



An Bille um Rialáil Cumarsáide, 2022
Communications Regulation Bill 2022

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Explanatory Memorandum



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COMMUNICATIONS REGULATION BILL 2022**

EXPLANATORY MEMORANDUM

Purpose of Bill

This Bill will transpose specific aspects of Directive (EU) 2018/1972 ('the Directive'), particularly the enforcement, security, alternative dispute resolution, and a limited number of end-user rights provisions. It will also designate the Commission for Communications Regulation ('ComReg') as the competent authority for the purpose of enforcing the Directive in the State. The *European Union (Electronic Communications Code) Regulations 2022* (S.I. 444 of 2022) (the 'Code Regulations') will transpose the remainder of the Directive.

The Bill will also provide ComReg with a new civil enforcement regime which will be used to enforce the obligations established in the Code Regulations, but can, subject to Regulations made by the Minister for the Environment, Climate and Communications, also be used to enforce obligations established by other regulatory regimes for which ComReg is given an enforcement role. The Bill will also amend Section 108 of the Code Regulations to provide for a higher maximum criminal penalty for conviction of an offence on indictment under those Regulations.

The Bill will transpose the security provisions of the Directive and, in so doing, will provide a mechanism for the Minister to specify security measures by Regulation and to make guidelines relating to network security and to provide a legislative basis to enforce the Electronic Communications Security Measures to ensure that electronic communications services and networks are required to ensure the security of their systems.

The Bill will provide for new consumer service protections for consumers in the electronic communications sector, including an enhanced alternative dispute resolution process for consumers, a new power for ComReg to set minimum quality-of-service standards, a new compensation scheme for consumers and a new "Customer Charter".

The Bill will make amendments to the *Communications Regulation Act 2002*, to align that Act with the Directive and make necessary amendments to ComReg's current functions and powers, to improve their functionality and complement the new proposed enforcement regime.

PART 1

PRELIMINARY AND GENERAL

Short title, collective citation, construction and commencement

Section 1 contains standard provisions dealing with the title, collective citation, construction, and commencement of the Bill.

Interpretation

Section 2 provides for definitions of terms used in the Bill.

Regulations

Section 3 allows for the Minister to make regulations in relation to any matter referred to in this Act as prescribed or to be prescribed or to be the subject of regulations or for the purpose of enabling any of its provisions to have full effect.

Exercise of powers of authorised officers for purposes of Act

Section 4 sets out that an authorised officer may exercise any of his or her powers under the Principal Act for the purposes of this Act.

PART 2

SECURITY OF NETWORKS AND SERVICES

Interpretation (Part 2)

Section 5 provides for definitions of terms used in *Part 2*.

Obligation on providers to take measures to manage risk

Section 6 establishes that providers shall take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of networks and services, and that the measures taken shall ensure a level of security appropriate to the risk presented having regard to the state of the art.

Security measures guidelines

Section 7 provides that the Minister may, for the purpose of providing practical guidance to providers, prepare and publish or approve guidelines on the implementation of technical and organisational measures to manage the risks posed to the security of networks and services.

Courts, etc. to have regard to security measures guidelines

Section 8 provides that in any legal proceedings before a court or tribunal, the court or tribunal shall have regard to any security measures guidelines in determining any question arising in the proceedings if the question relates to a time when the guideline was in force, and the guideline appears to the court or tribunal to be relevant to the question.

Commission to have regard to security measures guidelines in connection with carrying out functions

Section 9 provides that the Commission shall have regard to any security measures guideline in determining any question arising in relation to it carrying out its functions if the question relates to a time when the guideline was in force, and the guideline appears to the Commission to be relevant to the question.

Adjudicator to have regard to security measures guidelines in connection with carrying out functions

Section 10 provides that an adjudicator shall have regard to any security measures guideline in determining any question arising in relation to it carrying out its functions if the question relates to a time when the guideline was in force, and the guideline appears to the Commission to be relevant to the question.

