member of the public pursuant to the said invitation may be inspected (and such a document shall, accordingly, be made available at that place for inspection at all reasonable times before a draft of the order concerned is laid before the Houses of the Oireachtas under subsection (5)).

5. Where an order is proposed to be made under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

In view of the number of other statutory requirements that will bear upon PSB, it is hard to see why this further ministerial power is to be enacted. The drawing up of the Charter, the BAI's objectives, and the obligation to respond to the Audience Council provide the sufficient instruments to develop or change the remit.

Head 112 - Spectrum licence

1. The powers conferred on Radio Teilifís Éireann by virtue of paragraphs (a) and (b) of subsection (4) of section 109 shall not be exercised save under licence issued to Radio Teilifís Éireann or its agent by the Commission for Communications Regulation, the latter body having consulted with the Minister and the Authority, and in accordance with any conditions attached by the Commission for Communications Regulation to such licences.
2. A copy of every licence under this section shall be laid before each House of the Oireachtas as soon as may be after the issue of the licence.

Section 1: It is appropriate that an agent of RTÉ can be issued with a licence but seems unnecessary and inappropriate that both the Minister and the BAI have to be consulted by ComReg.

Head 113 - Independent television programme account

1. Radio Teilifís Éireann shall keep an account which shall be known as the "independent television programmes account" and is in this Act referred to as "the account".
2. (a) Monies standing to the credit of the account shall be used by Radio Teilifís Éireann for the purpose of—
 - (i) commissioning the making of independent television programmes,
 - (ii) procuring the formulation by persons of proposals for the commissioning by Radio Teilifís Éireann of the making of programmes as aforesaid,
 - (iii) assisting the completion of programmes as aforesaid the making of which has not been commissioned by Radio Teilifís Éireann, and for no other purpose.(b) The amount of monies that Radio Teilifís Éireann is required by subsection (3) of this section to pay into the account in a financial year shall be expended, unless it is impracticable to do so, within two years of that financial year.
(c) Radio Teilifís Éireann shall not in a financial year use for the purposes specified in subparagraphs (ii) and (iii) of paragraph (a) of this subsection more than 10 per cent. of the amount of monies that it is required by subsection (3) of this section to pay into the account in that financial year.
3. Radio Teilifís Éireann shall in each financial year mentioned in column (1) of the Table to this section pay into the account, in accordance with subsection (4) of this section, an amount of monies that is not less than the amount of monies mentioned in column (2) of the said Table opposite the mention of the financial year concerned in the said column (1).
4. The amount of monies required to be paid by subsection (3) of this section into the account in a financial year shall be so paid in such number of instalments as Radio Teilifís Éireann deems appropriate having regard to its duty under subsection (2) (b) of this section.
5. If any of the monies paid under subsection (3) of this section into the account in a financial year remains unexpended at the end of a two year period from the end of that financial year the Minister may, having consulted with the Authority and Radio Teilifís Éireann, authorise Radio Teilifís Éireann to withdraw the said monies or a specified portion thereof from the account and monies so withdrawn shall thereupon become and be available to Radio Teilifís Éireann for the purposes generally of its functions under this Act.
6. References in this section to the expenditure of monies in the account include references to the incurring of a legal obligation or legal obligations to expend such monies.
7. (a) The Minister may, having had regard to each of the following matters, namely—
 - (i) the current and prospective financial liabilities of Radio Teilifís Éireann,
 - (ii) the effect (if any) for the time being of the operation of the provisions of this section on—
 - (I) the employment or recruitment of staff by Radio Teilifís Éireann,
 - (II) the performance by Radio Teilifís Éireann of its functions generally under this Act,
 - (III) the employment of persons in the making of independent television programmes, from time to time by order vary the sum referred to in the definition of the 'appropriate amount' in subsection (8)(a) of this

section and for so long as such an order is in force the said Table or the said definition, as the case may be, shall be construed and have effect in accordance with the order.

(b) The Minister may by order revoke an order under this subsection.

(c) Where it is proposed to make an order under this subsection, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

8. (a) In the Table to this section—

"the appropriate amount" means the sum of €30,000,000 as increased by an amount equal to the appropriate percentage of the said sum.

(b) In this subsection "the appropriate percentage" means the difference between the consumer price index number at mid-August, 2005, and the said number at the mid-August immediately preceding the financial year concerned expressed as a percentage of the first-mentioned number.

