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**An Bille um Rialáil Cumarsáide agus um Ghníomhaireacht Forbartha don  
Mhol Digiteach (Leasú), 2022**

**Communications Regulation and Digital Hub Development Agency  
(Amendment) Bill 2022**

*athraithe ó  
changed from*

AN BILLE UM RIALÁIL CUMARSÁIDE, 2022  
COMMUNICATIONS REGULATION BILL 2022

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*Mar a ritheadh ag dhá Theach an Oireachtais*

*As passed by both Houses of the Oireachtas*

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**AN BILLE UM RIALÁIL CUMARSÁIDE AGUS UM GHNÍOMHAIREACHT  
FORBARTHA DON MHOL DIGITEACH (LEASÚ), 2022  
COMMUNICATIONS REGULATION AND DIGITAL HUB DEVELOPMENT AGENCY  
(AMENDMENT) BILL 2022**

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Postal and Telecommunications Services Act 1983 (No. 24)  
Probation of Offenders Act 1907 (7 Edw. 7 c. 17)  
Statute of Limitations (Amendment) Act 1991 (No. 18)  
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FORBARTHA DON MHOL DIGITEACH (LEASÚ), 2022  
COMMUNICATIONS REGULATION AND DIGITAL HUB DEVELOPMENT AGENCY  
(AMENDMENT) BILL 2022**

*athraithe ó*

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*changed from*

AN BILLE UM RIALÁIL CUMARSÁIDE, 2022

COMMUNICATIONS REGULATION BILL 2022

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# **Bill**

*entitled*

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An Act to give effect to certain provisions of Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018<sup>1</sup> establishing the European Electronic Communications Code; to provide that providers of public electronic communications networks and providers of publicly available electronic communications services take appropriate and proportionate measures to manage the risks posed to the security of networks and services; to enable the Minister to take measures in respect of the supply of critical components by certain vendors in order to safeguard the security of supply of such components; to provide for measures to assist consumers and other end-users; to provide for the resolution of certain complaints and disputes; to provide for interim measures to prevent certain breaches; to lay down rules on administrative sanctions applicable to breaches of regulatory provisions, including provisions adopted, and binding decisions of the Commission for Communications Regulation, pursuant to that Directive, in order to ensure that such provisions are implemented and that penalties for failure to do so are appropriate, effective, proportionate and dissuasive; to amend the European Union (Electronic Communications Code) Regulations 2022 (S.I. No. 444 of 2022); to amend the Communications Regulation Act 2002; to amend the Digital Hub Development Agency Act 2003; to amend the Postal and Telecommunications Services Act 1983 to enable funding to be made available for the purposes of maintaining the post office network and countering consequences of withdrawal of the United Kingdom from the European Union; and to provide for related matters.

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<sup>1</sup> OJ No. L321, 17.12.2018, p. 36

**Be it enacted by the Oireachtas as follows:**

## PART 1

### PRELIMINARY AND GENERAL

#### **Short title, collective citation, construction and commencement**

1. (1) This Act may be cited as the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023. 5
- (2) The Communications Regulation Acts 2002 to 2017 and this Act (other than *Parts 10* and *11*) may be cited together as the Communications Regulation Acts 2002 to 2023 and shall be construed together as one.
- (3) This Act, other than this Part, shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions. 10

#### **Interpretation**

2. (1) In this Act— 15
  - “Act of 1926” means the Wireless Telegraphy Act 1926;
  - “Act of 1972” means the European Communities Act 1972;
  - “BEREC” means the Body of European Regulators for Electronic Communications;
  - “breach of conditions” means a breach of the conditions of—
    - (a) a general authorisation, 20
    - (b) any rights of use for radio spectrum,
    - (c) any rights of use for numbering resources, or
    - (d) the specific obligations referred to in Article 13(2) of the Directive;
  - “Code Regulations” means the European Union (Electronic Communications Code) Regulations 2022 (S.I. No. 444 of 2022); 25
  - “Commission” means the Commission for Communications Regulation;
  - “consumer” means any individual who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business, craft or profession;
  - “date of service”, in relation to a notice or notification, means the date on which the notice or notification is given in accordance with section 60 of the Principal Act; 30
  - “Directive” means Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018<sup>2</sup> establishing the European Electronic Communications Code (Recast);

<sup>2</sup> OJ No. L321, 17.12.2018, p. 36

“general authorisation” means an authorisation for a person to provide an electronic communications network or service under and in accordance with regulations made under the Act of 1972 giving effect to Article 12 of the Directive;

“Minister” means Minister for the Environment, Climate and Communications;

“prescribed” means prescribed by regulations made by the Minister; 5

“Principal Act” means the Communications Regulation Act 2002;

“record” means any memorandum, book, report, statement, register, plan, chart, map, drawing, specification, diagram, program, algorithm, data, code, software, formula, pictorial or graphic work or other document, any photograph, film or recording (whether of sound or images or both), any form (including machine-readable form) or thing in which data (such as engineering data or personal data) or information is held or stored manually, mechanically, digitally or electronically and anything that is a part or a copy in any form, of any of, or any combination of, the foregoing, whether claimed as confidential or not; 10

“regulatory breach” means a failure to comply with— 15

(a) a regulatory provision,

(b) a relevant vendor measure,

(c) a confidentiality requirement of the Minister under *section 26(1)*,

(d) a direction under *section 33(2)*,

(e) a commitment under *section 67*, or 20

(f) an urgent interim measure;

“regulatory provision” has the meaning given to it by *section 60*;

“relevant vendor measure” has the meaning given to it by *section 25*;

“urgent interim measures” and “urgent interim measures notice” each has the meaning given to it by *section 57*. 25

- (2) A word or expression that is used in this Act and that is also used in the Directive has, unless the context otherwise requires, the same meaning in this Act that it has in the Directive.

### **Regulations**

3. (1) The Minister may 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 otherwise for the purpose of enabling any of its provisions to have full effect. 30

(2) Regulations made under this Act may contain such incidental, supplementary, consequential or transitional provisions as appear to the Minister to be necessary for the purposes of the regulations. 35

(3) The Minister may consult with the Commission before making regulations under this Act.

- (4) Every regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it has been made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 5

#### **Exercise of powers of authorised officers for purposes of Act**

4. An authorised officer may exercise any powers exercisable by him or her under the Principal Act (other than a power exercisable for a purpose specified in section 39(3A) of the Principal Act) for the purposes of this Act.

## PART 2 10

### SECURITY OF NETWORKS AND SERVICES

#### **Interpretation (*Part 2*)**

5. In this Part—

“CSIRT” means the unit of the Department of the Environment, Climate and Communications known as the computer security incident response team; 15

“ENISA” means the European Union Agency for Network and Information Security;

“provider” means a provider of public electronic communications networks or of publicly available electronic communications services;

“security audit” means the process of examining and evaluating, by such means as are necessary, a provider’s overall ability to appropriately manage the risks posed to the security of networks and services, including the provider’s ability to prevent and minimise the impact of security incidents on users and on other networks and services; 20

“security incident” means any action that compromises the availability, authenticity, integrity or confidentiality of networks and services, of stored or transmitted or processed data, or of the related services offered by, or accessible via, those electronic communications networks or services; 25

“security measures guidelines” has the meaning given to it by *section 7*;

“security of networks and services” means the ability of electronic communications networks and services to resist, at a given level of confidence, any action that compromises the availability, authenticity, integrity or confidentiality of those networks and services, of stored or transmitted or processed data, or of the related services offered by, or accessible via, those electronic communications networks or services. 30

#### **Obligation on providers to take measures to manage risk**

6. (1) Providers shall take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of networks and services. 35
- (2) Measures taken in accordance with *subsection (1)* shall ensure a level of security appropriate to the risk presented having regard to the state of the art.

- (3) In particular, measures, including the use of encryption where appropriate, shall be taken by providers to prevent security incidents and minimise the impact of any security incident on users and on other networks and services.
- (4) The Minister, having consulted with the Commission, may make regulations in relation to the types of measures to be taken by providers to manage risks in accordance with *subsection (1)*. 5
- (5) Regulations under *subsection (4)* may—
- (a) contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of ensuring that risks posed to the security of networks and services are appropriately managed, 10
  - (b) apply generally or to such class of providers, electronic communications networks or electronic communications services, technologies, equipment, associated facilities or associated services as the Minister may prescribe, and
  - (c) include different provisions in relation to different classes of providers, electronic communications networks or electronic communications services, technologies, equipment, associated facilities or associated services. 15
- (6) Subject to *subsection (8)*, the Minister shall, before making regulations under *subsection (4)*, publish a draft of the proposed regulations on a website maintained by or on behalf of the Department of the Environment, Climate and Communications and allow a period of 30 days beginning on the day on which the draft is published during which persons may make written representations to the Minister in relation to the proposed regulations. 20
- (7) The Minister may, having considered any representations received during the period specified in *subsection (6)*, make the regulations with or without modification.
- (8) Where the Minister is satisfied that regulations under *subsection (4)* are required urgently in order to prevent a serious imminent risk to the security of networks and services, to the health or safety of persons or to property, the Minister may make the regulations without complying with *subsection (6)*. 25
- (9) *Subsections (1), (2) and (3)* are regulatory provisions.
- (10) A provider that fails to comply with a provision of regulations made under this section that is stated in the regulations to be a penal provision commits an offence and is liable on summary conviction to a class A fine. 30

### **Security measures guidelines**

7. (1) The Minister may, for the purpose of providing practical guidance to providers, having consulted with the Commission and such other persons as he or she may consider appropriate— 35
- (a) prepare and publish guidelines on the implementation of technical and organisational measures to manage the risks posed to the security of networks and services, and

- (b) approve guidelines, or any part of guidelines, on the implementation of technical and organisational measures to manage the risks posed to the security of networks and services made or published by another person,
- (each referred to in this Act as “security measures guidelines”).
- (2) Without prejudice to the generality of *subsection (1)*, security measures guidelines may relate to any of the following: 5
- (a) the risks posed to the security of networks and services;
  - (b) the types of measures considered appropriate for securing electronic communication networks and services;
  - (c) guidance on the implementation methods of specified measures; 10
  - (d) standards or technical specifications that may be considered appropriate for the implementation of specified measures;
  - (e) certification schemes that may be considered appropriate to adopt for the implementation of specified measures;
  - (f) commencement times for certain measures; 15
  - (g) transitional provisions for providers.
- (3) Before publishing or approving security measures guidelines, the Minister shall publish a draft of the proposed guidelines on a website maintained by or on behalf of the Department of the Environment, Climate and Communications and allow a period of 30 days beginning on the day on which the draft is published during which persons may make written representations in relation to the proposed guidelines. 20
- (4) The Minister may, having considered any representations received during the period specified in *subsection (3)*, publish or, as the case may be, approve the guidelines with or without modification.
- (5) Where the Minister approves guidelines he or she shall publish the approved guidelines or a notice to that effect. 25
- (6) Where the Minister is satisfied that security measures guidelines are required urgently in order to prevent a serious imminent risk to the security of networks and services, to the health or safety of persons or to property, the Minister may publish or approve the guidelines without consulting in accordance with *subsection (3)*. 30
- (7) The Minister may publish security measures guidelines in such form or manner as he or she considers appropriate, including on the internet, and any security measures guidelines published shall specify the date from which they have effect.

#### **Courts, etc. to have regard to security measures guidelines**

8. In any legal proceedings before a court or tribunal, the court or tribunal shall have regard to a security measures guideline in determining any question arising in the proceedings if— 35
- (a) the question relates to a time when the guideline was in force, and
  - (b) 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**

9. The Commission shall have regard to any security measures guideline in determining any question arising in relation to it carrying out its functions if—
- (a) the question relates to a time when the guideline was in effect, and 5
  - (b) the guideline appears to the Commission to be relevant to determining the question.

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

10. An adjudicator shall have regard to any security measures guideline in determining any question arising in relation to it carrying out its functions under *Part 7* if—
- (a) the question relates to a time when the guideline was in force, and 10
  - (b) the guideline appears to the adjudicator to be relevant to the question.

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

11. (1) A provider shall, where any security incident occurs that has had or is having a significant impact on the operation of the provider's electronic communications networks or services, notify the Commission in accordance with *subsection (3)* without undue delay. 15
- (2) In order to determine whether the impact of a security incident is significant for the purposes of *subsection (1)* a provider shall have regard to the following matters in respect of the incident: 20
- (a) the duration of the incident;
  - (b) the number of users affected;
  - (c) any class of users particularly affected; 25
  - (d) the geographical area affected;
  - (e) the extent to which the functioning of the network or service was affected;
  - (f) the impact of the incident on economic and societal activities;
  - (g) the cause of the incident and any particular circumstances that resulted in the security incident. 30
- (3) A notification made under *subsection (1)* shall contain the following information in relation to the incident:
- (a) the provider's name;
  - (b) the public electronic communications network or publicly available electronic communications services provided by it affected by the incident; 35
  - (c) the date and time the incident occurred and its duration;
  - (d) the information specified in *paragraphs (a) to (g)* of *subsection (2)*;

- (e) information concerning the nature and impact of the incident;
  - (f) information concerning any or any likely cross-border impact;
  - (g) such other information as the Commission may specify.
- (4) Where a provider notifies the Commission of an incident in accordance with this section it shall, as soon as practicable, notify the Commission when the incident is resolved and of the actions taken by it to remedy the incident and, where applicable, any actions taken to reduce the likelihood of a similar incident occurring in the future. 5
- (5) Where the Commission is notified of a security incident under *subsection (1)* it shall—
- (a) inform the Minister of the notification, and 10
  - (b) where the Commission, having consulted with the Minister, considers it appropriate to do so, notify the competent authorities of other Member States and ENISA.
- (6) Where the Commission determines, having consulted with the Minister, that the disclosure of a security incident notified under *subsection (1)* is in the public interest it may inform the public of the incident or require the provider concerned to do so. 15
- (7) *Subsections (1), (2), (3) and (4)* are regulatory provisions.
- (8) A provider—
- (a) who fails to notify the commission in accordance with *subsection (1)*,
  - (b) who fails to make all reasonable efforts to provide the information referred to in *subsection (3)*, or 20
  - (c) that is required by the Commission under *subsection (6)* to inform the public of a security incident and that fails to do so,
- commits an offence and is liable on summary conviction to a class A fine.
- (9) The Commission shall in each year submit a summary report to the Minister, the European Commission and ENISA on the notifications received and the actions taken by the Commission in accordance with this section. 25

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

12. (1) 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— 30
- (a) inform its users potentially affected by such a threat of any possible protective measures or remedies which can be taken by the users, and
  - (b) where appropriate, inform its users of the threat itself.
- (2) *Subsection (1)* is a regulatory provision. 35
- (3) A provider who fails to inform its users in accordance with *subsection (1)(a)* commits an offence and is liable on summary conviction to a class A fine.

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

13. 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

14. (1) A provider shall, on the request of the Commission, provide the Commission with the information needed to assess the security of the provider's networks and services, including documented security policies. 5
- (2) The Commission may serve a direction (referred to in this Part as a "security measures direction") on a provider—
- (a) to remedy a security incident, 10
  - (b) to prevent a security incident from occurring when a significant threat has been identified, or
  - (c) to ensure that the provider is in compliance with this Part.
- (3) Without prejudice to the generality of *subsection (2)*, a security measures direction may require a provider to do one or more of the following: 15
- (a) to implement specified measures within specified time limits to remedy a security incident or prevent one from occurring when a significant threat has been identified;
  - (b) where the Commission has reasonable grounds to believe that a provider is failing, or has failed, to act in accordance with this Part, regulations under this Part or security measures guidelines, to provide a statement to the Commission indicating what measures the provider has taken to comply with the relevant regulations or guidelines and, where the provider has failed to act in accordance with regulations or guidelines, explaining the reasons for such failure; 20
  - (c) to provide information needed to assess the security of their networks and services, including documented security policies; 25
  - (d) to submit to a security audit by the Commission or a qualified independent person nominated by the Commission and make the results of any security audit not carried out by the Commission available to the Commission;
  - (e) to bear the costs of an audit under *paragraph (d)*; 30
  - (f) to implement specified measures within specified time limits in order to remedy any deficiencies identified during an assessment referred to in *paragraph (c)* or a security audit referred to in *paragraph (d)*.
- (4) A direction under *subsection (2)* takes effect—
- (a) immediately upon its service, where the Commission considers, and states in the direction, that it is necessary that the direction take effect immediately to prevent a serious imminent risk to the security of networks and services, the health or safety of persons or to property, and 35
  - (b) in any other case upon the expiration of the period allowed for representations to be made under *subsection (5)*. 40

- (5) A provider that is the subject of a security measures direction may make written representations to the Commission in respect of the direction within the period of 14 days beginning on the date on which the direction is served on the provider and the Commission shall consider any representations made to it during that period and affirm (with or without modification) or withdraw the direction. 5
- (6) Where a direction is affirmed under *subsection (5)* the Commission shall notify the provider concerned.
- (7) A provider that fails to comply with a security measures direction commits an offence and is liable on summary conviction to a class A fine.

### Security audits 10

15. (1) Where the Commission serves a security measures direction on a provider requiring the provider to submit to a security audit the Commission may appoint such member of the staff of the Commission, or such other suitably qualified independent person as the Commission considers appropriate, (referred to in this section as a “security auditor”) to carry out the security audit in accordance with the direction. 15
- (2) A security auditor shall, on his or her appointment, be provided by the Commission with a certificate of his or her appointment and when exercising a power referred to in *subsection (3)* shall, if requested by any person thereby affected, produce such certificate to that person for inspection.
- (3) Where the Commission serves a security measures direction on a provider requiring the provider to submit to a security audit a security auditor may, for the purposes of carrying out the audit, exercise any power exercisable by an authorised officer under the Principal Act (other than a power exercisable for a purpose specified in section 39(3A) of the Principal Act) and where a security auditor exercises such a power a reference to an authorised officer exercising such a power in the Principal Act shall include a reference to the security auditor. 20 25

### Assistance and information sharing

16. (1) The Commission may, for the purposes of exercising its functions under this Part, consult, cooperate, share information with, or obtain the assistance of—
- (a) the CSIRT, 30
- (b) a Computer Security Incident Response Team in another Member State designated pursuant to Article 9 of Directive (EU) 2016/1148<sup>3</sup>, and
- (c) a national regulatory authority in another Member State to whom a task under the Directive has been assigned.
- (2) The Commission shall, where appropriate, consult and cooperate with the Garda Síochána, the competent authorities designated in accordance with Regulations 7 and 8 of the European Union (Measures for a High Common Level of Security of Network and Information Systems) Regulations 2018 (S.I. No. 360 of 2018), the competent authorities within the meaning of Article 8(1) of Directive (EU) 2016/1148<sup>4</sup> and the Data Protection Commission in relation to any matter concerning this Part. 35 40

3 OJ No. L194, 19.7.2016, p. 1

4 OJ No. L194, 19.7.2016, p. 1

- (3) The Commission shall consult and cooperate with the Data Protection Commission in relation to any incident involving personal data (within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>5</sup>).
- (4) Information shared under this Part may include personal data.
- (5) Where the Commission receives or shares information under this Part in relation to a provider the Commission shall take all reasonable steps to protect the confidentiality of the information so shared, the security of networks and services and the commercial interests of the provider to which the information relates. 5

**Appeal of decisions, etc. under *Part 2, Part 4* or Code Regulations**

- 17. (1) Neither a decision or a requirement of— 10
  - (a) the Commission under this Part or *Part 4*, or the Code Regulations (other than Regulation 98 and 99), or
  - (b) the Minister under Regulation 70, 76 or 100 of the Code Regulations,
 shall be challenged, including as to its validity, other than by way of an appeal under this section. 15
- (2) For the avoidance of doubt, in respect of a decision or requirement referred to in *subsection (1)* no proceeding (including an application for judicial review) may be brought before the courts other than an appeal under this section.
- (3) A person affected by a decision or a requirement of—
  - (a) the Commission under this Part or *Part 4*, or the Code Regulations (other than Regulation 98 and 99), or 20
  - (b) the Minister under Regulation 70, 76 or 100 of the Code Regulations,
 (referred to in this section as the “decision”) may, not later than 28 days after the person receives notice of the decision, appeal the decision to the High Court.
- (4) Pending the outcome of an appeal, the decision of the Commission or the Minister, as the case may be, shall stand unless on application to the High Court, the Court suspends the application of the decision until the determination of an appeal or its withdrawal. 25
- (5) The respondent to an appeal referred to in *subsection(3)(a)* shall be the Commission.
- (6) The respondent to an appeal referred to in *subsection (3)(b)* shall be the Minister. 30
- (7) A person that brings an appeal under this section shall, on the same date as it makes such appeal notify the respondent of the fact that it has made the appeal and of the grounds on which it has made the appeal.
- (8) The High Court may, for the purpose of ensuring the efficient, fair and timely determination of an appeal, give directions in respect of the conduct of the appeal. 35
- (9) An appellant shall, when making an appeal precisely state all of the grounds in law and fact upon which the appeal is made and shall provide to the Court all of the

5 OJ No. L119, 4.5.2016, p. 1

- documents and evidence which it is alleged support the granting of the appeal or upon which the appellant intends to rely to support those grounds.
- (10) Subject to *subsection (11)*, a party to an appeal shall not be entitled during the course of an appeal to make submissions to the Court other than submissions related to the grounds stated, or documents and evidence provided under *subsection (9)*. 5
- (11) The Court may, upon application and where it considers it necessary for the fair and proper determination of an appeal, require or permit a party to an appeal to—
- (a) make submissions to the Court other than submissions related to the grounds stated or documents and evidence provided under *subsection (9)*, and
- (b) provide documents or evidence to the Court other than documents or evidence provided under *subsection (9)*. 10
- (12) Notwithstanding *subsection (11)*, the Court shall refuse to consider submissions, documents or evidence where it considers that—
- (a) the submissions, documents or evidence are not relevant to the appeal, or
- (b) it is appropriate to do so in order to avoid undue repetition of submissions. 15
- (13) Where the Court has granted leave to deliver additional submissions, documents or evidence on an application under *subsection (11)*, the Court shall give directions as to the scope, form and time-frame for delivery of such additional submissions, documents or evidence.
- (14) The Court may receive evidence by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. 20
- (15) The Court, on hearing an appeal against a decision, may consider—
- (a) whether the jurisdiction existed to make the decision,
- (b) whether the law was correctly applied in reaching the decision, or
- (c) whether the decision is supported by the evidence including evidence admitted in accordance with *subsection (11)*. 25
- (16) In considering an appeal, the Court shall have regard to—
- (a) the record of the decision the subject of the appeal,
- (b) the grounds stated by the parties to the appeal, and documents and evidence relied upon by the parties to support those grounds, under *subsection (9)*, and 30
- (c) any submissions, documents or evidence admitted under *subsection (11)*.
- (17) The Court may, on the hearing of an appeal against a decision—
- (a) confirm the decision, or
- (b) 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, and— 35

- (i) remit the decision for reconsideration by the Commission or the Minister, as the case may be, subject to such directions as the Court considers appropriate, or
- (ii) vary the decision and substitute such other decision as the Court considers appropriate.