Providers to notify Commission of any incident of significant impact on networks or services

Section 11 states that a provider shall, where any security incident occurs that has had or is having a significant impact on the operation of the provider's networks or services, notify the Commission without undue delay and sets out the procedure for same.

Providers to notify users of particular and significant threat of security incident

Section 12 provides that in the case of a particular and significant threat of a security incident in public electronic communications networks or publicly available electronic communications services, a provider of such networks or services shall inform its users potentially affected by such a threat of any possible protective measures or remedies which can be taken by the users, and where appropriate, inform its users of the threat itself.

Commission to seek to ensure compliance by providers with *Part 2*

Section 13 provides that the Commission shall take reasonable steps to ensure that providers comply with the obligations placed on them by or under this Part.

Power of Commission to serve security measures directions

Section 14 provides that the Commission may serve a direction on a provider to remedy a security incident or prevent one from occurring when a significant threat has been identified, or to ensure that a provider is in compliance with this Part.

Security audits

Section 15 provides that where the Commission serves a security measures direction on a provider requiring the provider to submit to a security audit, the Commission may appoint a security auditor to carry out the security audit in accordance with the direction.

Assistance and information sharing

Section 16 states that the Commission may consult, cooperate, share information with, or obtain the assistance of the CSIRT, a Computer Security Incident Response Team in another Member State, a national regulatory authority in another Member State to whom a task under the Directive has been assigned, An Garda Síochána and the Data Protection Commission.

Appeal of decisions, etc. under *Part 2*, *Part 3* or Code Regulations

Section 17 provides for appeals to the High Court against decisions or requirements of the Commission under *Part 2* and *Part 3* of the Bill, the *European Union (Electronic Communications Code) Regulations 2022* and the Minister for the Environment, Climate and Communications under Regulations 70, 76 or 100 of the Code Regulations. It sets out the procedure for these appeals. It provides that on hearing an appeal, the Court may confirm the decision, or, where it is satisfied by reference to the grounds of appeal that a serious and significant error of law or fact, or a series of minor errors of law or fact which when taken together amount to a serious and significant error, was made in making the decision, or that the decision was made without complying with fair procedures, annul the decision in its totality or in part.

Appeal to Court of Appeal from decision under *section 17*

Section 18 provides for appeals against the decision of the High Court under section 17 to the Court of Appeal. Such appeals will only be granted with leave of the High Court and where the High Court certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be made to the Court of Appeal.

PART 3

MEASURES TO ASSIST CONSUMERS AND OTHER END-USERS

Interpretation (*Part 3*)

Section 19 provides for definitions of terms used in Part 3.

Commission may require publication of information on quality of service

Section 20 establishes that the Commission may require providers of internet access services and of publicly available interpersonal communications services to publish within a specified period comprehensive, comparable, reliable, user-friendly and up-to-date information for end-users on the quality of their technical services, the quality of their non-technical services, and measures taken to ensure equivalence in access for end-users with disabilities.

Minimum quality-of-service standards

Section 21 provides that the Commission may specify minimum quality-of-service standards to be met by providers of internet access services or publicly available interpersonal communications services in respect of, amongst other things, customer service, complaint handling, outages and repairs, switching services, and billing and refunds.

Customer charters

Section 22 provides that the Commission may require providers of internet access services or publicly available interpersonal communications services to prepare, publish and keep updated a document to be entitled a “customer charter”, and the Commission may specify the form of a customer charter and the information required to be included in a charter, including minimum quality-of-service standards.

End-user compensation

Section 23 provides that the Commission may specify a failure of a provider to comply with an obligation under a minimum quality-of-service standard, and states that where a provider commits a specified failure, they shall pay compensation to any end-user affected.

PART 4

RESOLUTION OF COMPLAINTS AND DISPUTES

Interpretation (Part 4)

Section 24 provides for definitions of terms used in this Part.

Procedures for handling complaints and resolution of disputes

Section 25 sets out that a provider shall ensure that it has in place procedures for dealing with complaints and for settling disputes with end-users that are accessible, fair, prompt, transparent, inexpensive, and non-discriminatory.

