



Number 21 of 2026

**Criminal Justice (International Cooperation on Electronic Evidence and Other
Matters) Act 2026**



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**CRIMINAL JUSTICE (INTERNATIONAL COOPERATION ON ELECTRONIC
EVIDENCE AND OTHER MATTERS) ACT 2026**

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SCHEDULE

PROVISIONS APPLICABLE TO DIRECTOR OF CRIMINAL JUSTICE INTERNATIONAL COOPERATION

ACTS REFERRED TO

Civil Service Regulation Act 1956 (No. 46)

Companies Act 2014 (No. 38)

Criminal Justice (Mutual Assistance) Act 2008 (No. 7)

Data Protection Act 2018 (No. 7)

European Parliament Elections Act 1997 (No. 2)

Local Government Act 2001 (No. 37)

Official Languages Act 2003 (No. 32)

Petty Sessions (Ireland) Act 1851 (14 & 15 Vict., c.93)

Policing, Security and Community Safety Act 2024 (No. 1)

Public Service Management (Recruitment and Appointments) Act 2004 (No. 33)

[No. 21.]

*Criminal Justice (International Cooperation
on Electronic Evidence and Other Matters) Act 2026.*

[2026.]



Number 21 of 2026

CRIMINAL JUSTICE (INTERNATIONAL COOPERATION ON ELECTRONIC EVIDENCE AND OTHER MATTERS) ACT 2026

An Act to provide for the establishment of a body to be known as *Oifig an Stiúrthóra um Chomhar Idirnáisiúnta Ceartais Choiriúil* or, in the English language, as Office of the Director of Criminal Justice International Cooperation; to give effect to Directive (EU) 2023/1544 of the European Parliament and of the Council of 12 July 2023¹ laying down harmonised rules on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings; to give further effect to Regulation (EU) 2023/1543 of the European Parliament and of the Council of 12 July 2023² on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings and to provide for penalties for failure to comply with obligations arising thereunder; to give further effect to Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021³ on addressing the dissemination of terrorist content online; and to provide for related matters. [15th July, 2026]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Criminal Justice (International Cooperation on Electronic Evidence and Other Matters) Act 2026.
- (2) This Act, other than *sections 1 to 3, Part 2* and *section 26*, shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

1 OJ No. L 191, 28.7.2023, p. 181

2 OJ No. L 191, 28.7.2023, p. 118

3 OJ No. L 172, 17.5.2021, p. 79

Interpretation**2. (1)** In this Act—

“Act of 2014” means the Companies Act 2014;

“adjudication officer” has, subject to *section 46(2)*, the meaning assigned to it by *section 63(2)* and a reference to an adjudication officer, other than in *section 33(2)*, includes a reference to the chief adjudication officer;

“authorised officer” shall be construed in accordance with *section 35*;

“chief adjudication officer” means the adjudication officer appointed by the Minister under *section 63(3)* to be the chief adjudication officer;

“Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016⁴ on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

“decision and order” shall be construed in accordance with *subsection (2)*;

“Director” has the meaning assigned to it by *section 8*;

“e-Evidence Directive” means Directive (EU) 2023/1544 of the European Parliament and of the Council of 12 July 2023⁵ laying down harmonised rules on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings;

“e-Evidence Regulation” means Regulation (EU) 2023/1543 of the European Parliament and of the Council of 12 July 2023⁶ on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings;

“Garda Commissioner” means—

- (a) the person for the time being appointed as the Commissioner of An Garda Síochána in accordance with section 26 of the Policing, Security and Community Safety Act 2024,
- (b) a person performing the functions of the Commissioner pursuant to section 28 of that Act, or
- (c) a person to whom the functions of the Commissioner stand delegated in accordance with section 39 of that Act;

“local authority” has the same meaning as it has in the Local Government Act 2001;

“Minister” means the Minister for Justice, Home Affairs and Migration;

“relevant addressee”, in relation to a decision and order, means a designated establishment designated under *section 27* or a legal representative appointed under that section for the decision and order concerned;

⁴ OJ No. L 119, 4.5.2016, p. 1

⁵ OJ No. L 191, 28.7.2023, p. 181

⁶ OJ No. L 191, 28.7.2023, p. 118

“service provider” has the same meaning as it has in Article 3(3) of the e-Evidence Regulation;

“Terrorist Content Online Regulation” means Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021⁷ on addressing the dissemination of terrorist content online.

(2) A reference in this Act to a decision and order is a reference—

- (a) to a decision and order issued by a competent authority of a Member State for the purpose of gathering electronic evidence in criminal proceedings under the e-Evidence Regulation, or
- (b) to an order made by the District Court under the Criminal Justice (Mutual Assistance) Act 2008, pursuant to a request for mutual assistance, for the purpose of gathering electronic evidence in criminal proceedings, received under the Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between Member States of the European Union.⁸

(3) A word or expression used in *section 4* or *5* that is also used in the Terrorist Content Online Regulation has, unless the context otherwise requires, the same meaning in those sections as it has in that Regulation.

Expenses

3. Expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, be paid out of moneys provided by the Oireachtas.

Designation of competent authority for purposes of Terrorist Content Online Regulation

4. The Director is designated as the competent authority in the State for the purposes of Article 12(1)(b) of the Terrorist Content Online Regulation to scrutinise removal orders pursuant to Article 4 of that Regulation.

Revocation and saver

5. (1) Subject to *subsections (2) and (3)*, the Regulations of 2025 are revoked.
- (2) Notwithstanding *subsection (1)*, the Regulations of 2025 shall, on and after the date this section comes into operation, continue to apply in respect of a removal order, in respect of which a reasoned decision has yet to be adopted, received by the Garda Commissioner before such coming into operation and, accordingly, the Commissioner may—
- (a) adopt a reasoned decision in respect of the removal order, and

⁷ OJ No. L 172, 17.5.2021, p. 79

⁸ OJ No. C 197, 12.7.2000, p. 3

- (b) inform and communicate the reasoned decision to the competent authority that issued the removal order.
- (3) In this section, “Regulations of 2025” means the European Union (Online Dissemination of Terrorist Content) (Designation of the Commissioner of An Garda Síochána as a Competent Authority) Regulations 2025 (S.I. No. 375 of 2025).

Service of notices and documents

6. (1) A notice or other document that is required to be given to a person under this Act shall be addressed to the person concerned by name and may be given to the person in one of the following ways:
- (a) by electronic means, in a case in which the person has given notice in writing to the person giving the notice or document concerned of his or her consent to that notice or document (or notices or documents of a class to which the notice or document belongs) being given to him or her in that manner;
 - (b) by delivering it to the person;
 - (c) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;
 - (d) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address;
 - (e) for the purpose of a notice or other document given pursuant to the e-Evidence Regulation, by sending it via the decentralised IT system (within the meaning of Article 3(21) of the e-Evidence Regulation) established under Chapter V of that Regulation.
- (2) For the purposes of this section, a company formed and registered under the Act of 2014, or an existing company within the meaning of that Act, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

Orders and regulations

7. (1) An order or regulation made under this Act may contain such incidental, supplementary and consequential provisions as the Minister considers necessary or expedient.
- (2) The Minister shall cause every order or regulation made under this Act to be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which the 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.

PART 2

OFFICE OF DIRECTOR OF CRIMINAL JUSTICE INTERNATIONAL COOPERATION

Establishment of Office of Director of Criminal Justice International Cooperation

8. (1) There shall stand established a body to be known as *Oifig an Stiúirthóra um Chomhar Idirnáisiúnta Ceartais Choiriúil* or, notwithstanding section 9D(1) of the Official Languages Act 2003, in the English language, the Office of the Director of Criminal Justice International Cooperation (in this Act referred to as the “Director”).
- (2) The *Schedule* shall have effect in relation to the Director.

Director of Criminal Justice International Cooperation

9. (1) The Minister shall request the Public Appointments Service to hold a selection process for the purpose of identifying and recommending a person or persons who it is satisfied is or are suitable for appointment as Director from time to time when the position of Director becomes vacant or the Minister anticipates it is to become vacant.
- (2) The Public Appointments Service shall, upon receipt of a request under *subsection (1)*, hold a selection process and recommend to the Minister such person or persons who it is satisfied is or are suitable for appointment as Director.
- (3) Subject to *subsections (5) and (6)*, the Government shall, on the request of the Minister, from among the person or persons recommended under *subsection (2)*, appoint a person to be the Director.
- (4) Subject to *subsection (6)*, the Director shall hold office for such period, not exceeding 5 years from the date of his or her appointment, as the Government shall determine.
- (5) The Government may, before the coming into operation of this section, designate a person to be the first Director.
- (6) If, immediately before the coming into operation of this section, a person stands designated under *subsection (5)*, the person shall, on that day, stand appointed as the first Director for such period, not exceeding 5 years from the date of his or her designation, as the Government shall determine.
- (7) Subject to *subsection (8)*, a Director whose term of office expires with the passage of time shall be eligible for reappointment by the Government.
- (8) A person who is reappointed as Director by the Government in accordance with *subsection (7)* shall not hold office for periods the aggregate of which exceeds 10 years.
- (9) The Director shall hold office on such terms and conditions (including terms and conditions as to remuneration, allowances for expenses (if any) and superannuation) as may be determined by the Minister with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation.

- (10) A Director shall not hold any other paid office or employment or carry on any business.

Ineligibility to become and disqualification to act as Director

- 10.** (1) A person shall not be eligible for appointment as Director, and shall cease to hold office as Director, if he or she—
- (a) subject to *subsection (2)*, is adjudicated bankrupt,
 - (b) is subject to a composition or arrangement with creditors,
 - (c) is convicted on indictment of an offence,
 - (d) is convicted of an offence involving fraud or dishonesty,
 - (e) has a declaration made against him or her under section 819 of the Act of 2014 or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or
 - (f) is subject to, or is deemed to be subject to, a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014, whether by virtue of that Chapter or of any other provisions of that Act, or a disqualification outside the State which corresponds to such a disqualification order.
- (2) *Subsection (1)(a)* shall apply only for so long as the person has not obtained a certificate of discharge from the bankruptcy.

