

## Broadband Infrastructure Bill 2008

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As initiated

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### ARRANGEMENT OF SECTIONS

1. Short title and Commencement
2. Interpretation Section
3. Broadband Targets
4. Report by Minister to Joint Committee
5. National Broadband Network Establishment
6. Body Corporate
7. Functions of the Body
8. Board of the Network
9. Appointment and Term of Office of Chief Executive
10. Appointment of Employees
11. Funding
12. Ministerial Directions to Body
13. Non-disclosure of Confidential Information
14. Cessation of Membership
15. Establishment of Broadband Commission
16. Membership of Commission
17. Appointment of Chairperson
18. Resignation of member of Commission
19. Making of Regulations
20. Laying of Regulations before Houses of Oireachtas
21. Consultation with Commission prior to making Regulations

## Broadband Infrastructure Bill 2008

### Bill

entitled

AN ACT FOR THE PROVISION OF QUALITY, AFFORDABLE BROADBAND IN THE REPUBLIC OF IRELAND BY SETTING GIVEN QUALITY AND UPTAKE TARGETS; TO PLACE DUTIES UPON THE MINISTER AS TO THE ACHIEVEMENT OF THOSE TARGETS; TO ESTABLISH A BROADBAND NETWORK AND COMMISSION; TO REFORM CERTAIN REGULATIONS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1. This Act may be cited as the Broadband Infrastructure Act 2008.

2. In this Act:

‘backbone’ means any underlying network communication conduit or line by which all main servers and devices are connected;

‘backhaul’ means any means of transmitting data to or from a backbone;

‘broadband’ means any of a range of continuous internet connections which on average transmit information (being information for the same purposes as the Electronic Commerce Act 2000) at a rate equal to or greater than 1 megabit per second at all times;

‘broadband infrastructure’ means any of backbone infrastructure, backhaul infrastructure, any digital subscribers line technology infrastructure, ducting, fibre optic cabling or any other fibre optic infrastructure, and any infrastructure used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment;

‘broadband penetration rate’ means the number of broadband subscribers per 100 inhabitants in the Republic of Ireland;

‘Chief Executive’ means the chief executive officer of the National Broadband Network established in section (9);

‘ComReg’ means the Commission for Communications Regulation established by the Communications Regulation Act 2002;

‘Commission’ means the Broadband Commission established in section (16);

‘digital subscriber line technology’ means any of a family of digital telecommunications protocols designed to allow high speed data communication;

‘ducting’ means any purpose-designed conduit used for protection and routing of fibre optic cabling;

‘Forfás’ means the body established by that name by the Industrial Development Act 1993;

‘information communication technology’ means the use of computer-based information systems and communications systems to process, transmit and store data and information;

‘Joint Committee’ means the Joint Committee on Communications, Energy and Natural Resources;

‘megabits per second’ means a rate of data transfer equal to 1,048,576 bits per second;

‘Minister’ means the Minister for Communications, Energy and Natural Resources;

‘National Broadband Network’ means the body established in section (5);

‘next generation network’ means a broadband network capable of supporting low and high bandwidth services including mobility, rich voice, and multimedia services;

‘principal service operator’ means the service operator with the greatest share of consumers in the broadband market;

‘public private partnership’ means a public private partnership arrangement within the meaning of the State Authorities (Public Private Partnership Arrangements) Act 2002;

‘service operator’ means:

- a cable operator;
- a commercial mobile service carrier;
- an open video system operator;
- a satellite carrier;
- a telecommunications carrier, or;
- any other wireless carrier.

(2) In this Act a reference to a section, subsection, paragraph or subparagraph is to the section, subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(3) In this Act a reference to any enactment shall be construed as a reference to that enactment as amended or adapted by or under any subsequent enactment.

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

**3.** (1) It shall be the duty of the Minister to ensure every household and business in the Republic of Ireland has broadband access at speeds at a minimum of 5 megabits per second by the 31<sup>st</sup> December 2009.

(2) It shall be the duty of the Minister to ensure every household and business in the Republic of Ireland has broadband access at speeds at a minimum of 20 megabits per second by the 31<sup>st</sup> December 2012.