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

18. The decision of the High Court under *section 17* shall be final and no appeal shall lie from the decision of the High Court to the Court of Appeal in any case save with leave of the High Court, which leave shall only be granted where the High Court 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 made to the Court of Appeal.

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PART 3

SECURITY MEASURES IN RESPECT OF CERTAIN VENDORS

**Interpretation (*Part 3*)**

19. In this Part—

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“component” includes any function, technology, equipment, hardware, software, facility, good or service used in the provision of electronic communications networks or electronic communications services;

“critical component” means a critical component prescribed by the Minister under *section 20*;

20

“provider” means a provider of public electronic communications networks or of publicly available electronic communications services;

“relevant vendor” means a vendor, in respect of which the Minister has made an assessment under *section 22*;

“third country” means a country other than a Member State of the European Union, an EEA state, Switzerland and the United Kingdom;

25

“vendor” means a person who, normally for remuneration, provides components, functions, technology, equipment, hardware, software, facilities or services to providers of electronic communications networks to build or operate the network.

**Critical components**

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20. (1) The Minister may prescribe any component or any class of components as a critical component or critical components.
- (2) Without prejudice to the generality of *subsection (1)*, in prescribing a component or class of components, the Minister may have regard to:

- (a) the impact a compromise of a component referred to in *subsection (1)* would have on the availability, authenticity, integrity or confidentiality of those networks and services;
- (b) the likelihood of a compromise of such a component;
- (c) the extent of the impact a compromise of such a component would have on national security, or economic or societal activities;
- (d) the number of users likely affected by a compromise of such a component.

**Minister to assess likelihood of vendor being subjected to interference by third country**

21. (1) The Minister may assess at any time, and on an ongoing basis, the likelihood of a vendor being subjected to interference by a third country. 10
- (2) Without prejudice to the generality of the matters that the Minister may consider for the purposes of *subsection (1)*, the Minister shall have regard to the following matters when making an assessment under that subsection:
- (a) whether or not a strong link exists between the vendor and the government of any third country; 15
  - (b) the status of the rule of law and the political situation within the third country in question, in particular whether or not there is democratic or legislative oversight, including an independent judiciary, in place, and whether or not data protection or security agreements exist between the European Union and the third country in question; 20
  - (c) the characteristics of the vendor’s business ownership and practices, in particular whether the ownership structure is transparent and whether the vendor’s sources of finance are transparent;
  - (d) the ability of the third country in question to exert any form of pressure upon the vendor, including in relation to influencing where equipment is to be manufactured; 25
  - (e) whether or not the third country, from which the vendor originates, conducts or is associated with an offensive cyber policy.

**Assessment as relevant vendor**

22. (1) Where the Minister makes an assessment— 30
- (a) in accordance with *section 21*, that there is a likelihood of a vendor being subjected to interference by a third country,
  - (b) that there is a significant risk that a vendor will not be able to secure supply of critical components,
  - (c) that the overall quality of critical components supplied by a vendor is inadequate, or 35
  - (d) that the cybersecurity practices of a vendor are inadequate,
- the Minister may take measures in accordance with *section 25*.



- (2) The Minister may conduct an assessment under *subsection (1)* at any time and on an ongoing basis.

**Minister may consult for the purposes of assessments under this Part**

23. The Minister may consult with such persons as the Minister considers appropriate for the purposes of *sections 21* and *22*. 5

**Obligation to provide information for the purposes of assessments under this Part**

24. (1) The Minister may request any person to provide information that the Minister reasonably believes he or she requires for the purpose of *section 21* or *22*.  
(2) A person who fails to make all reasonable efforts to comply with a request under *subsection (1)* commits an offence and is liable— 10
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding €250,000, or both.

**Relevant vendor measures** 15

25. (1) Subject to *section 22*, the Minister may, if he or she considers it necessary to control risks to the security of electronic communications networks or electronic communications services which may affect national security, by notice in writing (referred to in this Part as a “relevant vendor notice”), take any of the following measures (referred to in this Act as a “relevant vendor measure”): 20
- (a) prohibit the installation by a provider of critical components made or supplied by a relevant vendor;
  - (b) prohibit or restrict the use by a provider of critical components made or supplied by a relevant vendor;
  - (c) place conditions on the installation or use by a provider of critical components made or supplied by a relevant vendor; 25
  - (d) prohibit the installation or use by a provider at a specified location of critical components made or supplied by a relevant vendor;
  - (e) require a provider to remove, disable or modify critical components made or supplied by a relevant vendor; 30
  - (f) place a restriction, expressed as a percentage of the total quantity of critical components used by the provider on their network or any part of their network, on the quantity of critical components made by a relevant vendor that a provider may use;
  - (g) where critical components made or supplied by a relevant vendor are in use by a provider, require the provider to use these critical components in a specified manner or at a specified location. 35

- (2) A relevant vendor notice shall specify—

- (a) the provider or providers to which it applies,
  - (b) that the Minister considers it necessary to take the measures contained in the order to control risks to the security of electronic communications networks or electronic communications services which may affect national security,
  - (c) where the Minister considers that consultation under *section 27(1)* would be contrary to the interests of national security, the reasons therefor, 5
  - (d) the reasons for the issuing of the notice, and
  - (e) the time at which the notice comes into operation.
- (3) *Paragraph (d) of subsection (2)* shall not apply where the Minister considers that specifying the reasons for the issuing of the notice in the notice would be contrary to the interests of national security. 10
- (4) The Minister may at any time, by further notice in writing, revoke or vary a relevant vendor measure.
- (5) Where the Minister makes, varies or revokes a relevant vendor notice he or she shall give the notice, in accordance with section 60 of the Principal Act, to any provider to which the notice applies. 15
- (6) Where the Minister gives notice to a provider in accordance with *subsection (5)*, the Minister shall take all reasonable steps to give a copy of the notice to the relevant vendor specified in the notice.
- (7) The requirement in *subsection (6)* shall not apply to the giving of a relevant vendor notice if the Minister considers that giving a copy of the notice to the relevant vendor would be contrary to the interests of national security. 20
- (8) A provider that fails to comply with a relevant vendor measure or a notice varying such a measure given to such provider or made under *subsection (1)* commits an offence and is liable— 25
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding €250,000, or both.

#### **Confidentiality of relevant vendor notice**

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26. (1) The Minister may require a provider to which a relevant vendor measure applies to treat as confidential the existence or contents of the measure and of the relevant vendor notice in circumstances where the Minister considers that disclosure of the measures imposed by the notice or of the contents of the notice would be contrary to the interests of national security. 35
- (2) A provider that fails to comply with a requirement made under *subsection (1)* commits an offence and is liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or

- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding €250,000, or both.

**Consultation before taking measures under section 25**

- 27. (1) The Minister, before taking any measures under *section 25*, shall—
  - (a) consult with the provider or providers which would be subject to the proposed measures, and 5
  - (b) make reasonable efforts to consult with the relevant vendor in respect of which the measures are proposed to be taken.
- (2) The requirement in *subsection (1)* shall not apply if the Minister considers that such consultation would be contrary to the interests of national security. 10

**Appeal of relevant vendor measure**

- 28. (1) A relevant vendor measure shall not be challenged, including as to its validity, other than by way of an appeal under this section.
- (2) For the avoidance of doubt, in respect of a measure under *section 25*, no proceeding (including an application for judicial review) may be brought before the courts other than an appeal under this section. 15
- (3) A person affected by a relevant vendor measure or a variation of such measure may, not later than 28 days after the person receives notice of the measure or variation, appeal the measure or variation to the High Court.
- (4) Pending the outcome of an appeal, the measure taken by the Minister, shall stand, unless on application to the High Court, the Court suspends the application of the measure until the determination of an appeal or its withdrawal. 20
- (5) A person that brings an appeal under this section shall, on the same date as it makes such appeal, notify the Minister of the fact that it has made the appeal and of the grounds on which it has made the appeal. 25
- (6) The High Court may, for the purpose of ensuring the efficient, fair and timely determination of an appeal, give directions in respect of the conduct of the appeal.
- (7) An appellant shall, when making an appeal, precisely state all of the grounds in law and fact upon which the appeal is made and shall provide to the Court all of the documents and evidence which it is alleged support the granting of the appeal or upon which the appellant intends to rely to support those grounds. 30
- (8) Subject to *subsection (9)*, a party to an appeal shall not be entitled during the course of an appeal to make submissions to the Court other than submissions related to the grounds stated or documents and evidence provided under *subsection (7)*.
- (9) The Court may, upon application and where it considers it necessary for the fair and proper determination of an appeal, require or permit a party to an appeal to— 35
  - (a) make submissions to the Court other than submissions related to the grounds stated or documents and evidence provided under *subsection (7)*, and

- (b) provide documents or evidence to the Court other than documents or evidence provided under *subsection (7)*.
- (10) Notwithstanding *subsection (9)*, the Court shall refuse to consider submissions, documents or evidence where it considers that—
  - (a) the submissions, documents or evidence are not relevant to the appeal, or 5
  - (b) it is appropriate to do so in order to avoid undue repetition of submissions.
- (11) Where the Court has granted leave to deliver additional submissions, documents or evidence on an application under *subsection (9)*, the Court shall give directions as to the scope, form and time-frame for delivery of such additional submissions, documents or evidence. 10
- (12) The Court may receive evidence by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner.
- (13) The Court, on hearing an appeal against a decision, may consider—
  - (a) whether the jurisdiction existed to make the decision,
  - (b) whether the law was correctly applied in reaching the decision, or 15
  - (c) whether the decision is supported by the evidence including evidence admitted in accordance with *subsection (9)*.
- (14) In considering an appeal, the Court shall have regard to—
  - (a) the record of the decision the subject of the appeal,
  - (b) the grounds stated by the parties to the appeal, and documents and evidence 20  
relied upon by the parties to support those grounds, under *subsection (7)*, and
  - (c) any submissions, documents or evidence admitted under *subsection (9)*.
- (15) The Court may, on the hearing of an appeal against a decision—
  - (a) confirm the decision, or
  - (b) where it is satisfied by reference to the grounds of appeal that a serious and 25  
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, and remit the decision for 30  
reconsideration by the Minister subject to such directions as the Court considers appropriate.

**Material not publicly available that relates to security of the State**

- 29. (1) Where an appeal of a relevant vendor measure or a variation in such measure relates to or involves any decision, evidence, document, material or any other matter that is not publicly available and relates to the security of the State, (referred to in this Part as “relevant material”), the High Court may— 35
  - (a) where it is satisfied by information on oath or affirmation of the Minister, or of an officer of the Minister appointed by the Minister to provide such information,

- that there are reasonable grounds for believing that the disclosure to an appellant of relevant material would create a risk to the security of the State—
- (i) where satisfied that the relevant material can be redacted in a way that removes that risk, direct the Minister to provide the relevant material to the appellant subject to such redactions, or 5
  - (ii) where satisfied that the relevant material or part thereof can be summarised or described in a way that removes that risk, direct the Minister to provide the appellant with such a summary or description,
- (b) where it is not satisfied by the information on oath or affirmation referred to in *paragraph (a)* that the disclosure to a party of relevant material would create a risk to the security of the State, direct that the relevant material or such part of that material as the High Court may direct, be provided to the party, and 10
  - (c) take relevant material into account in making its decision in relation to the appeal regardless of the extent to which, or ways in which, the relevant material is provided to the appellant in accordance with this section. 15
- (2) The Minister shall comply with a direction of the High Court under *subsection (1)*.
  - (3) The information on oath or affirmation provided to the High Court under *subsection (1)* shall not, without the express authorisation of the Minister, be disclosed by the Court, an officer or agent of the Court, or any other person, to any person other than a party to an appeal. 20
  - (4) When providing information on oath or affirmation under *subsection (1)*, the Minister may apply to the High Court *ex parte* for an order that—
    - (a) the information shall not be provided to a party to the appeal, and
    - (b) a summary of the information, provided to the High Court with the application, shall be provided to the party. 25
  - (5) The High Court shall grant the order applied for under *subsection (4)* if it is satisfied that—
    - (a) the Minister has grounds for believing that providing the information on oath or affirmation under *subsection (1)* to a party would create a risk to the security of the State, and 30
    - (b) the summary provided with the application for that order is sufficiently clear and detailed to allow the party effectively to challenge the basis on which, or way in which, the information on oath or affirmation is not being provided to it, or provided to it in part, as the case may be, and the Minister shall comply with such an order. 35
  - (6) A person, other than a judge, who contravenes *subsection (3)* commits an offence and shall be liable—
    - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or
    - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding €250,000, or both. 40

### **Hearing of appeal of relevant vendor measure other than in public**

30. If the High Court is satisfied, on an application by the Minister, that the hearing of an appeal of a relevant vendor measure, or a variation in such measure, is likely to result in the disclosure of relevant material and that such disclosure would create a risk to the security of the State it shall exclude from the hearing of the appeal all persons except— 5
- (a) a judge hearing the matter,
  - (b) a judicial assistant, or other court personnel, whose presence is necessary for the judge to hear the matter,
  - (c) the parties to the proceedings,
  - (d) the legal representatives of the parties to the proceedings, and 10
  - (e) a witness whose evidence is relevant to the proceedings, for as long as the witness's presence is required for the purpose of providing such evidence, unless it is satisfied that the interests of justice require any other person not to be so excluded.

### **Appeal to Court of Appeal from decision under *section 28*** 15

31. The decision of the High Court under *section 28* shall be final and no appeal shall lie from the decision of the High Court to the Court of Appeal in any case save with leave of the High Court, which leave shall only be granted where the High Court 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 made to the Court of Appeal. 20

### **Commission to report to Minister on this Part**

32. The Commission shall issue a report to the Minister on the operation of this Part annually or as requested by the Minister.

### **Commission to monitor providers' compliance with relevant vendor measures**

33. (1) The Commission shall take reasonable steps to monitor providers' compliance with relevant vendor measures. 25
- (2) For the purposes of *subsection (1)*, the Commission may serve a direction on a provider which may require the provider to do one or more of the following:
- (a) to provide information needed to assess whether a provider has complied with a relevant vendor measure taken by the Minister; 30
  - (b) where the Commission has reasonable grounds to believe that a provider is failing, or has failed, to comply with a relevant vendor measure, to provide a statement to the Commission indicating what measures the provider has taken to comply with the measure and, where the provider has failed to comply with the measure, explaining the reasons for such failure; 35
  - (c) to submit to a security audit referred to in *subsection (3)* by the Commission or a qualified independent person nominated by the Commission and to make the results of any security audit not carried out by the Commission available to the Commission;

- (d) to bear the costs of an audit under *paragraph (c)*.
- (3) Where the Commission serves a direction on a provider under *subsection (2)* requiring the provider to submit to a security audit, the Commission may appoint such member of the staff of the Commission or such other suitably qualified independent person as the Commission considers appropriate, (referred to in this section as a “security auditor”) to carry out the security audit in accordance with the direction. 5
- (4) A security auditor shall, on his or her appointment, be provided by the Commission with a certificate of his or her appointment and when exercising a power referred to in *subsection (5)* shall, if requested by any person thereby affected, produce such certificate to that person for inspection. 10
- (5) Where the Commission serves a direction under *subsection (2)* on a provider requiring the provider to submit to a security audit a security auditor may, for the purposes of carrying out the audit, exercise any power exercisable by an authorised officer under the Principal Act (other than a power exercisable for a purpose specified in section 39(3A) of the Principal Act) and where a security auditor exercises such a power a reference to an authorised officer exercising such a power in the Principal Act shall include a reference to the security auditor. 15
- (6) A direction under *subsection (2)* takes effect—
- (a) immediately upon its service, where the Commission considers, and states in the direction, that it is necessary that the direction take effect immediately to prevent a serious imminent risk to the security of networks and services, the health or safety of persons or to property, and 20
- (b) in any other case upon the expiration of the period allowed for representations to be made under *subsection (7)*.
- (7) A provider that is the subject of a direction under *subsection (2)* may make written representations to the Commission in respect of the direction within the period of 14 days beginning on the date on which the direction is served on the provider and the Commission shall consider any representations made to it during that period and affirm (with or without modification) or withdraw the direction. 25
- (8) Where a direction is affirmed under *subsection (7)*, the Commission shall notify the provider concerned. 30
- (9) A provider that fails to comply with a direction under *subsection (2)* commits an offence and is liable on summary conviction to a class A fine.

### **Review of operation of Part**

34. The Minister shall— 35
- (a) not later than the end of the period of 2 years beginning on the day on which this Act is passed, commence a review of the operation of this Part, and
- (b) not later than 12 months after the end of the period of 2 years referred to in *paragraph (a)*, make a report to each House of the Oireachtas of the findings made on such review and of the conclusions drawn from those findings. 40

## PART 4

### MEASURES TO ASSIST CONSUMERS AND OTHER END-USERS

#### **Interpretation (*Part 4*)**

35. In this Part, “minimum quality-of-service standard” means a minimum quality-of-service standard specified by the Commission under *section 37*. 5

#### **Commission may require publication of information on quality of service**

36. (1) 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— 10
- (a) the quality of their technical services, to the extent that they control at least some elements of the network either directly or by virtue of a service level agreement to that effect,
  - (b) the quality of their non-technical services, and
  - (c) measures taken to ensure equivalence in access for end-users with disabilities. 15
- (2) The Commission may require providers of publicly available interpersonal communications services to inform consumers within a specified period if the quality of the services they provide depends on any external factors such as control of signal transmission or network connectivity.
- (3) The Commission may require that a provider, before publishing information under *subsection (1)* or informing consumers under *subsection (2)*, supply the relevant information to the Commission. 20
- (4) Where the Commission requires the publication of information referred to in *subsection (1)*, it shall specify, taking account of BEREC guidelines, the quality-of-service parameters to be measured, the applicable measurement methods, and the content, form and manner of the information to be published, including possible quality certification mechanisms and may, where it considers it appropriate, specify the parameters, definitions and measurement methods set out in Annex X to the Directive. 25
- (5) Providers shall ensure that any measures that they take pursuant to this section comply with Regulation (EU) 2015/2120 of 25 November 2015<sup>6</sup>. 30

#### **Minimum quality-of-service standards**

37. (1) The Commission may specify minimum quality-of-service standards to be met by providers of internet access services or publicly available interpersonal communications services when providing such services to end-users generally, or such class of end-user as the Commission may specify, in respect of any of the following: 35
- (a) customer service, including—

6 OJ No. L310, 26.11.2015, p. 1



- (i) available customer service channels,
- (ii) response times on available customer service channels,
- (iii) time taken to revert to a customer if an issue is not resolved on first contact,  
and
- (iv) escalation to complaint handling; 5
- (b) complaint handling, including—
  - (i) available complaint handling channels,
  - (ii) acknowledgement times, and
  - (iii) time taken to resolve a dispute;
- (c) outages and repairs, including— 10
  - (i) notification of planned and unplanned service outages,
  - (ii) time taken to restore service in the event of service interruption,
  - (iii) available channels for end-users to report outages,
  - (iv) times for provision of acknowledgement and estimated outage information to  
end-users after an outage has been reported, and 15
  - (v) timelines and methods for provision of updates on the outage;
- (d) switching services, including—
  - (i) availability of handset unlocking facilities,
  - (ii) time taken to unlock a handset after any residual payment owing to a  
provider has been made, and 20
  - (iii) methods for payment of residual fees, where applicable;
- (e) billing and refunds, including—
  - (i) time taken to review billing queries and complaints and to make any refund  
where a bill is found to have been incorrect,
  - (ii) measures to avoid bill-shock, and 25
  - (iii) instances of incorrect billing;
- (f) disconnection policy in case of non-payment of bills, including—
  - (i) instances where disconnections may occur,
  - (ii) end-user notification in advance of disconnection,
  - (iii) service restrictions, and 30
  - (iv) reconnection process and fees;
- (g) connections, including—
  - (i) the time for initial connection to the network,
  - (ii) connection failure rates, and

- (iii) missed and delayed service and installation appointments;
  - (h) such other matters as the Minister may prescribe relating to *paragraphs (a) to (g)*.
- (2) The Commission may make and publish guidelines in relation to the application of minimum quality-of-service standards and providers shall have regard to those guidelines. 5

### Customer charters

38. (1) 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, and referred to in this Act as, a “customer charter”.
- (2) The Commission may specify— 10
- (a) the form of a customer charter and the information required to be included in a charter, including minimum quality-of-service standards under *section 37*,
  - (b) the manner (including frequency) of updates required to a customer charter,
  - (c) the classes of end-users that a charter is required to address, and
  - (d) the manner (including frequency) in which a customer charter is required to be published and notified to customers. 15
- (3) The Commission may, where no minimum levels of quality of service are offered by a provider, require the provider to publish a statement to this effect in the customer charter or in such other form or manner as the Commission considers appropriate.
- (4) The Commission shall require a provider referred to in *subsection (1)* to measure its performance against the standards set out in its customer charter and to report to the Commission on such performance in such form and manner as the Commission specifies. 20
- (5) The Commission may arrange, or require a provider referred to in *subsection (1)* to arrange, an independent audit or review paid for by the provider of the performance of the provider measured against the standards set out in its customer charter. 25
- (6) The Commission may publish details of a provider’s performance measured against the standards set out in its customer charter in such manner as the Commission considers appropriate.
- (7) The Commission may, where it considers that a provider is not complying with *subsection (1), (2) or (3)*, serve a direction on the provider specifying the measures required to be taken to comply with the relevant provision. 30
- (8) A provider of internet access services or publicly available interpersonal communications services who fails to comply with—
- (a) a requirement under *subsections (1), (3) and (5)*, or 35
  - (b) a direction of the Commission under *subsection (7)*,
- commits an offence and is liable on summary conviction to a class A fine.

