



ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

## Licensing: Regulatory Measures

## Background

The BAI's licensing activities have evolved over the years since the establishment of the broadcasting regulator in 1988. These activities, including policies and regulatory measures, are underpinned by relevant legislation, principally the Broadcasting Act, 2009 ("the 2009 Act"), and the Authority's policies including its Strategy Statement and its Broadcasting Services Strategy ("the BSS").

This document details the Authority's approach to six regulatory measures, which are concerned primarily with sound broadcasting ("radio") services. These are as follows:

- News & Current Affairs 120 minutes and 20% Requirements
- Opt-out Programming
- Opt-out Advertising
- Programme Automation and Networking
- Sharing of non-Programme Functions
- Studio Location

During the review of the BSS over 2017/2018, the Authority agreed to include consideration of these regulatory measures in the consultation phase. There was good engagement with this section of the consultation by broadcasters, particularly the commercial radio broadcasters, and by parties committed to supporting Irish language. The feedback and Authority considerations are set out in the Statement of Outcomes document, published by the BAI on conclusion of the review process. This document is available at [www.bai.ie/en/consultations](http://www.bai.ie/en/consultations).

The BAI will devise and publish licensing documentation for each licensing category (9 in total) over the coming 12 months which will detail the regulatory measures where relevant in line with its stated commitment in the revised BSS. In the meantime, this document sets out the Authority's current approach to these regulatory measures

Regarding ownership and control, the Authority's approach to this regulatory measure is set out in the BAI's Ownership and Control Policy 2012. This policy is under review and is being considered within the wider context of plurality.

BAI publications and further information on the licensing activities and functions of the BAI can be found at [www.bai.ie](http://www.bai.ie).

If you have any queries in relation to these guidelines, please email [licensing@bai.ie](mailto:licensing@bai.ie) or phone (01) 6441 200.

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## 1. Regulatory Principles

The BAI commits to implementing its regulatory role in a manner that balances sectoral sustainability with audience needs and preferences and the statutory requirements for plurality and diversity in broadcasting. In carrying out its regulatory functions pursuant to the BSS, the BAI will regulate in accordance with its strategic values of being fair, independent, expert and accountable. In implementing its licensing activities, the BAI will:

- Ensure broadcasting contractors adhere to their contractual commitments and, in particular, to diversity and plurality;
- Keep the administrative costs of meeting licensing obligations to a minimum;
- Reduce unnecessary regulatory burden;
- Devise licensing procedures that minimise the cost of making a licence application;
- Ensure its regulation practices are efficient, effective and responsive;
- Consult on the regulatory principles and regulatory activities with licensed contractors; and,
- Publish detailed documentation for each licensing category, that sets out its licensing and regulatory approach for that particular category.

## 2. Regulatory Measures

The BAI, and its predecessors (IRTC & BCI), have developed a series of well-established regulatory measures, which underpin the BAI's licensing and contracting activities. These regulatory measures are mainly informed by the Broadcasting Act, 2009 and also, importantly, by the aims and objectives of the Authority including the promotion of 'a *plurality of voices, viewpoints, outlets and sources in Irish media*' and 'to foster diverse and culturally relevant quality content for Irish audiences'.

The Authority's approach to each of these regulatory measures for radio services is set out in the following sections.

### 2.1 News & Current Affairs Requirement

The 2009 Act sets out requirements for news and current affairs minuteage and permits the Authority to consider derogations as follows:

**39.—** (1) *Every broadcaster shall ensure that—*  
(c) *in the case of sound broadcasters 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, unless a derogation from this requirement is authorised by the Authority under subsection (3),*

*(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.*

The BAI acknowledges that news and current affairs provided by Irish broadcasters makes a substantive and valuable contribution to Irish audiences, as recognised by Section 39(1)(c) of the 2009 Act. However, derogation from the statutory requirement is considered appropriate where, in the Authority's view, it is beneficial to listeners and is likely to increase programming diversity to the audience in a franchise area.

In implementing the statutory requirement for a 20% minimum level of news and current affairs content on specified sound broadcasting services licensed by the BAI, the Authority shall have regard to the following:

- It shall apply a broad definition of news and current affairs for the purpose of meeting the provision, as has been the case to date;
- It shall have regard to the nature of a broadcasting service as an important determinant of the character of the news and current affairs content on a particular service;
- In the case of national and local broad-format radio services on the FM band, the BAI permits derogation between the hours of 1am and 7am. The Authority does not propose that any additional derogation from the statutory requirement will be granted to such services;
- The BAI shall give consideration to derogation from the statutory requirement in the case of music-driven, youth and niche services.

In determining any derogation to be granted, the Authority shall have regard to three influencing factors:

1. The innovative nature of the alternative editorial and schedule proposals that the contractor submits and the impact that the proposed derogation will have on the audience being served;
2. The impact of the derogation on the overall quality of news and current affairs output in the relevant franchise area, and;
3. The contribution the derogation would be likely to make to the diversity and quality of news and current affairs output for the relevant audience of music-driven, youth and niche services or of those services targeting a particular demographic.

## **2.2 Opt-out Programming**

The Authority will permit the broadcast of opt-out programming by radio services from a main studio location, having regard to the following:

1. Whether the granting of such permission would compromise the focus of the content for the intended audience;
2. Whether the arrangements proposed support the principles of diversity and plurality, particularly in relation to serving audience needs;

3. Whether the proposals are consistent with the nature of the service licensed i.e. national, regional, local; and,
4. The impact on the viability of other services in the franchise area.

### **2.3 Opt-out Advertising**

The BAI may, in some limited circumstances, permit opt-out advertising without the requirement for opt-out programming. In considering any such proposals, the BAI shall have regard to the likely impact on the viability of the service as well as the general impact on the viability of other services in the franchise area and the wider broadcasting sector.

### **2.4 Programme Automation & Networking**

The BAI may permit greater levels of automation and networking in certain circumstances. In considering proposals from broadcasters, it shall have regard to the following:

- Impact on the audience for the service;
- Potential to increase the viability of the service, particularly in the case of niche services;
- In the case of community radio services, the impact of the proposals on the ethos of the service;
- In the case of proposals to automate elements of the programme service, the time of day – generally, it is expected that automated content would occur during off-peak hours.

### **2.5 Sharing of non-Programme Functions**

In the case of commercial radio services, the BAI permits the sharing of non-programming functions such as finance, engineering and administration. A radio contractor must notify the BAI of any such arrangements prior to implementation.

The BAI may also be open to considering proposals for a further extension of shared services, provided that this does not impact on the delivery of the core programme service. The BAI shall have particular regard to the nature of the proposed service when considering such matters.

The BAI does not consider such arrangements are appropriate for community radio services, given its requirement that a community service should be established, owned and controlled by the community it serves.

### **2.6 Studio Location**

The BAI shall require that broad-based local radio and community radio services locate their principal studios in the relevant franchise areas. In the case of other commercial services, including niche services and operators of content provision contracts, the BAI may permit co-location with another service(s) or location of the service outside of the franchise area, provided that such location does not result in listeners or viewers being unduly affected by the proposed arrangements.

This provision will also apply to community television services.

### 3. Contractual Variation Requests

If a contractor wishes to make a change to any of its contractual obligations under any of the six regulatory measures outlined above, the BAI should be notified and/or requested to consider the proposed change at that time.

If you require any assistance concerning a contractual variation request, please contact Rachel Casey on (01) 644 1200 or e-mail [rcasey@bai.ie](mailto:rcasey@bai.ie)