Membership of either House of Oireachtas, European Parliament or local authority: Director

- 11.** (1) A person shall cease to hold office as Director if he or she is—
- (a) nominated as a member of Seanad Éireann,
 - (b) elected as a member of either House of the Oireachtas or of the European Parliament,
 - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to be a member of the European Parliament, or
 - (d) elected or co-opted as a member of a local authority.
- (2) A person who is for the time being—
- (a) entitled under the Standing Orders of either House of the Oireachtas to sit therein,
 - (b) a member of the European Parliament, or
 - (c) entitled under the standing orders of a local authority to sit as a member thereof,
- shall, while he or she is so entitled as mentioned in *paragraph (a)* or *(c)* or is such a member as mentioned in *paragraph (b)*, be disqualified to act as Director.

Resignation and removal of Director

12. (1) The Director may, at any time, resign by notice in writing to the Minister and the resignation shall take effect on the date the Minister receives the notice or, if a date is specified in the notice and the Minister agrees to the date, on that date.
- (2) The Government may remove a Director from office if satisfied that—
- (a) the Director has become incapable, through ill-health or otherwise, of effectively performing the functions of Director under this Act,
 - (b) the Director has engaged in serious misconduct, or
 - (c) the replacement of the Director appears necessary for the effective performance of the functions of Director under this Act.
- (3) Before removing a Director under *subsection (2)*, the Government shall give the Director a notice in writing of the proposed removal, including a statement—
- (a) of the reasons for the proposed removal,
 - (b) that the Director may, within a period of 30 working days from the date on which the notice is sent (or such other period as the Government may, having regard to the requirements of natural justice, specify in the notice) make representations to the Government in such form and manner as may be specified by the Government, as to why the Director should not be removed from office, and
 - (c) that, where no representations are received within the period referred to in *paragraph (b)* or the period specified in the notice referred to in that paragraph, as the case may be, the Government will proceed with the removal of the Director from office.
- (4) In considering whether to remove the Director from office, the Government shall take into account—
- (a) any representations made by the Director within the period referred to in *paragraph (b)* of *subsection (3)* or the period specified in the notice referred to in that paragraph, as the case may be, and
 - (b) any other matter the Government consider relevant.
- (5) Following consideration in accordance with *subsection (4)*, the Government shall, by notice in writing, inform the Director of—
- (a) the decision whether or not to remove the Director from office,
 - (b) the reasons for the decision, and
 - (c) if the decision is to remove the Director from office, the date from which the removal shall take effect.
- (6) Where the Government decide to remove the Director from office, the Government shall—
- (a) prepare a statement of the reasons for removal, and

- (b) cause the statement to be laid before each House of the Oireachtas as soon as practicable after the decision is made.

Members of staff of Director

- 13. (1) The Director may, subject to the approval of the Minister given with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, appoint such and so many persons to be members of staff of the Director as he or she may, from time to time, determine.
- (2) Appointments under this section shall be subject to the Public Service Management (Recruitment and Appointments) Act 2004.
- (3) A member of staff of the Director shall be a civil servant in the Civil Service of the State and the Civil Service Regulation Act 1956 shall apply to a member of staff of the Director.
- (4) The members of staff of the Director shall perform their functions under the direction and control of the Director.

Deputy Director

- 14. (1) The Director shall appoint, from among the members of staff of the Director, a person to be Deputy Director and such appointment shall be in writing and for such period as shall be determined by the Director and specified in the appointment.
- (2) The Deputy Director shall—
 - (a) undertake such functions as the Director may delegate to the Deputy Director under *section 18*, and
 - (b) exercise any function of the Director at a time when there is a vacancy in the office of the Director or the Director is unable to act.
- (3) If, at any time, the Deputy Director ceases to be a member of staff of the Director, he or she shall also cease to be Deputy Director.
- (4) The Deputy Director may, in addition to his or her remuneration as a member of staff of the Director, be paid such additional remuneration (if any) as the Minister, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, may determine.
- (5) The Deputy Director may resign his or her office by notice in writing addressed to the Director.

Engagement of consultants and advisers

- 15. (1) Subject to *subsection (3)*, the Director may, with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, engage such consultants and advisers for such period and subject to

such terms and conditions as the Director considers necessary or expedient for the performance of the Director's functions.

- (2) There shall be paid by the Director, out of the resources at the disposal of the Director, to consultants or advisers referred to in *subsection (1)* such fees (if any) or allowances for expenses (if any) incurred by them as the Director, with the consent of the Minister, given with the approval of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, may determine.
- (3) The Minister may, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, give the Director directions concerning the engagement of consultants and advisers.
- (4) The Director shall comply with any directions given to him or her under *subsection (3)*.

Indemnity

16. A Director or a former Director shall not be liable for damages for anything done, purported to be done or omitted to be done in performing a function of the Director under this Act, unless the act or omission is shown to have been done or made in bad faith.

Functions of Director

17. (1) The general functions of the Director shall be to—
 - (a) manage and control generally the staff, administration and business of the Director,
 - (b) maintain appropriate financial records in relation to the exercise of his or her functions under this Act,
 - (c) provide the Minister with any financial information required by the Minister for budgetary and accounting purposes,
 - (d) monitor and enforce compliance by service providers with this Act and the e-Evidence Regulation,
 - (e) take such enforcement measures, in accordance with *Part 5*, as are necessary in respect of relevant obligations and e-Evidence Regulation obligations, and
 - (f) make representations to, or otherwise assist, a court or a public authority for purposes connected with the e-Evidence Regulation.
- (2) The Director shall have all the powers necessary or expedient for the performance of his or her functions.
- (3) Subject to this Act, the Director shall be independent in the performance of his or her functions.
- (4) In this section, “public authority” means—
 - (a) the Competition and Consumer Protection Commission,

- (b) Coimisiún na Meán,
- (c) the Corporate Enforcement Authority,
- (d) Fiosrú,
- (e) An Garda Síochána, or
- (f) the Revenue Commissioners.

Delegation of functions of Director

- 18.** (1) The Director may, in writing, delegate any of his or her functions to a member of staff and the member of staff of the Director shall be accountable to the Director for the performance of the functions so delegated.
- (2) A delegation under *subsection (1)* may—
- (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,
 - (b) be made subject to conditions or restrictions, and
 - (c) be revoked or varied by the Director in writing at any time.

Information sharing agreements with relevant persons in State

- 19.** (1) Subject to compliance with the Data Protection Regulation and the Data Protection Act 2018, the Director may enter into an information sharing agreement with a person in the State specified in *subsection (2)* for the purposes of the performance of the functions of the Director or the person concerned, or both.
- (2) A person referred to in *subsection (1)* means—
- (a) the Competition and Consumer Protection Commission,
 - (b) Coimisiún na Meán,
 - (c) the Corporate Enforcement Authority,
 - (d) Fiosrú,
 - (e) An Garda Síochána, or
 - (f) the Revenue Commissioners.

Annual report

- 20.** (1) The Director shall, not later than 31 March in each year, prepare and submit a report (in this section referred to as the “annual report”) to the Minister on the performance of the Director’s functions in the preceding year.
- (2) Notwithstanding *subsection (1)*, if, but for this subsection, the first annual report under this section would relate to a period of less than 6 months, the report shall relate

to that period and to the year immediately following that period and shall be made as soon as may be, but not later than 3 months after the end of that year.

- (3) An annual report shall be in such form, and include such information in respect of the performance by the Director of his or her functions, as the Director considers appropriate or as the Minister may direct.
- (4) The Minister shall, as soon as is practicable after receipt of an annual report, cause a copy of the annual report to be laid before each House of the Oireachtas.

Statistical information

- 21.** (1) The Director shall maintain records in respect of the data referred to in—
- (a) Article 28(2)(d) and (g) of the e-Evidence Regulation, and
 - (b) Article 5 of the e-Evidence Directive.
- (2) The Director shall provide the Minister, not later than 28 February in each year, with such records referred to in *subsection (1)* as are available to the Director in respect of the preceding year.
- (3) The Director shall, not later than 1 March in each year, in his or her capacity as the competent authority designated under *section 4*, provide the Minister with such information as the Director has in that capacity that is required to be forwarded to the Commission of the European Union pursuant to Article 21 of the Terrorist Content Online Regulation.

Guidance notes

- 22.** The Director may issue guidance notes to service providers to promote compliance by service providers with their obligations under this Act.

PART 3

E-EVIDENCE REGULATION ENFORCING AUTHORITY AND CENTRAL AUTHORITY

Designation of enforcing authority for purposes of e-Evidence Regulation

- 23.** The Director is designated as the enforcing authority (within the meaning of Article 3 of the e-Evidence Regulation) in the State for the purposes of that Regulation.

Designation of central authority for purposes of e-Evidence Regulation

- 24.** The Director is designated as the central authority in the State for the purposes of Article 4(6) of the e-Evidence Regulation.

PART 4

E-EVIDENCE DIRECTIVE

CHAPTER 1

*Preliminary and General***Interpretation (Part 4)**

25. A word or expression used in this Part that is also used in the e-Evidence Directive has, unless the context otherwise requires, the same meaning in this Part as it has in that Directive.

CHAPTER 2

*e-Evidence Directive: central authority***Designation of central authority for purposes of e-Evidence Directive**

26. (1) The Director is designated as the central authority in the State for the purposes of Article 6(1) of the e-Evidence Directive.
- (2) The Director shall coordinate and cooperate with central authorities designated in other Member States for the purposes of Article 6(1) of the e-Evidence Directive and shall—
- (a) provide information and assistance to those central authorities with respect to the application of that Directive, in particular where an enforcement action under *Part 5* is being considered, and
 - (b) inform those central authorities of his or her intention to undertake an enforcement action under *Part 5*.

CHAPTER 3

*e-Evidence Directive: obligations of service providers***Designation of designated establishment and appointment of legal representative by service provider**

27. (1) Subject to *subsections (3) and (4)*, a service provider that is established in the State and that offers services in the State or in another Member State shall designate one or more than one designated establishment for the receipt of, compliance with and enforcement of decisions and orders.
- (2) Subject to *subsections (3) and (4)*, a service provider that is not established in the State or in another Member State and that offers services in the State shall appoint one or more than one legal representative for the receipt of, compliance with and enforcement of decisions and orders.