## End-user compensation

39. (1) The Commission may, for the purposes of this section, specify a failure (referred to in this section as a “specified failure”) of a provider of internet access services or number-based interpersonal communications services (referred to in this section as a “provider”) to comply with an obligation under— 5
- (a) a minimum quality-of-service standard, or
  - (b) Regulation 90 of the Code Regulations.
- (2) Where a provider commits a specified failure the provider shall pay compensation to any end-user affected.
- (3) Where the Commission specifies a failure under *subsection (1)* providers shall, not later than 3 months thereafter, prepare and publish a scheme (in this section referred to as a “compensation scheme”) setting out the compensation that end-users are to be entitled to in respect of the specified failure and a transparent procedure by which compensation shall be paid. 10
- (4) A compensation scheme shall include at least the following in respect of the specified failure— 15
- (a) a user-friendly description of the procedure by which compensation is paid,
  - (b) the amount of compensation that end-users are entitled to,
  - (c) the means by which compensation will be paid, and
  - (d) the time periods within which end-users will receive compensation. 20
- (5) Providers shall ensure that the amount to which end-users are entitled under a compensation scheme is sufficient to compensate them having regard, *inter alia*, to—
- (a) the nature of any loss of service experienced,
  - (b) the duration of any loss of service experienced, and
  - (c) any failure on the part of the provider to keep end-users informed throughout the process. 25
- (6) A provider shall not charge an end-user any fee in connection with the payment of compensation.
- (7) The Commission may determine that providers pay compensation to end-users in respect of a specified failure without the need for an end-user to make a complaint or a claim for compensation. 30
- (8) A compensation scheme shall be published by the provider on its website in a clear and comprehensible format that is easily accessible by end-users and, in particular, by end-users with disabilities and in any other manner as may be specified by the Commission. 35
- (9) Where a provider prepares a compensation scheme it shall ensure that end-users are informed about the scheme in a user-friendly manner.
- (10) Where a provider prepares a compensation scheme it shall ensure that end-users are informed, in a clear and comprehensible way, that the compensation scheme does not

- prejudice their right to pursue compensation in respect of a specified failure by other legal means or proceedings.
- (11) The Commission may specify the amount of compensation to be payable in respect of a specified failure.
- (12) Providers shall report to the Commission annually in relation to the operation of this section in such manner as may be required by the Commission, detailing in particular, in respect of the period to which the report relates—
- (a) the specified failures in respect of which compensation was paid by the provider,
  - (b) the number of instances of each specified failure in respect of which compensation was paid by the provider,
  - (c) the amount of compensation that was paid in respect of each specified failure by the provider, and
  - (d) the average time taken by the provider to pay compensation to an end-user.
- (13) The Commission may require a provider to submit to an independent audit or review, paid for by the provider, on its compliance with this section.
- (14) This section, other than *subsections (1), (7), (11) and (13)*, is a regulatory provision.
- (15) This section is without prejudice to the right of—
- (a) an end-user to pursue compensation in respect of a specified failure by other legal means or proceedings, including where the end-user considers any compensation granted under this section is not adequate, and
  - (b) the Commission or any other person to bring proceedings in respect of a specified failure.

## PART 5

### RESOLUTION OF COMPLAINTS AND DISPUTES

- Interpretation (*Part 5*)** 25
- 40.** In this Part—
- “Act of 2022” means the Consumer Rights Act 2022;
- “Mobile Phone Roaming Regulation” has the same meaning as it has in the Roaming Regulations;
- “provider” means— 30
- (a) an undertaking within the meaning of the Principal Act,
  - (b) an undertaking within the meaning of Regulation 2 of the Regulations of 2019, or
  - (c) an undertaking within the meaning of Regulation 2 of the Roaming Regulations;
- “Regulations of 2013” means the Communications (Mobile Telephone Roaming) Regulations 2013 (S.I. No. 228 of 2013); 35

“Regulations of 2019” means the European Union (Open Internet Access) Regulations 2019 (S.I. No. 343 of 2019);

“relevant dispute” means—

- (a) a dispute between an end-user and a provider in relation to compensation payable under *section 39*, 5
- (b) a dispute between an end-user and a provider, arising under this Act or the Code Regulations, relating to contractual conditions or the performance of contracts (whether entered into or not),
- (c) a dispute between an end-user and an undertaking (within the meaning of Regulation 2 of the Regulations of 2019), 10
- (d) a dispute involving a consumer or end-user and concerning an issue falling within the scope of the Mobile Phone Roaming Regulation,
- (e) a dispute between an end-user and a provider relating to the imposition or purported imposition of a charge referred to in section 45 of the Principal Act,
- (f) a dispute between a consumer, within the meaning of the Act of 2022, and a trader, within the meaning of the Act of 2022, who is also a provider, relating to Part 5 (other than sections 119, 120 and 125) of the Act of 2022, and 15
- (g) any other disputes that relate to the supply of and access to electronic communications services, electronic communications networks and associated facilities or the transmission of such services on such networks prescribed by the Minister for the purposes of this Part; 20

“Roaming Regulations” means the European Communities (Mobile Telephone Roaming) Regulations 2022 (S.I. No. 315 of 2022);

“Universal Services Regulations” means the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (S.I. No. 337 of 2011). 25

#### **Procedures for handling complaints and resolution of disputes**

- 41.** (1) 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. 30
- (2) The Commission may specify requirements to be met by a provider for the purpose of ensuring compliance with this section.
- (3) The Minister may, either on the recommendation of, or having consulted with, the Commission, prescribe measures to be taken by a provider for the purposes of giving effect to this section. 35
- (4) *Subsection (1)* is a regulatory provision.

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

- 42.** (1) A provider shall prepare, publish, keep updated and implement a code of practice for dealing with complaints and for settling relevant disputes.

- (2) A code of practice shall provide for the following matters:
- (a) first point of contact for complainants, including the channels of making complaints;
  - (b) a means of recording complaints;
  - (c) time-frames within which a provider shall respond to and resolve complaints; 5
  - (d) procedures for resolving complaints;
  - (e) informing the complainant that a dispute may be referred to the Commission where—
    - (i) the dispute has been resolved in accordance with the code of practice and the complainant is dissatisfied with the resolution, or 10
    - (ii) the dispute has not been resolved and at least 10 working days have passed since the day on which the complaint was first notified to the provider;
  - (f) cases where reimbursement of payments, payments of compensation and payments in settlement of losses incurred will be made;
  - (g) retention of records of complaints (including copies of the complaint, any response to it, any determination in respect of the complaint and any documentation considered in the course of such determination). 15
- (3) The Commission may specify requirements to be met for the purpose of ensuring compliance with *subsection (1)* and the manner of publication of a code of practice referred to in that subsection including, without limitation, any requirements to ensure that the code of practice and procedures for dealing with complaints and settling disputes are fair, prompt, transparent, inexpensive and non-discriminatory. 20
- (4) The Commission may serve a direction on a provider requiring that provider to make such alterations or additions to its code of practice as the Commission may specify in the direction. 25

**Provider to report on end-user complaints**

43. A provider shall, within each period of 6 months beginning with the period beginning on the date on which this section comes into operation, report to the Commission on—
- (a) complaints made to it by end-users within the preceding 6 month period, and
  - (b) such other matters relating to complaints by end-users made during that period as may be specified by the Commission. 30

**Commission may require information regarding end-user complaints**

44. The Commission may require providers to collate and—
- (a) publish, or
  - (b) provide to it, 35
- 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**

45. 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 47*. 5

#### **Commission may require provider to comply with code of practice**

46. Where the Commission considers that a provider has failed to implement its code of practice, the Commission may serve a direction on the provider specifying the provisions of the code which have not been implemented and requiring the provider to implement them. 10

#### **Resolution of relevant disputes by Commission**

47. (1) 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, and—
- (a) a period of at least 10 days has elapsed since the complaint giving rise to the dispute was made, or 15
  - (b) the procedures for the resolution of disputes provided for in the provider's code of practice have been completed,
- the Commission, or such independent person as may be appointed by the Commission, shall, in accordance with such procedures as may be specified by the Commission under *section 48*, carry out a dispute resolution process and propose a resolution to the dispute referred. 20
- (2) Where the Commission proposes a resolution under *subsection (1)* the end-user that referred the dispute may elect to accept the resolution proposed and where the end-user so elects the resolution shall be binding on the provider concerned.
- (3) An end-user who has referred a dispute to the Commission for resolution under this section may withdraw the dispute at any stage up to the time at which the Commission, or such independent person as may be appointed by the Commission, proposes a resolution to the dispute, by notifying the Commission, or the person, in writing to that effect, or, where there is an oral hearing in relation to the dispute, by notifying the Commission, or the person, at the hearing. 25 30

#### **Procedure for resolution of disputes by Commission**

48. (1) The Commission may specify procedures for the resolution of disputes under *section 47* and such procedures shall—
- (a) be transparent, non-discriminatory, simple, and inexpensive,
  - (b) enable disputes to be settled fairly and promptly, and 35
  - (c) be made publicly available by the Commission, together with any amendments to such procedures.

- (2) The Commission, or such independent person as may be appointed by the Commission under *section 47(1)*, shall, as soon as practicable after an end-user refers a dispute, inform the end-user—
- (a) of his or her right under *section 47(2)* to elect to accept the resolution proposed,
  - (b) of his or her right under *section 47(3)* to withdraw the dispute, 5
  - (c) that the procedure is without prejudice to any other right to seek redress, including by court proceedings,
  - (d) that the resolution proposed may be different from an outcome determined by a court,
  - (e) of the legal effect of electing to accept the resolution proposed, 10
  - (f) that he or she will be given a reasonable period of time to consider whether to elect to accept the proposed solution, and
  - (g) that if the end-user does not elect to accept the resolution proposed within the period specified for the purposes of *paragraph (f)*, the end-user shall be deemed to have rejected the proposed solution. 15

#### **Direction**

49. (1) Where the Commission is satisfied that a provider has failed to comply with a proposed resolution that is binding upon it by virtue of *section 47(2)*, the Commission may serve a direction on the provider requiring the provider to take such measures to ensure compliance with the resolution as are specified in the direction. 20
- (2) Without prejudice to the generality of *subsection (1)*, a direction may require all or any of the following:
- (a) the reimbursement of payments by a provider to an end-user;
  - (b) payment of compensation by a provider to an end-user;
  - (c) payment by a provider in settlement of losses suffered by an end-user; 25
  - (d) where the Commission is satisfied that the conditions, requirements or circumstances permitting such termination have been met, the termination of a contract between a provider and an end-user without the end-user incurring further costs;
  - (e) the giving of an apology by a provider to an end-user; 30
  - (f) the giving of an explanation by a provider to an end-user for any matter giving rise to a complaint;
  - (g) compliance with a term or condition of the contract between the provider and the end-user;
  - (h) compliance with a legal obligation pursuant to the law relevant to the relevant dispute. 35
- (3) The maximum amount of compensation that a provider may be directed to pay to any end-user under this section shall be €5,000 or such other lesser or greater amount as the Minister may prescribe.



### **Disputes involving parties in more than one Member State**

50. Where a person refers a relevant dispute to the Commission under *section 47* that involves parties in different Member States the Commission shall coordinate its efforts with any relevant regulatory authority in the other Member States with a view to bringing about a resolution of the dispute. 5

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

51. The Commission may pay such remuneration and expenses to an independent person appointed by the Commission referred to in *section 47(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. 10

### **Enforcement**

52. (1) The following provisions are regulatory provisions:
- (a) *section 41(1)*;
  - (b) *subsections (1) and (2) of section 42*; 15
  - (c) *section 43*;
  - (d) *section 45*.
- (2) A provider that fails to comply with—
- (a) a requirement under *section 41(2)*,
  - (b) an obligation to take a measure prescribed by a regulation under *section 41(3)* 20 that is stated in the regulations to be a penal provision,
  - (c) *subsection (1) and (2) of section 42*,
  - (d) a direction under *section 42(4)*,
  - (e) *section 43(a)*,
  - (f) a requirement under *section 44*, 25
  - (g) a direction under *section 46*, or
  - (h) a direction under *section 49*,
- commits an offence and is liable on summary conviction to a class A fine.
- (3) In proceedings for the prosecution of an offence consisting of a failure to comply with *section 43* it is a defence for a provider to show that it took all reasonable steps and exercised all due diligence to avoid committing the offence. 30

### **Commission to be listed as alternative dispute resolution entity**

53. (1) The Competition and Consumer Protection Commission shall, notwithstanding paragraph (1) of Regulation 8 of the European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015 (S.I. No. 343 of 2015) (referred to in this 35

section as the “Regulations of 2015”) add the Commission to the list of ADR entities established and maintained by it under that Regulation.

- (2) The Regulations of 2015 do not apply to an ADR process conducted by the Commission or a person appointed by the Commission under *section 47*.

**Procedure under this Part without prejudice to other remedies** 5

54. 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.

**Application of Universal Service Regulations to certain disputes**

55. Where on the coming into operation of this section, a dispute is before the Commission, or an independent person, for resolution in accordance with Regulation 27(4) of the Universal Service Regulations then, notwithstanding any repeal of the Universal Service Regulations, those Regulations shall continue to apply in respect of such a dispute. 10

**Continuation of measures under Universal Services Regulations**

56. (1) Any measure that is in force under Regulation 27 of the Universal Services Regulations on the coming into operation of this section shall continue in force and be deemed to have been made under, and in accordance with, this Part. 15
- (2) Without prejudice to the generality of *subsection (1)*, for the purposes of this section “measure” includes any decision, specification, requirement, direction, notification and notice, and any other act of an equivalent nature.

PART 6 20

INTERIM MEASURES

**Urgent interim measures**

57. (1) The Commission may, at any time where 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— 25
- (a) represents an immediate and serious threat to public safety, public security or public health, or
  - (b) 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, 30
- impose urgent interim measures (referred to in this Act as “urgent interim measures”) to remedy the breach or the risk of the breach.
- (2) The urgent interim measures that the Commission may impose in accordance with *subsection (1)* may include a requirement—

- (a) that the suspected breach cease and that specified measures be taken to remedy the suspected breach, or
  - (b) in the case of an anticipated breach, that specified measures be taken to prevent the breach from taking place,

immediately or within a reasonable time limit. 5
- (3) Where the Commission imposes urgent interim measures it shall serve a notice in writing (referred to in this Act as an “urgent interim measures notice”) on the person suspected of the breach or, as the case may be, the anticipated breach.
- (4) An urgent interim measures notice shall—
  - (a) identify the evidence referred to in *subsection (1)*, 10
  - (b) specify the suspected, or anticipated, regulatory breach or breach of conditions,
  - (c) identify any suspected breach that is required to cease,
  - (d) specify any measure that is required to be taken to remedy the suspected breach concerned or to prevent the anticipated breach from taking place,
  - (e) specify any date or time by which the breach is to cease or any measure is to be taken, and 15
  - (f) be signed and dated by the Commission.
- (5) An urgent interim measure shall take effect on such date as the Commission specifies in the notice.
- (6) The Commission shall, subject to *subsection (8)*, allow a reasonable period, having regard to the urgency of the measures and the particular circumstances, before an urgent interim measure takes effect to enable the person to whom the measure is directed to make written submissions to the Commission in relation to the measure including any remedies that the person concerned may wish to propose. 20
- (7) A person to whom an urgent interim measure is directed may, within the period specified in the urgent interim measures notice, or where the measure is varied within the period specified in the notice of such variation, make written submissions to the Commission in relation to the measure or the variation of the measure. 25
- (8) Exceptionally, and in circumstances of extreme urgency, the Commission may specify that an urgent interim measure take effect without the person to whom it is directed having an opportunity to make submissions and where the Commission does so it shall provide the person with an opportunity to make such submissions as soon as possible after the measure takes effect. 30
- (9) Where the Commission receives written submissions in accordance with *subsection (7)* or *(8)* in relation to an urgent interim measure it shall— 35
  - (a) consider such submissions, and
  - (b) by notice in writing to each person on which the urgent interim measures notice was served, confirm, revoke or vary the urgent interim measure.

- (10) Subject to *subsection (11)* and to any order made by the High Court on an appeal under *section 105* an urgent interim measure shall remain in effect until the earlier of—
- (a) such date as the Commission may specify in the urgent interim measures notice, and 5
  - (b) the expiry of a period of 3 months beginning on the date on which the measure first came into effect.
- (11) The Commission may by notice in writing to each person on which the urgent interim measures notice was served, in circumstances where enforcement procedures have not been completed, extend the period during which an urgent interim measure remains in force up to a maximum period of 6 months beginning on the date on which the measure first came into effect. 10
- (12) Where there is a material change of circumstances while an urgent interim measure is in effect a person to whom the measure is directed may make representations to the Commission to have the measure varied or revoked. 15
- (13) The Commission may vary or revoke an urgent interim measure at any time by notice in writing to the person on whom the urgent interim measures notice was served, setting out how the measure is to be varied or stating that the measure is to be revoked and stating the date on which such variation or revocation is to take effect.
- (14) An urgent interim measures notice shall cease to have any effect if it is revoked by the Commission. 20
- (15) A person to whom an urgent interim measures notice is directed shall comply with any urgent interim measures contained in such notice.
- (16) Where a person fails to comply with an urgent interim measure the Commission may apply to the High Court for an order compelling compliance. 25
- (17) Where an urgent interim measure—
- (a) requires the cessation of a breach that constitutes a criminal offence, or
  - (b) requires a person to do something in circumstances where a failure to do the thing required constitutes a criminal offence,
- and the Commission has— 30
- (i) brought proceedings in respect of such offence, or
  - (ii) given a notice under section 44 of the Principal Act in respect of such offence,
- the Commission shall not make an application for an order under *subsection (16)* compelling compliance with the urgent interim measures notice.
- (18) A person to whom an urgent interim measure is directed may appeal the measure in accordance with *Chapter 8 of Part 7*. 35
- (19) Where the Commission imposes urgent interim measures under this section in relation to a suspected regulatory breach that is the subject of an investigation by an authorised officer, the authorised officer shall, as soon as reasonably practicable

thereafter, conclude the investigation and determine whether or not to serve a notice of suspected non-compliance within the meaning of *Part 7*.

### **Imposition of urgent interim measures by High Court**

- 58.** (1) The High Court may, on an application to it in that behalf, where it is satisfied that a person is— 5
- (a) committing a regulatory breach, or
  - (b) engaging in conduct which may give rise to a regulatory breach, that gives rise to a serious risk of—
- (i) irreparable harm to public safety, public security, public health, competition or the rights of end-users, or 10
  - (ii) substantial economic or operational difficulties for other providers or users of electronic communications networks or services or other users for radio spectrum,
- by order require that, on the expiry of any specified urgent interim measure imposed by the Commission under *section 57*, 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. 15
- (2) The High Court may in particular—
- (a) make an order on the same or similar terms as an urgent interim measures notice under *section 57* that has expired or is to expire, or 20
  - (b) extend urgent interim measures imposed under *section 57* for a period beyond the period referred to in *subsection (1)* of that section.