Handling of complaints and resolution of disputes to be provided for in code of practice

Section 26 establishes that a provider of electronic communications networks or services shall prepare, publish, keep updated and implement a code of practice for dealing with complaints and for settling disputes with end-users relating to the contractual conditions or performance of contracts (whether entered into or not).

Provider to report on end-user complaints

Section 27 sets out that a provider shall report to the Commission on complaints made to it by end-users within the preceding 6-month period, and such other matters relating to complaints by end-users made during that period as may be specified by the Commission.

Commission may require information regarding end-user complaints

Section 28 provides that the Commission may require providers to collate and publish, or provide to it, in such form as the Commission may specify, comparable data in relation to complaints made to it by end users and in relation to the procedures that providers have in place for dealing with complaints and for settling disputes with end-users.

Notification to end-user of right to refer dispute to Commission

Section 29 provides that where a provider receives a complaint from an end-user in respect of its services, the provider shall inform the end-user of his or her right to refer a relevant dispute to the Commission for resolution in accordance with section 31.

Commission may require provider to comply with code of practice

Section 30 provides that where the Commission considers that a provider has failed to implement its code of practice, the Commission may issue a direction on the provider specifying the provisions of the code which have not been implemented and requiring the provider to implement them.

Resolution of relevant disputes by Commission

Section 31 provides that an end user may refer a dispute with a provider to the Commission and, where the Commission is satisfied that the dispute is a relevant dispute, the Commission, or such independent person as may be appointed by the Commission, shall carry out a dispute resolution process and propose a resolution to the dispute referred.

Procedure for resolution of disputes by Commission

Section 32 provides that the Commission may specify procedures for the resolution of disputes under section 31 and such procedures shall be transparent, non-discriminatory, simple, and inexpensive; enable disputes to be settled fairly and promptly; and be made publicly available by the Commission, together with any amendments to such procedures.

Direction

Section 33 provides that where the Commission is satisfied that a provider has failed to comply with a proposed resolution that is binding upon it, the Commission may serve a direction on the provider requiring the provider to take such measures as are specified in the direction. The direction may require, among other things, all or any of the following: the reimbursement of payments by a provider to an end-user; payment of compensation by a provider to an end-user; or payment by a provider in settlement of losses suffered by an end-user.

Disputes involving parties in more than one Member State

Section 34 establishes that where a person refers a relevant dispute to the Commission under section 31 that involves parties in different Member States, the Commission shall co-ordinate its efforts with any relevant regulatory authority in the other Member State with a view to bringing about a resolution of the dispute.

Remuneration and expenses of person appointed by Commission to carry out dispute resolution process

Section 35 sets out that the Commission may pay such remuneration and expenses to an independent person appointed by the Commission referred to in section 31(1) as it considers appropriate, and the amount of such payments shall be included in the expenses of the Commission for the purpose of section 30 of the Principal Act.

Enforcement

Section 36 sets out which failures by providers constitute a regulatory breach under this Part, and which failures constitute an offence.

Commission to be listed as alternative dispute resolution entity

Section 37 provides that the Competition and Consumer Protection Commission shall add the Commission to the list of ADR entities established and maintained by it under Regulation 8 of the *European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015*.

Procedure under this Part without prejudice to other remedies

Section 38 provides that this Part is without prejudice to an end-user's right to pursue a dispute to which this section applies by other legal means or proceedings.

PART 5

INTERIM MEASURES

Urgent interim measures

Section 39 sets out the rules around "urgent interim measures", which the Commission is able to impose if it has evidence of a breach of a regulatory provision or a breach of conditions, or of a substantial risk that either such breach will take place, that represents an immediate and serious threat to public safety, public security or public health, or risks creating serious economic or operational problems for other providers or users of electronic communications networks or services or other users of the radio spectrum.

Imposition of urgent interim measures by High Court

Section 40 provides that the High Court may, by order, require that, on the expiry of any specified urgent interim measure imposed by the Commission under the previous section, the breach or conduct cease immediately or within a reasonable time period, and that specified measures be taken to remedy the breach or the effects of the conduct concerned.