(c) If at the second-mentioned date in paragraph (b) of this subsection the consumer price index number stands at a figure that is less than that at which it stood at the first-mentioned date in that paragraph, the definition of "the appropriate amount" in this subsection shall have effect as respects the financial year immediately following the second-mentioned date as if "reduced" were substituted for "increased" in that definition.

9. As soon as may be, but not later than 3 months, after the end each financial year Radio Teilifís Éireann shall make a report to the Minister of—

(a) its activities during that financial year as respects commissioning the making of independent television programmes.

(b) the name or corporate identity of persons commissioned to make independent television programmes.

(c) the operation by it of the account during that financial year,

(d) such other matters relating to the matters referred to in paragraphs (a),(b) and (c) of this subsection as the Minister may direct, and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

10. For the purposes of this Act, the making of an independent television programme shall not be regarded as having been commissioned by Radio Teilifís Éireann unless, before work on the making of the programme commences, Radio Teilifís Éireann has incurred a legal obligation to pay at least 25 per cent. of the cost of its making.

Financial year

(1) 2006 €30,000,000

Each subsequent financial year

TABLE	
Financial year (1)	Amount of monies to be paid by the Radio Teilifís Éireann into the account (2)
2006	€30,000,000
Each subsequent year	The appropriate amount

Given the rapidly changing broadcasting environment and the impact of convergence consideration should be given to expanding the independent television programme process to include on-line etc.

Head 114 - Principal objects and associated powers of Teilifís na Gaeilge

1. The objects of Teilifís na Gaeilge shall be stated in its memorandum of association to be-

(a) To establish and maintain a national television broadcasting service, which shall have the character of a public service, be a free-to-air service and be made available, in so far as it is reasonably practicable, to the whole community on the island of Ireland.

(b) To establish and maintain a website and teletext services in connection with the services of the company under paragraphs (a), (c), (d), (e), (f), (g), (h) and (i) of this subsection.

(c) To establish and maintain choirs, composers, music libraries and other cultural performing groups in connection with the services of Teilifís na Gaeilge under paragraphs (a), (f), (g), (h) and (i) of this subsection.

(d) To assist and co-operate with the relevant public bodies in preparation for, and execution of, the dissemination of relevant information to the public in the event of a major local, regional or national emergency.

(e) To establish and maintain libraries and archives containing materials relevant to the objects of Teilifís na Gaeilge under this subsection.

(f) Subject to the consent of the Minister to establish and maintain, in so far as it is reasonably practicable, broadcasting services, which shall have the character of a public service, for reception by Irish communities living outside of the Island of Ireland.

(g) Subject to the consent of the Minister, the Minister having sought the advice of the Authority, to establish and maintain, in so far as it is reasonably practicable, community, local, or regional broadcasting services, which shall have the character of a public service, and be free-to-air.

(h) Subject to the consent of the Minister, the Minister having sought the audio-visual media services, in so far as it is reasonably practicable, which shall have the character of a public broadcasting service.

(i) Subject to the consent of the Minister, the Minister having sought the advice of the Authority, to establish and maintain, in so far as it is reasonably practicable, broadcasting services which are of a special interest to only certain members of the community and which are made available on a subscription or pay-per-view basis (within the meaning of the Broadcasting Act, 2001), which shall have the character of a public service.

(j) So far as it is reasonably practicable, to exploit such commercial opportunities arising in pursuit of the objects outlined in paragraphs (a), (b), (c), (d), (e), (f), (g), (h) and (i) of this subsection.

2. In pursuit of the objects outlined in subsection (1) of this section Teilifís na Gaeilge shall-

(a) be responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Irish language

(b) uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, and

(c) have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of such countries which are members of the European Union.

3. Without prejudice to the generality of subsection (1), Teilifís na Gaeilge shall ensure that the programme schedules of the broadcasting services referred to in that subsection—

- (a) provide a comprehensive range of programmes, primarily in the Irish language, that reflect the cultural diversity of the whole island of Ireland and include, (and also, where appropriate, any means of transmission referred to in subsections (4)(p) and (q) of this section) programmes that entertain, inform and educate, provide coverage of sporting, religious and cultural activities and cater for the expectations of those of all age groups in the community whose preferred spoken language is Irish or who otherwise have an interest in Irish,
- (b) provide programmes, primarily in the Irish language, of news and current affairs,
- (c) provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament, and
- (d) facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting.