## PART 7

### ADMINISTRATIVE SANCTIONS

#### CHAPTER 1

25

#### *Interpretation and application of Part 7*

### **Interpretation (*Part 7*)**

**59.** In this Part—

“Act of 2002” means the Competition Act 2002;

“adjudication” means—

30

(a) a decision by an adjudicator under *section 90*, and

(b) any decision of the adjudicator under *section 91* on foot of that decision,

or either such decision;

“adjudicator” has the meaning given to it by *section 76*;

“administrative sanction” means—

- (a) a requirement to cease a regulatory breach or to take specified measures to remedy the breach,
- (b) a requirement to pay a financial penalty, refund or compensation, or
- (c) the withdrawal or suspension of authorisation or rights of use,

5

imposed under *section 91* and “administrative sanctions proceedings” shall be interpreted accordingly;

“appeal” means an appeal under *Chapter 8*;

“authorised officer” shall be construed in accordance with section 39 of the Principal Act;

10

“commercially sensitive information” means information the disclosure of which could reasonably be expected to—

- (a) substantially and materially prejudice the commercial or industrial interests of—
  - (i) the person required to provide the information,
  - (ii) another person, or
  - (iii) a class of persons in which a person referred to in *subparagraph (i)* or *(ii)* falls,

15

- (b) substantially prejudice the competitive position of a person in the conduct of the person’s business, profession or occupation, or

- (c) substantially prejudice the financial position of—

20

- (i) the State,
- (ii) a Department of State,
- (iii) the Garda Síochána,
- (iv) the Permanent Defence Force within the meaning of the Defence Act 1954,
- (v) a local authority within the meaning of the Local Government Act 2001, or
- (vi) a body established by or under any enactment or charter other than the Companies Act 2014 or a former enactment relating to companies within the meaning of section 5 of that Act;

25

“licence” means a licence granted under section 5 of the Act of 1926 to keep and have possession of apparatus for wireless telegraphy for the provision of an electronic communications network or service and which grants a right of use for radio spectrum;

30

“notice of suspected non-compliance” has the meaning given to it by *section 63*;

“notified person” means a person on whom a notice of suspected non-compliance has been served;

“referral report” has the meaning given to it by *section 70*.

35

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

60. (1) In this Part, “regulatory provision” means any of the following:
- (a) a provision of this Act that is stated in this Act to be a regulatory provision;
  - (b) the Code Regulations;
  - (c) an Act or a provision of an Act (other than this Act) that is stated in such Act to be a regulatory provision for the purposes of this Part; 5
  - (d) regulations or a provision of regulations made by the Minister prescribed by the Minister as a regulatory provision for the purposes of this Part;
  - (e) an act, or provision of an act, adopted by an institution of the European Union, prescribed by the Minister as a regulatory provision for the purposes of this Part; 10
  - (f) a decision or action of the Commission (referred to in this section as a “regulatory decision”) the effect of which is to require a person to do, or refrain from doing, something and including the making of a requirement or direction, the imposition of an obligation, the designation of a person or thing, the determination that certain provisions apply to a person or thing, the making of a specification (including the specification of a standard) and the giving of notice, or the notification of, such a requirement, under— 15
    - (i) this Act,
    - (ii) the Code Regulations,
    - (iii) an Act, or a provision of an Act, referred to in *paragraph (c)*, 20
    - (iv) a regulation, or a provision of regulations, referred to in *paragraph (d)*, or
    - (v) an act, or provision of an act, referred to in *paragraph (e)*;
  - (g) a condition or restriction of a licence granted to a provider under section 5 of the Act of 1926.
- (2) The Minister may when making regulations under any Act, in order to ensure that the penalties provided for the breach of such regulations, or any decision made under such regulations, are appropriate, effective, proportionate and dissuasive, apply the provisions of this Part to a breach of any provision of such regulations, and any regulatory decision made under such regulations, and may, for that purpose, state in such regulations that the regulations or any provision thereof is a regulatory provision for the purposes of this Part. 25 30
- (3) The Minister may, in order to ensure that the penalties provided for the breach of such act or decision are appropriate, effective, proportionate and dissuasive, apply the provisions of this Part to a breach of any provision of an act adopted by an institution of the European Union, and any regulatory decision made under such act, and may, for that purpose prescribe such act or any provision of such act as a regulatory provision for the purposes of this Part. 35

## Application of Part

61. (1) This Part applies in respect of a licence notwithstanding anything to the contrary in—

- (a) the Act of 1926,
  - (b) any Regulations made under section 6 (inserted by section 182 of, and Schedule 2 to, the Broadcasting Act 2009) of the Act of 1926, and
  - (c) the licence itself.
- (2) This Part is without prejudice to any power of the Commission to suspend or withdraw general authorisation or rights of use for radio spectrum or rights of use for numbering resources. 5

## CHAPTER 2

### *Preliminary procedure*

#### **Power of Commission to resolve suspected regulatory breach, etc. 10**

- 62.** (1) 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. 10
- (2) Such an agreement is to be on such terms as are specified in the agreement and is binding on the Commission and the person concerned. 15
- (3) The terms of such an agreement may include terms under which that person accepts the imposition of administrative sanctions.
- (4) The Commission may enter into an agreement under this section—
- (a) without any investigation into the matter taking place under this Act, or
  - (b) after beginning such an investigation, as long as an adjudicator has not made a decision in respect of the matter under *section 90*. 20
- (5) Where a person with whom the Commission has entered into an agreement under this section fails to comply with any of the terms of the agreement, the Commission may apply to the High Court for an order under *subsection (6)*.
- (6) If satisfied on application to it under *subsection (5)* that the person concerned has failed to comply with any of the terms of the agreement under this section, the High Court may make an order requiring that person to comply with those terms or that term, as the case may be. 25
- (7) The Commission may, by proceedings brought in a court of competent jurisdiction, recover as a debt due to the Commission the amount of any amount agreed to be paid under an agreement entered into under this section. 30

#### **Notice of suspected non-compliance**

- 63.** (1) In this Act, “notice of suspected non-compliance” means a notice in writing informing the person on whom it is served of the details of a regulatory breach of which the person is suspected. 35
- (2) Where an authorised officer suspects on reasonable grounds that a person has committed or is committing a regulatory breach that does not constitute a criminal



- offence the authorised officer may serve a notice of suspected non-compliance on the person.
- (3) Where an authorised officer suspects on reasonable grounds that a person has committed or is committing a regulatory breach that constitutes a criminal offence, the authorised officer may serve a notice of suspected non-compliance on the person if— 5
- (a) the offence is an offence that may be prosecuted summarily by the Commission and the Commission has elected not to prosecute the offence, or
  - (b) the authorised officer refers the matter to the Director of Public Prosecutions and the Director of Public Prosecutions has not commenced criminal proceedings in respect of the regulatory breach. 10
- (4) A notice of suspected non-compliance shall be in such form as the Commission may specify, and shall—
- (a) inform the notified person that the authorised officer suspects that the person has committed or is committing a regulatory breach,
  - (b) set out the grounds for the authorised officer’s suspicion in sufficient detail to allow the notified person to fully respond to the notice of suspected non-compliance in accordance with *subsection (6)*, and 15
  - (c) inform the notified person of its right to make submissions under *subsection (6)*, and the period within which that right may be exercised.
- (5) The authorised officer shall, as soon as is practicable after issuing the notice of suspected non-compliance, serve on the notified person a copy of, or access to, any material relied upon by the authorised officer for the purpose of issuing the notice of suspected non-compliance, subject to such redactions as the authorised officer may consider necessary and appropriate in order to protect the rights of the parties or any other person, to protect commercially sensitive information, or for any other good and sufficient reason. 20 25
- (6) Subject to *subsection (7)*, a notified person may, within such period as is specified in the notice, make written submissions to the authorised officer on the notice of suspected non-compliance.
- (7) Notwithstanding the period specified in the notice of suspected non-compliance in accordance with *subsection (4)(c)*, the authorised officer may, where it is appropriate to do so in the circumstances of the case, extend the period within which written submissions may be made and shall notify the notified person in writing of the extended period. 30

**Supplementary notice of suspected non-compliance** 35

64. (1) Where an authorised officer, having served a notice of suspected non-compliance, identifies—
- (a) new or different points of fact or law, or new evidence, having a material impact on its analysis or the grounds set out in the notice of suspected non-compliance, or 40
  - (b) any error or inaccuracy in the notice of suspected non-compliance,

the authorised officer shall serve a notice (referred to in this Act as a “supplementary notice of suspected non-compliance”) on each notified person.

- (2) A supplementary notice of suspected non-compliance shall—
- (a) be in such form as the Commission may specify,
  - (b) summarise the new or different points of fact or law or new evidence that have been identified by the authorised officer and the material impact of such points of fact or law or such evidence on the analysis or the grounds set out in the notice of suspected non-compliance of the authorised officer, and 5
  - (c) inform the notified person of its right to make written submissions under *subsection (3)*, and specify the period within which that right may be exercised. 10
- (3) Subject to *subsection (4)*, the notified person on which a supplementary notice of suspected non-compliance is served may, within such period as is specified in the supplementary notice, make written submissions to the authorised officer on the supplementary notice of suspected non-compliance.
- (4) Notwithstanding the period specified in the supplementary notice of suspected non-compliance in accordance with *subsection (3)*, the authorised officer may, where it is appropriate to do so in the circumstances of the case, extend the period within which the notified person may make written submissions in accordance with that subsection and shall notify each notified person in writing of the extended period. 15

**Commission may revoke notice of suspected non-compliance, etc.** 20

65. 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.**

66. The Commission may (save where such publication would, in the opinion of the Commission, prejudice the achievement of the objectives of this Act) 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 the protection of commercially sensitive information. 25

**Commitments**

67. (1) A notified person may at any time prior to the date on which an adjudicator makes a decision under *section 90* in relation to the regulatory breach specified in a notice of suspected non-compliance (referred to in this section as the “relevant breach”), propose to the Commission in writing measures to appropriately address the breach. 30
- (2) Where the Commission receives a proposal under *subsection (1)*, it may—
- (a) consult to the extent that it sees fit in relation to the proposal, including consulting publicly or consulting other persons, 35
  - (b) where it is of the opinion that it requires further information in order to consider the proposal, by notice in writing served on the person that made the proposal,

- require the person to give to it within a specified period specified information,  
and
- (c) where it considers it necessary to do so, at any time before the proposal is made the subject of a commitment, propose to the person modifications, alterations, additions or other changes to the proposal. 5
- (3) Where the Commission is satisfied that the terms of the proposal (subject to any modifications, alterations, additions or other changes made to the proposal under *subsection (2)*)—
- (a) appropriately address the relevant breach, and
- (b) are clear and unambiguous and capable of being complied with, 10
- it may notify the person in writing that it is willing to accept a commitment from the person in relation to the proposal.
- (4) Where a person enters into a commitment with the Commission in accordance with this section (referred to in this Act as a “commitment”), the Commission shall publish the commitment (save where such publication would, in the opinion of the Commission, prejudice the achievement of the objectives of this Act) on the website of the Commission, with due regard for the protection of commercially sensitive information, as soon as practicable after the notified person has entered into the commitment. 15
- (5) The Commission shall not take any further step in administrative sanctions proceedings in relation to the relevant breach as long as it is satisfied that— 20
- (a) the notified person is in compliance with the commitment, and
- (b) that the information submitted by the notified person at the time it entered into the commitment was not incomplete, incorrect, false, or misleading in a material respect. 25
- (6) A commitment may be amended or terminated where both the notified person and the Commission agree to the amendment or termination.
- (7) Where the Commission is no longer satisfied that a notified person is in compliance with a commitment it shall notify the person that it intends to take further steps in the administrative sanctions proceedings and afford the person an opportunity to make submissions in relation to its compliance with the commitment. 30

## Settlements

68. (1) An authorised officer may, with the approval of the Commission, at any time prior to the date on which an adjudicator makes a decision under *section 90* in relation to the regulatory breach specified in a notice of suspected non-compliance agree a settlement with a notified person. 35
- (2) An authorised officer may at any time refer a proposed settlement to the Commission for its approval.
- (3) Where the Commission approves a settlement with a notified person, the authorised officer shall— 40

- (a) prepare a report containing at least the following:
  - (i) a summary of the facts of the case;
  - (ii) the regulatory breach alleged against the notified person;
  - (iii) details of any administrative sanction to be imposed on the notified person as part of the settlement; 5
  - (iv) a statement that the Commission and the notified person consent to the imposition of the administrative sanction referred to in *subparagraph (iii)*; and
  - (v) details of any other measures agreed to be taken either by the Commission or by the notified person on foot of the settlement agreement, 10
- (b) give a copy of the report referred to in *paragraph (a)* to the notified person, and
- (c) subject to *subsection (4)*, refer the matter to an adjudicator for an adjudication on consent.
- (4) Where at the time the notified person is given a copy of the report in accordance with *subsection (3)(b)* where the matter has been referred for adjudication under *section 69(b)*— 15
  - (a) the authorised officer shall notify the adjudicator concerned of the withdrawal of the referral under *section 69(b)*, and
  - (b) the matter shall be deemed to have been referred to an adjudicator under *subsection (3)(c)* for an adjudication on consent. 20
- (5) Where, following the confirmation of an adjudication on consent under *section 109(1)* the notified person fails to comply with any of the terms of the settlement, the Commission may apply to the High Court for an order under *subsection (6)*.
- (6) If satisfied on application to it under *subsection (5)* that a notified person has failed to comply with an adjudication on consent confirmed under *section 109(1)*, the High Court may make an order requiring that person to comply with the adjudication. 25
- (7) The Commission may, by summary proceedings brought in a court of competent jurisdiction, recover as a debt due to the Commission any amount agreed to be paid by the notified person as part of a settlement confirmed by an order of the Court under *section 109(1)*. 30

#### **Actions by authorised officer following investigation**

**69.** An authorised officer, having investigated a suspected regulatory breach, may, subject to *section 68* and with the consent of the Commission—

- (a) close the investigation and not take any further action in respect of the matter, or
- (b) where the authorised officer suspects on reasonable grounds that the notified person has committed or is committing a regulatory breach, refer the matter in accordance with *section 71* for adjudication. 35

## Referral report

70. Prior to referring a matter for adjudication an authorised officer shall prepare a report (referred to in this Act as a “referral report”) containing—
- (a) a detailed description of the relevant facts of the case,
  - (b) details of the regulatory breach concerned, 5
  - (c) an outline of the facts and evidence on which the authorised officer is relying for the purpose of referring the matter to the Commission for adjudication,
  - (d) a summary of any submissions made by the notified person to the authorised officer during the investigation, including in response to the notice of suspected non-compliance or any supplementary notice of suspected non-compliance, 10
  - (e) the authorised officer’s assessment of the extent to which the notified person cooperated with the investigation, and
  - (f) any other information that the authorised officer considers to be relevant to an adjudication.

## Referral of matter by authorised officer to adjudicator for adjudication 15

71. (1) Where an authorised officer refers a matter for adjudication he or she shall provide the adjudicator with—
- (a) the notice of suspected non-compliance served by the authorised officer under *section 63*, and any supplementary notice of suspected non-compliance served by the authorised officer under *section 64*, 20
  - (b) the referral report,
  - (c) a copy of all material relied upon by the authorised officer in forming his or her opinion, and
  - (d) any submissions made by the notified person during the investigation.
- (2) An authorised officer shall, as soon as is practicable after providing an adjudicator with the information specified in *subsection (1)*, give the notified person— 25
- (a) a copy of the referral report, and
  - (b) a copy of, or access to, any material (other than material that has already been provided to the notified person) relied upon by the authorised officer for the purpose of referring the matter for adjudication, subject to such redactions as the authorised officer considers necessary and appropriate in order to protect the rights of the parties or any other person, to protect commercially sensitive information, or for any other good and sufficient reason. 30

## Withdrawal by Commission of matter referred to adjudicator

72. (1) A referral under *section 68(3)(c)* or *section 69* may be withdrawn by the Commission at any time before the adjudicator makes an adjudication or, as the case may be, an adjudication on consent. 35
- (2) Where a referral is withdrawn under this section, the adjudicator shall—

- (a) notify the notified person of the withdrawal, and
- (b) take no further action in relation to the matter.

**Power of Commission to share certain documents**

- 73.** (1) The Commission may provide a copy of any notice or document referred to in *section 63, 64, 71 or 83* to such other persons as the Commission considers appropriate, subject to such redactions as the Commission considers appropriate. 5
- (2) A person that is provided with a copy of a notice or document under *subsection (1)* subject to redactions may appeal against the decision of the Commission to make such redactions—
- (a) within 14 days of the date of service the copy of the notice or document, and 10
  - (b) by application to the adjudicator to whom the matter has been referred under *section 71*.
- (3) A person who receives—
- (a) a copy of a document referred to in *subsection (1)*, or
  - (b) copies of materials under *section 63(5)* or *section 71(2)*, 15
- shall not, without the prior authorisation of the Commission, disclose the existence or the content of the document or materials to any other person.
- (4) A person who contravenes *subsection (3)* commits an offence and is liable on summary conviction to a class A fine.

**Regulations and rules relating to referrals to adjudicator 20**

- 74.** (1) The Minister may prescribe the procedure for—
- (a) making a referral under *section 68(3)(c)*,
  - (b) withdrawing a referral under *section 72*, and
  - (c) making an application for an adjudication on consent under *section 109(1)*.
- (2) The Commission may, subject to this Act and to any regulations made under *subsection (1)*, make rules detailing the procedure for— 25
- (a) making a referral under *section 68(3)(c)*,
  - (b) withdrawing a referral under *section 72*, and
  - (c) making an application for an adjudication on consent under *section 109(1)*.

CHAPTER 3 30

*Adjudicators*

**Nomination of adjudicators**

- 75.** (1) The Commission shall nominate persons who may be appointed by the Minister under *section 76*.

- (2) The Commission may nominate persons under *subsection (1)*, including members of the Commission, employees and members of staff of the Commission, who have, in the opinion of the Commission, sufficient relevant expertise to merit such appointment whether or not the persons are members or employees of the Commission. 5
- (3) The Minister shall, in a manner ensuring the independence of adjudicators in the performance of their functions, prescribe categories of persons who may be nominated and criteria, including requirements and qualifications, by which to determine whether or not a person is eligible to be nominated by the Commission for appointment by the Minister as adjudicators (including a Chief Adjudicator). 10

**Appointment of adjudicators**

- 76. (1) The Minister shall appoint persons (referred to in this Act as “adjudicators”) to make adjudications.
- (2) The Minister shall appoint a person nominated by the Commission under *section 75* unless the Minister— 15
  - (a) is not satisfied that the nominated person meets the requirements and qualifications prescribed by the Minister, or
  - (b) considers that the nominated person does not have the independence necessary to be appointed as an adjudicator.
- (3) The Commission shall appoint one of the adjudicators appointed under this section to be the Chief Adjudicator. 20
- (4) Nothing in this Act or the Act of 2002 or in any regulations made under either Act shall prevent—
  - (a) the Minister appointing, under and in accordance with this section, as an adjudicator a person who is, on the nomination of the Commission, appointed as an adjudication officer or Chief Adjudication Officer under the Act of 2002, or 25
  - (b) a person who is appointed by the Minister, under and in accordance with this section, as an adjudicator being appointed as an adjudication officer or Chief Adjudication Officer under the Act of 2002.
- (5) The Minister may make regulations providing for the creation of a panel of adjudicators to perform the functions of adjudicators under this Act. 30
- (6) If no Chief Adjudicator stands appointed by the Commission under this section the adjudicators standing appointed may agree that one of them perform the functions of Chief Adjudicator.

**Independence of adjudicators**

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- 77. (1) Adjudicators shall be independent in the performance of their functions.
- (2) The Commission shall put in place measures to ensure—
  - (a) the independence of adjudicators in the performance of their functions, and

- (b) the effective implementation of, and adherence to, any regulations made under *section 80*.
- (3) Where an adjudicator believes that performing any of his or her functions as an adjudicator in particular administrative sanctions proceedings would potentially create a conflict of interest, then the adjudicator shall recuse himself or herself from the proceedings in question and shall notify the Commission and the parties concerned of the recusal. 5
- (4) Where an adjudicator believes that performing any of his or her functions as an adjudicator would give rise to the perception of any potential conflict of interest, the adjudicator shall disclose that fact to the Commission and to the parties concerned in the matter with which the adjudicator is dealing, and shall, having regard to any submissions received from the person concerned or from the Commission, consider whether it is necessary to recuse himself or herself from the proceedings in question. 10
- (5) An adjudicator shall not make an adjudication where that adjudicator has been involved in any decision of the Commission whether or not to exercise any of the powers referred to in *Chapter 2* or *Part 6* for the purposes of an investigation in relation to the matter the subject of the adjudication. 15
- (6) An adjudicator shall not, during the period of his or her appointment, draw up or decide upon—
- (a) guidelines under *section 98* (other than *subsection (1)(g)*), or 20
- (b) the policy of the Commission concerning—
- (i) the bringing of criminal prosecutions, the referral of matters to the Director of Public Prosecutions or the making of referrals under *section 68(3)(c)* or *71*, and
- (ii) administrative sanctions that may be imposed under *section 91*, 25
- but may be consulted in the drawing up or deciding upon of such policy or guidelines, as the case may be.
- (7) Where a decision of the Commission referred to in *subsection (5)* is made as a college, or in any other manner whereby a decision of the Commission is treated as having been made by all members of the Commission, a member of the Commission who recused himself or herself from the process of making that decision shall, for the purposes of *subsection (5)*, be deemed not to have been involved in that decision, provided that the recusal took place at a point and in a manner which does not compromise the independence of the member of the Commission as an adjudicator. 30
- (8) The chairperson of the Commission shall not during his or her term of office serve as an adjudicator. 35
- (9) A member of the Commission may not during his or her term of office serve as Chief Adjudicator.
- (10) A member of the Commission or a member of staff of the Commission who is appointed as an adjudicator or is appointed to assist an adjudicator under *section 81* shall not be required by the Commission or by any other person to perform any duty, including any statutory duty, of a member of the Commission or a member of staff of 40



the Commission or of an authorised officer or of an adjudicator the performance of which interferes with his or her independence in making an adjudication or, in the case of a person appointed to assist an adjudicator under *section 81*, the independence of an adjudicator whom he or she is assisting or may assist.