PART 6

ADMINISTRATIVE SANCTIONS

Chapter 1 – Interpretation and application of Part 6

Interpretation (Part 6)

Section 41 provides for definitions of terms used in this Part.

Regulatory provisions and power of Minister to apply Part to certain breaches

Section 42 defines a "regulatory provision" and details the provisions of other legal instruments that the Minister may prescribe as regulatory provisions for the purposes of this Act.

Application of Part

Section 43 sets out that this Part applies in respect of a licence notwithstanding anything to the contrary in the Act of 1926, any Regulations made under section 6 of the Act of 1926, and in the licence itself.

Chapter 2 – Preliminary procedure

Power of Commission to resolve suspected regulatory breach, etc.

Section 44 states that where the Commission suspects on reasonable grounds that a person has committed or is committing a regulatory breach, it may enter into an agreement in writing with the person to resolve the matter, and that where that person fails to comply with any of the terms of the agreement, the Commission may apply to the High Court for an order requiring that person to comply with those terms.

Notice of suspected non-compliance

Section 45 sets out that an authorised officer, who suspects that a person has committed or is committing a regulatory breach, which either does or does not constitute a criminal offence, may serve on the person a notice in writing of the details of the suspected breach.

Supplementary notice of suspected non-compliance

Section 46 provides that where an authorised officer who has already issued a notice of suspected non-compliance identifies new evidence which impacts said notice, or any error or inaccuracy in the notice, they shall serve a supplementary notice of suspected non-compliance on each person on which the initial notice was served.

Commission may revoke notice of suspected non-compliance, etc

Section 47 provides that the Commission may revoke a notice of suspected non-compliance or a supplementary notice of suspected non-compliance.

Commission may publish notice of suspected non-compliance, etc

Section 48 provides that the Commission may publish a notice of suspected non-compliance or a supplementary notice of suspected non-compliance on the website of the Commission, with due regard for commercially sensitive information, save where such publication would, in the opinion of the Commission, prejudice the achievement of the objectives of this Act.

Commitments

Section 49 provides for a commitments procedure which allows the Commission to accept commitments from a person under investigation for a regulatory breach. The commitments concerned may require the person to take or refrain from taking particular actions. The commitments can be renegotiated by the parties. Should the commitments not be complied with, the original investigation can be continued.

Settlements

Section 50 provides for a settlement procedure which allows the Commission to enter into a settlement agreement with any person under investigation for a regulatory breach prior to the date on which an adjudicator makes a decision under section 72. The settlement agreement may be on such terms as may be agreed between the parties and would constitute a final resolution of the matter under investigation.

Actions by authorised officer following investigation

Section 51 states that following an investigation, an authorised officer may close the investigation and not take any further action in respect of the matter, or where the authorised officer suspects on reasonable grounds that the notified person has committed or is committing a regulatory breach, refer the matter for adjudication.

Referral report

Section 52 dictates that, prior to referring a matter for adjudication, an authorised officer shall prepare a referral report containing a detailed description of the relevant facts of the case, as well as details of the regulatory breach concerned.

Referral of matter by authorised officer to adjudicator for adjudication

Section 53 provides that when an authorised officer refers a matter for adjudication, they shall furnish the adjudicator with the notice of suspected non-compliance served, as well as the referral report, a copy of all material relied upon in forming their opinion, and any submissions made by the notified person during the investigation.

Withdrawal by Commission of matter referred to adjudicator

Section 54 allows for the Commission to withdraw a matter referred to an adjudicator, at any time before the adjudicator makes an adjudication.

Power of Commission to share certain documents

Section 55 sets out that the Commission may provide a copy of any notice or document referred to in section 45, 46, 53 or 65 to such other persons as the Commission considers appropriate, subject to such redactions as the Commission considers appropriate.

Regulations and rules relating to referrals to adjudicator

Section 56 provides that the Minister may prescribe the procedure for making and withdrawing a referral, and for making an application for an adjudication on consent under section 91(1); and that the Commission, subject to any regulations made by the Minister, may make rules detailing the procedures stated above.