4. The principal express powers of Teilifís na Gaeilge in pursuance of the objects outlined in subsection (1) of this section shall be stated in its memorandum of association to be—

- (a) to establish, maintain and operate broadcasting stations and to acquire, install and operate apparatus for wireless telegraphy,
- (b) subject to any regulations under the Wireless Telegraphy Act, 1926, which are for the time being in force, to provide for the distribution by means of wired broadcast relay stations of programmes broadcast by Teilifís na Gaeilge and such other programmes as Teilifís na Gaeilge may decide,
- (c) to provide, broadcasting services which are of a special interest to only certain members of the community and which are made available on a subscription or pay-per-view basis (within the meaning of the Broadcasting Act, 2001),
- (d) to originate programmes and procure programmes from any source,
- (e) to make contracts, agreements and arrangements incidental or conducive to the objects of Teilifís na Gaeilge,
- (f) to acquire and make use of copyrights, patents, licences, privileges and concessions,
- (g) to collect news and information and to subscribe to news services and such other services as may be conducive to the objects of Teilifís na Gaeilge,
- (h) to subscribe to such international associations, and to such educational, musical and dramatic bodies and such other bodies promoting entertainment or culture, as may be conducive to the objects of Teilifís na Gaeilge,
- (i) to organise, provide and subsidise concerts and other entertainments in connection with the broadcasting service or for any purpose incidental thereto and, in relation to any such concert or entertainment, to provide or procure accommodation and, if desired, to make charges for admission,
- (j) to prepare, publish and distribute, with or without charge, such magazines, books, papers and other printed matter as may seem to Teilifís na Gaeilge to be conducive or incidental to its objects,
- (k) to arrange with other broadcasting companies or authorities for the distribution, receipt, exchange and relay of programmes (whether live or recorded),
- (l) to compile, publish and distribute, with or without charge, recorded aural and visual material,
- (m) provide programmes of news and current affairs in the Irish and English languages, including programmes that provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament,
- (n) facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting,

- (o) to establish and maintain a website,
- (p) to establish and maintain an electronic communications network within the meaning of section 2 of the Communications Regulations Act 2002, subject to the provisions of any enactment or rule of law, and
- (q) to procure an "electronic communications service" meaning a service provided for remuneration by another party which consists wholly or mainly in the conveyance of signals on electronic communications networks, subject to the provisions of any enactment or rule of law.

5. Teilifís na Gaeilge may, for the purpose of complementing the programme material it broadcasts in the Irish language, acquire programme material in other languages; in acquiring such material, the company shall have regard to the need to maintain the distinctive character of the broadcasting service referred to in subsection (1) and to cater for the expectations of audiences who are not generally catered for by other broadcasting services.

6. Nothing in this section shall be construed as preventing Teilifís na Gaeilge from including in the programme schedules programmes made outside the State.

7. Teilifís na Gaeilge may include in its memorandum of association all such objects and powers as are reasonably necessary for or incidental to the attainment of the objects under subsection (1) and which are not inconsistent with this Act.

8. Teilifís na Gaeilge shall have power to do anything which appears to it to be necessary, or to facilitate the pursuance of its objects and which is not inconsistent with this Act.

9. Each amount paid to Teilifís na Gaeilge under section 116(4) shall be used solely for the purposes of pursuing the objects outlined in paragraphs (a) to (i) of subsection (1) of section 114

Suggest that this Head should be amended to specify the principal aim for Teilifís na Gaeilge – the provision of television and on-line Irish language content.

This Head almost entirely replicates the objects of RTÉ for Teilifís na Gaeilge. This appears excessive and has the potential to lead to duplication of services, competition for rights and needless double spend of public monies. There should be complementarity of objects for the two PSBs.

Head 115 - Alterations by Minister to the remit of Teilifís na Gaeilge

1. Subject to subsections (3) to (5), the Minister may, for the purpose of ensuring that the character, as a public service, of the broadcasting service referred to in section 114 is maintained, by order modify section 114(3)–

(a) by adding thereto provisions specifying categories of programmes that shall be included in the programme schedules referred to in that subsection, and

(b) by making such other alterations to section 114 as are necessary or expedient in consequence of the addition of such provisions.

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

3. Nothing in subsection (1) or (2) shall be construed as enabling a requirement to be imposed on Teilifís na Gaeilge with respect to the manner in which any particular programme broadcast on the broadcasting service referred to in subsection (1) is made or the manner in which any decision of an editorial nature relating to the broadcasting of such a programme is made.