### **Regulations to ensure independence of adjudicators**

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**78.** (1) The Minister shall make regulations prescribing requirements to be imposed upon the Commission and adjudicators to implement *section 77*.

(2) Adjudicators shall not be involved in investigations of regulatory breaches and shall not act as authorised officers under section 39 of the Principal Act subject to such exceptions as the Minister may prescribe.

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(3) Regulations under this section may make further provision for the independence of adjudicators (including an effective internal separation between the functions of the Commission and the functions of adjudicators) and any such regulations shall (where appropriate) include provision for—

(a) a requirement that adjudicators, and employees of the Commission tasked with assisting adjudicators, shall not communicate with authorised officers, employees and members of the Commission in respect of any proceeding relating to a regulatory breach before the Commission arising under this Act save on notice to the persons concerned in those proceedings the subject of a referral under *section 68(3)(c)* or *71*, or as otherwise permitted by regulations, which may include communications relating to investigations in which the adjudicators, and employees of the Commission tasked with assisting the adjudicators, have not been nor will be involved in any decision under *section 71*,

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(b) a requirement that documentation and other information concerning an investigation conducted under *Chapter 2* which have been obtained by the Commission in the performance of its functions under this Act, shall not be disclosed to adjudicators that have been directed to make an adjudication in relation to that same investigation or to employees of the Commission or other persons (including any consultant or adviser) tasked with assisting such adjudicators save in accordance with this Act and upon notice to the persons concerned in any referral under *section 68(3)(c)* or *71*,

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30

(c) arrangements for oversight by specified members or employees of the Commission for compliance by the Commission with the provisions of *section 77*,

(d) reporting to the Minister or the Commission by specified members or employees of the Commission or by adjudicators of any breach of *section 77* and for remedying any such breach,

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(e) a requirement that the Commission publish policies and implement measures sufficient to identify and manage conflicts of interest on the part of—

(i) adjudicators, and

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(ii) any employee of the Commission or other person (including any consultant or adviser) tasked with assisting an adjudicator in the performance of his or her functions under this Act,

and

- (f) a requirement that the Chief Adjudicator and the Commission report annually to the Minister on the Commission's compliance with the principle of independence under *section 77* and any regulations made hereunder and the policies the adjudicators or the Commission have adopted in order to do so. 5

### **Adjudicators may sit together**

- 79. The powers and functions of an adjudicator shall be exercisable by each adjudicator for the time being standing appointed save 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 where the Chief Adjudicator so directs the functions of an adjudicator for that purpose shall be performed by those adjudicators sitting together. 10

### **Regulations in relation to adjudicators**

- 80. The Minister shall, in a manner ensuring the independence of adjudicators in the performance of their functions, make regulations to provide for each of the following:
  - (a) the term of appointment of adjudicators (including the term of appointment of a Chief Adjudicator), which term shall be specified in the instrument of appointment, and may be—
    - (i) fixed and non-renewable, or 15
    - (ii) fixed and renewable based upon objective, independently assessed competence-based criteria prescribed by the Minister under *section 75(3)*; 20
  - (b) the remuneration of the Chief Adjudicator and other adjudicators, which remuneration may—
    - (i) not be reduced during the term of their appointment save in accordance with law, and
    - (ii) vary depending on the category of person prescribed by the Minister under *section 75(3)* into which the adjudicator falls; 25
  - (c) such prohibitions on remuneration of adjudicators during their term of office, by persons or bodies other than the Commission, as are necessary to ensure that actual or perceived conflicts of interest do not arise in the performance of the adjudicator's functions; 30
  - (d) the renewal of appointment of adjudicators, including criteria for such renewal;
  - (e) the resignation from office of adjudicators;
  - (f) procedures and criteria whereby the revocation of appointments of adjudicators may only take place upon decision by the Government after independent assessment and recommendation by persons outside the Commission with relevant experience and expertise and where—
    - (i) the adjudicator concerned has become incapable through ill-health of effectively performing his or her functions, 35
    - (ii) the adjudicator concerned has engaged in serious misconduct, or

(iii) the Commission has been notified of an adjudicator's conflict of interest in more than one matter, which conflict of interest is assessed to be likely to continue,

without prejudice to the automatic removal from office as an adjudicator of an employee of the Commission upon cessation of that employment; 5

(g) the functions of the Chief Adjudicator;

(h) the rules concerning adjudications by adjudicators sitting together;

(i) the rules concerning promotion and increments of employees of the Commission who act as adjudicators;

(j) the rules concerning the tasking of any employee of the Commission to assist an adjudicator in their performance of his or her functions under this Act; 10

(k) the rules concerning the appointment of consultants or advisers for the purpose of assisting an adjudicator in the performance of his or her functions under this Act.

### **Assistants to adjudicators**

**81.** (1) The Commission may from time to time— 15

(a) require any employee of the Commission, or

(b) appoint such persons (including any consultant or adviser) as it considers necessary,

to assist adjudicators, or an individual adjudicator (including the Chief Adjudicator), in the performance of functions under this Act. 20

(2) Persons assisting an adjudicator in accordance with *subsection (1)* shall not provide such assistance in connection with any matter in which they have or may have a conflict of interest.

(3) The Chief Adjudicator may at any time direct that an employee of the Commission required to assist the adjudicators, or an individual adjudicator, under *subsection (1)(a)* in the performance of powers and functions under this Act, be reassigned by the Commission. 25

(4) Persons required to, or appointed to as the case may be, assist adjudicators under *subsection (1)* may perform other tasks on behalf of the Commission, including performing tasks in any investigation in which they have not been, and will not be, involved in assisting an adjudicator under this section, but they shall be solely responsible to the Chief Adjudicator, or to the adjudicator or adjudicators to which they have been individually assigned, in relation to providing assistance in accordance with *subsection (1)*. 30

(5) Employees of the Commission who have been required to assist adjudicators under *subsection (1)(a)* and persons appointed by the Commission to assist adjudicators under *subsection (1)(b)* shall not be subject to the direction of any member or employee of the Commission, (other than, where such member or employee is the adjudicator) in relation to the performance of the functions referred to in that subsection. 40

- (6) Nothing in *subsection (5)* shall preclude an employee of the Commission or other person appointed by the Commission being subject to the direction of a member or employee of the Commission in relation to the performance of functions not referred to in *subsection (1)(a)*.
- (7) Without prejudice to the responsibility of the Commission for employment and for entering into contracts and determining all matters relevant thereto, where an adjudicator has made a determination that specific assistance is required in a particular matter referred to the adjudicator for a decision under *section 90*, the adjudicator shall be consulted on decisions concerning the appointment and assignment of a person to provide assistance to the adjudicator. 5 10
- (8) The Minister may prescribe detailed requirements governing the appointment and assignment of persons to assist adjudicators under *subsection (1)(b)*.
- (9) The Minister may, where it is necessary to enable the proper functioning of the Commission, make regulations prescribing such limited exceptional circumstances in which persons referred to in *subsection (5)* may be subject to a direction referred to in that subsection. 15

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

82. (1) 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 tasks other than— 20
- (a) the functions of an adjudicator under this Act, and
  - (b) the functions of a person required to assist adjudicators under *section 81(1)(a)* when assisting an adjudicator.
- (2) The appointment of a person as an adjudicator shall not in itself— 25
- (a) constitute employment by or within the Commission,
  - (b) constitute the holding of a position in the civil service, or
  - (c) otherwise create a contract between an adjudicator on the one part and the Minister or the Commission on the other part.
- (3) Save in relation to the application of independence requirements to an adjudicator, nothing in this Part shall alter the terms and conditions of employment of an adjudicator who is an employee of the Commission on the date on which this section comes into operation. 30
- (4) Save for such limited exceptions consistent with the independence of adjudicators in the performance of their functions that the Minister may prescribe, nothing in this Part shall prevent the application by the Commission of disciplinary procedures under a contract of employment save in respect of— 35
- (a) the tasks of an adjudicator under this Act, and
  - (b) the tasks of a person required to assist adjudicators under *section 81(1)(a)* when assisting an adjudicator. 40

- (5) The Minister may make regulations to give further effect to this section.

#### CHAPTER 4

##### *Procedure following referral to adjudicator*

##### **Notification by adjudicator following referral**

- 83.** As soon as practicable after a referral is made to an adjudicator under *section 68(3)(c)* or *71*, the adjudicator shall serve on the notified person—
- (a) a copy of this section,
  - (b) in the case of a referral under *section 68(3)(c)*, a notice in writing stating that the matter has been referred for an adjudication on consent under *section 109*, and asking the person to confirm the matters set out in the report prepared in accordance with *section 68(3)(a)* within the period of 15 days from the date of service of the notice, or such further period, not exceeding 7 days, as the adjudicator may specify in the notice, and
  - (c) in the case of a referral under *section 71*, a notice in writing stating that the person may make written submissions to the adjudicator on the referral report within the period of 30 days beginning on the date of service of the notice, or such further period, not exceeding 15 days, as the adjudicator may specify in the notice.

##### **Actions following referral under *section 68(3)(c)***

- 84.** Where a notified person served with a notice in accordance with *section 83(b)* confirms the matters set out in the report prepared in accordance with *section 68(3)(a)*, an adjudicator may, at any time following such confirmation, impose on the person, in accordance with the report any of the following:
- (a) a requirement to cease the regulatory breach or to take specified measures to remedy the breach;
  - (b) a financial penalty in accordance with *section 94*;
  - (c) a requirement to pay a refund in accordance with *section 95*;
  - (d) a requirement to pay compensation in accordance with *section 96*;
  - (e) a suspension or withdrawal of authorisation or rights of use for radio spectrum or rights of use for numbers, in accordance with *section 97*.

##### **Actions following referral under *section 71***

- 85.** (1) In the case of a referral under *section 71* the adjudicator may do any of the following that he or she considers necessary to resolve an issue of fact or otherwise enable the adjudicator to make an adjudication:
- (a) exercise any of the powers under *section 87*;
  - (b) request further information from the person concerned;

- (c) request further information from any other person, and may, for the purposes of doing so, provide, with due regard for the protection of commercially sensitive information, a copy of the referral report to the person;
  - (d) conduct an oral hearing.
- (2) Where there is a dispute of fact which cannot be successfully resolved in accordance with *paragraphs (a) to (c) of subsection (1)* the adjudicator concerned shall, on the request of the notified person, conduct an oral hearing in order to resolve the dispute. 5
  - (3) Where an oral hearing takes place at which a person may make submissions to the adjudicator on the referral report, the adjudicator shall not be required to give to the person the material referred to in *subsection (5)*. 10
  - (4) As soon as practicable after making a request under *subsection (1)(c)*, the adjudicator shall give to the Commission, and shall, with due regard for the protection of commercially sensitive information, give to the notified person, a copy of the request.
  - (5) As soon as practicable after receiving any information pursuant to a request under *subsection (1)(c)*, the adjudicator shall, with due regard for the protection of commercially sensitive information, give the Commission and the person— 15
    - (a) a copy of the information or, where commercial confidentiality means that such information cannot be provided in full, a summary of such information, and
    - (b) written notice stating that the Commission and the person may make written submissions to the adjudicator on the information within the period of 21 days beginning on the date of service of the notice, or such further period, not exceeding 14 days, as the adjudicator may specify in the notice. 20
  - (6) A person who receives a copy of a report under *subsection (1)(c)*, shall not, without the prior authorisation of the adjudicator, disclose the existence or the content of the report to any other person. 25
  - (7) A person who contravenes *subsection (6)* commits an offence and is liable on summary conviction to a class A fine.
  - (8) An adjudicator may direct an employee of the Commission who has been required under *section 81(1)(a)* to assist the adjudicator in the performance of his or her functions to make any communication on his or her behalf. 30

**Admissibility of evidence and rules for oral hearings conducted by adjudicators**

- 86.** (1) This section applies to an oral hearing before an adjudicator.
- (2) An adjudicator may, by notice, in writing—
    - (a) 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 35
    - (b) require the witness to attend an oral hearing from day to day unless excused, or released from further attendance, by the adjudicator.
  - (3) An adjudicator may require evidence to be given on oath or affirmation, and may for that purpose— 40

- (a) require a witness to take an oath or affirmation, and
  - (b) administer an oath to the witness orally or permit the witness to affirm.
- (4) The oath or affirmation to be taken by a witness for the purposes of this section is an oath that the evidence the witness will give shall be true.
- (5) The adjudicator may allow a witness at the oral hearing to give evidence by tendering a written statement, provided such statement is verified on oath or affirmation. 5
- (6) Without prejudice to *subsections (1) to (5)*, the adjudicator has the same powers, rights and privileges as a judge of the High Court when hearing civil proceedings on the occasion of that action including with respect to—
- (a) the attendance and examination of witnesses on oath or affirmation or otherwise (including witnesses who are outside the State), and 10
  - (b) compelling the production (including discovery) of records or an identified category or categories of records.
- (7) An oral hearing under this section may, at the discretion of the adjudicator, be held remotely (including in an online format), and evidence may be tendered as permitted by regulations or by an adjudicator. 15
- (8) At the oral hearing before the adjudicator—
- (a) an authorised officer or other representative of the Commission or any other person, with leave of the adjudicator, shall present the evidence in support of the referral, and 20
  - (b) the testimony of witnesses attending the oral hearing shall be given in accordance with this section and any regulations made under this section.
- (9) A person to whom notice is given under *subsection (2)*, or an authorised officer, may be examined and cross-examined at the oral hearing.
- (10) At any oral hearing before an adjudicator, there shall be a right to cross-examine witnesses and call evidence in defence and reply. 25
- (11) An oral hearing before an adjudicator shall be held in public unless the adjudicator 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. 30
- (12) If special circumstances exist (which shall include whether information given or likely to be given in evidence is commercially sensitive information), an adjudicator may impose restrictions on the reporting or distribution of information given at the hearing. 35
- (13) The payment or reimbursement of, or of any part of, the reasonable travelling and subsistence expenses of a witness required to attend an oral hearing, is at the discretion of the adjudicator, and such expenses shall be discharged by the Commission.
- (14) The rules of evidence shall apply to an oral hearing before an adjudicator save as may be otherwise prescribed. 40

- (15) Nothing in this section compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person’s possession, power or control.
- (16) The Minister may make regulations setting out further details or conditions for the receipt of evidence or the conduct of oral hearings under this section. 5
- (17) Subject to any regulations under *subsection (16)*, the Commission shall make rules providing for the conduct of an oral hearing under this section and shall publish such rules on the website of the Commission.
- (18) Rules made under *subsection (17)* shall not have effect until they are published. 10

### **Powers of adjudicators and offences**

87. (1) At any time after a referral under *section 69* an adjudicator may, on an application by the Commission or the notified person or of the adjudicator’s own motion, where the adjudicator is satisfied that such direction is necessary for the determination of the issues before the adjudicator— 15
- (a) direct authorised officers of the Commission, or the notified person (each of which, in this section, is referred to as a “party”) to answer (whether on oath or affirmation or otherwise) an identified question or questions in whatever manner or form the adjudicator may specify,
- (b) direct a party to adduce evidence or produce books, documents and records in its power or control, and 20
- (c) direct a party to clarify any issue of fact that an adjudicator may deem necessary.
- (2) An answer to a question put to a person in response to a direction under *subsection (1)(a)* is not admissible as evidence against the person in criminal proceedings, other than proceedings for perjury in circumstances where the contested response or information was provided on oath or affirmation. 25
- (3) A summons issued by the adjudicator for the purpose of an oral hearing under *section 86* may be substituted for, and is the equivalent of, any formal process capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of records. 30
- (4) A person the subject of a direction under this section shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in this section as a witness appearing in proceedings before the Court.
- (5) A person commits an offence if the person—
- (a) is served with a notice under *section 86(2)* and does not comply with that notice, 35
- (b) is subject to a direction under *subsection (1)* and fails to comply with such direction,
- (c) having been duly summoned to attend before an adjudicator under *section 86(2)* fails without reasonable excuse to attend at the time and place indicated on the summons, 40



- (d) while attending as a witness before an adjudicator at an oral hearing under *section 86* refuses to—
- (i) give evidence in the manner lawfully required by the adjudicator to be taken,
  - (ii) produce any record in the person’s power or control that the person is lawfully required by the adjudicator to produce, or
  - (iii) answer any question that the person is lawfully required by the adjudicator to answer,
- or
- (e) while attending before the adjudicator engages in any conduct that, if the adjudicator were a court of law having power to punish for contempt, would be contempt of court.
- (6) Where a person fails to comply with a requirement of an adjudicator under *section 86*, with a direction under *subsection (1)*, or with a summons to attend before an adjudicator, or refuses, while attending as a witness before the adjudicator, to do anything referred to in *subsection (5)* that the person is lawfully required by an adjudicator to do, or otherwise fails to comply with a direction of the adjudicator, the Court, on summary application by a party, on notice to that person, may—
- (a) by order require the person to attend before the adjudicator or to do the thing that the person refused to do, as the case may be, within a period to be specified by the Court, and
  - (b) make such interim or interlocutory orders as it considers necessary for that purpose.
- (7) A person commits an offence if, having been, or in anticipation of being, required to produce a book, document or record under *subsection (1)* or under *section 86(2)*, he or she intentionally or recklessly destroys or otherwise disposes of, falsifies or conceals such book, document or record or causes or permits its destruction, disposal, falsification or concealment.
- (8) If information or evidence is provided by a person to an adjudicator in connection with any function of an adjudicator under this Part, that person commits an offence if—
- (a) the information or evidence is false or misleading in a material respect, and
  - (b) the person knows, or ought reasonably to know, that it is false or misleading in a material respect.
- (9) A person who provides any information to another person, knowing the information to be false or misleading in a material respect, or who recklessly provides any information to another person which is false or misleading in a material respect, knowing the information is to be used for the purpose of providing information to an adjudicator in connection with any of his or her functions under this Act, commits an offence.
- (10) A person who commits an offence under *subsection (5), (7), (8) or (9)* is liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding €250,000 or both.
- (11) Proceedings may be brought for an offence under this section regardless of whether or not an order has been made, or has been applied for, under *subsection (6)*. 5
- (12) The Minister may make regulations setting out further details or conditions for the exercise of the powers of adjudicators under this section.
- (13) In this section, “Court” means the High Court.

### **Orders for costs in proceedings before adjudicator**

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- 88.** (1) No order as to costs shall be made in proceedings before an adjudicator save that an adjudicator may in his or her discretion award the costs of proceedings before an adjudicator against a respondent person or, as the case may be, the Commission if the adjudicator finds that the person or the Commission has engaged in improper, irregular, unfair, or unsatisfactory conduct in connection with the investigation of the alleged regulatory breach or in the conduct of proceedings before the adjudicator. 15
- (2) A requirement to pay costs under *subsection (1)* shall be proportionate to the nature and extent of the conduct that the person or, as the case may be, the Commission is found to have engaged in, and may be limited to a proportion of the overall costs of proceedings or to the costs of a particular part of the proceedings. 20

### **Regulations in relation to proceedings before adjudicator**

- 89.** (1) The Minister may make regulations setting out detailed requirements in relation to decisions of an adjudicator under *sections 90 and 91*, in order to implement this section and otherwise in relation to the conduct of proceedings before an adjudicator in any matter referred to an adjudicator under *section 71* (in this section referred to as “proceedings”), having regard to the need for efficiency and the rights of the defence, including but not limited to all or any of the following: 25
- (a) the form and manner of provision of information, records, documents, statements, admissions and evidence to be provided to the Commission or to the adjudicator;
  - (b) time limits to apply to the making and conduct of proceedings; 30
  - (c) the attendance of witnesses at an oral hearing;
  - (d) the form, and manner of making, of requests by an adjudicator for information, discovery or disclosure from a party to a proceeding, or a person other than a party;
  - (e) the provision by the Commission, or by an adjudicator, to a party to proceedings, or a person other than a party to proceedings, of information received by the adjudicator or the Commission; 35
  - (f) procedures for the consolidation and hearing of two or more proceedings together;

- (g) procedures for the separation of proceedings;
  - (h) the publication on the website of the Commission of information and documents provided, for the purposes of proceedings, by a party to a proceeding or by a person other than a party to proceedings;
  - (i) the form and manner in which a proceeding may be withdrawn; 5
  - (j) any consequential, supplementary or transitional provisions as appear to the Minister to be necessary or expedient for the purpose of giving effect to the regulations.
- (2) The Commission shall publish guidelines on the conduct of proceedings and may publish guidelines on any of the matters the subject of regulations under *subsection (1)*. 10

**Decision of adjudicator in relation to breach**

90. (1) An adjudicator shall consider the following when making a decision in relation to a matter referred to him or her under *section 71*:
- (a) the notice of suspected non-compliance served under *section 63* (and any supplementary notice of suspected non-compliance served under *section 64*); 15
  - (b) the referral report;
  - (c) any written submissions made by the notified person on the notice of suspected non-compliance, any supplementary notice of suspected non-compliance and the referral report; 20
  - (d) any submissions, statements, admissions, information, records or other evidence provided to the adjudicator in the course of the proceedings;
  - (e) any prior relevant adjudication that has been confirmed by the High Court under *section 109*.
- (2) In any matter referred to an adjudicator under *section 71* the adjudicator may make a decision as to whether, on the balance of probabilities, a person has committed or is committing a regulatory breach. 25
- (3) Where—
- (a) an adjudicator makes a decision under this section that a person has committed or is committing a regulatory breach, and 30
  - (b) the regulatory breach concerned constitutes a criminal offence,
- the person found to have committed, or be committing, the regulatory breach shall not be prosecuted for the criminal offence constituted by the regulatory breach.
- (4) A decision under *subsection (2)* shall be dated and include—
- (a) the reasons for the decision, 35
  - (b) the notice of suspected non-compliance and any supplementary notice of suspected non-compliance,

- (c) the evidence, including any information, records, documents, statements, admissions, evidence and written and oral submissions, considered,
  - (d) information regarding the right of appeal provided for under *section 106* where a final decision has been made,
  - (e) the name of the person found to have committed, or to be committing, a regulatory breach, and the nature of the breach, and 5
  - (f) such other particulars or material as the adjudicator considers appropriate.
- (5) For the avoidance of doubt, a decision may be made under *subsection (2)* or *section 91(1)* in relation to conduct that is no longer ongoing at the time at which the decision is made. 10

### **Decision of adjudicator in relation to administrative sanction**

91. (1) Where an adjudicator makes a decision under *section 90(2)*, that a person has committed a regulatory breach he or she may, subject to this section, do one or more of the following:
- (a) require the person to cease the regulatory breach or to take specified measures to remedy the breach; 15
  - (b) impose a financial penalty on the person in accordance with *section 94*;
  - (c) require the person to pay a refund to a third party in accordance with *section 95*;
  - (d) require the person to pay compensation to a third party in accordance with *section 96*; 20
  - (e) suspend or withdraw the person's authorisation to provide electronic communications networks or services (other than number-independent interpersonal communications services) or some or all of the person's rights of use for radio spectrum and of use for numbering resources in accordance with *section 97*. 25
- (2) A decision under this section shall specify the time period within which the person is required, subject to any appeal, to cease a regulatory breach or to take specified measures to remedy the breach or to pay any financial penalty, refund or compensation.
- (3) In determining the amount of any financial penalty to be imposed the adjudicator shall have regard to the matters outlined in *section 94*. 30
- (4) After reaching a decision under *section 90(2)* and prior to making a decision under *subsection (1)*, the adjudicator shall provide the Commission and the person to whom the decision relates with a copy of the decision under *section 90(2)* and shall inform the Commission and the person of the intention of the adjudicator to do one or more of the things set out in *subsection (1)*. 35
- (5) The adjudicator shall invite the Commission and the person concerned to make written submissions in accordance with *subsections (6) and (8)*.
- (6) The Commission may, within a period of 15 working days from the date on which the adjudicator invites it to make written submissions in accordance with *subsection (5)*, 40

or within such further period as is considered appropriate by the adjudicator and specified when inviting submissions, make written submissions to the adjudicator in relation to the application of the criteria specified in *section 94*, the amount of any financial penalty that may be imposed and in regard to guidelines made by the Commission under *section 98(1)(b) to (e)*. 5

(7) Where the Commission makes submissions in accordance with *subsection (6)* the adjudicator shall provide the person concerned with a copy of those submissions.