- (3) A service provider shall designate a designated establishment or appoint a legal representative under this section only where the establishment or representative concerned—
- (a) is established, or resides, as the case may be—
 - (i) in the State, or
 - (ii) in another Member State where the service provider offers services,
 - and
 - (b) is capable of being subject to enforcement action in the State or that Member State.
- (4) A service provider to whom *subsection (1) or (2)* applies shall comply with the obligations imposed by *subsection (1) or (2)*, as the case may be—
- (a) where the service provider is offering services in the State or in another Member State on the coming into operation of this section, by 18 August 2026, or
 - (b) where the service provider starts offering services in the State or in another Member State after such coming into operation, within the period of 6 months from the date the service provider starts to offer such services.

Powers and resources for relevant addressees

- 28.** (1) A service provider that is established or that offers services in the State shall provide a relevant addressee of the service provider with the necessary powers and resources to comply with, and enforce, a decision and order that the relevant addressee may receive from a competent authority in a Member State.
- (2) The Director shall take all reasonable steps to verify that a service provider to whom *subsection (1)* applies has complied with that subsection.
- (3) Where, arising out of the verification process referred to in *subsection (2)*, or otherwise, the Director considers that a service provider has not provided the necessary powers and resources to a relevant addressee as required by *subsection (1)*, the Director shall, by notice in writing, identify any additional powers and resources that the service provider needs to provide in order to comply with that requirement.

Notices and languages

- 29.** (1) A service provider that is established or that offers services in the State shall, in respect of each relevant addressee of the service provider, give the Director a notice in writing of where the relevant addressee resides and the contact details for that relevant addressee.
- (2) A notice under *subsection (1)* shall specify the official language or languages of the European Union, as referred to in Council Regulation No. 1 determining the

languages to be used by the European Economic Community⁹, in which the relevant addressee can be addressed.

- (3) The languages referred to in *subsection (2)* shall include one or more of the official languages of the State.
- (4) Where a service provider has more than one relevant addressee, the service provider shall specify in the notice given under *subsection (1)*—
 - (a) the precise territorial scope of each of the relevant addressees, and
 - (b) the official language or languages of the European Union or the State in which each of the relevant addressees can be addressed.
- (5) A service provider shall give the Director a notice in writing of any changes to the matters referred to in *subsection (1), (2) or (4)*.
- (6) The Director shall ensure to arrange that information given to him or her under this section—
 - (a) is made publicly available on the dedicated website of the European Judicial Network in criminal matters, and
 - (b) is updated on that website if the Director receives a notice under *subsection (5)*.

Liability of service providers and relevant addressees

- 30.** (1) Subject to *subsection (3)*, a service provider and a relevant addressee of the service provider shall, upon receipt of a decision and order, be jointly and severally liable for compliance with obligations imposed on either or both of them by the decision and order concerned.
- (2) Where an act or omission by a service provider or a relevant addressee in non-compliance with an obligation referred to in *subsection (1)* would constitute a criminal offence in the State, the liability referred to in *subsection (1)* shall not apply.
 - (3) A service provider or relevant addressee may not rely on a lack of appropriate internal procedures between the service provider and the relevant addressee as a justification for non-compliance with obligations referred to in *subsection (1)*.

⁹ OJ No. L 17, 6.10.1958, p. 385

PART 5

ENFORCEMENT: RELEVANT OBLIGATIONS AND E-EVIDENCE REGULATION OBLIGATIONS

CHAPTER 1

*Preliminary and General***Definitions (*Part 5*)****31.** In this Part—

“directed investigation” has the meaning assigned to it by *section 42(1)*;

“e-Evidence Regulation obligation” means an obligation under Article 10, 11 or 13(4) of the e-Evidence Regulation;

“place” includes—

- (a) a dwelling or a part thereof,
- (b) a building or a part thereof,
- (c) any other premises or a part thereof, and
- (d) a vehicle, vessel, aircraft or any other means of transport;

“record” includes a document, statement and other information (whether in paper or electronic form, or both);

“relevant obligation” means an obligation on a service provider to—

- (a) where applicable, designate a designated establishment in accordance with *section 27(1)*,
- (b) where applicable, appoint a legal representative in accordance with *section 27(2)*,
- (c) provide a relevant addressee with the necessary powers and resources in accordance with *section 28(1)* or comply with a notice referred to in *section 28(3)*, or
- (d) give the Director a notice in accordance with *subsection (1)* or *(5)*, or both, of *section 29*.

Privileged legal material

- 32.** (1) Subject to *subsection (3)*, nothing in this Act shall compel the disclosure by, or authorise the taking from, a person of a record that the person is entitled to refuse to produce on the grounds of legal professional privilege (in this section referred to as “privileged legal material”).
- (2) Privileged legal material may be taken from a person referred to in *subsection (1)* where the material is freely provided by the person.

- (3) Notwithstanding that it is apprehended that a record is privileged legal material, an authorised officer or an adjudication officer, as the case may be, may, in accordance with this Part, compel the disclosure of the record or take possession of the record provided that the privilege asserted can be maintained (as against the person compelling such disclosure or taking such possession) pending the determination by the High Court of an application made under *subsection (4)* or *(6)* as to whether the record is privileged legal material.
- (4) Subject to *subsection (5)*, where an authorised officer or the adjudication officer, as the case may be, has compelled the disclosure of a record or taken possession of a record in accordance with *subsection (3)*, he or she shall, on notice to the person who is compelled to disclose, or surrender possession of, the record concerned, apply to the High Court not later than 30 days from the date of the disclosure or the taking of possession for a determination as to whether the record is privileged legal material.
- (5) An authorised officer or an adjudication officer, as the case may be, shall not make an application under *subsection (4)* where, before the application is made, an application has been made under *subsection (6)*.
- (6) A person who, in accordance with *subsection (3)*, is compelled to disclose, or surrender possession of, a record may, on notice to the authorised officer or an adjudication officer, as the case may be, who compelled the disclosure or has taken possession of the record concerned, apply to the High Court for a determination as to whether the record is privileged legal material.
- (7) Pending the making of a final determination of an application made under *subsection (4)* or *(6)*, the High Court may give such directions or make such orders as it considers appropriate including, without prejudice to the generality of the foregoing, in relation to—
 - (a) the preservation of the record in a safe and secure place in a manner specified by the High Court, and
 - (b) the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the court considers to be appropriate for the purpose of—
 - (i) examining the record, and
 - (ii) preparing a report for the High Court with a view to assisting or facilitating it in the making of a determination as to whether the record is privileged legal material.
- (8) An application under *subsection (4)* or *(6)*, or any related proceedings under which directions or orders referred to in *subsection (7)* are sought, may, if the High Court so directs, be heard otherwise than in public.

Non-disclosure of confidential information

33. (1) A person shall not, unless he or she is required or permitted by law or duly authorised in writing by the Director to do so, disclose confidential information obtained by him or her while performing functions as—
- (a) a member of staff of the Director,
 - (b) an authorised officer, or
 - (c) a consultant, advisor or other person who is or was engaged under contract or other arrangement by the Director under *section 15*.
- (2) A person shall not, unless he or she is required or permitted by law or duly authorised in writing by the chief adjudication officer to do so, disclose confidential information obtained by him or her while performing functions under this Act as an adjudication officer.
- (3) A person who contravenes *subsection (1)* or *(2)* is guilty of an offence and is liable on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both.
- (4) In this section, “confidential information” includes—
- (a) information that is expressed to be confidential by the Director or the chief adjudication officer, as the case may be, either as regards particular information or as regards information of a particular class or description, and
 - (b) proposals of a commercial nature or tenders submitted to the Director or the chief adjudication officer, as the case may be, by contractors, consultants or any other person.

False or misleading information, documentation or evidence

34. (1) A person is guilty of an offence where he or she—
- (a) provides information or documentation or gives evidence to—
 - (i) the Director, or
 - (ii) an adjudication officer,in the performance of the respective functions of the Director or the adjudication officer, and
 - (b) knows, or ought reasonably to know, the information, documentation or evidence, as the case may be, to be false or misleading in a material respect.
- (2) A person guilty of an offence under *subsection (1)* is liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 2 years, or both, or
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.

CHAPTER 2

Authorised officers: relevant obligations

Appointment of authorised officers

- 35.** (1) The Director may appoint in writing such and so many persons, including members of staff of the Director, who, in the opinion of the Director, have the expertise or experience necessary to be authorised officers for the purposes of this Act.
- (2) An appointment under *subsection (1)* shall be for such fixed period of time as may be determined by the Director and may be revoked, in writing, by the Director.
- (3) Where a person who is appointed under *subsection (1)* is not a member of staff of the Director, the appointment shall be on such terms and conditions (including as to remuneration and allowances (if any)) as may be determined by the Director with the approval of the Minister given with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation.
- (4) The Director shall provide a warrant of appointment to an authorised officer.
- (5) An authorised officer shall, if requested by a service provider, relevant addressee or other person affected by the exercise of a power of the authorised officer, produce for inspection—
- (a) his or her warrant of appointment or a copy of the warrant, and
 - (b) his or her personal identification.
- (6) An appointment under *subsection (1)* shall end on the earlier of the following occurring:
- (a) when revoked in accordance with *subsection (2)*;
 - (b) when a fixed period of appointment expires;
 - (c) in the case of a person who is a member of staff of the Director, when the person ceases to be a member of staff.
- (7) Nothing in *subsection (6)* shall be construed so as to prevent the Director from reappointing as an authorised officer a person to whom that subsection applied.