Chapter 3 – Adjudicators

Nomination of adjudicators

Section 57 outlines requirements for a person to be eligible for nomination as an adjudicator by the Commission; and allows for the Minister to prescribe categories, criteria, requirements, and qualifications necessary for a person to be eligible for nomination.

Appointment of adjudicators

Section 58 provides that the Minister shall appoint a person nominated by the Commission as an adjudicator unless the Minister is not satisfied that the nominated person meets the requirements and qualifications prescribed by the Minister; or considers that the nominated person does not have the independence necessary to be appointed as an adjudicator. This section also states that the Commission shall appoint one of the appointed adjudicators as the Chief Adjudicator.

Independence of adjudicators

Section 59 provides that adjudicators shall be independent in the performance of their functions, and that the Commission shall put measures in place to ensure such independence. It also provides that an adjudicator shall recuse themselves from proceedings where a conflict of interest may arise.

Regulations to ensure independence of adjudicators

Section 60 provides that the Minister shall make regulations prescribing requirements upon the Commission and adjudicators to implement section 59, and that these regulations may make further provision for the independence of adjudicators including, for example, an effective internal separation between the functions of the Commission and the functions of adjudicators.

Adjudicators may sit together

Section 61 provides that the Chief Adjudicator may direct that an uneven number of adjudicators sit together for the purpose of a particular adjudication or part of an adjudication, and in such a case, the functions of the adjudicator for that purpose shall be exercised by those adjudicators sitting together.

Regulations in relation to adjudicators

Section 62 states that the Minister shall, in a manner ensuring the independence of adjudicators in the performance of their functions, make regulations to provide for, among other things, the term of appointment of adjudicators, the remuneration of adjudicators, and the resignation from office of adjudicators.

Assistants to adjudicators

Section 63 provides that the Commission may from time to time require any employee of the Commission, or appoint such persons as it considers necessary, to assist adjudicators in the performance of their functions, and sets out rules regarding same.

Effect of appointment as adjudicator on terms of employment or contract with Commission

Section 64 provides that nothing in this Part shall preclude the Commission from relying on any aspect of a contract of service or contract for services in relation to the performance or non-performance of non-adjudication-related tasks, and that appointment of a person as an adjudicator shall not constitute employment by or within the Commission, nor should it constitute the holding of a position in the civil service.

Chapter 4 – Procedure following referral to adjudicator

Notification by adjudicator following referral

Section 65 provides that, as soon as is practicable after a referral is made to an adjudicator, the adjudicator shall serve on the notified person a copy of this section, as well as a notice in writing stating that the matter has been referred for an adjudication and inviting the person to make submissions in writing to the adjudicator on the referral report.

Actions following referral under section 50(3)(c)

Section 66 provides that at any time after a referral under section 50(3)(c), an adjudicator may impose on the person the following: a requirement to cease the regulatory breach or to take specified measures to remedy the breach, a financial penalty in accordance with section 76; a requirement to pay a refund in accordance with section 77; a requirement to pay compensation in accordance with section 78; and a suspension or withdrawal of authorisation or rights of use of radio spectrum or rights of use for numbers, in accordance with section 79.

Actions following referral under section 53

Section 67 sets out that in the case of a referral under section 53, the adjudicator may do any of the following that they consider necessary to resolve an issue of fact or otherwise enable the adjudicator to make an adjudication: exercise any of the powers under section 69; request further information from the person concerned; request further information from any other person; or conduct an oral hearing.

Admissibility of evidence and rules for oral hearings conducted by adjudicators

Section 68 provides that an adjudicator may, by notice, in writing, summon a witness to appear to give evidence, or to produce before the adjudicator any books, documents or records in such person's power or control, or to do both; and require the witness to attend an oral hearing from day to day unless excused, or released from further attendance, by the adjudicator.