4. Where the Minister proposes to make an order under this section, the Minister shall–

(a) consult with Teilifís na Gaeilge, and such other persons as he or she considers appropriate,

(b) consult with the Authority as to the public value and sectoral impact of such an order,

(c) publish a notice of his or her intention to make such an order in at least one newspaper circulating in the State,

(d) invite, by means of that notice or such other means as he or she considers appropriate, comments from members of the public in relation to the order proposed to be made, and

(e) publish in such manner as he or she considers appropriate a statement outlining the consultations that have been carried out under paragraphs (a) and (b) and any comments received by him or her pursuant to the invitation referred to in paragraph (d) and indicating a place at which any document furnished to the Minister by a person referred to in paragraph (a) or (b) in the course of consultations under those paragraphs or by a member of the public pursuant to the said invitation may be inspected (and such a document shall, accordingly, be made available at that place for inspection at all reasonable times before a draft of the order concerned is laid before the Houses of the Oireachtas under subsection (5)).

5. Where an order is proposed to be made under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

The comments under Head 110 also apply to this Head

Head 126 - Transitional provisions - RTÉ

1. On vesting day all land which, immediately before that day, was vested in Radio Éireann and all rights, powers and privileges relating to or connected with such land shall, without any conveyance or assignment, stand vested in Radio Teilifís Éireann for all the estate or interest for which immediately before the said day it was vested in the said Radio Éireann, but subject to all trusts and equities affecting the land subsisting and capable of being performed.
2. On vesting day all property other than land, including choses-in-action, which immediately before that day was the property of Radio Éireann shall stand vested in Radio Teilifís Éireann without any assignment.
3. Every chose-in-action transferred by subsection (2) to Radio Teilifís Éireann may, after vesting day, be sued on, recovered or enforced by it in its own name and it shall not be necessary for it or Radio Éireann to give notice to the person bound by the chose-in-action of the transfer effected by that subsection.
4. All rights and liabilities of Radio Éireann arising by virtue of any contract or commitment (express or implied) entered into by it before vesting day shall on that day stand transferred to Radio Teilifís Éireann.
5. Every right and liability transferred by subsection (4) to Radio Teilifís Éireann may, on and after vesting day, be sued on, recovered or enforced by or against it in its own name and it shall not be necessary for it or Radio Éireann to give notice to the person whose right or liability is transferred by that subsection of such transfer.
6. Any legal proceedings pending immediately before vesting day to which Radio Éireann is a party shall be continued with the substitution in the proceedings of Radio Teilifís Éireann for Radio Éireann.
7. Anything commenced but not completed before vesting day by Radio Éireann may be carried on and completed on or after that day by Radio Teilifís Éireann.
8. References to the Authority in section 5(2) of the Act of 1998 shall be construed as a reference to the company.

Clarification needed. This proposed Head envisages a new entity, called RTÉ, being a company under the Companies' Acts, limited by guarantee and having no share capital, being formed. All of the assets and liabilities of the current RTÉ will simply vest in this new entity. This can have significant tax implications, and without special provision being made could result in large capital gains tax, VAT and stamp duty liabilities arising.

There are some non-Irish tax implications that will need to be considered as RTÉ has a presence in the UK and has certain VAT arrangements with the HMRC, and as currently envisaged there would be a full transfer of any UK assets and liabilities to a new and unrelated entity. The tax cost of this need to be quantified, and will be a cost of the transaction because it will not be possible to eliminate this through Irish legislation. There will also be some tax registrations and filings in Belgium and the US arising out of the new entity due to the presence of permanent correspondents in those two countries.

APPENDICES

ATTACHMENT A

In summary form the functions of the Minister/Government under the *General Scheme for the Broadcasting Bill 2006* that are relevant to the management or operation of the RTÉ Company are as follows:-