(8) The person concerned may—

(a) where the Commission does not make submissions in accordance with *subsection (6)*, within the period of 15 working days from the date by which the Commission was invited to make submissions in accordance with that subsection, 10

(b) where the Commission makes submissions in accordance with *subsection (6)*, with the period of 15 working days from the date on which the person is provided with a copy of those submissions, or

(c) within such further period as the adjudicator considers appropriate, and specifies when he or she invites written submissions from the person concerned, 15

make written submissions to the adjudicator in relation to the application of the criteria specified in *section 94*, the amount of any financial penalty and in regard to guidelines made by the Commission under *section 98(1)(b) to (e)*.

(9) When making submissions in accordance with *subsection (6)*, the Commission may, where it considers that there are, or have been, serious or repeated breaches of conditions by a person found to have committed a regulatory breach, recommend to the adjudicator in writing, that either or both the person's— 20

(a) general authorisation to provide electronic communications networks or services (other than number-independent interpersonal communications services), or 25

(b) some or all of the person's rights of use for radio spectrum and of use for numbering resources,

be suspended or withdrawn on a temporary or permanent basis.

(10) The adjudicator may by notice in writing request the person concerned to provide, in writing, within a period specified in the notice, such information as the adjudicator considers appropriate for the purpose of determining the administrative sanction to be imposed under *subsection (1)*. 30

### **Adjudication to take effect when confirmed by High Court**

92. (1) An adjudication shall take effect at the time it is confirmed by the High Court under *section 109* subject to any order made by a court on an appeal of the adjudication or on an application for leave to appeal the adjudication. 35

(2) Where an adjudication has taken effect in accordance with *subsection (1)* any sanction, including any financial penalty, imposed by such adjudication may be enforced without the need for any further judgment of a court.

- (3) Where an adjudication has taken effect in accordance with *subsection (1)* any financial penalty imposed by such adjudication may be enforced by the Commission as a judgment debt.
- (4) Where a person fails to comply with an administrative sanction imposed by an adjudication that has taken effect in accordance with *subsection (1)* the High Court may, on an application to it by the Commission in that behalf—
  - (a) suspend or withdraw the person’s general authorisation or rights of use,
  - (b) compel compliance with the adjudication and any administrative sanction imposed, or
  - (c) grant any injunctive relief that the Court considers necessary.
- (5) The Court may not require the Commission to give an undertaking as to damages as a condition of granting any injunctive relief under *subsection (4)(c)*.

**Notice of adjudication**

- 93.** (1) As soon as practicable after the adjudicator has made a decision under *section 91*, the adjudicator shall provide the Commission with the decision.
- (2) The Commission shall within 7 days of receipt of the decision of the adjudicator under *section 91* give notice in writing of the decision to the person concerned.
- (3) The notice under *subsection (2)* shall—
- (a) include a copy of the decision of the adjudicator under *section 90(2)*,
  - (b) state that, in so far as it imposes any administrative sanction, the adjudication shall not take effect unless it is confirmed by the Court in accordance with *section 109*, and
  - (c) state that, if the person does not appeal any administrative sanction imposed by the decision under *section 106*, the Commission shall, as soon as is practicable after the expiration of the period for the making of such an appeal, make an application for confirmation of the adjudication in accordance with *section 109*.
- (4) The Commission may provide a copy of a notice referred to in *subsection (2)* to a person other than the person concerned where it considers it appropriate to do so.
- (5) A copy of the adjudication shall be published on the website of the Commission.
- (6) A decision referred to in *subsection (1)* and a copy of the adjudication referred to in *subsection (3)* may contain such redactions as the adjudicator considers necessary and appropriate, in respect of *subsection (1)* on his or her own motion, or in respect of *subsection (2)* or *(3)* upon application of the Commission or any of the persons concerned—
- (a) to protect commercially sensitive information,
  - (b) to protect the rights of the person concerned or any other person, or
  - (c) for any other good and sufficient reason.

- (7) A person who receives a copy of a notice under *subsection (2)* prior to the publication of the adjudication shall not, without the prior authorisation of the adjudicator, disclose the existence or the content of the notice to any other person.
- (8) A person who receives a copy of a notice under *subsection (2)* that contains material redacted from publication under *subsection (6)* shall not, without the prior authorisation of the adjudicator, disclose the content of the redacted material to any other person. 5
- (9) A person who fails to comply with *subsection (7)* or *(8)* commits an offence and is liable—
  - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or 10
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding €250,000 or both.

## CHAPTER 5

### *Imposition of administrative sanctions* 15

#### **Requirement to pay financial penalty**

94. (1) When determining the amount of a financial penalty, an adjudicator shall have regard to—
- (a) the need to ensure that the financial penalty is—
    - (i) appropriate, 20
    - (ii) effective,
    - (iii) proportionate to the regulatory breach, and
    - (iv) dissuasive (including whether it will act as a sufficient deterrent to ensure that any similar regulatory breach will not occur in the future),
  - (b) the seriousness of the regulatory breach, 25
  - (c) in the case of breach by—
    - (i) a person that is not a natural person, the turnover of the person in the State in the financial year ending in the year immediately before the financial year in which the regulatory breach last occurred, or
    - (ii) a natural person, the annual income of the person on whom the financial penalty is to be imposed, in the year preceding the year in which the regulatory breach last occurred, 30
  - (d) the extent of any failure by the person to cooperate with the investigation concerned, whether or not such failure is prosecuted,
  - (e) any excuse or explanation offered by the person for the regulatory breach or failure to cooperate with the investigation concerned, 35

- (f) any gain (financial or otherwise) made, or loss avoided, by the person, or by any other person in which the first-named person has a financial interest, as a consequence of the regulatory breach,
  - (g) the amount of any loss suffered, or costs incurred, by any person as a result of the regulatory breach, 5
  - (h) the effect of the regulatory breach on other operators, consumers and other end-users,
  - (i) the duration of the regulatory breach,
  - (j) the number of times the regulatory breach has occurred,
  - (k) whether or not the regulatory breach continued after the person was served with a notice of suspected non-compliance, 10
  - (l) where applicable, the absence, ineffectiveness or repeated failure of internal mechanisms or procedures of the person intended to prevent such a regulatory breach from occurring,
  - (m) where applicable, the extent and timeliness of any steps taken to end the regulatory breach and any steps taken to remedy the consequences of the regulatory breach, 15
  - (n) whether a financial penalty in respect of a similar regulatory breach has already been imposed on the person by a court or a competent authority, including by the Commission, 20
  - (o) any precedents set by a court or a competent authority, including the Commission, in respect of a similar regulatory breach,
  - (p) where applicable, the amount of any compensation paid or to be paid in accordance with *section 96*,
  - (q) any specific factors, criteria or methodology relevant to *paragraphs (a) to (o)* prescribed by the Minister for the purposes of this subsection, and 25
  - (r) any guidelines made by the Commission under *section 98* in respect of the calculation of the amount of a financial penalty.
- (2) The Commission may make rules for the purposes of the implementation of this section. 30
- (3) The adjudicator may, having imposed a financial penalty on a person (in this subsection referred to as the “sanctioned person”) in accordance with this section and where he or she considers that it is necessary to do so in order to ensure that the penalty be appropriate, effective, proportionate and dissuasive, impose the penalty (whether jointly with or separately to the sanctioned person) on either or both of the following: 35
- (a) a subsidiary of the sanctioned person;
  - (b) a person of which the sanctioned person is a subsidiary.
- (4) The following shall apply for the purposes of this section:



- (a) “subsidiary” shall have the same meaning as it has in section 7 of the Companies Act 2014;
- (b) where a person is a partnership, for the purposes of the application to it of the definition of “subsidiary”—
  - (i) references to voting rights attaching to shares in a company shall be construed as references to votes or other rights exercisable by the partners in a partnership giving those partners the potential to exercise control or dominant influence over the activities of the partnership, and 5
  - (ii) references to a company’s constitution shall be construed as references to any agreement or practice governing or concerning the operation of the partnership; 10
- (c) where a person is an unincorporated association, for the purposes of the application to it of the definition of “subsidiary undertaking”—
  - (i) references to voting rights attaching to shares in a company shall be construed as references to votes or other rights exercisable by the members of the unincorporated association giving those members the potential to exercise control or dominant influence over the activities of the unincorporated association, and references to a company’s constitution shall be construed as references to the constitution or of any agreement or practice governing or concerning the operation of the unincorporated association, and 15 20
  - (ii) references to a company’s constitution shall be construed as references to the constitution or of any agreement or practice governing or concerning the operation of the unincorporated association.
- (5) The maximum amount of a financial penalty that an adjudicator may impose on a person under this Part in respect of a regulatory breach shall be— 25
  - (a) in the case of a person other than a natural person, the greater of €5 million and 10 per cent of the turnover of the person in the State in the financial year ending in the year immediately before the financial year in which the regulatory breach last occurred in the State, and
  - (b) 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, in the year preceding the year in which the regulatory breach last occurred. 30

**Requirement to pay refund**

- 95. (1) 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. 35
- (2) No maximum or minimum amount shall apply to any refund under *subsection (1)*.

**Requirement to pay compensation**

- 96. (1) This section applies to a requirement to pay compensation in respect of a regulatory breach. 40

- (2) An adjudicator may require compensation to be paid to an end-user in respect of a regulatory breach notwithstanding that the end-user may have received a refund.
- (3) When determining the amount of compensation to be paid by a person in respect of a regulatory breach, an adjudicator shall take account of at least the following factors, to the extent that they are relevant to the breach: 5
- (a) the need to ensure that the compensation is appropriate and proportionate;
  - (b) the amount of any loss suffered, or costs incurred by any person affected by the breach;
  - (c) the effect of the breach on any person affected by the breach, including any distress, inconvenience or emotional upset caused by the breach; 10
  - (d) whether the regulatory breach continued after the person was served with a notice of suspected non-compliance;
  - (e) if applicable, the extent and timeliness of any steps taken to end the regulatory breach and any steps taken to remedy the consequences of the regulatory breach;
  - (f) any relevant precedents set by a court or the Commission. 15
- (4) The maximum amount of compensation that a provider may be required to pay to an end-user is €5,000.
- (5) Where a regulatory breach is committed by a person other than a natural person the maximum amount of compensation that an adjudicator may require it to pay to all the persons affected by the regulatory breach shall not exceed the greater of— 20
- (a) €5,000,000, and
  - (b) 10 per cent of the annual turnover of the person in the State in the financial year ending in the year immediately before the financial year in which the regulatory breach last occurred.
- (6) Where a regulatory breach is committed by a natural person the maximum total amount of compensation that an adjudicator may require him or her to pay in respect of that breach to all of the persons affected shall not exceed the greater of— 25
- (a) €500,000, and
  - (b) 10 per cent of annual income of the person on whom the financial penalty is to be imposed, in the year preceding the year in which the regulatory breach last occurred. 30
- (7) If compensation is required to be paid to more than one person following a finding that a person has committed a regulatory breach and the total amount of such compensation exceeds the maximum limit provided for in *subsection (5)* or *(6)*, the compensation shall be reduced in proportion to the sum of all claims for compensation against the maximum limit. 35
- (8) Where an adjudicator decides to impose both a financial penalty and a requirement to pay compensation in respect of a regulatory breach the cumulative maximum amount of the financial penalty and compensation shall not exceed the relevant limit set out in *subsection (5)* or *(6)*. 40

## **Suspension or withdrawal of authorisation or rights of use**

97. Where an adjudicator receives a recommendation from the Commission under *section 91(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, either or both, the general authorisation of a person to provide electronic communications networks or services (other than number-independent interpersonal communications services) and some or all of the person's rights of use for radio spectrum and of use for numbering resources. 5

## **Guidelines**

98. (1) The Commission may, subject to this Act and any regulations and rules made under this Act, and having regard to the fairness and efficiency of the procedures under this Part, prepare and make guidelines in relation to any matter provided for by or under this Part, including— 10
- (a) the conduct of oral hearings,
  - (b) the imposition of administrative sanctions (including the factors applicable to any financial penalty to be imposed under *section 91*, and the method of calculation of financial penalties), 15
  - (c) the award of compensation,
  - (d) the award of refunds,
  - (e) the suspension or withdrawal of authorisation or rights of use for radio spectrum or rights of use for numbering resources, 20
  - (f) the decision to carry out an investigation where there is evidence of a breach and the conduct of such investigations, including the content of referral reports and other reports of authorised officers,
  - (g) the general policies of the Commission. 25
- (2) In making an adjudication, subject to this Act and any regulations and rules made under this Act, an adjudicator shall apply guidelines made and published by the Commission under *subsection (1)* and by BEREK unless the adjudicator considers that there is a good and substantial reason not to do so.
- (3) The Commission may amend or revoke guidelines made under *subsection (1)*. 30
- (4) The Commission shall publish any guidelines made under *subsection (1)*, and any amendment to or revocation of those guidelines, on the website of the Commission.

## **Regulations in relation to certain matters**

99. The Minister may provide in regulations for any matter referred to in *paragraphs (a) to (f) of section 98(1)*. 35

*Admissibility of certain evidence***Admissibility of evidence before Commission**

- 100.** (1) The type of proof that is admissible as evidence in proceedings under this Part or the Principal Act (whether criminal or civil, including proceedings before the Commission or an adjudicator) 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, provided that the evidence referred to would have been admissible before a court were it before a court. 5 10
- (2) If a document contains a statement by a person specified in *subsection (3)* asserting that an act has been done, or is, or was, proposed to be done, by another person, being an act that relates to a regulatory breach (the “relevant act”) then subject to the conditions specified in *subsection (4)* being satisfied, that statement shall be admissible in proceedings in respect of the regulatory breach as evidence that the relevant act was done by that other person or was proposed (at the time the statement was made, or, as the case may be, at a previous time) to be done by him or her. 15
- (3) The person referred to in *subsection (2)* is a person who has done an act of the kind referred to in that subsection in relation to the regulatory breach (whether or not the same as the act which the other person referred to in that subsection is alleged to have done or proposed to do). 20
- (4) The conditions referred to in *subsection (2)* are that the document referred to in that subsection—
- (a) has come into existence before the commencement of the proceedings under this Act in which it is sought to tender the document in evidence, and 25
- (b) has been prepared otherwise than in response to any enquiry made or question put by a member or officer of the Commission, a member of the Garda Síochána, an officer of the European Commission, or an authorised officer relative to any matter the subject of those proceedings.
- (5) In estimating the weight, if any, to be attached to evidence admitted by virtue of this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise. 30
- (6) Where the proof admitted in evidence by virtue of this section comprises a statement by a person—
- (a) any evidence which, if the person who made the statement had been called as a witness, would have been admissible as relevant to his or her credibility as a witness shall be admissible for that purpose, 35
- (b) evidence may, with the leave of the court or adjudicator seised of the proceedings, be given of any matter which, if that person had been called as a witness, could have been put to him or her in cross-examination as relevant to his or her credibility but of which evidence could not be adduced by the cross-examining party, and 40

- (c) evidence tending to prove that that person, whether before or after making the statement, made (whether orally or not) a statement which is inconsistent with it shall, if not already admissible by virtue of any rule of law or other enactment, be admissible for the purpose of showing that he or she has contradicted himself or herself. 5
- (7) Nothing in this section shall prejudice the admissibility in any proceedings under this Act before a court or an adjudicator of any document, as evidence of any matters stated in it—
  - (a) that is so admissible by virtue of any rule of law or other enactment, or
  - (b) in respect of adjudicators, that would be admissible before a Court hearing civil proceedings by virtue of any rule of law or other enactment. 10
- (8) The provisions of Chapter 3 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 shall apply to proceedings under this Act (whether criminal or civil, including proceedings under *Chapters 1 to 5* and *Part 6*).

CHAPTER 7 15

*Restrictions on disclosure of certain information*

**Restrictions on disclosure of certain information**

- 101.** (1) 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. 20
- (2) Subject to *subsection (3)*, and save in accordance with law, an adjudicator, an authorised officer, the Commission and its respective servants or agents shall not, without reasonable excuse, disclose to any person— 25
- (a) any confidential information obtained by virtue of the exercise of powers conferred by or under this Act, or
  - (b) any information obtained by virtue of the exercise of powers conferred by or under this Part or the Principal Act in relation to an investigation under this Part or the Principal Act where that information was given under power of compulsion. 30
- (3) Notwithstanding *subsection (2)* an adjudicator, the Commission and its servants or agents may disclose information obtained by virtue of the exercise of powers conferred by or under this Act or the Principal Act where such disclosure is—
- (a) permitted by this Act or the Principal Act, 35
  - (b) otherwise permitted by law, or
  - (c) duly authorised by the Commission or an adjudicator in the performance of his or her functions.

- (4) Information provided to any person pursuant to *subsection (3)* may contain such redactions as an adjudicator or the Commission or an authorised officer may consider necessary and appropriate—
- (a) to protect commercially sensitive information,
  - (b) to protect the rights of the parties or any other person, or 5
  - (c) for any other good and sufficient reason.
- (5) A person who contravenes *subsection (2)* commits an offence and is liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both.
- (6) The following categories of information obtained by a party during investigations by an authorised officer, or administrative sanctions proceedings before an adjudicator under this Act, shall not be used by that party in proceedings before a court prior to the authorised officer or the Commission or an adjudicator, as the case may be, having closed such proceedings with respect to all parties under investigation, whether by making a decision under *section 90* or *section 91*: 10
- (a) information that was prepared by persons specifically for investigations by an authorised officer or administrative sanctions proceedings before an adjudicator; 15
  - (b) information that an authorised officer or an adjudicator has drawn up and sent to the parties in the course of an investigation or administrative sanctions proceedings; 20
  - (c) settlement submissions that have been withdrawn.
- (7) In this section, “applicable provisions” means section 38A and sections 13D and 39 of the Principal Act.

### **Confidentiality rings**

- 102.** (1) Where the Commission or an adjudicator provides, or otherwise makes available, 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, is provided subject to this section. 25
- (2) A document, or part of a document, provided subject to this section may not be viewed by, or shared with, any person other than one or more of the following, as the Commission may specify: 30
- (a) the person to whom the document is provided or otherwise made available;
  - (b) a legal adviser, or other professional adviser, of the person to whom the document is provided or otherwise made available;
  - (c) such other person as the Commission may specify. 35
- (3) A person who allows a document provided to the person subject to this section to be viewed by, or shared with, a person other than in accordance with this section commits an offence and is liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both.