(3) It shall be the duty of the Minister to ensure that broadband penetration rates in the Republic of Ireland are at a minimum of 30% by the 31<sup>st</sup> December 2009.

(4) It shall be the duty of the Minister to ensure that broadband penetration rates in the Republic of Ireland are at a minimum of 60% by the 31<sup>st</sup> December 2012.

**4.** (1) It shall be the duty of the Minister to appear on a twice yearly basis before the Joint Committee and shall report to the Joint Committee:

(a) the prevailing minimum broadband speeds available to every household and business in the Republic of Ireland;

(b) the percentage change in minimum broadband speeds available to every household and business in the Republic of Ireland since his previous appearance before the Joint Committee;

(c) the prevailing broadband penetration rate in the Republic of Ireland;

(d) the percentage change in the broadband penetration rate in the Republic of Ireland since his previous appearance before the Joint Committee;

(e) the steps taken by the Minister and his department since his previous appearance before the Joint Committee to ensure that the targets laid down in section (3) are met.

(2) Failure to meet any of the targets laid down in section (3), shall result in the Minister, at his subsequent appearance before the Joint Committee, additionally reporting on:

(a) the reasons why the target or targets was not or were not met;

(b) the actions to be taken by the Minister and his Department to ensure that the target or targets are met.

**5.** (1) There shall stand established a body to be known as the National Broadband Network (“the Network”) in this Act to perform the functions conferred on it by or under this Act.

(2) The Network shall stand established on such day as the Minister shall by order appoint.

**6.** (1) The Network shall be a body corporate with perpetual succession and a seal and with power:

(a) to acquire, hold and dispose of land or an interest or part of an interest in land, by transfer, assignment, conveyance, grant of lease or licence or otherwise;

(b) to acquire, hold and dispose of any other property, by transfer, assignment, conveyance, grant of lease or licence or otherwise and;

(c) to receive income (including any amount, right, interest, benefit or profit) arising from or make payments (or otherwise provide consideration) in respect of any of its functions referred to in this Act.

(2) The Network shall have all such powers as are necessary or expedient for the performance of its functions.

**7.** (1) Subject to the following provisions of this part and, in particular, to such directions and guidelines as may be given by the Minister under section (12), it shall be the general duty of the Network to:

(a) procure, secure the provision of, promote and facilitate the development, including the carrying out of construction or maintenance works, of any broadband infrastructure it deems necessary to advance the broadband network;

(b) guarantee wholesale backhaul broadband access to service providers;

(c) enter into agreements with service providers or other persons in order to secure the development of the broadband network whether by means of a concession, joint venture, public private partnership or any other means;

(d) enter, where appropriate, into an agreement with persons who have arranged or provided funding for the carrying out of any part of the development of the broadband network;

(e) allocate moneys and make payments in relation to construction or maintenance works, or in relation to any other function assigned to it by or under this Act;

(2) In the performance of its functions under subsection (1), the Network shall consider the needs of all broadband users and guarantee competitive access to the broadband network.

(3) The Network may do all such things as arise out of or are consequential on or are necessary or expedient for the performance of its functions or are ancillary thereto.

(4) No action or other proceedings shall lie or be maintainable against the Network for the recovery of damages in respect of any injury to persons, damage to property or other loss alleged to have been caused or contributed to by a failure of the Network to perform or to comply with any of the functions conferred on it.

**8.** (1) The number of members of the board of the Network (“the Board”) shall not be less than six nor more than ten.

(2) Each member of the Board shall be a person who in the opinion of the Minister is independent and has experience and competence in relation to information communications technology.

(3) The members of the Board shall be nominated by the Minister in accordance with the criteria laid down in subsection (2).

(4) Each member of the Board shall be ratified by at least a two thirds majority of the Joint Committee in a vote.

(5) For each member who is ratified by the Joint Committee, he or she will then be deemed appointed to the Board.

(6) For each member who fails to be ratified by the Joint Committee, he or she shall not be appointed the Board.

(7) The Minister shall, when nominating the members of the Board, fix their terms of office which shall be for a period not exceeding five years, and those persons shall hold their offices on such terms and conditions as the Minister determines.