- (1) The Minister acts as the member of the new RTÉ Company and in that regard the Minister's membership carries all the rights and obligations that a member of a company would normally have (Head 73).
- (2) The Memorandum of the RTÉ Company must be approved by the Minister with the consent of the Minister for Finance (Head 74).
- (3) The RTÉ Company requires the consent of the Minister to vary the number of channels it operates, to delegate the performance of a significant function to an agent or to undertake "supplementary services" (Head 75).
- (4) RTÉ is required to submit a scheme to the Minister for the licensing of the use and exploitation by third parties of its archive (Head 77).
- (5) During an emergency the Minister may suspend any wireless telegraphy licence and operate the service which had been operated by the RTÉ Company. The Minister may direct the RTÉ Company to allocate broadcasting time for announcements by any Minister of State in the event of an emergency. The Government may direct the Company to allocate broadcasting time for announcements in the public interest (Head 79).
- (6) The Articles of Association of the RTÉ Company must be approved by the Minister and the Minister for Finance (Head 80).
- (7) The Chairperson and other Directors of the RTÉ Company will be appointed by the Government on the nomination of the Minister (Heads 81 & 82).
- (8) The consent of the Government is required before the RTÉ Company appoints or removes the Director General or alters his/her remuneration or his/her terms and conditions (Head 84).
- (9) The RTÉ Company may only establish subsidiaries with the consent of the Minister and the Minister for Finance or promote or take part in the formation of a company or enter into joint ventures or partnerships or acquire, hold or dispose of shares or interests in a company with the consent of the same Ministers. Likewise the Memorandum and Articles of Association of a subsidiary of the RTÉ Company must be approved by the Minister and the Minister for Finance. The Minister may give a direction to the RTÉ Company on *any* matter relating to a subsidiary and a direction in relation to the disposal of any assets or surpluses of a subsidiary cannot be given by the Minister without the consent of the Minister for Finance (Head 87).
- (10) The RTÉ Company cannot alter its Memorandum or Articles of Association without the consent of the Minister and the Minister for Finance (Head 88).

- (11) An RTÉ “Pension Scheme” needs the approval of the Minister and the Minister for Finance (Head 92).
- (12) The RTÉ Company is required to consult with the Minister in drawing up a code of conduct in respect of controls on interests and ethical behaviour to be applied to each director, employee, advisor and member of an advisory committee of the company or a subsidiary of the RTÉ Company. Likewise the RTÉ Company is required to consult with the Minister in drawing up a code in respect of controls on interests and ethical behaviour to be applied to contractors for services (Head 93).
- (13) The Director General is required to appear before the Committee of Public Accounts to give evidence on all matters pertaining to the expenditure of the RTÉ Company (Head 97).
- (14) The Director General is required to appear before any other Oireachtas Committee to give account of the general administration of the RTÉ Company (Head 98).
- (15) The amount the RTÉ Company may borrow will be set at a maximum amount and any borrowing up to that amount will require the consent of the Minister and the Minister for Finance. The RTÉ Company may borrow in excess of the amount to be stipulated by means of the creation of stock or other forms of security but only with the consent of the Minister for Finance and the Minister. Temporary borrowing for current expenditure also requires the consent of the Minister for Finance and the Minister (Head 99).
- (16) The RTÉ Company is required to submit estimates of income and expenditure to the Minister in such form and in respect of such periods and at such times as may be required by the Minister and is also required to furnish to the Minister any information which the Minister may require in relation to such estimates including proposals and future plans relating to the RTÉ Company’s functions. The RTÉ Company is required to keep in such form as approved by the Minister all proper books, records of account and also to keep in such form all special accounts as the Minister may direct from time to time. The RTÉ Company requires the consent of the Minister for the appointment of auditors. The RTÉ Company is required to submit to the Minister a copy of its income and expenditure account and balance sheet as certified by the auditors, a copy of the auditors’ report, a statement in respect of revenue and costs derived from different activities (the Minister may also direct the format of such a statement) and copies of accounts submitted for audit that the Minister designates as accounts of which copies are to be furnished to him/her. The RTÉ Company is required to make a report to the Minister of the use it has made of monies paid to it in respect of its public service objects. The Minister can direct the Compliance Committee of the BAI to review and report to the Minister on the compliance by the RTÉ Company’s statement in respect of total revenue and costs with the guidance on cost accounting principles issued by the BAI. The Minister can require the RTÉ Company, the Director General and any relevant member of staff to permit any person appointed by the Minister to examine the books or other records of the RTÉ Company (Head 100).
- (17) The Minister can direct the Compliance Committee to prepare a report on the compliance by the RTÉ Company with the requirement to enter into certain transactions at arm’s length (Head 101).