Powers of authorised officers

- 36.** (1) An authorised officer may—
- (a) subject to *subsection (5)*, at any reasonable time, enter any place where—
 - (i) a relevant activity is taking place,
 - (ii) the authorised officer has reasonable grounds for believing a relevant activity is taking place, or

- (iii) the authorised officer has reasonable grounds for believing that records relating to a relevant activity are being kept,
 - (b) search and inspect the place and any records found there,
 - (c) require any person at the place to produce to him or her any records relating to the relevant activity that are in that person's possession or power to procure and, in the case of records in a non-legible form, to reproduce them in a legible and comprehensible form,
 - (d) require a person to give to the authorised officer such information as the authorised officer may reasonably require in relation to any such records,
 - (e) secure for later inspection for such period as the authorised officer may reasonably consider necessary for the purposes of the performance of his or her functions under this Part—
 - (i) any records so found or produced and any data equipment in which those records may be held, or
 - (ii) any place in which such records or data equipment are kept or any place in respect of which there are reasonable grounds for believing that records relating to such an activity or data equipment are kept,
 - (f) take extracts from, or make copies of, any such records (including, in the case of information in a non-legible form, a copy of or extract from such records in a permanent legible form),
 - (g) remove and retain such records for such period as the authorised officer reasonably considers necessary for the purposes of the performance of his or her functions or require any person at the place to retain and maintain such records for such period of time as the authorised officer reasonably considers necessary for those purposes, and
 - (h) where a person who is required under *paragraph (c)* to provide a particular record is unable to provide it, require the person to state, to the best of that person's knowledge and belief, where the record is located or from whom it may be obtained.
- (2) An authorised officer may, in the performance of his or her functions under this Act—
- (a) operate any data equipment or cause any such data equipment to be operated by a person accompanying the authorised officer, and
 - (b) require any person who appears to the authorised officer to be in a position to facilitate access to records stored in any data equipment or which can be accessed by the use of that data equipment to give the authorised officer all reasonable assistance in relation to the operation of the data equipment or access to the records stored in it, including by—
 - (i) providing the records to the authorised officer in a form in which they can be taken and in which they are, or can be made, legible and comprehensible,

- (ii) giving to the authorised officer any password necessary to make the records concerned accessible or legible and comprehensible, or
 - (iii) otherwise enabling the authorised officer to examine the records in a legible and comprehensible form.
- (3) When performing a function under this Act, an authorised officer may be accompanied by such and so many other authorised officers and members of An Garda Síochána as he or she considers appropriate.
- (4) Where an authorised officer in the performance of his or her functions is prevented from entering any place, he or she may make an application under *section 37* for a warrant to authorise such entry.
- (5) An authorised officer shall not enter a dwelling, other than—
 - (a) with the consent of the occupier, or
 - (b) in accordance with a warrant issued under *section 37*.
- (6) A person is guilty of an offence where he or she—
 - (a) obstructs or impedes an authorised officer in the exercise of his or her powers under this section,
 - (b) fails or refuses to comply with a requirement of an authorised officer under this section,
 - (c) alters, suppresses or destroys any records which the person concerned has been required by an authorised officer to produce, or
 - (d) gives an authorised officer, in purported compliance with a requirement under this section, records which the person knows to be false or misleading in any material respect or, in the case of *subsection (1)(d)*, information which the person knows to be false or misleading in a material respect.
- (7) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.
- (8) A statement or admission made by a person pursuant to a requirement of an authorised officer under *subsection (1)(d)* shall not be admissible in evidence in proceedings brought against the person for an offence, other than an offence under *subsection (6)*, and this shall be explained to the person in ordinary language by the authorised officer concerned.
- (9) In this section—

“data equipment” includes a computer;

“relevant activity” means activity connected with a relevant obligation of a service provider, or an activity connected with a relevant addressee in so far as it relates to a relevant obligation of a service provider.

Search warrants

37. (1) Where a place referred to in *section 36(1)(a)* is to be searched, a judge of the District Court in the District Court district in which the place is situated who is satisfied, on the sworn information of an authorised officer, that there are reasonable grounds for suspecting that records required by an authorised officer for the purpose of performing his or her functions under this Part are held at the place, may issue a warrant authorising an authorised officer to enter that place at any time or times within the period of validity of the warrant, accompanied by such other person including a member of An Garda Síochána, as may be necessary, on production, if so required, of the warrant, if need be by the use of reasonable force, and exercise the powers conferred on an authorised officer under *section 36*.
- (2) A warrant issued under *subsection (1)* shall be valid for a period of 28 days from its date of issue, but that period of validity may be extended in accordance with *subsections (3) and (4)*.
- (3) An authorised officer may, during the period of validity of a warrant (including such period as previously extended under *subsection (4)*), apply to a judge of the District Court for an order extending the period of validity of the warrant and such an application shall be grounded upon information on oath given by the authorised officer stating, by reference to the purpose or purposes for which the warrant was issued, the reasons why the authorised officer considers the extension to be necessary.
- (4) Where, on the making of an application under *subsection (3)*, the judge of the District Court is satisfied that there are reasonable grounds for believing, having regard to that information given under that subsection, that further time is needed so that the purpose or purposes for which the warrant was issued can be fulfilled, the judge may make an order extending the period of validity of the warrant by such period not exceeding 28 days as, in the opinion of the judge, is appropriate and just and where such an order is made, the judge shall cause the warrant to be suitably endorsed to indicate its extended period of validity.
- (5) Nothing in *subsections (1) to (4)* prevents a judge of the District Court from issuing, on the making of a new application under *subsection (1)*, a further search warrant under this section in relation to the same place.

CHAPTER 3

Compliance with relevant obligations: general

Obligation to provide compliance report and information and documentation

38. (1) The Director may, by notice in writing and at such intervals as he or she considers appropriate, request a service provider to provide the Director with a report (in this

section referred to as a “compliance report”) for the purpose of enabling the Director to confirm compliance by the service provider with a relevant obligation.

- (2) A notice under *subsection (1)* shall specify—
 - (a) the information to be provided by the service provider in the compliance report,
 - (b) the form and manner in which the report shall be provided, and
 - (c) the period within which the compliance report shall be provided.
- (3) A service provider shall comply with a request under *subsection (1)* within the period specified under *subsection (2)(c)* or within such further period as may be agreed in writing between the Director and the service provider.
- (4) Without prejudice to *subsection (1)*, the Director may, at any time by notice in writing, request a service provider to provide the Director with information and documentation relating to compliance by the service provider with a relevant obligation.
- (5) A notice under *subsection (4)* shall specify—
 - (a) the information and documentation to be provided,
 - (b) the form and manner in which the information and documentation shall be provided, and
 - (c) the period within which the information and documentation shall be provided.
- (6) A service provider shall comply with a request under *subsection (4)* within the period specified under *subsection (5)(c)* or within such further period as may be agreed in writing between the Director and the service provider concerned.
- (7) The Director may, on notice to a service provider, apply to the District Court for an order under *subsection (8)* where it appears to the Director that the service provider has failed to comply with a request under—
 - (a) *subsection (1)* within the period specified in a notice under that subsection or, if applicable, within such further period as has been agreed in writing between the Director and the service provider concerned under *subsection (3)*, or
 - (b) *subsection (4)* within the period specified in a notice under that subsection or, if applicable, within such further period as has been agreed in writing between the Director and the service provider concerned under *subsection (6)*.
- (8) The District Court may, on hearing an application under *subsection (7)*, where it is satisfied that the service provider concerned has failed to comply with the request concerned, make an order directing the service provider, within such period as is specified in the order, to comply with the request.

Action by Director in relation to alleged contravention of relevant obligation

- 39.** (1) Where the Director is of the opinion that a service provider has contravened a relevant obligation, the Director may, having regard to the matters set out in *subsection (2)*—

- (a) enter into an agreement with the service provider under *section 40*, or
 - (b) cause a directed investigation to be conducted.
- (2) In determining whether to proceed in accordance with *paragraph (a)* or *(b)* of *subsection (1)*, the Director shall have regard to the following matters:
- (a) the nature and gravity of the alleged contravention;
 - (b) the duration of the alleged contravention;
 - (c) any financial penalty imposed on the service provider previously under *Chapter 5* in respect of a contravention of a relevant obligation and any conviction of the service provider for an offence under this Act.

Power of Director to enter agreement with service provider in respect of alleged contravention

- 40.** (1) The Director may, in accordance with *section 39(1)(a)* or *44(1)(c)*, enter into an agreement in writing with a service provider setting out the steps that the service provider agrees to take, and the period within which those steps shall be taken, to comply with a relevant obligation.
- (2) Where a service provider fails to comply with an agreement referred to in *subsection (1)*, a judge of the Circuit Court in the circuit in which the service provider is ordinarily resident or carries on any profession, trade or business may, on an application by the Director, make an order directing the service provider to comply with the agreement.

CHAPTER 4

Directed investigation: relevant obligations

Definition (*Chapter 4, Part 5*)

- 41.** In this Chapter, “investigation report” has the meaning assigned to it by *section 43(4)*.

Power to direct investigation

- 42.** (1) Where the Director makes a decision under *section 39(1)(b)*, he or she may direct an authorised officer to conduct an investigation (in this Part referred to as a “directed investigation”) for the purpose of determining whether there has been a contravention of a relevant obligation by a service provider.
- (2) The Director shall provide an authorised officer who is subject to a direction under *subsection (1)* with a statement in writing of the scope and terms of the directed investigation.
- (3) The Director may, at any stage prior to the completion of a directed investigation, amend the scope and terms of the directed investigation.

Investigation report

- 43.** (1) Subject to *subsection (5)*, an authorised officer shall, as soon as is practicable after completing a directed investigation, prepare a draft report setting out his or her findings from that investigation.
- (2) An authorised officer shall, as soon as is practicable after preparing the draft report, send the service provider the subject of the directed investigation—
- (a) a copy of the draft report, and
 - (b) a notice in writing stating that the service provider may, not later than 28 days from the date of the notice, make submissions in writing to the authorised officer on the draft report.
- (3) A service provider may make submissions referred to in *subsection (2)(b)* within the period specified in the notice sent under that paragraph or within such further period as the authorised officer may agree in writing with the service provider concerned.
- (4) Subject to *subsection (5)*, an authorised officer shall, having considered any submissions made in response to a notice sent under *subsection (2)(b)* within the period referred to in that subsection, or where the period is extended under *subsection (3)*, within that period as so extended, make such revisions (if any) to the draft report as he or she considers appropriate and prepare a final report (in this Chapter referred to as an “investigation report”).
- (5) An authorised officer shall not express any opinion, in a draft report prepared under *subsection (1)* or in an investigation report, as the case may be, as to whether, in the event that the adjudication officer finds under *section 49* that there has been a contravention of a relevant obligation by the service provider, a financial penalty should be imposed under *subsection (13)* of that section and, if so, as to the amount of any such penalty to be imposed.
- (6) An authorised officer shall, as soon as practicable after completing an investigation report—
- (a) submit a copy of the report and any submissions considered by him or her under *subsection (4)* to the Director, and
 - (b) send a copy of the report to the service provider.