Powers of adjudicators and offences

Section 69 provides that at any time after a referral under section 51, an adjudicator may direct authorised officers of the Commission or the notified person to answer an identified question or questions in whatever manner or form the adjudicator may specify; or direct a party to adduce evidence or produce books, documents and records in its power or control; or direct a party to clarify any issue of fact that an adjudicator may deem necessary.

Orders for costs in proceedings before adjudicator

Section 70 provides that no order as to costs shall be made in proceedings before an adjudicator, save that an adjudicator in their discretion awards the costs of proceedings against a respondent where they are found to have committed a regulatory breach, or engaged in the investigation in an improper way; or against the Commission in the event that no regulatory breach is found or the Commission engaged in an improper way.

Regulations in relation to proceedings before adjudicator

Section 71 provides that the Minister may make regulations setting out detailed requirements in relation to decisions of an adjudicator under sections 72 and 73, including, for example: the form and manner of provision of information and evidence to be provided to the Commission or to the adjudicator; time limits to apply to the making and conduct of proceedings; and the attendance of witnesses at an oral hearing.

Decision of adjudicator in relation to breach

Section 72 provides that an adjudicator shall consider the following when making a decision in relation to a matter referred to them under section 53: the notice of suspected non-compliance; the referral report; any written submissions made by the notified person on the notice of suspected non-compliance and the referral report; any information provided to the adjudicator in the course of the proceedings; and any prior relevant adjudication.

Decision of adjudicator in relation to administrative sanction

Section 73 outlines the actions an adjudicator may take where they have made a decision that a person has committed a regulatory breach, which include: requiring the person to cease the breach or take steps to remedy the breach; imposing a financial penalty; requiring the person to pay a refund to a third party; requiring the person to pay compensation to a third party; suspending or withdrawing the person's authorisation to provide electronic communications networks or services.

Adjudication to take effect when confirmed by High Court

Section 74 provides that an adjudication shall take effect at the time it is confirmed by the High Court under section 91 subject to any order made by a court on an appeal of the adjudication or on an application for leave to appeal the adjudication.

Notice of adjudication

Section 75 provides that as soon as is practicable after the adjudicator has made a decision under section 73, they shall provide the Commission with the decision. Within 7 days of the receipt of the decision, the Commission shall give notice in writing of the decision to the person concerned.

Chapter 5 – Imposition of administrative sanctions

Requirement to pay financial penalty

Section 76 sets out the criteria an adjudicator shall have regard to when determining the amount of a financial penalty, including, amongst other things, the need to ensure that the financial penalty is appropriate, effective, and proportionate to the regulatory breach. It also provides that the maximum amount of a financial penalty that an adjudicator may impose on a person shall be the greater of €5 million and 10 per cent of the total turnover in the State of the person in the financial year preceding the imposition of the financial penalty, or in the case of a natural person, the greater of €500,000 and 10 per cent of the annual income of the person on whom the financial penalty is to be imposed.

Requirement to pay refund

Section 77 provides that where an adjudicator considers that an end-user has been overcharged for a service as a result of a regulatory breach, the adjudicator may require that the person concerned refund the end-user in part or in full.

Requirement to pay compensation

Section 78 provides that when determining the amount of compensation to be paid by a person in respect of a regulatory breach, an adjudicator shall take account of, amongst other things: the need to ensure that the compensation is appropriate and proportionate; the amount of any loss suffered, or costs incurred by any person affected by the breach; and the effect of the breach on any person affected by the breach, including any distress, inconvenience or emotional upset caused by the breach.

Suspension or withdrawal of authorisation or rights of use

Section 79 provides that where an adjudicator receives a recommendation from the Commission under section 73(9) and the adjudicator considers that there are, or have been, serious or repeated breaches of conditions by a person, the adjudicator may withdraw or suspend the general authorisation of a person to provide electronic communications networks or services and some or all of the person's rights of use for radio spectrum and of use for numbering resources.

Guidelines

Section 80 establishes that the Commission may prepare and make guidelines in relation to any matter provided for in or under this Part, including, amongst other things, the conduct of oral hearings, the imposition of administrative sanctions, the award of compensation, and the award of refunds.