- (18) The Minister can require the RTÉ Company to submit, from time to time, in a form approved by the Minister strategic business and financial plans for the RTÉ Company (Head 102).
- (19) The RTÉ Company is required to submit a public service broadcasting charter to the Minister for approval. Such charter must be produced by the RTÉ Company not later than 12 months after the coming into being of the company and every 5 years thereafter or as required by the Minister (Head 103).
- (20) The RTÉ Company is required to publish an annual statement of commitments having first consulted with the Minister (and the BAI) (Head 104).
- (21) The RTÉ Company is required to make an annual report to the Minister in such form as the Minister requires. Such report must include information on the performance of functions and activities as the Minister may specify. The Minister is entitled to such information from the RTÉ Company regarding the performance of its functions as the Minister may require from time to time. The RTÉ Company must submit to the Minister such information regarding the remuneration of staff, contractors, consultants or advisors as the Minister may require (Head 105).
- (22) The daily time allowed for advertisements and sponsorship acknowledgments and the distribution of that time throughout a day are subject to the approval of the Minister. The Minister can direct the RTÉ Company (following consultation) to allocate broadcasting time to the Referendum Commission (Head 106).
- (23) The RTÉ Company is required to prepare and submit to the Minister a code of fair trading practice (and every four years thereafter) (Head 107).
- (24) The Minister appoints 14 out of the 15 members of the Audience Council and its Chairman (Head 108).
- (25) The RTÉ Company may not establish a community, local or regional broadcasting service without the consent of the Minister (having consulted with the BAI) nor may it establish non-broadcast, non-linear audiovisual media services nor special interest broadcasting services without such consent (Head 109).
- (26) The Minister may modify the obligations of the RTÉ Company with respect to its programme schedules for the purpose of ensuring the public service character of these is maintained (Head 110).
- (27) ComReg may not issue a spectrum licence to the RTÉ Company without having consulted with the Minister (Head 112).
- (28) The Minister may vary the amount that the RTÉ Company has to pay into the IPU account and the RTÉ Company is also required to make an annual report to the Minister in respect of the commissioning of independent television programmes (Head 113).
- (29) The Minister with the approval of the Minister for Finance, *may* pay to the RTÉ Company money collected by way of television licence fees (less expenses and monies under the Broadcasting (Funding) Act 2003) (Head 116).

- (30) The Minister can vary the amount of the licence fee on an annual basis. Any amendment to the licence fee following a five yearly review requires Government approval (Head 117).

* *This summary does not deal with obligations relating to disclosure of interests and which are to be found in Heads 94 to 96 inclusive or with any issues arising under transitional provisions.*

ATTACHMENT B

In summary form the functions of the BAI and its statutory committees under the General Scheme that are relevant to the management or operation of the RTÉ Company are as follows:

- (1) Preparation of a strategy for and the provision of broadcasting services other than those provided by RTÉ (and Teilifís na Gaeilge).
- (2) Preparation of a strategy statement reflecting its statutory functions.
- (3) Preparation of broadcasting codes covering impartiality and fairness, incitement to crime, privacy, the allocation of party political broadcasts, taste and decency, advertising and shopping (including protection of the interests of children), protection of the interests of the audience in respect of broadcasting services promoting any organisation and codes for television advertising and sponsorship, protection of minors and public order required under the Television Without Frontiers Directive; preparation of rules covering daily advertising times and periods, steps to be taken by broadcasters to promote enjoyment of broadcasting services by persons who are deaf or blind and rules required under the Television Without Frontiers Directive covering advertising and sponsorship, protection of minors and public order.
- (4) Preparation of schemes and granting of funds under the 2003 Act (broadcasting funding scheme).
- (5) Imposing a broadcasting levy.
- (6) Preparation of a Right of Reply scheme.
- (7) Advising the Minister of the sectoral impact of a proposal:-
 - (a) in respect of an RTÉ scheme for 3rd party use of its archives;
 - (b) by RTÉ to establish a subsidiary, enter into a joint venture or make investments;
 - (c) for the Memorandum and Articles of Association of RTÉ
 - (d) by RTÉ to borrow in excess of a yet unspecified amount or to borrow any amount temporarily
 - (e) for the form of the books and records of RTÉ, including its property, assets and liabilities;