Action by Director on receipt of investigation report

- 44.** (1) The Director shall consider an investigation report and submissions submitted to him or her under *section 43(6)(a)* as soon as practicable after receipt of such report and submissions and shall, following such consideration—
- (a) where he or she considers it necessary, direct an authorised officer to conduct a further directed investigation in respect of the service provider concerned,
 - (b) refer the investigation report to the chief adjudication officer for the purposes of conducting an adjudication,

- (c) enter into an agreement with the service provider under *section 40*, or
 - (d) take no further action.
- (2) The Director shall send a notice in writing of the action he or she has decided to take under *subsection (1)* to—
- (a) the service provider concerned, and
 - (b) where the decision—
 - (i) is an action referred to in *paragraph (b), (c) or (d)* of that subsection, the authorised officer, or
 - (ii) is an action referred to in *paragraph (a), (c) or (d)* of that subsection, the chief adjudication officer.

CHAPTER 5

*Decision as to contravention and on imposition of financial penalty: relevant obligations and e-Evidence Regulation obligations***Definitions (Chapter 5, Part 5)****45.** In this Chapter—

“decision as to contravention” has the meaning assigned to it by *section 49(5)*;

“oral hearing” shall be construed in accordance with *section 55*;

“proceedings before an adjudication officer” means any process, including an oral hearing, by which an adjudication officer considers submissions, records or other evidence provided to an adjudication officer for the purposes of this Chapter;

“relevant contravention” means a contravention of—

- (a) a relevant obligation, or
- (b) an e-Evidence Regulation obligation.

Adjudication by adjudication officers or panel**46.** (1) Subject to *subsection (2)*, where—

- (a) in relation to an alleged contravention of a relevant obligation, an investigation report is referred by the Director under *section 44(1)(b)*, or
- (b) an alleged contravention of an e-Evidence Regulation obligation is referred by the Director to the chief adjudication officer for adjudication,

the chief adjudication officer shall assign an adjudication officer to conduct an adjudication in relation to the alleged contravention of the relevant obligation or the e-Evidence Regulation obligation, as the case may be.

- (2) The chief adjudication officer may direct that adjudication officers sit as a panel to perform an adjudication, in an uneven number of 3 or more, and where he or she so directs, a reference in this Act to an adjudication officer shall be construed as a reference to a panel of adjudication officers.
- (3) The chief adjudication officer shall determine the procedures to apply where a panel of adjudication officers is conducting an adjudication.

Imposition of financial penalty and criminal proceedings

47. Where a financial penalty is imposed on a service provider in accordance with this Chapter in respect of a relevant contravention and the relevant contravention is an offence under a law of the State, the service provider concerned is not liable to be prosecuted or punished for the offence under that law.

Action by adjudication officer after assignment to conduct adjudication

48. (1) An adjudication officer to whom an adjudication is assigned under *section 46(1)* shall, for the purposes of assisting him or her in making a decision under *section 49* as to whether a service provider has committed a relevant contravention, send the service provider concerned—
- (a) a copy of this section, and
 - (b) a notice in writing stating that the service provider may—
 - (i) make submissions in writing, within the period specified in the notice, to the adjudication officer, and
 - (ii) request an oral hearing.
- (2) A service provider may—
- (a) make submissions referred to in *subsection (1)(b)(i)* within the period specified in the notice sent under that subparagraph or within such further period, not exceeding 15 days, as the adjudication officer may agree in writing with the service provider concerned, and
 - (b) request an oral hearing be held in accordance with *section 55*.
- (3) An adjudication officer may, where he or she considers it necessary or appropriate for the purposes of resolving an issue of fact or otherwise enabling the adjudication officer to make a decision under *section 49* referred to in *subsection (1)*, or to impose a financial penalty under *subsection (13)* of that section, do any of the following:
- (a) request the Director or the service provider, or both, by notice in writing, to provide such information or documentation, or both, as is specified in the notice to be provided within such period as is specified in the notice;
 - (b) request any other person (not being the Director or the service provider), by notice in writing, to provide such information or documentation, or both, as is specified in the notice within such period as is specified in the notice;

- (c) either on foot of a request from the service provider under *subsection (1)(b)(ii)* or of his or her own volition, conduct an oral hearing in accordance with *section 55*.
- (4) Where the decision under *section 49* relates to whether there has been a contravention of a relevant obligation, the adjudication officer may, with due regard for commercial confidentiality, send a copy of an investigation report to a person of whom a request was made under *subsection (3)(b)* where the adjudication officer considers it necessary to enable the person concerned to comply with a request made to that person under that paragraph.
- (5) As soon as practicable after making a request under *subsection (3)(b)*, the adjudication officer shall, with due regard for commercial confidentiality, send the Director and the service provider concerned a copy of the request.
- (6) As soon as practicable after receiving information or documentation, or both, pursuant to a request under *subsection (3)(b)*, the adjudication officer shall, with due regard for commercial confidentiality, send the Director and the service provider concerned—
 - (a) a copy of the information or documentation, or both, as the case may be, or, where by reason of commercial confidentiality such information or documentation cannot be provided in full, a summary of such information or documentation received from the person of whom the request was made, and
 - (b) a notice in writing stating that the Director and the service provider may make submissions in writing, within the period specified in the notice, to the adjudication officer in relation to the information or documentation, or both, as the case may be.
- (7) The Director and a service provider may make submissions referred to in *subsection (6)(b)* within the period specified in the notice sent under that paragraph or within such further period, not exceeding 10 days, as the adjudication officer may agree in writing with the Director and the service provider, as the case may be.
- (8) A person who receives a copy of an investigation report under *subsection (4)* shall not, without the prior consent in writing of the adjudication officer, disclose the existence or the content of the investigation report to any other person.
- (9) A person who contravenes *subsection (8)* is guilty of an offence and is liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both.

Decision as to contravention and imposition of financial penalty

- 49.** (1) Subject to *subsections (2)* and *(15)*, an adjudication officer shall decide whether, on the balance of probabilities, a service provider has committed, or is committing, a relevant contravention.
- (2) An adjudication officer shall, in making a decision under *subsection (1)*, consider—
- (a) any information or documentation provided by the Director or the service provider pursuant to a request under *subsection (3)(a)* of *section 48*,

- (b) any information or documentation provided by a person pursuant to a request under *subsection (3)(b) of section 48* and any submissions made by the Director or the service provider in accordance with *subsection (7) of that section*,
 - (c) any submissions, records or other evidence provided in proceedings before the adjudication officer, and
 - (d) where the decision relates to a contravention of a relevant obligation, the investigation report and submissions (if any) considered by an authorised officer pursuant to *section 43(4)*.
- (3) Where the adjudication officer makes a decision under *subsection (1)* that a service provider has not committed, or is not committing, a relevant contravention, the adjudication officer shall, as soon as practicable after making the decision, send the Director a copy of that decision.
- (4) The Director shall, as soon as practicable after receiving a copy of a decision referred to in *subsection (3)*, give notice in writing of the decision to the service provider concerned.
- (5) Where an adjudication officer makes a decision (in this Chapter referred to as a “decision as to contravention”) under *subsection (1)* that a service provider has committed, or is committing, a relevant contravention, the adjudication officer shall—
- (a) where he or she is not imposing a financial penalty under *subsection (13)* in respect of that decision as to contravention, by notice in writing inform the Director of the decision as to contravention, the reasons for that decision and that he or she is not imposing a financial penalty, or
 - (b) where he or she proposes to impose a financial penalty under *subsection (13)* in respect of a decision as to contravention, send a notice in accordance with *subsection (8)*.
- (6) Where *subsection (5)(a)* applies, the Director shall send a copy of the notice under that subsection to the service provider concerned within 7 days of receipt of the notice and shall, at the same time, by notice in writing—
- (a) where appropriate, require the service provider to comply with the relevant obligation or the e-Evidence Regulation obligation, as the case may be, to which the decision as to contravention relates,
 - (b) state that the service provider is entitled to appeal, in accordance with *section 53*, against the decision as to contravention and state the period within which such an appeal may be made in accordance with that section, and
 - (c) state that, where the service provider does not bring an appeal under that section, the Director shall, as soon as is practicable after the expiration of the period for making an appeal under that section, make an application under *section 54* in a summary manner for confirmation of the decision as to contravention.
- (7) The Director shall, in accordance with *subsection (6)(c)*, where no appeal is made by the service provider concerned under *section 53* within the period allowed for making

the appeal, apply to the Circuit Court under *section 54* for confirmation of the decision as to contravention.