Regulations in relation to certain matters

Section 81 states that the Minister may provide in regulations for any matter referred to in paragraphs (a) to (f) of section 80(1).

Chapter 6 – Admissibility of certain evidence

Admissibility of evidence before Commission

Section 82 provides that the type of proof that is admissible as evidence in proceedings under this Part shall include relevant documents, oral statements, electronic messages, recordings and all other objects containing information, irrespective of the form it takes and the medium on which information is stored.

Chapter 7 – Restrictions on disclosure of certain information

Restrictions on disclosure of certain information

Section 83 establishes that where an authorised officer requires a natural person to provide a statement or admission on the basis of measures referred to in applicable provisions, any such statement or admission may not be admissible in evidence against that person in criminal proceedings or for perjury where such statement or admission was provided under oath.

Confidentiality rings

Section 84 provides that where the Commission or an adjudicator provides a document to any person, it may specify and so notify the person concerned that such document, or such part of the document as it may specify, may not be viewed by, or shared with, any person other than as the Commission may specify.

Chapter 8 – Appeals, confirmation and judicial review of certain decisions

Interpretation (Chapter 8 of Part 6)

Section 85 states that in this Chapter, “Court” means the High Court.

Decisions reviewable only by appeal under this Chapter

Section 86 states that neither an urgent interim measure, nor an adjudication shall be challenged, including as to its validity, other than by way of an appeal under section 87 or section 88 respectively.

Appeal against urgent interim measures notice

Section 87 provides that a person to whom an urgent interim measure is directed may appeal to the Court against such measure not later than 14 days after the date of service of the urgent interim measures notice.

Appeal against adjudication

Section 88 provides that a person the subject of an adjudication may appeal to the Court against that adjudication not later than 28 days after the date of service of the notice.

Conduct of appeals

Section 89 sets out the procedure for appeals under this Part. It provides that on hearing an appeal, the Court may confirm the decision, or, where it is satisfied by reference to the grounds of appeal that a serious and significant error of law or fact, or a series of minor errors of law or fact which when taken together amount to a serious and significant error, was made in making the decision, or that the decision was made without complying with fair procedures, annul the decision in its totality or in part.

Orders for costs by Court on appeal

Section 90 provides that the Court may in its discretion award the costs of an appeal as if section 70 applied to such an award.

Court confirmation of adjudication

Section 91 provides that where a person does not appeal to the Court against an adjudication within the period provided for the Commission shall, as soon as is practicable after the expiration of the period allowed for such an appeal, make an application to the Court for the confirmation of that adjudication. This section further sets out the procedure regarding the above.

Publication of adjudication

Section 92 provides that the Commission shall publish an adjudication confirmed by the Court under section 91.

Adjudicator may refer question of law to Court

Section 93 provides that an adjudicator may, on their own initiative or at the request of the Commission or a person the subject of a referral under section 53, refer to the Court for decision by way of case-stated a question of law arising at a hearing under section 53. This section further sets out the procedure regarding same.

Judicial review

Section 94 establishes that the validity of a decision made or an act done by the Commission in the performance of a function under Part 5 or Chapters 1 to 7 of this Part shall not be challenged other than by way of an application for judicial review, or in accordance with a process provided for in the Principal Act or this Act by which the validity of such decision or act may be challenged.

Appeals to Court of Appeal

Section 95 states, amongst other things, that an appeal to the Court of Appeal shall lie in respect of a determination of the High Court on an appeal under section 88 in respect of a decision by an adjudicator under section 72 or 73. Such appeals will only be granted with leave of the High Court and where the High Court certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be made to the Court of Appeal.

Treatment of amounts paid to Commission pursuant to Part 6

Section 96 provides that a payment received by the Commission of any amount due to it pursuant to this Part shall be paid into, or disposed of for the benefit of, the Exchequer in such manner as the Minister for Finance may direct.

Non-applicability of limitation periods to certain actions

Section 97 provides that the service of an urgent interim measure notice or a suspected non-compliance notice; or a referral under section 50(3)(c) or 53, may be served or made, as the case may be, by the Commission at any time.

