



Coimisiún
na Meán

Procedures for an Internal Review of a Decision Made by the Commission Under a Levy Order Made Pursuant to Section 21 of the Broadcasting Act 2009 (as amended).

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Procedures for an internal review of a decision made by the Commission under a levy order made pursuant to section 21 of the Broadcasting Act 2009 (as amended).

As set out more fully in sections 3 and 7 below, a review of a decision is strictly limited to a decision under the levy order in force at the time of an application for a review. Any decision not made under the relevant levy order cannot be the subject of a review and any application for a review of such an out-of-scope decision will be dismissed at a preliminary stage.

1. Definitions

Term	Definition
'the 2009 Act'	The Broadcasting Act 2009 (as amended).
'the Commission'	Coimisiún na Meán.
"Commissioner"	A member of the Commission.
'the Levy Order'	The relevant levy order made by the Commission pursuant to section 21 of the 2009 Act in force at the time of the Review Application.
"Provider"	means a provider falling within one of more of the categories of providers who must pay a levy in accordance with the terms of the Levy Order.
'Review' and 'the Review process'	A review undertaken pursuant to the relevant article of the Levy Order entitling a provider to request a review of a decision under the Levy Order as provided for by section 21(6)(e) of the 2009 Act.
'the Reviewer'	The person(s) charged with undertaking the Review.
'the Review Application'	The application by a provider for a review of a decision of the Commission under the Levy Order.
'the Review Application Request'	The application form to be submitted by or on behalf of a provider applying for a review of a decision under the Levy Order, a template of which is attached at Appendix A.

'the Review Decision'	The final decision issued by the Commission in respect of the Review following consideration of the Review Recommendation.
'the Review Recommendation'	The recommendation issued by the Reviewer to the Commission.

2. Purpose

- 2.1 In accordance with section 21(6)(e), these procedures set out the general procedures applicable to applications by providers for the review of a decision made under the Levy Order.

3. Scope

- 3.1 A Review is strictly limited to a decision made by the Commission under the Levy Order.
- 3.2 Decisions falling within the ambit of the Commission's discretion when making a Levy Order pursuant to section 21 of the 2009 Act, such as, for example, the categories of providers on whom a levy is imposed; the duration of the levy period; or other decisions relating to the provisions of section 21(6) of the 2009 Act shall not come within the scope of a Review.
- 3.3 Subject to the provisions of the specific Levy Order, a decision of the Commission may include, but is not necessarily limited to, the determination of the Commission of the following matters:
- 3.3.1 the amount of a levy calculated in accordance with the methodologies for the relevant providers set out in the relevant schedules to the Levy Order;
 - 3.3.2 either that such levy is to be paid in one sum on or before a specified date, or that it is to be paid by way of instalments;
 - 3.3.3 where the levy is to be paid by a provider in instalments, the Commission's determination of the amount of each such instalment and the date upon which it is to be paid.
- 3.4 For the avoidance of doubt, the Reviewer has no jurisdiction to review a decision, unless that particular decision was made under the Levy Order in force at the time of the Review Application. While certain decisions made under a Levy Order may also require consideration of other decisions which were not made under the Levy Order, decisions not made under the Levy Order cannot be the subject of the Review.



- 3.5 A Review under a Levy Order is not intended to take the form of a *de novo* consideration of the decision made under the Levy Order. It is a review of errors alleged by the provider in respect of a decision of the Commission under the Levy Order.

4. Guiding Principles

- 4.1 The Review process shall be fair, transparent, and conducted in accordance with the principles of natural justice.
- 4.2 Insofar as any procedural issue arises in the course of a Review in any individual case which is not addressed in these Procedures, it will be for the Reviewer to determine any such procedural issue. The Reviewer shall at all times act in accordance with the principles of natural justice.
- 4.3 The final decision shall remain with the Commission, which will consider the Reviewer's Recommendation before issuing its Review Decision.
- 4.4 Once issued, the Review Decision is binding and not subject to internal appeal.

5. Request for Review

- 5.1 A provider wishing to exercise the right to seek a Review shall, no later than **21 calendar days** after the relevant decision of the Commission under the Levy Order, request a Review in writing using the Commission's Review Application Request form, as appended at Appendix A to these Procedures.
- 5.2 The Review Application Request must be completed in full and shall exhaustively identify the grounds of review and set out fully the basis on which a Review is sought, including any information relied upon by the provider in this regard.
- 5.3 Insofar as the provider alleges that the error in the decision subject to review results from an error in the materials submitted by the provider, the provider may attach to the Review Application Request and submit as part of the Review Application such material as may be relevant and/or necessary for the purpose of reviewing any such alleged error.



6. Person(s) to Undertake a Review

- 6.1 The Review shall be undertaken by a Commissioner appointed by the Commission for that purpose.