- (8) Where *subsection (5)(b)* applies, the adjudication officer shall, by notice in writing to the Director and the service provider concerned—
 - (a) inform the Director and the service provider of the adjudication officer’s decision as to contravention and the reasons for that decision,
 - (b) state the intention of the adjudication officer to impose a financial penalty under *subsection (13)* and the amount of the financial penalty proposed, and
 - (c) state that—
 - (i) the Director may make submissions in writing to the adjudication officer within the period specified in the notice, in relation to the amount of the financial penalty and the factors to be taken into account in determining the amount of the penalty in accordance with *section 50*, or
 - (ii) the service provider may make submissions in writing in accordance with *subsection (11)*.
- (9) The Director may make submissions referred to in *subsection (8)(c)(i)* within the period specified in the notice sent under that subparagraph or, where the adjudication officer is satisfied there are good reasons to do so, within such further period, not exceeding 10 days, as he or she may agree in writing with the Director.
- (10) An adjudication officer shall give the service provider concerned a copy of any submissions made by the Director in accordance with *subsection (8)*.
- (11) An adjudication officer shall, by notice in writing, state that the service provider concerned may, within the period specified in the notice, make submissions in writing to the adjudication officer—
 - (a) where no submissions are received from the Director in accordance with *subsection (8)*, in relation to the matters referred to in *subsection (8)(c)(i)*, or
 - (b) where submissions are received from the Director in accordance with *subsection (8)*, in relation to the matters referred to in *subsection (8)(c)(i)* and those submissions.
- (12) A service provider may make submissions under *subsection (11)* within the period specified in the notice under that subsection or, where the adjudication officer is satisfied that there are good reasons to do so, within such further period, not exceeding 10 days, as he or she may agree in writing with the service provider concerned.
- (13) Subject to *subsections (14) and (15)*, where an adjudication officer makes a decision as to contravention, he or she may, in accordance with *section 50*, decide to impose a financial penalty—
 - (a) where relevant, having regard to the matters referred to in *paragraphs (a) to (d) of subsection (2)*,

- (b) having regard to any submissions made in accordance with *subsection (8) and (11)* by the Director and the service provider concerned, and
 - (c) in the case of a decision as to contravention in respect of an e-Evidence Regulation obligation, in accordance with the e-Evidence Regulation.
- (14) In exceptional circumstances, following consideration of the matters referred to in *section 50(3)*, an adjudication officer may decide, in the case of a decision as to contravention in respect of an e-Evidence Regulation obligation, not to impose a financial penalty.
- (15) A decision as to contravention and a financial penalty in relation to that contravention shall take effect in accordance with *section 52*.
- (16) Where a court remits a financial penalty under *section 53 or 54*, as the case may be, an adjudication officer shall reconsider the financial penalty and may decide, following such reconsideration in accordance with any directions of the court concerned, to impose a different financial penalty or no financial penalty.
- (17) Where a court remits both a decision as to contravention and a financial penalty under *section 53 or 54*, as the case may be, an adjudication officer shall reconsider both the decision and financial penalty and may decide, following such reconsideration in accordance with any directions of the court concerned to—
- (a) set aside the decision as to contravention and the financial penalty concerned, or
 - (b) confirm the decision as to contravention and either confirm the financial penalty or impose a different financial penalty or no financial penalty.
- (18) An adjudication officer shall, as soon as practicable after he or she has made a decision under *subsection (16) or (17)* as the case may be, by notice in writing—
- (a) inform the Director and the service provider concerned of the decision and the reasons for the decision, and
 - (b) specify the date from which the decision shall take effect.
- (19) In this section, “exceptional circumstances” include where the service provider is a microenterprise and the contravention concerned arose in an emergency case due to lack of human resources outside of normal business hours and there is compliance with the obligation concerned without undue delay.

Limitations on amount of financial penalty imposed for relevant contravention

- 50.** (1) The amount of a financial penalty imposed on a service provider in respect of a decision as to contravention shall not exceed 2 per cent of the total world annual turnover of the service provider in the financial year preceding the date of the decision as to contravention.
- (2) Where the decision as to contravention relates to a contravention of a relevant obligation, an adjudication officer shall have regard to the following matters in determining the amount of the financial penalty to be imposed on a service provider:

- (a) the nature, gravity and duration of the contravention;
 - (b) whether the contravention was intentional or negligent;
 - (c) previous contraventions of relevant obligations by the service provider;
 - (d) the financial strength of the service provider;
 - (e) the level of cooperation by the service provider or relevant addressee with competent authorities designated for the purposes of Article 6(1) of the e-Evidence Directive;
 - (f) the nature and size of the service provider, in particular whether it is a micro, small or medium-sized enterprise;
 - (g) the degree of harm caused as a result of the contravention;
 - (h) the need to ensure that the penalty shall not be of an amount likely to cause the service provider to cease trading.
- (3) Where the decision as to contravention relates to a contravention of an e-Evidence Regulation obligation, an adjudication officer shall have regard to the following matters in determining the amount of the financial penalty to be imposed on a service provider:
- (a) the nature, gravity and duration of the contravention;
 - (b) whether the contravention was intentional or through negligence;
 - (c) previous contraventions of e-Evidence Regulation obligations by the service provider;
 - (d) the financial strength of the service provider.

Notice of financial penalty

- 51.** (1) An adjudication officer shall, as soon as is practicable after he or she makes a decision to impose a financial penalty under *section 49(13)*, send the Director a notice of the imposition of the financial penalty and the amount of the financial penalty being imposed.
- (2) The Director shall send a copy of the notice of the imposition of the financial penalty referred to in *subsection (1)* to the service provider concerned within 7 days of receipt of the notice and shall, at the same time, by notice in writing state—
- (a) the amount of the financial penalty being imposed,
 - (b) where appropriate, that the service provider is required to comply with the relevant obligation or e-Evidence Regulation obligation, as the case may be, to which the decision as to contravention and that financial penalty relate,
 - (c) that the service provider is entitled to appeal, in accordance with *section 53*, against the decision as to contravention and the imposition of the financial

penalty or against the imposition of the financial penalty only and state the period within which such an appeal may be made in accordance with that section, and

- (d) that where the service provider does not make an appeal under *section 53*, the Director shall, as soon as is practicable after the expiration of the time for bringing an appeal under that section, make an application under *section 54* in a summary manner for confirmation of the decision as to contravention and the financial penalty.
- (3) The Director shall, in accordance with *subsection (2)(d)*, where no appeal is made by the service provider under *section 53* within the period allowed for making the appeal, apply to the Circuit Court under *section 54* for confirmation of the decision as to contravention and the financial penalty.

Taking effect of decision as to contravention and of financial penalty

52. (1) A decision as to contravention shall take effect—

- (a) where an appeal against the decision is taken under *section 53*, when the decision is upheld on appeal,
- (b) when the decision is confirmed by the Circuit Court in accordance with *section 54*, or
- (c) where the decision, having been remitted to an adjudication officer for reconsideration, is confirmed by the adjudication officer under *subsection (17)(b)* of *section 49*, on the date specified in the notice under *subsection (18)* of that section.

(2) A financial penalty shall take effect—

- (a) where an appeal is taken under *section 53*—
 - (i) when the penalty is confirmed on appeal under *subsection (5)(b)(i)* or *(5)(c)(i)* of that section or when a different financial penalty is imposed under *subsection (5)(c)(iii)* of that section, or
 - (ii) where the court remits the financial penalty to an adjudication officer and the financial penalty is confirmed by the adjudication officer under *subsection (17)(b)* of *section 49* or a different financial penalty is imposed by the adjudication officer under *subsection (16)* or *(17)(b)* of that section, on the date specified in the notice under *subsection (18)* of that section,

or

- (b) where an application is made to the Circuit Court under *section 54*—
 - (i) when the financial penalty is confirmed by the Court under *subsection (5)* of that section or when a different financial penalty is imposed by the Court under *subsection (7)(b)* of that section, or
 - (ii) where the Court remits the financial penalty to an adjudication officer and the financial penalty is confirmed by the adjudication officer under

subsection (17)(b) of section 49 or a different financial penalty is imposed by the adjudication officer under subsection (16) or (17)(b) of that section, on the date specified in the notice under subsection (18) of that section.

- (3) Where a financial penalty takes effect in accordance with *subsection (2)*, the financial penalty may be enforced by the Director without the need for any further judgment of a court.
- (4) The Director may recover, as a simple contract debt in any court of competent jurisdiction, any amount due and owing by a service provider as a financial penalty that has taken effect in accordance with *subsection (2)*.
- (5) Where a service provider fails to comply with a financial penalty that has taken effect in accordance with *subsection (2)*, the High Court may, on an application to it by the Director in that behalf—
 - (a) compel compliance with the financial penalty imposed, and
 - (b) grant such injunctive relief (if any) that the Court considers necessary.
- (6) The High Court may not require the Director to give an undertaking as to damages as a condition of granting any injunctive relief under *subsection (5)(b)*.

Appeal against decision as to contravention and imposition of financial penalty

- 53.** (1) A service provider to whom a decision as to contravention relates may appeal to the appropriate court—
 - (a) where no financial penalty is imposed in respect of the decision, against that decision, or
 - (b) where a financial penalty is imposed in respect of the decision—
 - (i) against the imposition of a financial penalty, including against the amount of the penalty imposed, or
 - (ii) against both the decision and the imposition of a financial penalty, including against the amount of the financial penalty imposed.
- (2) Subject to *subsection (3)*, an appeal under *subsection (1)* may be made to the appropriate court within 28 days from—
 - (a) where *subsection (1)(a)* applies, the date on which the notice in writing under *section 49(5)(a)* is sent to the service provider concerned, or
 - (b) where *subsection (1)(b)* applies, the date on which the notice in writing under *section 51(1)* is sent to the service provider concerned.
- (3) The appropriate court may, on the application of a service provider to whom a decision as to contravention relates, extend the period referred to in *subsection (2)* where it is satisfied that—
 - (a) there is good and sufficient reason for doing so,

- (b) the circumstances that resulted in the failure to bring an appeal within that period were outside the control of the service provider, and
 - (c) where an application has been made under *section 54* for confirmation of the decision as to contravention or, where applicable, the imposition of a financial penalty, the application has not been finally determined.
- (4) In considering an appeal under *subsection (1)*, the appropriate court may, where it considers it necessary for the fair and proper determination of the appeal, consider—
- (a) information, documentation or submissions referred to in *paragraph (a)* or *(b)* of *section 49(2)*, and
 - (b) any submissions, records or other evidence referred to in *paragraph (c)* of *section 49(2)*.
- (5) Subject to *subsection (6)* and *sections 49(13)(c)*, *49(14)* and *50*, the appropriate court may, on the hearing of an appeal under *subsection (1)*—
- (a) where *subsection (1)(a)* applies—
 - (i) confirm the decision, or
 - (ii) set aside the decision,
 - (b) where *subsection (1)(b)(i)* applies—
 - (i) confirm the financial penalty,
 - (ii) set aside the financial penalty,
 - (iii) replace the financial penalty with such other financial penalty as the court considers it just and appropriate to impose, or
 - (iv) remit the financial penalty for reconsideration by an adjudication officer, subject to such directions as the court considers appropriate,
- or
- (c) where *subsection (1)(b)(ii)* applies—
 - (i) confirm both the decision as to contravention and the financial penalty,
 - (ii) confirm the decision as to contravention and set aside the financial penalty,
 - (iii) confirm the decision as to contravention and replace the financial penalty with such other financial penalty as the court considers it just and appropriate to impose,
 - (iv) remit either or both the decision as to contravention and the financial penalty for reconsideration by an adjudication officer, subject to such directions as the court considers appropriate, or
 - (v) set aside both the decision as to contravention and the financial penalty.
- (6) A decision as to contravention or the imposition of a financial penalty may not be set aside or remitted by the appropriate court under *subsection (5)* for error of law or fact

unless the appropriate court is satisfied that the adjudication officer concerned committed a serious and significant error in making the decision, or that the adjudication officer concerned committed a series of minor errors which, when taken together, amount to a serious and significant error.