Commission to collect information relating to appeals and decisions to grant interim measures

Section 98 provides that the Commission shall collect information on the general subject matter of appeals under this Chapter, the number of appeals, the duration of appeal proceedings and the number of decisions to urgent interim measures; and provide this information to the Minister.

Chapter 9 – Revocation, transitional provisions and consequential amendments

Revocation

Section 99 sets out the regulations which are revoked as a result of this Bill.

Transitional provisions where Regulator has notified proposed withdrawal of authorisation or suspension or withdrawal of rights

Section 100 sets out the continuing application of certain regulations where the Regulation has proposed withdrawal of authorisation or suspension or withdrawal of rights.

Transitional provisions where certain applications have been made

Section 101 provides for the continuing application of certain regulations where applications have been made by the Regulator.

Transitional provisions where certain notifications have been given

Section 102 provides that where notifications have been given under certain regulations, where an authorised officer suspects on reasonable grounds that the operator or undertaking has committed or is committing a regulatory breach, the authorised officer may refer the matter for adjudication.

PART 7

AMENDMENT OF CODE REGULATIONS

Amendment of Code Regulations

Section 103 provides that Regulation 108 of the Code Regulations is amended by the substitution of “on conviction on indictment, to a fine not exceeding €10,000,000” for “on conviction on indictment, to a fine not exceeding €500,000”.

Part 8 – Miscellaneous Amendments to Principal Act

Amendment of section 2 of Principal Act

Section 104 sets out the amendments made by this Act to section 2 of the Communications Regulation Act 2002 (known as the “Principal Act”), regarding definitions.

Amendment of section 10 of Principal Act

Section 105 sets out the amendments made by this Act to section 10 of the Principal Act, regarding the functions of the Commission.

Power of Minister to request advice from Commission

Section 106 states that the Minister may request the Commission to advise them on matters relating to the electronic communications market or matters relating to the Commission’s functions, and sets out the amendments to the Principal Act in this regard.

Power of Commission to obtain information

Section 107 amends section 13D of the Principal Act, regarding the power of the Commission to obtain information.

Power of Commission to share information with Minister

Section 108 inserts section 13EA to the Principal Act, which provides for the sharing of information with the Minister.

Amendment to section 39 of Principal Act

Section 109 sets out the amendments made by this Act to section 39 of the Principal Act, regarding the powers of authorised officers.

Amendment of section 40 of Principal Act

Section 110 provides for an amendment to section 40 of the Principal Act, regarding search warrants.

Amendment to Section 43 of Principal Act

Section 111 provides for an amendment to section 43 of the Principal Act, regarding prosecution of summary offences.

Undertaking not to overcharge or charge for services not supplied

Section 112 amends section 45 of the Principal Act, regarding overcharging or charging for services not supplied.

Commission may apply to High Court for order to restrain certain repeated or apprehended contraventions

Section 113 amends section 46 of the Principal Act, allowing the Commission to conduct an audit of an undertaking’s billing system, switching system or contract change system, in the case of a regulatory breach.

Amendment of section 46B(1) of Principal Act

Section 114 amends section 46B(1) of the Principal Act, which relates to admissibility of expert evidence in proceedings.

Amendment of section 46D of Principal Act

Section 115 amends section 46D of the Principal Act, which relates to presumptions to apply in civil and criminal proceedings.

Amendment of section 57A of the Principal Act

Section 116 amends section 57A(8) of the Principal Act, which relates to the power of High Court to make compliance orders.

Service of notices

Section 117 amends section 60 of Principal Act, which relates to the service of notices.

Miscellaneous amendments to Principal Act

Section 118 inserts a new section 61 in the Principal Act, relating to privileged legal material, the Freedom of Information Act, and the publication of certain notices.

Amendment to Part 2 of Schedule 1 to Principal Act

Section 119 amends Part 2 of Schedule 1 of the Principal Act.

*An Roinn Comhshaoil, Aeráide agus Cumarsáide,
Meán Fómhair 2022.*