7. Acknowledgment and Preliminary Consideration of Review Application Request

- 7.1 Upon receipt of the Review Application Request, the Reviewer shall, as soon as is reasonably practicable, acknowledge receipt of the Review Application Request.
- 7.2 In conducting the Review, the Reviewer will assess the grounds on which a provider is seeking a review in order to confirm that the decision sought to be reviewed is a decision(s) made under the Levy Order.
- 7.3 If, having considered the Review Application Request, the Reviewer forms the view that the decision sought to be reviewed is not one which was made under the Levy Order and therefore is not properly within the scope of a Review, the Reviewer shall dismiss the Review Application in so far as it relates to the out of scope decision.
- 7.4 If, in addition to any out of scope decision, the Review Application Request also contains an application seeking a review of another decision made under the Levy Order, the Reviewer shall proceed to carry out the Review in respect of that in scope decision only.
- 7.5 In any instance in which the Reviewer decides to dismiss a Review Application, in whole or in part, on the basis that one or more of the decisions requested for review is not within the scope of a Review, the Reviewer shall notify the relevant provider that their Review Application has been dismissed, in whole or in part, as the case may be, as soon as practicable.

8. Seeking Further Information

- 8.1 Within a period of **14 calendar days** following the receipt of the Review Application Request or such further period as may be necessary, the Reviewer may request a provider to address any queries arising in respect of the Review Application and shall give the provider an opportunity to address such queries, to provide any appropriate clarifications and to make such further submissions as may be appropriate.

- 8.2 The provider shall respond to any such request within a period of **14 calendar days** or as soon as reasonably practicable.

9. Review and preparation of Review Recommendation

- 9.1 Following receipt of any response to queries and/or further submissions (if same were requested pursuant to section 8 above), the Reviewer shall consider all information provided as part of the Review Application and shall determine whether the provider has established any basis for the review of a decision under the Levy Order.

- 9.2 The Reviewer shall prepare a draft Review Recommendation.

- 9.3 The draft Review Recommendation shall set out:

9.3.1 The Reviewer's draft recommendation(s); and

9.3.2 The reasons for those draft recommendation(s).

10. Opportunity to Comment

- 10.1 The Reviewer shall share the draft Review Recommendation with the provider from whom the Review Application Request was received and afford the provider an opportunity to make any observations in respect of the draft Review Recommendation.

- 10.2 The provider shall communicate any observations in respect of the draft Review Recommendation to the Reviewer in writing within **14 calendar days** of receipt or such period as the Reviewer determines. In that regard, such observations should be limited to the contents of the draft Review Recommendation (such as errors of fact or additional points of fact).

11. Finalising Review Recommendation

- 11.1 Upon receipt of any observations, the Reviewer shall consider the observations and shall have regard to those observations in preparing the final Review Recommendation.

- 11.2 The Reviewer shall proceed to prepare the Review Recommendation which shall provide a summary of the Review Application, the review process; the issues considered; the Reviewer's findings and reasons for its recommendation(s) and a recommendation to uphold, vary or set aside the original decision under the Levy Order. For the avoidance of doubt, the right of a provider to provide observations on the draft Review Recommendation is without prejudice to the right of the Reviewer ultimately to prepare a Review Recommendation in whatever form or with whatever content they consider appropriate.
- 11.3 The Reviewer shall submit the Review Recommendation to the Commission for its consideration.

12. Final Review Decision

- 12.1 Following its consideration of the Review Recommendation and documentation submitted as part of the Review Process, the Commission (excluding the Reviewer for the purposes of the Review Decision only) shall make a final and binding Review Decision. In reaching the Review Decision, the Commission shall not be bound by the recommendations outlined in the Review Recommendation. However, the Review Decision may:
- 12.1.1 Confirm the original decision made under the Levy Order;
 - 12.1.2 Amend/vary the original decision made under the Levy Order; or
 - 12.1.3 Annul and substitute the original decision under the Levy Order.
- 12.2 The Commission shall also specify in the Review Decision such steps (if any) as are necessary for the provider and/or the Commission to take as a result of its Review Decision.
- 12.3 In the event that the Commission decides not to be bound by the Review Recommendation, the Commission may share a draft Review Decision with the provider from whom the Review Application was received and afford that provider a period of **14 calendar days** (or such period as the Commission may determine) to make any written observations in respect of the draft Review Decision. In that regard, any observations should be limited to the contents of the draft Review Decision (such as errors of fact or additional points of fact).

13. Notification of Final Review Decision

- 13.1 The Commission shall notify the provider in writing of the outcome of the Review Application, providing a copy of the Review Decision, within **5 calendar days** of the making of the Review Decision.

13.2 The Commission's Review Decision shall be final and not subject to any further review.

14. Confidentiality and Records

14.1 All material received and considered during the Review process will be processed in accordance with the Commission's privacy statement and confidentiality obligations.