- (7) The appropriate court may make such interim or interlocutory orders in appeal proceedings under this section as it considers appropriate.
- (8) Where an appeal under *subsection (1)* is withdrawn or abandoned by a service provider, or struck out by the appropriate court, the Director shall make an application under *section 54* in respect of the decision the subject of the appeal.
- (9) In this section, “appropriate court” means—
 - (a) the Circuit Court, where the amount of any financial penalty imposed does not exceed €75,000 or such other sum as stands specified in law as that court’s jurisdiction in tort, and
 - (b) in any other case, the High Court.

Circuit Court confirmation of decision as to contravention and financial penalty

- 54.** (1) The Director shall, on notice to the service provider to whom a decision as to contravention relates, make an application in a summary manner to the Circuit Court for confirmation of—
- (a) where no financial penalty is imposed, the decision as to contravention, or
 - (b) where a financial penalty is imposed, the decision as to contravention and the financial penalty.
- (2) The Director shall make an application under *subsection (1)* where—
- (a) the service provider does not appeal against the decision within the period specified in *section 53*, or
 - (b) an appeal is withdrawn, abandoned or struck out, as the case may be.
- (3) An application under *subsection (1)* shall be made by the Director as soon as practicable after the expiration of the period specified in *section 53* for bringing an appeal or after the appeal is withdrawn, abandoned or struck out, as the case may be.
- (4) A service provider may, as soon as practicable after receiving notice of the application under *subsection (1)*, inform the Director in writing that the service provider does not intend to appear at, or make submissions at, the hearing of the application and where the service provider does so, the application and any remaining steps in such application may be made *ex parte*.
- (5) On the hearing of an application under *subsection (1)*, the Circuit Court shall, where *paragraph (a)* of that subsection applies, confirm the decision as to contravention, or where *paragraph (b)* of that subsection applies, confirm the decision as to contravention and the financial penalty, unless it is satisfied, on the basis of the

evidence that was before the adjudication officer when making the decision or imposing the financial penalty—

- (a) that the adjudication officer made an error of law which is—
 - (i) manifest from the decision, and
 - (ii) fundamental so as to deprive the decision of its basis,or
 - (b) that the financial penalty is manifestly disproportionate having regard to *sections 49(13)(c), 49(14) and 50.*
- (6) Where the Circuit Court does not, under *subsection (5)*, confirm a decision as to contravention, the Court shall set the decision aside.
- (7) Where the Circuit Court does not, under *subsection (5)*, confirm the decision as to contravention and the financial penalty, it may, subject to *sections 49(13)(c), 49(14) and 50—*
- (a) confirm the decision as to contravention and set aside the financial penalty,
 - (b) confirm the decision as to contravention and replace the financial penalty with such other financial penalty as the Circuit Court considers it just and appropriate to impose,
 - (c) set aside both the decision as to contravention and the financial penalty, or
 - (d) remit either or both the decision as to contravention or, where applicable, the financial penalty, for reconsideration by an adjudication officer, subject to such directions as it considers appropriate.
- (8) Where an application to extend the period for the making of an appeal against a decision as to contravention is made under *section 53(3)*, the Circuit Court shall make an order staying proceedings in relation to an application under *subsection (1)* until the appropriate court has made a decision under that section in relation to the extension sought.
- (9) Where the appropriate court makes an order under *section 53(3)* extending the period for the making of an appeal under that section, the Circuit Court shall continue the stay on proceedings in relation to an application under *subsection (1)* in respect of the decision the subject of the appeal until—
- (a) where the appeal is brought under that section within the extended period, either—
 - (i) the appropriate court has made a decision on the appeal under that section, or
 - (ii) the appeal is withdrawn, abandoned or struck out,or
 - (b) where the appeal is not brought under *section 53* within the extended period, until that period as so extended expires.

- (10) Where *subsection (9)(a)(i)* applies, the Circuit Court shall make an order striking out the application under *subsection (1)* to which the appeal concerned relates.
- (11) The Circuit Court may make such interim or interlocutory orders as it considers appropriate in any proceedings in relation to an application under *subsection (1)*.
- (12) The Circuit Court may direct how the costs of an application under *subsection (1)* are to be borne having regard to any communication of the service provider concerned to the Director under *subsection (4)*.

Oral hearing

- 55.** (1) An oral hearing shall be conducted by the adjudication officer in accordance with this section where the adjudication officer considers it necessary or appropriate to conduct the oral hearing—
- (a) following receipt of a request under *section 48(2)(b)* from a service provider to conduct an oral hearing, or
 - (b) of his or her own volition.
- (2) An adjudication officer may, by notice in writing—
- (a) summon a person to appear as a witness before the adjudication officer to do either or both of the following:
 - (i) give evidence;
 - (ii) produce any records in the person's possession or power to procure,
 and
 - (b) require that person to attend an oral hearing from day to day unless excused, or released from further attendance, by the adjudication officer.
- (3) Without prejudice to *subsection (2)*, an adjudication officer has the same powers, rights and privileges as a judge of the High Court when hearing civil proceedings including with respect to—
- (a) the attendance and examination of witnesses (including witnesses who are outside the State) on oath or otherwise, and
 - (b) compelling the production (including discovery) of records or an identified category or categories of records.
- (4) An oral hearing may, at the discretion of an adjudication officer, be conducted in whole or in part by way of a remote hearing.
- (5) Where *subsection (4)* applies—
- (a) an adjudication officer shall have the same powers, with any necessary modifications, in respect of the conduct of the oral hearing by way of a remote hearing as he or she has in respect of the conduct of an oral hearing that is not conducted by way of a remote hearing, and

- (b) a person who participates in such a remote hearing before an adjudication officer shall, in respect of such participation—
 - (i) be deemed to be present at the oral hearing concerned, and
 - (ii) have the same immunities and privileges, and be subject to the same obligations and liabilities, as he or she would have were he or she participating in an oral hearing that was not so conducted.
- (6) An oral hearing shall be held in public unless the adjudication officer conducting the hearing is satisfied that, given the existence of special circumstances (which shall include whether information given or likely to be given in evidence is commercially sensitive information), the hearing or part of the hearing should be held otherwise than in public.
- (7) Where special circumstances as referred to in *subsection (6)* exist, the adjudication officer may impose restrictions on the reporting or distribution of evidence given or records produced at the hearing.
- (8) An adjudication officer may, at his or her discretion, direct the reimbursement of some or all of the reasonable travelling expenses incurred by a witness required to attend an oral hearing and the payment of a sum to such witness for subsistence while so attending.
- (9) Save as may be otherwise prescribed by an order of the Minister made under this subsection in relation to the rules applicable to an oral hearing under this section, the rules of evidence shall apply to an oral hearing, including an oral hearing held in whole or in part by way of a remote hearing.
- (10) A person is guilty of an offence where the person—
 - (a) having been duly summoned to attend as a witness at an oral hearing under *subsection (2)(a)*, fails without reasonable excuse to attend at the time and place indicated in the notice given under that subsection,
 - (b) having been duly summoned to attend as a witness at an oral hearing under *subsection (2)(a)*, fails without reasonable excuse to produce before the adjudication officer any records specified in that notice, or
 - (c) while attending as a witness at an oral hearing, refuses to—
 - (i) give evidence in the manner lawfully required by the adjudication officer,
 - (ii) produce any record in the person's possession or power to procure that the person is lawfully required by the adjudication officer to produce, or
 - (iii) answer any question that the person is lawfully required by the adjudication officer to answer.
- (11) A person who, having been required to produce a record under *subsection (2)(a)(ii)*, intentionally destroys or otherwise disposes of, falsifies or conceals such record or causes or permits its destruction, disposal, falsification or concealment is guilty of an offence.

- (12) A person guilty of an offence under *subsection (10)* or *(11)* is liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.
- (13) In this section—
- “electronic communications technology” means, in relation to a remote hearing, technology that enables real time transmission and real time two-way audio-visual or audio communication that enables a person to participate in the hearing from a location other than the location where the adjudication officer is conducting the oral hearing;
- “in part”, in relation to a remote hearing, includes—
- (a) any day or part of a day in which an oral hearing is conducted, and
 - (b) the participation of a particular person in the oral hearing;
- “remote hearing” means a hearing in which one or more of the participants participates—
- (a) from a location other than the location where the adjudication officer conducting the oral hearing is, whether within the State or outside the State, and
 - (b) by means of electronic communications technology.

Reference on point of law to High Court

- 56.** (1) An adjudication officer may, at any time before making a decision under *subsection (1)* of *section 49* or imposing a financial penalty under *subsection (13)* of that section, refer any question of law to the High Court.
- (2) Subject to *subsection (3)*, no appeal shall lie to the Court of Appeal from a decision of the High Court on a reference under *subsection (1)*.
- (3) The High Court may grant leave to appeal its decision on a reference made under *subsection (1)* where it certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Court of Appeal.