**Interpretation (Chapter 8 of Part 7)**

**103.** In this Chapter, “Court” means the High Court.

**Decisions reviewable only by appeal under this Chapter**

5

**104.** (1) Neither—

(a) an urgent interim measure, nor

(b) an adjudication,

shall be challenged, including as to its validity, other than by way of an appeal, in the case of an urgent interim measure, under *section 105*, or, in the case of an adjudication, under *section 106*. 10

(2) For the avoidance of doubt, in respect of a decision under *section 57, 90 or 91* no proceeding (including an application for judicial review whether in accordance with *section 112* or otherwise) may be brought before the courts other than an appeal under *section 105* in the case of a decision under *section 57* or, in the case of a decision under *section 90 or 91*, an appeal under *section 106* or an application to have the decision confirmed under *section 109*. 15

**Appeal against urgent interim measures notice**

**105.** (1) 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 under *section 57*. 20

(2) On application, the Court may extend the period within which an appeal may be brought under *subsection (1)*, where it is satisfied that—

(a) there is exceptional, good and sufficient reason for doing so, and

(b) the circumstances that resulted in the failure to bring an appeal within the period provided for in *subsection (1)* were outside the control of the applicant for the extension. 25

(3) Where an appeal is made under *subsection (1)*—

(a) the appellant may apply to the Court to have the urgent interim measure suspended until such time as the appeal is determined, and 30

(b) the Court may, if it considers it appropriate to do so having regard to all the circumstances, order that the urgent interim measure or part thereof, be suspended until the appeal is determined, or until such other time as the Court may order.

(4) In any appeal under *subsection (1)*, the Court may not require the Commission to give an undertaking as to damages as a condition of granting any order. 35

## Appeal against adjudication

- 106.** (1) 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 under *section 93(2)*.
- (2) On application, the Court may extend the period within which an appeal may be brought under *subsection (1)*, where it is satisfied—
- (a) that there is exceptional, good and sufficient reason for doing so,
  - (b) that the circumstances that resulted in the failure to bring an appeal within the period provided for in *subsection (1)* were outside the control of the applicant for the extension, and
  - (c) where an application for confirmation has been brought under *section 109*, that the Court has neither heard nor determined such application.
- (3) Where an application for confirmation has been brought pursuant to *section 109* in relation to an adjudication the subject of an appeal under this section, the Court may, upon application or of its own motion, stay the proceedings under *section 109*.
- (4) Where the Court confirms an adjudication that imposes an administrative sanction, or substitutes its own decision for the adjudication of an adjudicator and, as part of such adjudication, imposes an administrative sanction, the Court may set a time limit for the payment of any financial penalty, compensation or refund required to be paid.

## Conduct of appeals

- 107.** (1) The respondent to an appeal shall be the Commission.
- (2) A person that brings an appeal, or an application under *section 105(3)(a)*—
- (a) may include in such appeal or application, as the case may be, any ground that could, but for *section 104*, be relied upon by the appellant in an application seeking judicial review, and
  - (b) shall, on the same date as it makes such appeal or application, as the case may be, notify the respondent of the fact that it has made the appeal or application, and of the grounds on which it has made the appeal or application.
- (3) The Court may, for the purpose of ensuring the efficient, fair and timely determination of an appeal, give directions in respect of the conduct of the appeal.
- (4) An appellant shall, when making an appeal precisely state all of the grounds in law and fact upon which the appeal is made and shall provide to the Court all of the documents and evidence which it is alleged support the granting of the appeal or upon which the appellant intends to rely to support those grounds.
- (5) A party to an appeal other than the appellant shall, when responding to an appeal, state all of the grounds upon which he or she responds to the appeal and provide to the Court all of the documents and evidence upon which he or she intends to rely to support those grounds.



- (6) Subject to *subsection (7)*, a party to an appeal shall not be entitled during the course of an appeal to make submissions to the Court other than submissions related to the grounds stated, or documents and evidence provided under *subsections (4) and (5)*.
- (7) The Court may, upon application and where it considers it necessary for the fair and proper determination of an appeal, require or permit a party to an appeal to— 5
- (a) make submissions to the Court other than submissions related to the grounds stated or documents and evidence provided under *subsections (4) and (5)*, and
  - (b) provide documents or evidence to the Court other than documents or evidence provided under *subsections (4) and (5)*.
- (8) Notwithstanding *subsection (7)*, the Court shall refuse to consider submissions, 10 documents or evidence where it considers that—
- (a) the submissions, documents or evidence are not relevant to the appeal, or
  - (b) it is appropriate to do so in order to avoid undue repetition of submissions.
- (9) Where the Court has granted leave to deliver additional submissions, documents or 15 evidence on an application under *subsection (7)*, the Court shall give directions as to the scope, form and time-frame for delivery of such additional submissions, documents or evidence.
- (10) The Court may receive evidence by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner.
- (11) The Court, on hearing an appeal against a decision, may consider— 20
- (a) whether the jurisdiction existed to make the decision,
  - (b) whether the law was correctly applied in reaching the decision,
  - (c) whether the decision is supported by the evidence including evidence admitted in accordance with *subsection (7)*, and
  - (d) in the case of an appeal against an adjudication, whether an administrative 25 sanction was imposed as part of the adjudication that was appropriate, effective, proportionate and dissuasive.
- (12) In considering an appeal, the Court shall have regard to—
- (a) the record of the decision the subject of the appeal,
  - (b) the grounds stated by the parties to the appeal, and documents and evidence 30 relied upon by the parties to support those grounds, under *subsections (4) and (5)*, and
  - (c) any submissions, documents or evidence admitted under *subsection (7)*.
- (13) The Court may, on the hearing of an appeal against a decision—
- (a) confirm the decision, or 35
  - (b) 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, and—

- (i) remit the decision for reconsideration by the adjudicator, or, in the case of a decision to serve an urgent interim measures notice, the Commission subject to such directions as the Court considers appropriate, including, in the case of a decision by an adjudicator, whether the matter should be reconsidered by another adjudicator, or
  - (ii) vary the decision and substitute such other decision as the Court considers appropriate.
- (14) The Court shall, in determining an appeal act as expeditiously as possible consistent with the administration of justice, and shall have particular regard to the need for expedition in appeals under *section 105(1)*.

#### **Orders for costs by Court on appeal**

- 108.** The Court may in its discretion award the costs of an appeal as if *section 88* applied to such an award.

#### **Court confirmation of adjudication**

- 109.** (1) Where a person does not appeal to the Court against an adjudication within the period provided for in *section 106(1)* the Commission shall, subject to *subsection (11)*, as soon as practicable after the expiration of the period allowed for such an appeal, make an application to the Court for the confirmation of that adjudication.
- (2) An application by the Commission under *subsection (1)* shall include a copy of the adjudication together with the documents and evidence that were before the adjudicator which are referred to in that adjudication, and may include any other documents and evidence which were before the adjudicator.
- (3) Notice of an application under *subsection (1)* shall be served by the Commission on the person the subject of the adjudication within 7 days of the Commission lodging the application in Court.
- (4) The notice referred to in *subsection (3)* shall, where possible, specify the time fixed by the Court for the hearing of the application, and shall enclose copies of all the papers lodged in Court in relation to the application under *subsection (1)*.
- (5) The Court shall, on the hearing of an application under *subsection (1)*, confirm the adjudication the subject of the application unless the Court, on the basis of the findings of fact in the adjudication (which are to be accepted as final by the Court), determines that—
- (a) the adjudication contains an error of law which is—
    - (i) manifest from the record of the adjudication, and
    - (ii) fundamental so as to deprive the adjudication of its basis,or
  - (b) the administrative sanction imposed was manifestly—

- (i) disproportionate,
  - (ii) in excess of the sanction required to be dissuasive,
  - (iii) in excess of the sanction required to be effective, or
  - (iv) in excess of the sanction required to be appropriate.
- (6) The Court— 5
- (a) where it makes a determination referred to in *subsection (5)(a)*, or both a determination referred to in *subsection (5)(a)* and a determination referred to in *subsection (5)(b)*, in relation to an application under *subsection (1)*, shall remit the matter for reconsideration by an adjudicator, subject to such directions as the Court considers appropriate including, as the Court sees fit, directions as to whether or not— 10
    - (i) the adjudicator should be limited to reconsidering a specific aspect of an adjudication, and
    - (ii) the matter should be reconsidered by another adjudicator,
 and 15
  - (b) where it makes a determination referred to in *subsection (5)(b)*, but does not make a determination referred to in *subsection (5)(a)*, in relation to an application under *subsection (1)* may—
    - (i) order either or both that a lesser amount be substituted for the amount of the financial penalty, compensation or refund, and that any suspension or withdrawal of authorisation or rights of use specified in the adjudication be reduced or removed, and confirm the adjudication subject to such substitution, and 20
    - (ii) where the Court does not make an order referred to in *subparagraph (i)* and considers that the interests of justice so require, remit the matter for reconsideration by an adjudicator, subject to such directions as the Court considers appropriate including, as the Court sees fit, directions as to whether or not— 25
      - (I) the adjudicator should be limited to reconsidering a specific aspect of an adjudication, and 30
      - (II) the matter should be reconsidered by another adjudicator.
- (7) The Court shall hear the application under *subsection (1)* on the evidence before the adjudicator.
- (8) The Court shall, in determining an application under *subsection (1)*, act as expeditiously as possible consistent with the administration of justice. 35
- (9) The Court may in its discretion award the costs of an application under this section as if *section 88* applied to such an award.
- (10) Where the Court confirms or substitutes its own decision for the decision of an adjudicator imposing a requirement to cease a regulatory breach, a requirement to take specified measures to remedy the breach, a financial penalty or a requirement to 40

pay compensation or a refund, the Court may set a time limit for the requirement to be carried out or the payment of the financial penalty or compensation or refund concerned.

- (11) The Commission shall, prior to making an application under *subsection (1)*, seek the consent in writing of the person to the confirmation of the adjudication of the adjudicator. 5
- (12) Where a person consents in writing to the adjudication, the application under *subsection (1)* (and any remaining steps in such application) may be made *ex parte*.

### **Publication of adjudication**

- 110.** The Commission shall publish an adjudication confirmed by the Court under *section 109* (save where such publication would, in the opinion of the Commission, prejudice the achievement of the objectives of this Act) subject to such redactions as the Commission may consider necessary and appropriate in order to protect the rights of the parties or any other person, to protect commercially sensitive information, or for any other good and sufficient reason, on the website of the Commission as soon as practicable after the adjudication is confirmed. 10 15

### **Adjudicator may refer question of law to Court**

- 111.** (1) An adjudicator may, on her or his own initiative or at the request of the Commission or a person the subject of a referral under *section 71*, refer to the Court for decision by way of case-stated a question of law arising at a hearing on a referral under *section 71*. 20
- (2) Where a question has been referred under *subsection (1)*, the adjudicator shall not, in relation to a referral under *section 71* to which the hearing relates—
- (a) make a decision under *section 90* or *91* to which the question is relevant while the reference to the Court is pending, or 25
- (b) proceed in a manner, or make a decision under *section 90* or *91*, that is inconsistent with the Court’s decision on the question.
- (3) Where a question is referred to the Court under *subsection (1)*—
- (a) the adjudicator shall send to the Court all documents before the adjudicator that are relevant to the matter in question, and 30
- (b) at the end of the proceeding in the Court in relation to the reference, the Court shall cause the documents to be returned to the adjudicator.

### **Judicial review**

- 112.** (1) The validity of a decision made or an act done by the Commission (including by an authorised officer or adjudicator) in the performance of a function under *Chapters 1* to *7* or *Part 6* (whether such function is performed by way of powers conferred by or under this Act or otherwise) shall not be challenged other than— 35

- (a) by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (in this section referred to as “Order 84”), and in accordance with this section, or
- (b) 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. 5
- (2) Notwithstanding *section 104*, a person affected by, but not the subject of, a decision under *section 90* or *91* may, not later than 14 days after the decision is published, apply to the Court by way of an application for judicial review under Order 84 and in accordance with this section.
- (3) At any time after the bringing of an application for leave to apply for judicial review of any decision or other act to which *subsection (1)* applies and which relates to a matter for the time being before the Commission (including a matter before an adjudicator), the Commission may apply to the Court to stay the proceedings pending the making of a decision by the Commission (including a decision by an adjudicator) in relation to the matter concerned. 10 15
- (4) On the making of an application to stay proceedings referred to in *subsection (3)*, the Court may, where it considers that the matter before the Commission (including an adjudicator and an authorised officer) is within the jurisdiction of the Commission (including an adjudicator and an authorised officer), make an order staying the proceedings concerned on such terms as it thinks fit. 20
- (5) Subject to *subsection (6)*, an application for leave to apply for judicial review under Order 84 in respect of a decision or other act to which *subsection (1)* applies shall be made in respect of a decision made or an act done under *Chapters 1* to *7* or *Part 6* not later than 28 days from the date on which the notice of the decision or act was first sent or published as the case may be or, if notice of the decision or act was not sent or published, from the date on which the person or persons became aware of the decision or act. 25
- (6) The Court may extend the period provided for in *subsection (5)* within which an application for leave referred to in that subsection may be made but shall only do so if it is satisfied that— 30
- (a) there is good and sufficient reason for doing so, and
- (b) the circumstances that resulted in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension.
- (7) An application for leave under this section shall be made by motion *ex parte* and shall be grounded in the manner specified in Order 84 in respect of an *ex parte* motion for leave. 35
- (8) The Court hearing the *ex parte* application for leave may decide, having regard to the issues arising, the likely impact of the proceedings on the Commission or the person concerned or another party, or for other good and sufficient reason, that the application for leave should be conducted on an *inter partes* basis and may adjourn the application on such terms as it may direct in order that a notice may be served on that person. 40

- (9) If the Court directs that the leave hearing is to be conducted on an *inter partes* basis it shall be by motion on notice (grounded in the manner specified in Order 84 in respect of an *ex parte* motion for leave)—
- (a) if the application relates to a decision made or other act done by the Commission (including an adjudicator and an authorised officer) in the performance or purported performance of a function under this Act or the Principal Act, to the Commission (including an adjudicator and an authorised officer) concerned, and 5
  - (b) to any other person specified for that purpose by order of the Court.
- (10) The Court may— 10
- (a) on the consent of all of the parties, or
  - (b) where there is good and sufficient reason for so doing and it is just and equitable in all the circumstances,
- treat the application for leave as if it were the hearing of the application for judicial review and may for that purpose adjourn the hearing on such terms as it may direct. 15
- (11) The Court shall not grant leave under this section unless it is satisfied that—
- (a) there are substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed,
  - (b) the applicant is materially affected by or has a sufficient interest in the matter which is the subject of the application, and 20
  - (c) the matter does not relate to a decision by an adjudicator under *section 90* or *91*.
- (12) If the court grants leave under this section, no grounds shall be relied upon in the application for judicial review under Order 84 other than those determined by the Court to be substantial under *subsection (11)(a)*.
- (13) The Court may, as a condition for granting leave under this section, require the applicant for such leave to give an undertaking as to damages. 25
- (14) If an application is made for judicial review under Order 84 in respect of part only of a decision or other act to which *subsection (1)* applies, the Court may, if it thinks fit, declare to be invalid or quash the part concerned or any provision thereof without declaring invalid or quashing the remainder of the decision or other act or part of the decision or other act, and if the Court does so, it may make any consequential amendments to the remainder of the decision or other act or the part thereof that it considers appropriate. 30
- (15) The Court shall, in determining an application under this section or an application for judicial review on foot of such leave— 35
- (a) act as expeditiously as possible consistent with the administration of justice, and
  - (b) give such priority as it reasonably can, having regard to all the circumstances, to the disposal of proceedings in that Court under this section.

## Appeals to Court of Appeal

- 113.** (1) An appeal to the Court of Appeal shall lie in respect of a determination of the High Court on an appeal under *section 106* in respect of a decision by an adjudicator under *section 90* or *91*.
- (2) The determination of the High Court on— 5
- (a) an appeal under *section 105* against an urgent interim measures notice,
  - (b) an application for confirmation under *section 109*,
  - (c) an application for judicial review of any other decision made or act done under this Act by the Commission (including decisions made or acts done under this Act by an authorised officer or by an adjudicator), 10
  - (d) a reference to the Court by way of case-stated by an adjudicator under *section 111*, or
  - (e) an application to the High Court for compliance with an urgent interim measure under *section 57*,
- shall be final and no appeal shall lie from the decision of the High Court to the Court of Appeal in any case save with leave of the High Court, which leave shall only be granted where the High Court 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 made to the Court of Appeal. 15
- (3) In respect of an application for confirmation under *section 109*, where the point of law which would otherwise be certified is a point that could have been brought by way of an appeal under *section 106*, the High Court may only in exceptional circumstances grant leave to appeal to the Court of Appeal under *subsection (2)*. 20
- (4) *Subsection (2)* shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution. 25
- (5) On an appeal from a determination of the High Court to which *subsection (2)* applies, the Court of Appeal shall—
- (a) have jurisdiction to determine only the point of law certified by the High Court under *subsection (2)* (and to make only such order in the proceedings as follows from such determination), and 30
  - (b) in determining the appeal, act as expeditiously as possible consistent with the administration of justice.

## Treatment of amounts paid to Commission pursuant to *Part 7*

- 114.** 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. 35

## Non-applicability of limitation periods to certain actions

- 115.** An urgent interim measures notice, a notice of suspected non-compliance, or a

supplementary notice of suspected non-compliance, may be served, and a referral under *section 68(3)(c)* or *71* may be made, by the Commission at any time notwithstanding—

- (a) any provision (other than section 11A) of the Statute of Limitations Act 1957, and
- (b) any provision of the Statute of Limitations (Amendment) Act 1991. 5

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

- 116.** (1) The Commission shall collect information on the general subject matter of appeals under this Chapter, the number of appeals and the duration of appeal proceedings and the number of decisions to grant urgent interim measures. 10
- (2) The information collected by the Commission under *subsection (1)* shall be provided to the Minister annually or as requested by the Minister.

CHAPTER 9

*Revocation, transitional provisions and consequential amendments*

**Transitional provision where certain notifications have been given** 15

- 117.** (1) Where, on the coming into operation of this section—
- (a) an undertaking has been notified and given an opportunity to state its views or remedy non-compliance in accordance with Regulation 37(1) of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011) by the Regulator (within the meaning of those Regulations), 20
  - (b) an operator or undertaking has been notified and given an opportunity to state its views or remedy non-compliance in accordance with Regulation 19(1) of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011) by the Regulator (within the meaning of those Regulations), 25
  - (c) an undertaking has been notified and given an opportunity to state its views or remedy non-compliance in accordance with Regulation 16(3) of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011) by the Regulator (within the meaning of those Regulations), or 30
  - (d) an undertaking has been notified and given an opportunity to state its views or remedy non-compliance in accordance with Regulation 31(2) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. No. 337 of 2011) by the Regulator (within the meaning of those Regulations), 35

an authorised officer may, subject to *section 70*, where the authorised officer suspects on reasonable grounds that the operator or undertaking notified has committed or is committing a regulatory breach, with the consent of the Commission, refer the matter in accordance with *section 71* for adjudication. 40



- (2) Where an authorised officer makes a referral referred to in *subsection (1), Part 7* (including *sections 67 and 68*) shall apply in respect of such referral.

## PART 8

### AMENDMENT OF CODE REGULATIONS

#### Amendment of Code Regulations

5

- 118.** 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 9

### MISCELLANEOUS AMENDMENTS TO PRINCIPAL ACT

10

#### Amendment of section 2 of Principal Act

- 119.** Section 2 of the Principal Act is amended—

- (a) by the substitution of the following definition for the definition of “associated facilities”:

“ ‘associated facilities’ means associated services, physical infrastructures and other facilities or elements associated with an electronic communications network or an electronic communications service which enable or support the provision of services via that network or service, or have the potential to do so, and include buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets;”

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- (b) by the insertion of the following definition after the definition of “associated facilities”:

“ ‘associated service’ means a service associated with an electronic communications network or an electronic communications service which enables or supports the provision, self-provision or automated-provision of services via that network or service, or has the potential to do so, and includes number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides (EPGs), as well as other services such as identity, location and presence service;”

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- (c) by the substitution of the following definition for the definition of “electronic communications network”:

“ ‘electronic communications network’ means transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or

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other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;” 5

(d) by the substitution of the following definition for the definition of “end-user”:

“ ‘end-user’ means a user not providing public electronic communications network or publicly available electronic communications services;”

(e) by the insertion of the following definition after the definition of “end-user”: 10

“ ‘end-user of premium rate services’ means a person to whom such a service is supplied, or who has asked for the supply of such a service otherwise than for the purpose of resupply;”

(f) by the substitution of the following definition for the definition of “electronic communications service”: 15

“ ‘electronic communications service’ means a service normally provided for remuneration via electronic communications networks, which encompasses, with the exception of services providing, or exercising editorial control over, content transmitted using electronic communications networks and services, the following types of services: 20

(a) ‘internet access service’ as defined in point (2) of the second paragraph of Article 2 of Regulation (EU) 2015/2120 of 25 November 2015<sup>7</sup>,

(b) interpersonal communications service, and

(c) services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine to machine services and for broadcasting;” 25

and

(g) by the insertion of the following definition after the definition of “financial year”:

“ ‘interpersonal communications service’ means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient and does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service;” 30  
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### **Amendment of section 10 of Principal Act**

**120.** Section 10 of the Principal Act is amended—

(a) in subsection (1)—

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<sup>7</sup> OJ No. L310, 26.11.2015, p. 1

- (i) by the insertion of the following paragraph after paragraph (ae):
  - “(af) to ensure compliance with, and to carry out the functions assigned to it by, the European Union (Electronic Communications Code) Regulations 2022 (S.I. No. 444 of 2022),”
- (ii) in paragraph (da), by the substitution of “on those networks” for “on those networks, and”, 5
- (iii) in paragraph (e), by the substitution of “of radio equipment, and” for “of radio equipment.”, and
- (iv) by the insertion of the following paragraph after paragraph (e):
  - “(f) to advise the Minister, when requested by him or her, on matters relating to the electronic communications market and matters relating to the functions of the Commission.”, 10

and

- (b) by the substitution of the following subsection for subsection (2):
  - “(2) The Commission may carry out an investigation referred to in subsection (1) either on its own initiative or on foot of a complaint.”. 15

**Power of Minister to request advice from Commission**

**121.** The Principal Act is amended by the insertion of the following section after section 12:

- “**12A.** The Minister may request the Commission to advise him or her on matters relating to the electronic communications market and matters relating to the functions of the Commission.”. 20

**Power of Commission to obtain information**

**122.** The Principal Act is amended by the substitution of the following section for section 13D:

- “**13D.** (1) The Commission may at any time, by notice in writing, require— 25
  - (a) an undertaking,
  - (b) a person providing a service in a sector closely related to that of the provision of electronic communications networks or services or associated facilities, or
  - (c) a premium rate service provider, 30
    - to provide it with such written information as it considers necessary to enable it to carry out its functions or to comply with a requirement made to it by the Minister under section 13B.
- (2) A requirement by the Commission under subsection (1) may include a requirement that the undertaking or person concerned gather together, 35
  - generate or obtain information for the purposes of providing it pursuant to that requirement.