(8) A person appointed under this section whose term of office expires by the effluxion of time shall be eligible for reappointment.

(9) Any member of the Board may resign from office by letter addressed to the Minister and the resignation shall take effect from the date of the receipt of the letter by the Minister.

(10) A member of the Board may be removed from office by the Minister for stated reasons if, and only if, a resolution is passed by a two thirds majority of the Joint Committee calling for his or her removal.

(11) The Board may act notwithstanding a vacancy amongst its members.

**9.** (1) The Board shall from time to time as occasion requires nominate a chief executive (“the Chief Executive”) thereof.

(2) The Chief Executive shall be ratified by a minimum of two thirds of the members of the Joint Committee;

(3) The Board shall, when nominating the Chief Executive, fix his term of office which shall be for a period not exceeding five years, and that person shall hold his office on such terms and conditions as the Board determines.

(4) (a) The Chief Executive shall carry on and manage and control generally the administration and business of the Network and perform such other functions as the Board may determine from time to time.

(b) The Chief Executive may delegate any of the functions referred to in paragraph (a).

(5) Save as is provided for in any other enactment, the Board may, for stated reasons, terminate the employment of the Chief Executive subject to the approval of a minimum of two thirds of the Joint Committee.

**10.** (1) The Chief Executive may appoint such persons to be employees of the Network as it may determine subject to the consent of the Minister as to numbers and grading.

(2) An employee of the Network shall be paid, out of moneys at the disposal of the Network, such remuneration and allowances for expenses.

**11.** (1) For the purpose of enabling the Network to perform its functions, the Minister may provide services (including services of staff) to the Network on such terms and conditions (including payment for such services) as may be agreed and the Network may avail of such services.

(2) The Network may provide services (including services of staff) to the Minister or any other body or person on such terms and conditions (including payment for such services) as may be agreed and the Minister or any other body or person may avail of such services.

**12.** (1) The Minister may give a direction in writing to the Network in relation to any of the functions assigned to it by or under this Act and the Network shall comply with the direction.

(2) The Minister shall lay a copy of any direction given by him under subsection (1) before each House of the Oireachtas.

(3) The Minister may, by regulations, assign to the Network such additional functions in relation to the construction or maintenance or procurement of broadband infrastructure as from time to time he or she considers appropriate.

**13.** (1) A person shall not disclose confidential information obtained by him while performing duties as a member of the Board, as an employee of the Network, as a person whose services are provided to the Network under section (7), as a member of a committee or consultative group established by the Network or as a consultant, adviser or other person engaged by the Network unless he or she is duly authorised to do so.

(2) In this section “confidential information” includes:

(a) information that is expressed by the Chief Executive or the Board or the Minister to be confidential either as regards particular information or as regards information of a particular class or description,

(b) commercial information in relation to contractors, consultants, service providers of finance or any other person,

(c) proposals of a commercial nature or tenders submitted to the by contractors, consultants or any other person, and

and “duly authorised” means authorised in writing by the Board or by some person authorised in that behalf by the Board.

(3) A person who contravenes subsection (1) shall be guilty of an offence.

**14.** (1) Where a member of the Board or the Chief Executive is:

(a) nominated as a member of Seanad Éireann, or

(b) nominated as a candidate for election to either House of the Oireachtas or to 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 the European Parliament, he or she shall thereupon cease to be a member of the Network.

(2) 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 he or she is so entitled or is such a member, be disqualified from becoming a member of the Network.

**15.** (1) The Board shall establish a body, which shall be known as the Broadband Commission, in this Act referred to as “the Commission”, which shall perform the functions assigned to it by this Act.

(2) The functions of the Commission shall be to oversee the application and enforcement of this Act.

(3) Without prejudice to the generality of subsection (2), the Commission shall:

(a) be a forum to allow the discussion and resolution of next generation networks’ technical, interconnect, regulatory, and commercial issues.

(b) advise and assist the Minister as to services and processes that are required to ensure that competition and investment in the sector remains strong;

(c) gather comprehensive information on the state of the market and the principal service operator's intentions.

(4) Other forums and steering groups relating to broadband and broadband development are abolished.

**16.** (1) The Commission shall consist of a Chairperson and not fewer than seven and not more than ten Commissioners, who shall each serve for a maximum term of five years.