- (f) for the form of RTÉ's strategic, business and financial plans and any revisions thereof;
 - (g) in respect of RTÉ's public service broadcasting charter;
 - (h) RTÉ's annual statement of commitments;
 - (i) the time allowed to RTÉ for advertising time, etc.;
 - (j) RTÉ'S code of fair trading;
 - (k) to allow RTÉ to withdraw unexpended monies from the IPU account.
- (8) Consulting with the Minister as to the public value and sectoral impact of:-
- (a) a proposal by RTÉ to provide supplementary services, vary the number of channels it operates or to delegate a significant function to an agent.
 - (b) a proposal by RTÉ to establish community, local or regional broadcasting services, non broadcast, non-linear, audio-visual services or special interest services on a pay-per view basis; and
 - (c) a proposal by the Minister to alter the remit of RTÉ.
- (9) Preparation and issuing guidance to RTÉ as to:-
- (a) the fulfilment of its obligations as to cost accounting principles and methods to be considered by RTÉ in preparing financial statements;
 - (b) the format of a public service broadcasting charter;
 - (c) the format of an annual statement of commitments;
 - (d) the format of a code of fair trading practice.
- (10) Undertaking a review of the extent to which RTÉ has fulfilled the commitments in its annual statement of commitments and a review on a five yearly basis as to the adequacy or otherwise of the public funding of RTÉ.
- (11) Making a recommendation to the Minister:-
- (a) following a review of the extent to which RTÉ has fulfilled its annual commitments, as to a licence fee modification and the amount to be paid to Teilifís na Gaeilge;
 - (b) following a five yearly review of the adequacy or otherwise of the public funding of RTÉ, as to level of adjustment of the licence fee and the amount to be paid to Teilifís na Gaeilge.
- (12) Liaising and consulting with ComReg in the preparation of the allocation plan for the frequency range dedicated to radio and television broadcasting.
- (13) Consulting with ComReg as to the sectoral impact of the issuance of a spectrum licence to RTÉ.
- (14) Publishing information on the broadcasting sector and monitoring developments internationally, organising research, promoting training, co-operating with similar regulators outside the State and bringing about a better public understanding of media issues.
- (15) Directing the manner of resolution of a dispute between RTÉ and a third party in respect of access to RTÉ's archives (Head 77(11))

- (16) Requiring RTÉ to submit from time to time, as may be required, information on the performance by RTÉ of its functions, the remuneration of staff, contractors for services, consultants or advisors. (Head to 105(4) to (6))
- (17) Where the Minister proposes to modify the remit of RTÉ, he must consult with the BAI as to the public value and sectoral impact of such a change (Head 110(4)(b))
- (18) Monitoring and enforcing compliance with duties, codes and rules.
- (19) Investigating and deciding upon complaints.
- (20) Investigating and deciding upon a decision by a broadcaster to refuse a right of reply.
- (21) At the request of the Minister, reporting compliance by RTÉ of:-
 - (a) the requirement to engage in arm's length transactions;
 - (b) its code of fair trading and;
 - (c) the guidance issued on cost accounting principles in preparing the statement of total revenue and costs.
- (22) At the request of the Minister, reporting on television production for the purposes of the Television Without Frontiers Directive.
- (23) At the request of the Minister, reporting compliance by RTÉ's of its obligations to maintain archives and establish an access scheme to the public for those archives.
- (24) Making the determinations in respect of disputes arising under section 37(7) of the 2001 Act (dispute between Cable or MMDS operator and RTÉ over placement of must-carry services).
- (25) Preparing, if it chooses, guidance for broadcasters on the handling of complaints, requiring RTÉ to supply information on the handling of complaints and directing RTÉ to make available records of complaints' handling if requested (Head 43(4),(5) & (6))
- (26) Following an inquiry instigated by the Compliance Committee, imposing monetary penalties (based on published guidelines) for breach of duties, broadcasting codes or rules relating to advertising or access. (Heads 47, 48 & 49).

** All of the above based on Heads 25 & 27 unless otherwise stated.*

ATTACHMENT C

In summary form the matters in the existing Broadcasting Authority Acts where the Minister / Government / BCI / BCC / ComReg have a function relevant to the management or operation of RTÉ are as follows:

- (1) The members of the Authority and its Chairman are appointed by the Government (sections 4 & 7 1960 Act).
- (2) The Government may remove a member of the Authority but only if resolutions are passed by both Houses of the Oireachtas (section 2 1976 Act).
- (3) The consent of the Minister is necessary before the Authority appoints or removes the Director-General or alters his remuneration or his terms and conditions of office (section 13 1960 Act).
- (4) An RTÉ “pension scheme” needs the approval of the Minister and the Minister for Finance (Section 14 1960 Act, as amended).
- (5) RTÉ may not operate wireless telegraphy equipment without a license (now from ComReg, originally from Minister). During an emergency the Minister may suspend any wireless telegraphy licence and operate the service which had been operated by RTÉ (Section 16 1960 Act, as amended).
- (6) RTÉ requires the consent of the Minister to appoint advisory committees or advisers (section 21 1960 Act, as amended).
- (7) RTÉ is required to keep in such form as approved by the Minister, after consultation with the Minister for Finance, all proper and usual accounts, including an income and expenditure account and balance sheet and all special accounts as the Minister or the Minister for Finance shall direct including special accounts (a) showing how licence fee monies have been spent fulfilling RTÉ’s public service remit and (b) in respect of secondary broadcasting services (section 25 1960 Act, as amended, sections 32 & 54 2001 Act).
- (8) RTÉ is required to provide an Annual Report to the Minister including such information on particular aspects as the Minister may direct. RTÉ is required to submit such information to the Minister as he may require, from time to time, on the performance by RTÉ of its functions (section 26 1960 Act, as amended).
- (9) Borrowing, including temporary borrowing for current expenditure requires the consent of the Minister and the Minister for Finance (sections 27 & 28 1960 Act, as amended).
- (10) The Minister may direct RTÉ not to broadcast matter which would be likely to promote or incite to crime or would tend to undermine the authority of the state and he may also direct RTÉ to allocate broadcasting time for announcements by any Minister of State (section 31 1960 Act, as amended).
- (11) The Minister may, with the consent of the Minister for Finance assign RTÉ additional subsidiary functions (section 7 1976 Act).

- (12) The Minister, with the approval of the Minister for Finance *may* pay licence fee monies to RTÉ, less expenses, (Section 7 1976 Act) and less monies under the Broadcasting (Funding) Act, 2003.
- (13) At the request of the BCI, the Minister may require RTÉ to co-operate with commercial or private broadcasters in the use of any mast, tower or site needed in connection with the provision of transmission facilities licensed under the legislation for those broadcasters (section 16 Radio & Television Act 1988).
- (14) RTÉ is required to send to the Minister audited accounts, a copy of the auditors' report, a statement (certified by the auditors) of revenue derived from advertising, sponsorship or other forms of commercial promotion and copies of such of the accounts submitted for audit as the Minister may direct (Section 7 Broadcasting Act 1990).
- (15) The Minister may permit RTÉ to withdraw unexpended monies from the IPU Account and RTÉ is also required to make an annual report to the Minister in respect of the commissioning of independent television programmes (sections 4 & 6 Broadcasting Authority (Amendment) Act 1993).
- (16) The Minister, if requested by the Referendum Commission, having consulted with RTÉ is obliged to direct RTÉ to allocate broadcasting time to the Referendum Commission in performing its functions (Section 5 Referendum Act 1998).
- (17) Upon being directed by the Minister the BCI is required to prepare broadcast codes for standards of taste and decency and advertising and sponsorship (including advertising and sponsorship codes for children) and is charged with enforcing standards in broadcasting (sections 19 & 21 2001 Act).
- (18) The BCC investigates and decides upon broadcasting complaints (section 24 2001 Act).
- (19) The Minister may modify the obligations of RTÉ with respect to its programme schedules for the purpose of ensuring that the public service character of these is maintained (Section 28 2001 Act).
- (20) RTÉ is obliged to make a report to the Minister of the use it has made of licence fee monies in carrying out its public service duties (section 28 2001 Act).
- (21) The total daily times for broadcasting advertisements and teleshopping material and the maximum period for any hour are subject to the approval of the Minister (section 31 2001 Act).
- (22) The BCI is responsible for making determinations in respect of disputes between Cable or MMDS operators and RTÉ over placement of must-carry services on such systems (section 37 2001 Act).
- (23) The Minister may require RTÉ to prepare and submit to him financial or other statements on secondary broadcast services (section 54 2001 Act).

- (24) RTÉ is obliged to supply information to the Minister to enable the Minister to make a report under the Television Without Frontiers Directive (regulation 6 European Communities (Television Broadcasting) Regulations 1999).

Note 1: A reference to the “1960 Act” means the Broadcasting Authority Act 1960. A reference to the “1976 Act” means the Broadcasting Authority (Amendment) Act 1976. A reference to the “2001 Act” means the Broadcast Act 2001.

Note 2: Reference is not made to either the provisions of Part II or Part VI of the 2001 Act as neither the transmission company nor the multiplex company have been designated under Part II nor has the body to be known as Teilifis na Gaeilge been established under Part VI.