- (3) Any information provided to the Commission in accordance with subsection (1) may be used by the Commission to enable it to carry out any of its functions.
- (4) An undertaking or person referred to in subsection (1) that—
- (a) fails to comply with a requirement made under subsection (1) within the period specified in the notice or within such extended period as the Commission allows, or 5
  - (b) in purporting to comply with such a requirement, knowingly or grossly negligently provides misleading, erroneous or incomplete information to the Commission, 10
- commits an offence and is liable on summary conviction to a class A fine.
- (5) In proceedings for an offence involving a failure by an undertaking or a person referred to in subsection (1) to comply with a requirement made under subsection (1), it is a defence if the undertaking or person establishes that— 15
- (a) the undertaking or person did not know and could not reasonably be expected to know, ascertain or obtain the required information, or
  - (b) the disclosure of the information was prohibited by a law of the State.”. 20

### **Power of Commission to share information with Minister**

**123.** The Principal Act is amended by the insertion of the following section after section 13E:

- “13EA. (1) The Commission may, where the Minister so requests, provide the Minister with any information that the Minister considers may assist the Minister in the formulation of policy relating to electronic communications networks and services and associated facilities. 25
- (2) Where the Commission intends to provide information to the Minister under this section which was obtained by the Commission from a person who is or, at the time the information was obtained from the person, was— 30
- (a) an undertaking,
  - (b) a person that provides, or provided, associated facilities, or
  - (c) such other person referred to in section 13D(1),
- the Commission shall notify the person in writing that the Commission intends to share the information with the Minister and afford the person an opportunity to make representations to it on the matter within a period of 7 days beginning on the date on which such notification is given or such further period as may be specified by the Commission. 35 40

- (3) The Commission may, taking into account any representations made to it under subsection (2), identify information provided to the Minister as being confidential information.
- (4) Where the Minister receives information identified by the Commission as confidential information and the Minister is satisfied that such information is confidential information, he or she shall protect the confidentiality of such information.” 5

**Amendment of section 39 of Principal Act**

**124.** Section 39 of the Principal Act is amended—

- (a) in subsection (3) (as amended by section 37(a) of the Competition (Amendment) Act 2022)— 10

- (i) by the insertion of “a related enactment,” after “this Act,” and

- (ii) by the insertion of the following paragraph after paragraph (j):

- “(k) require any person who appears to the authorised officer to be in a position to facilitate access to the documents or records stored in any data equipment or computer on the premises, land or vessel or at the place or in the vehicle or which can be accessed by the use of that data equipment or computer to give the authorised officer all reasonable assistance in relation to the operation of the data equipment or computer or access to the records stored in it, including by giving to the authorised officer any password necessary to access the documents or records concerned, or to make the documents or records legible and comprehensible, 15 20

- (l) take possession of and detain any computer, machinery, apparatus, appliance or any equipment or part thereof on the premises, land or vessel or at the place or in the vehicle as he or she considers appropriate.”, 25

and

- (b) by the insertion of the following subsection after subsection (10) (inserted by section 37(e) of the Competition (Amendment) Act 2022): 30

- “(11) A reference in this section to a book, document or record is a reference to a book, document or record irrespective of the medium on which it may be stored.”.

**Amendment of section 40 of Principal Act**

**125.** Section 40 of the Principal Act is amended by the insertion of “on any land,” after “is held” and by the substitution of “the land, premises” for “the premises”. 35

**Amendment of section 43 of Principal Act**

**126.** Section 43 of the Principal Act is amended—

- (a) in subsection (1), by the substitution of “an offence under this Act or a related enactment that may be prosecuted summarily may only be prosecuted summarily” for “a summary offence under this Act or a related enactment may be prosecuted only”, and
- (b) by the insertion of the following subsection after subsection (3): 5
  - “(4) Section 1(1) of the Probation of Offenders Act 1907 shall not apply to an offence under this Act or a related enactment.”.

**Undertaking not to overcharge or charge for services not supplied**

**127.** The Principal Act is amended by the substitution of the following section for section 45:

- “45. (1) A person shall not impose, or purport to impose, a charge for supplying an electronic communications service or electronic communications product to an end-user that exceeds the amount for that service or product specified— 10
  - (a) in the undertaking’s published tariff of charges, or
  - (b) in a written statement previously made or given to the end-user by the undertaking in relation to that supply. 15
- (2) A person shall not impose, or purport to impose, a charge for an electronic communications service or electronic communications product that was—
  - (a) supplied to an end-user but not requested by him or her, 20
  - (b) requested by an end-user but not supplied to him or her, or
  - (c) neither supplied to, nor requested by, a person.
- (3) A person that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a class A fine.
- (4) In carrying out an investigation to ascertain whether a person may be contravening or may have contravened subsection (1) or (2), the Commission may conduct an audit of the undertaking’s billing system. 25
- (5) In this section, ‘tariff of charges’, in relation to a person, includes any list setting out the prices charged by the undertaking for providing electronic communications services or electronic communications products to end-users.”. 30

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

**128.** The Principal Act is amended by the substitution of the following section for section 46:

- “46. (1) If it appears to the Commission that a person is contravening or has contravened or, having contravened, may in the future contravene— 35
  - (a) section 45(1) or (2),

- (b) Regulation 89 or 90 of the European Union (Electronic Communications Code) Regulations 2022, or
- (c) section 13(1) of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010, the Commission may apply to the High Court, by motion, for an order under subsection (7) restraining such contravention. 5
- (2) The Commission may conduct an audit of—
- (a) the billing system, switching system or contract change system of an undertaking, or
- (b) the billing system of a premium rate service provider, 10  
prior to making an application to the High Court referred to in subsection (1).
- (3) The High Court may hear the application under subsection (1) only if it is satisfied that a copy of the application has been served on the undertaking or premium rate service provider concerned. On being served with such a copy, that undertaking or provider becomes the respondent to the application. 15
- (4) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under subsection (1). 20
- (5) The High Court may not require the Commission to give an undertaking as to damages as a condition for the granting of an order under subsection (4).
- (6) The Court may not refuse interim or interlocutory relief under subsection (4) merely because the Commission might not suffer damage if relief were not granted pending determination of the application. 25
- (7) On the hearing of an application made under subsection (1), the High Court may make a restraining order requiring the undertaking or premium rate service provider to cease the contravention concerned and not to repeat it, or, if it is of the opinion that the application is not substantiated, refuse the application. 30
- (8) An application for a restraining order under subsection (1) may include or be accompanied by a further application for an order directing the respondent to pay to the Commission a financial penalty of such amount as is proposed by the Commission having regard to the circumstances of the contravention. 35
- (9) On hearing the further application, the High Court may if it is satisfied, having previously been satisfied that the respondent has contravened the provision concerned, and having regard to the circumstances surrounding the contravention, order the respondent to pay to the Commission a financial penalty of such amount as is 40

specified in the order. The amount may be more or less than the amount proposed by the Commission.

(10) The circumstances surrounding the contravention referred to in subsection (9) include (but are not limited to) the following:

- (a) the duration of the contravention; 5
- (b) the effect of the contravention on other parties to the relevant decision, and on end-users and on end-users of premium rate services;
- (c) the submission of the Commission with respect to what it considers to be the appropriate amount; 10
- (d) any excuse or explanation for the contravention provided by the respondent.

(11) If the High Court makes an order under this section, it may make such ancillary orders as it considers appropriate.”.

**Amendment of section 46B(1) of Principal Act** 15

**129.** Section 46B(1) of the Principal Act is amended by the insertion of “, the *Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023*,” after “this Act”.

**Amendment of section 46D of Principal Act**

**130.** Section 46D of the Principal Act is amended— 20

- (a) in subsection (1), by the insertion of “, the *Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023*,” after “proceedings under this Act”, and
- (b) in subsection (1), by the insertion of “, the *Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023*,” after “proceedings under this Act”. 25

**Amendment of section 57A of Principal Act**

**131.** Section 57A(8) of the Principal Act is amended by the substitution of the following paragraph for paragraph (b):

“(b) the effect of the non-compliance on other parties to the relevant decision, to end-users and to end-users of premium rate services.”. 30

**Service of notices**

**132.** The Principal Act is amended by the substitution of the following section for section 60:

“**60.** (1) Where a notice is required to be given to a person under this Act, the *Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023* or a related enactment, the notice shall be given in one of the following ways: 35



- (a) by delivering it to the person (where the person is an individual);
  - (b) by leaving it addressed to the person at a relevant address;
  - (c) by sending it, addressed to the person, to a relevant address by pre-paid registered post or other pre-paid recorded delivery service;
  - (d) by sending it to the person by electronic means in accordance with subsection (5). 5
- (2) In subsection (1)(b) and (c), ‘relevant address’ means any of the following:
- (a) the address at which the person ordinarily resides;
  - (b) an address at which the person carries on business; 10
  - (c) a postal address at which the person has agreed in writing to receive notices under this Act or a related enactment.
- (3) For the purposes of subsection (2)(a), a company registered under the Companies Act 2014, or an existing company within the meaning of that Act, is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business. 15
- (4) For the purposes of subsection (1)(d), a notice is sent to a person by electronic means in accordance with this subsection if—
- (a) it is sent to an email address, fax number, or other electronic contact point, at which the person has agreed in writing to receive notices under this Act, and 20
  - (b) a record that the email, fax, or other electronic message has been sent is made for the sender by the email system, fax machine, or other electronic system used. 25
- (5) A notice to which subsection (1) applies—
- (a) if given in accordance with subsection (1)(a), is given at the time when it is delivered,
  - (b) if given in accordance with subsection (1)(b), is given at the time when it is left at the relevant address, 30
  - (c) if given in accordance with subsection (1)(c), is deemed, unless the contrary is proved, to be given at the time when it would be delivered in the ordinary course of the post or other service used, and
  - (d) if given in accordance with subsection (1)(d), is deemed, unless the contrary is proved, to be given at the time stated in the record referred to in subsection (4)(b). 35
- (6) In this section, ‘notice’ includes notification.”.

## Miscellaneous amendments to Principal Act

133. The Principal Act is amended by the insertion of the following section after section 60:

### “Privileged legal material

61. (1) Subject to subsection (2), nothing in this Act or a related enactment shall compel the disclosure by any person of privileged legal material or authorise the taking of privileged legal material. 5
- (2) The disclosure of information may be compelled, or possession of it taken, pursuant to this Act or a related enactment, notwithstanding that it is apprehended that the information is privileged legal material, provided that the compelling of its disclosure or the taking of its possession is done by means whereby the confidentiality of the information can be maintained (as against the person compelling such disclosure or taking such possession) pending the determination by the High Court of the issue as to whether the information is privileged legal material. 10 15
- (3) Without prejudice to subsection (4), where, in the circumstances referred to in subsection (2), information has been disclosed or taken possession of pursuant to this Act or a related enactment, the person—
- (a) to whom such information has been so disclosed, or
- (b) who has taken possession of it, shall (unless the person has, within the period subsequently mentioned in this subsection, been served with notice of an application under subsection (4) in relation to the matter concerned) apply to the High Court as soon as is reasonably practicable for a determination as to whether the information is privileged legal material. 20 25
- (4) A person who, in the circumstances referred to in subsection (2), is compelled to disclose information, or from whose possession information is taken, pursuant to this Act, may apply to the High Court for a determination as to whether the information is privileged legal material. 30
- (5) Pending the making of a final determination of an application under subsection (3) or (4), the High Court may give such interim or interlocutory directions as the court considers appropriate including, without prejudice to the generality of the foregoing, directions as to—
- (a) the preservation of the information, in whole or in part, in a safe and secure place in any manner specified by the court, 35
- (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— 40
- (i) examining the information, and
- (ii) preparing a report for the court with a view to assisting or facilitating the court in the making by the court of its

determination as to whether the information is privileged legal material.

(6) Subsections (1) to (5) also apply to irrelevant material and references in those subsections to ‘privileged legal material’ shall be construed as referring to irrelevant material as the case may be. 5

(7) An application under subsection (3), (4) or (5) shall be by motion and may, if the High Court directs, be heard otherwise than in public.

(8) In this section—

‘computer’ includes a personal organiser or any other electronic means of information storage or retrieval; 10

‘information’ means information contained in a book, document or record, a computer or otherwise;

‘irrelevant material’ means information which, in the opinion of the High Court, a person is entitled to refuse to produce on the grounds that it is not relevant to the purpose for which it is sought by the Commission; 15

‘privileged legal material’ means information which, in the opinion of the High Court, a person is entitled to refuse to produce on the grounds of legal professional privilege.

#### **Freedom of Information Act not to apply to certain confidential information** 20

62. The Freedom of Information Act 2014 shall not apply to information classified as confidential which the Commission receives from the European Commission or from the national regulatory authority or competent authority of another Member State in accordance with Article 20 of Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018<sup>8</sup>. 25

#### **Publication of certain notices**

63. Before taking any measure in accordance with Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018<sup>9</sup> which will have a significant impact on a relevant market, the Commission shall publish the text of the proposed measure, give the reasons for it, including information as to which of the Commission’s statutory powers gives rise to the measure, and specify the period within which submissions relating to the proposal may be made by interested parties.”. 30 35

#### **Amendment to Part 2 of Schedule 1 to Principal Act**

134. Part 2 of Schedule 1 (inserted by section 18 of the Communications Regulation (Amendment) Act 2007) to the Principal Act is amended—

(a) in paragraph (58), by substituting “(S.I. No. 414 of 2006);” for “(S.I. No. 414 of 2006).”, and 40

8 OJ No. L321, 17.12.2018, p. 36

9 OJ No. L321, 17.12.2018, p. 36

(b) by the insertion of the following paragraphs after paragraph (58):

- “(59) European Communities (Electromagnetic Compatibility) Regulations 2016 (S.I. No. 145 of 2016);
- (60) European Union (Low Voltage Electrical Equipment) Regulations 2016 (S.I. No. 345 of 2016); 5
- (61) European Union (Reduction of Cost of Deploying High-Speed Public Communications Networks) Regulations 2016 (S.I. No. 391 of 2016);
- (62) European Communities (Electromagnetic Compatibility) Regulations 2017 (S.I. No. 69 of 2017);
- (63) European Union (Radio Equipment) Regulations 2017 (S.I. No. 248 of 2017); 10
- (64) European Union (Open Internet Access) Regulations 2019 (S.I. No. 343 of 2019);
- (65) European Union (Retail Charges for Regulated Intra-EU Communications) Regulations 2020 (S.I. No. 668 of 2020); 15
- (66) European Union (Low Voltage Electrical Equipment) (Amendment) Regulations 2022 (S.I. No. 14 of 2022);
- (67) European Union (Mobile Telephone Roaming) Regulations 2022 (S.I. No. 315 of 2022).”.

PART 10 20

AMENDMENTS TO DIGITAL HUB DEVELOPMENT AGENCY ACT 2003

**Amendment of Digital Hub Development Agency Act 2003**

**135.** The Digital Hub Development Agency Act 2003 is amended—

- (a) in section 15(1), by the substitution of “8 members” for “14 members”, and
- (b) in section 17(3), by the substitution of “4” for “6”. 25

PART 11

AMENDMENT TO POSTAL AND TELECOMMUNICATIONS SERVICES ACT 1983

**Financing for the purposes of maintaining post office network and countering consequences of Brexit**

**136.** The Postal and Telecommunications Services Act 1983 is amended by the insertion of the following section after section 29: 30

- “**29A.** (1) The Minister may, out of such monies as are available to him or her from monies provided by the Oireachtas, with the consent of the Minister for Public Expenditure, National Development Plan Delivery

and Reform, make available to the postal company a sum not exceeding €30,000,000 for the purposes of maintaining a network of post offices.

- (2) The Minister may, out of such monies as are available to him or her from the Brexit Adjustment Reserve established under Regulation (EU) 2021/1755 of the European Parliament and of the Council of 6 October 2021<sup>10</sup>, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, make available to the postal company a sum not exceeding €25,000,000 for the purposes of providing support to the postal company to counter the adverse economic and social consequences of the withdrawal of the United Kingdom from the European Union. 5 10
- (3) Any amounts made available to the postal company under subsection (1) or (2) shall be provided in such form and manner and on such terms and conditions as may be agreed between the Minister and the company with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform.”. 15

<sup>10</sup> OJ No. L357, 8.10.2021, p. 1

An Bille um Rialáil Cumarsáide agus um  
Ghníomhaireacht Forbartha don Mhol  
Digiteach (Leasú), 2022

*athraithe ó*

An Bille um Rialáil Cumarsáide, 2022

# BILLE

*(mar a ritheadh ag dhá Theach an Oireachtais)*

*dá ngairtear*

Acht do thabhairt éifeacht d'fhorálacha áirithe de Threoir 2018/1972 ó Pharlaimint na hEorpa agus ón gComhairle an 11 Nollaig 2018 lena mbunaítear an Cód Eorpach um Chumarsáid Leictreonach; do dhéanamh socrú, maidir le soláthraithe líonraí cumarsáide leictreonáil poiblí agus soláthraithe seirbhíse cumarsáide leictreonáil atá ar fáil go poiblí, go ndéanfaidh siad bearta cuí agus comhréireacha chun bainistiú a dhéanamh ar na prícaíl atá ann do shlándáil líonraí agus seirbhíse; dá chumasú don Aire bearta a dhéanamh i leith díoltóirí áirithe do sholáthar comhpháirteanna rithábachtacha d'fhonn áirithe sholáthar na gcomhpháirteanna sin a chosaint; do dhéanamh socrú maidir le bearta chun cuidiú le tomhaltóirí agus le húsáideoirí deiridh eile; do dhéanamh socrú maidir le gearáin agus díospóidí áirithe a réiteach; do dhéanamh socrú maidir le bearta eatramhacha chun sárúithe áirithe a chosc; do leagan síos rialacha maidir le smachtbhannaí riaracháin is infheidhme maidir le sárúithe ar fhorálacha rialála, lena n-áirítear forálacha arna nglacadh, agus maidir le breitheanna ceangailteacha ón gCoimisiún um Rialáil Cumarsáide, de bhun na Treorach sin, d'fhonn a chinntiú go ndéanfar na forálacha sin a chur i ngníomh agus, maidir le pionóis mar gheall ar mhainneachtain déanamh amhlaidh, gur pionóis iad a bheidh cuí, éifeachtach, comhréireach agus athchomhairleach; do leasú Rialachán an Aontais Eorpaigh (Cód um Chumarsáid Leictreonach), 2022 (I.R. Uimh. 444 de 2022); do leasú an Achta um Rialáil Cumarsáide, 2002; do leasú an Achta um Ghníomhaireacht Forbartha don Mhol Digiteach, 2003; do leasú an Achta Seirbhíse Poist agus Teileachumarsáide, 1983 dá chumasú maoiniú a chur ar fáil chun an líonra postóifigí a chothabháil agus chun cur i gcoinne iarmhairtí a ghabhann le tarraingt siar na Ríochta Aontaithe as an Aontas Eorpach; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*Ritheadh ag dhá Theach an Oireachtais,*

*22 Feabhra, 2023*

Communications Regulation and Digital Hub  
Development Agency (Amendment) Bill  
2022

*changed from*

Communications Regulation Bill 2022

# BILL

*(as passed by both Houses of the Oireachtas)*

*entitled*

An Act to give effect to certain provisions of Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code; to provide that providers of public electronic communications networks and providers of publicly available electronic communications services take appropriate and proportionate measures to manage the risks posed to the security of networks and services; to enable the Minister to take measures in respect of the supply of critical components by certain vendors in order to safeguard the security of supply of such components; to provide for measures to assist consumers and other end-users; to provide for the resolution of certain complaints and disputes; to provide for interim measures to prevent certain breaches; to lay down rules on administrative sanctions applicable to breaches of regulatory provisions, including provisions adopted, and binding decisions of the Commission for Communications Regulation, pursuant to that Directive, in order to ensure that such provisions are implemented and that penalties for failure to do so are appropriate, effective, proportionate and dissuasive; to amend the European Union (Electronic Communications Code) Regulations 2022 (S.I. No. 444 of 2022); to amend the Communications Regulation Act 2002; to amend the Digital Hub Development Agency Act 2003; to amend the Postal and Telecommunications Services Act 1983 to enable funding to be made available for the purposes of maintaining the post office network and countering consequences of withdrawal of the United Kingdom from the European Union; and to provide for related matters.

*Passed by both Houses of the Oireachtas,*

*22nd February, 2023*