(2) The members of the Commission shall be appointed by the Board in accordance with criteria of expertise on matters related to information communications technology.

(3) Without prejudice to the generality of subsection (2), the Commission shall be principally composed of representatives from each of ComReg, the principal service operator, other services operators, Forfás, small and medium sized enterprises, large enterprises, and consumer groups.

**17.** (1) The Chief Executive shall from time to time as occasion requires appoint a chairperson of the Commission.

(2) The chairperson of the Commission shall, unless he or she sooner dies or resigns the office of chairperson or otherwise ceases to be chairperson, hold office until the expiration of his or her period of office as a member of the Commission.

(3) The chairperson of the Commission may at any time resign his or her office as chairperson by letter sent to the Chief Executive and the resignation shall take effect at the commencement of the meeting of the Commission held next after the Commission has been informed by the Chief Executive of the resignation.

**18.** (1) A member of the Commission may at any time resign his or her office by letter addressed to the Chief Executive and the resignation shall take effect as on and from the date of receipt of the letter by the Chief Executive.

(2) The Chief Executive may remove from the Commission any such person if in the opinion of the Chief Executive he or she has become incapable through ill-health of effectively performing his duties or has committed stated misbehaviour or his removal appears to the Chief Executive to be necessary or desirable for the effective performance by the Commission of its functions.

**20.** (1) The Minister may make regulations:

(a) for any purposes in relation to which regulations are provided for by any of the provisions of this Act, and

(b) for prescribing any matter or thing referred to in this Act as prescribed or to be prescribed.

(2) The Minister shall make regulations which shall provide for:

(a) the provision of broadband infrastructure in the construction or upgrade of any local road, national road, or motorway (as defined in the Roads Act 1993);

(b) the provision of broadband infrastructure in any other major structural project;

(c) the provision of broadband infrastructure in the construction of any new dwelling (as defined in the Residential Tenancies Act 2004) and;

(d) the inclusion of broadband infrastructure in all national, regional, county and city development plans.

**21.** Every order and every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next subsequent 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

**22.** (1) Before the Minister makes any orders or regulations in exercise of any power conferred on him or her by this Act, the Minister may consult the Commission and such other persons (if any) as he or she considers appropriate.

(2) The Commission may from time to time submit to the Minister such proposals as the Commission considers appropriate for the making of orders or regulations under this Act.

## **Explanatory Memorandum**

Modern economies are knowledge driven. Those that prosper are those that are most efficient in transforming raw data into valuable knowledge and profitably using this knowledge. Broadband is a key enabler of this knowledge economy.

Broadband has the potential to transform our economy and society. It can produce efficiency gains in existing sectors, and spur the growth of complementary new sectors. It has the potential to attract inward investment and generate significant economic growth in rural areas. Efficiency gains can also be realised in the public sector, streamlining administration. Moreover, broadband has the potential to improve quality of life. It can advance healthcare and education services, and connect every household in the Republic of Ireland to the world economy.

Ireland is at the bottom of numerous league tables of broadband quality, penetration, and price. This represents a key threat to the economy's long term viability. Countries such as Korea and Denmark are already constructing 'Next Generation Networks'. Meanwhile Ireland still does not have the necessary infrastructure installed to catch up to where these world leaders in Information Communication Technology are now.

This Bill aims to redress this. It provides targets for bringing about high quality broadband coverage nationwide. The Bill also provides targets for broadband uptake which will ensure that broadband becomes more affordable. The Bill establishes a National Broadband Network which will join up and extend existing broadband infrastructure. Use of this network will be kept open for competition between service providers. This network will be expanded and improved in preparation for 'Next Generation Networks', and the Bill contains regulatory reforms to prepare the country for these networks.

In addition, a Broadband Commission will be set up to facilitate the objectives of the Bill. The Minister will be held accountable before the Joint Committee if the targets are not met.

The Bill also provides for a new way for the board of the Network to be chosen. They will be chosen by the Minister according to their expertise in this field. Their names will go before the Joint Committee on Communications, Energy and Natural Resources for ratification. A two thirds majority of the Joint Committee will be required to ratify each member.