Orders for costs in proceedings before adjudication officer

- 57.** (1) Subject to *subsection (2)*, no order as to costs shall be made in proceedings before an adjudication officer.
- (2) An adjudication officer may, at his or her discretion, award the costs of proceedings referred to in *subsection (1)* against a service provider or the Director where the adjudication officer determines that the service provider or the Director, as the case

may be, has engaged in improper, irregular, unfair or unsatisfactory conduct in connection with—

- (a) the directed investigation giving rise to those proceedings, or
 - (b) in the conduct of those proceedings.
- (3) An award of costs against a service provider or the Director under *subsection (2)* shall be proportionate to the nature and extent of the improper, irregular, unfair or unsatisfactory conduct that the service provider or the Director, as the case may be, is found to have engaged in and the award may be limited to a proportion of the costs of the proceedings before an adjudication officer or to the costs of a particular part of those proceedings.

Regulations in relation to proceedings before adjudication officer

58. (1) Subject to this Chapter, the Minister may make regulations setting out requirements in relation to the conduct of proceedings before an adjudication officer, having regard to the need for efficiency and the rights of service providers.
- (2) Without prejudice to the generality of *subsection (1)*, regulations under that subsection may include, but are not limited to, all or any of the following:
- (a) the form, and manner of making, of requests by an adjudication officer for information, documentation or discovery from a party to proceedings or from a person other than a party to proceedings;
 - (b) the form, and manner of inviting, of submissions by an adjudication officer from a party to proceedings;
 - (c) the form and manner of provision of submissions, information, documentation, records, or other evidence to be provided to an adjudication officer;
 - (d) the provision by an adjudication officer to a party to proceedings or to a person other than a party to proceedings, of information or documentation received by the adjudication officer;
 - (e) time limits to apply in the conduct of proceedings before an adjudication officer;
 - (f) procedures for the consolidation of two or more proceedings before an adjudication officer;
 - (g) procedures for the separation of proceedings before an adjudication officer;
 - (h) the conduct of an oral hearing.

Treatment of amounts paid in respect of financial penalties

59. A payment made by a service provider to the Director in respect of a financial penalty which has taken effect in accordance with *section 52(2)*, shall be paid into, or disposed of for the benefit of, the Exchequer, in such manner as the Minister for Finance may direct.

CHAPTER 6

*Provisions applicable to adjudication officers***Ineligibility to become and disqualification to act as adjudication officer**

- 60.** (1) A person shall not be eligible for appointment, and shall cease to hold office as an adjudication officer, if he or she—
- (a) subject to *subsection (2)*, is adjudicated bankrupt,
 - (b) is subject to a composition or arrangement with creditors,
 - (c) is convicted on indictment of an offence,
 - (d) is convicted of an offence involving fraud or dishonesty,
 - (e) has a declaration under section 819 of the Act of 2014 made against him or her or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or
 - (f) is subject, or is deemed to be subject, to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Act of 2014, whether by virtue of that Chapter or any other provisions of that Act, or a disqualification outside the State which corresponds to such a disqualification order.
- (2) *Subsection (1)(a)* shall apply only for so long as the person has not obtained a certificate of discharge from the bankruptcy.

Membership of either House of Oireachtas, European Parliament or local authority: adjudication officer

- 61.** (1) A person shall cease to hold office as adjudication officer if he or she is—
- (a) nominated as a member of Seanad Éireann,
 - (b) elected as a member of either House of the Oireachtas or of the European Parliament,
 - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament, or
 - (d) elected or co-opted as a member of a local authority.
- (2) A person who is for the time being—
- (a) entitled under the Standing Orders of either House of the Oireachtas to sit therein,
 - (b) a member of the European Parliament, or
 - (c) entitled under the standing orders of a local authority to sit as a member thereof,

shall, while he or she is so entitled as mentioned in *paragraph (a)* or *(c)* or is such a member as mentioned in *paragraph (b)*, be disqualified to act as an adjudication officer.

Nomination of adjudication officers

- 62.** (1) The Director shall, on the request of the Minister, nominate such and so many persons who, in the opinion of the Director, are independent and have the experience, qualifications, training or expertise specified in regulations made by the Minister under *section 65(a)*, to be appointed by the Minister as adjudication officers.
- (2) The Director shall not nominate, under *subsection (1)*, either of the following for appointment:
- (a) an authorised officer;
 - (b) a member of staff of the Director.

Appointment of adjudication officers

- 63.** (1) Subject to *sections 60* and *61* and *subsection (2)*, the Minister shall appoint such and so many persons (each of whom in this Act is referred to as an “adjudication officer”) as he or she considers necessary to perform the functions of an adjudication officer under this Act.
- (2) The Minister shall appoint an adjudication officer from among the persons nominated by the Director under *section 62* unless the Minister is not satisfied that the person—
- (a) is independent, or
 - (b) has the experience, qualifications, training or expertise specified in regulations made under *section 65(a)*.
- (3) The Minister shall appoint one adjudication officer to be the chief adjudication officer.
- (4) Subject to *sections 60* and *61* and *subsections (5)* and *(6)*, an adjudication officer shall—
- (a) be appointed under this section upon such terms and conditions (including as to appointment, remuneration, reappointment and revocation of appointment) as are specified in regulations under *section 65*, and
 - (b) be paid, out of moneys provided by the Oireachtas for such purpose, such remuneration and allowances for expenses, as are specified in regulations under that section.
- (5) A person shall cease to hold office as an adjudication officer on his or her appointment as an authorised officer or on becoming a member of staff of the Director.

- (6) The appointment of an adjudication officer may be revoked by the Minister, in accordance with procedures specified in regulations made under *section 65(f)*, on one of the grounds specified in *subsection (7)* following—
 - (a) receipt of an assessment and recommendation by a person, other than the Director or a member of staff of the Director, who is independent and has relevant experience and expertise in the matters giving rise to the revocation, and
 - (b) a decision by the Government, having reviewed the assessment and recommendation referred to in *paragraph (a)*, confirming the proposed revocation.
- (7) The grounds referred to in *subsection (6)* are that an adjudication officer has—
 - (a) become incapable, through ill-health or otherwise, of effectively performing his or her functions,
 - (b) engaged in serious misconduct, or
 - (c) a serious conflict of interest, which conflict of interest is likely to continue.

Independence of adjudication officer

- 64.** (1) An adjudication officer shall be independent in the performance of his or her functions.
- (2) An adjudication officer shall, where he or she believes that performing an adjudication assigned to him or her may create a conflict of interest or may give rise to the perception of a potential conflict of interest, recuse himself or herself from the adjudication concerned.
- (3) Where an adjudication officer forms a belief referred to in *subsection (2)*, he or she shall inform the chief adjudication officer who shall re-assign that adjudication to another adjudication officer.
- (4) An adjudication officer shall, as soon as practicable after informing the chief adjudication officer under *subsection (3)*, by notice in writing, inform the Director and any service provider affected by a recusal under that subsection.

Regulations (*Chapter 6*)

- 65.** The Minister shall, in a manner ensuring the independence of adjudication officers in the performance of their functions, make regulations providing for—
- (a) the experience, qualifications, training or expertise persons shall possess to be appointed as adjudication officers,
 - (b) the term of appointment of adjudication officers, which term shall be specified in writing on appointment, and the term of appointment may be—
 - (i) fixed and non-renewable, or
 - (ii) subject to *paragraph (c)*, fixed and renewable,

- (c) where a term of appointment is renewable in accordance with *paragraph (b)(ii)*, objective, independently assessed competence-based criteria for such renewal,
- (d) the remuneration and allowances for expenses to be paid, which may not be reduced during the term of the appointment save in accordance with law, to an adjudication officer and, having regard to his or her different functions, to the chief adjudication officer,
- (e) the manner in which an adjudication officer may resign from office, and
- (f) subject to *section 63(4), (6) and (7)*, procedures for the revocation of appointment of adjudication officers.

Assistance to adjudication officers

- 66.** (1) The Director may, from time to time, require a member of staff of the Director to assist adjudication officers in the performance of their functions.
- (2) The Director may, from time to time, enter into a contract or arrangement with a person or appoint a consultant or adviser under *section 15* for the purpose of having the person, consultant or adviser assist adjudication officers in the performance of their functions.
- (3) A member of staff of the Director referred to in *subsection (1)* or a person, consultant or adviser referred to in *subsection (2)*—
- (a) shall not provide assistance to adjudication officers in connection with any matter in which the member, or person, consultant or adviser concerned, has or may have a conflict of interest, and
 - (b) may perform other tasks on behalf of the Director, including performing tasks in any investigation in which the member or person, consultant or adviser concerned has not been, and will not be, involved in assisting an adjudication officer under this section.

CHAPTER 7

Provisions related to offences: General

Summary proceedings

- 67.** Summary proceedings for an offence under this Act may be brought and prosecuted by the Director.

Time limit for instituting summary proceedings

- 68.** Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted at any time within 2 years from the date on which the offence was alleged to have been committed.

Liability for offences by body corporate

69. (1) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to be attributable to any wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, commits an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Costs

70. (1) Where a person is convicted of an offence under this Act, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Director the costs and expenses, measured by the court, incurred by the Director in relation to the investigation, detection and prosecution of the offence.
- (2) An order for the payment of costs and expenses under *subsection (1)* is in addition to and not instead of any fine or other penalty the court may impose.

SCHEDULE

Section 8

PROVISIONS APPLICABLE TO DIRECTOR OF CRIMINAL JUSTICE INTERNATIONAL COOPERATION

1. The Director shall be a corporation sole with perpetual succession and an official seal and with power—
 - (a) to sue and be sued, and
 - (b) with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, to acquire, hold and dispose of land and other property.
2. The seal of the Director (in this Schedule referred to as the “seal”) shall be authenticated by—
 - (a) the signature of the Director, or
 - (b) the signatures of 2 members of staff of the Director each of whom has been authorised by the Director to act in that behalf.
3. Judicial notice shall be taken of the seal and every document purporting to be an instrument made by the Director and to be sealed with the seal (purporting to be authenticated in accordance with *paragraph (2)*) shall be received in evidence and be deemed to be such an instrument without proof unless the contrary is shown.
4. Any contract or instrument, which if entered into or executed by an individual would not be required to be under seal, may be entered into or executed on behalf of the Director by a member of staff of the Director or other person generally or specially authorised by the Director for that purpose.