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*Number 2 of 2024*

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**Digital Services Act 2024**

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## **DIGITAL SERVICES ACT 2024**

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*Number 2 of 2024*

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## **DIGITAL SERVICES ACT 2024**

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An Act to give further effect to Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022<sup>1</sup> on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) and for that purpose to amend the Broadcasting Act 2009 and the Competition and Consumer Protection Act 2014; and to provide for related matters. [11th February, 2024]

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

### PART 1

#### PRELIMINARY AND GENERAL

#### **Short title and commencement**

1. (1) This Act may be cited as the Digital Services Act 2024.  
(2) This Act shall come into operation on such day or days as the Minister, following consultation with the Minister for Tourism, Culture, Arts, Gaeltacht, Sports and Media, 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.

#### **Definitions**

2. In this Act—  
“Act of 2014” means the Competition and Consumer Protection Act 2014;  
“Minister” means the Minister for Enterprise, Trade and Employment;  
“prescribed” means prescribed by regulations made by the Minister;  
“Principal Act” means the Broadcasting Act 2009.

#### **Regulations**

3. (1) The Minister may make regulations for the purposes of this Act, including regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed.

<sup>1</sup> OJ L277, 27.10.2022, p. 1

- (2) Without prejudice to any provision of this Act, regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (3) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

#### **Service of documents**

4. (1) A notice or other document that is required to be served on or given to a person under this Act shall be addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways:
  - (a) by delivering it to the person;
  - (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;
  - (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address;
  - (d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to, him or her in that manner.
- (2) For the purpose of this section, a company formed and 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 of persons shall be deemed to be ordinarily resident at its principal office or place of business.

#### **Revocation**

5. Regulations 15 to 18 of the European Communities (Directive 2000/31/EC) Regulations 2003 (S.I. No. 68 of 2003) are revoked.

#### **Expenses**

6. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, National Development Plan Delivery and Reform, be paid out of moneys provided by the Oireachtas.

## PART 2

## AMENDMENT OF PRINCIPAL ACT

**Amendment of section 2 of Principal Act**

7. Section 2 of the Principal Act is amended, in subsection (1), by the insertion of the following definitions:

“ ‘Digital Services Regulation’ means Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022<sup>2</sup> on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act);

‘intermediary service provider’ means a provider of intermediary services;

‘Member State competent authority’ means an authority that is designated by a Member State (other than the State) as a competent authority for the purposes of Article 49(1) of the Digital Service Regulation;

‘Member State Digital Services Coordinator’ means an authority that is designated by a Member State (other than the State) as a Digital Services Coordinator for the purposes of Article 49(2) of the Digital Service Regulation;”.

**Amendment of section 7 of Principal Act**

8. Section 7 of the Principal Act is amended by the insertion of the following subsection after subsection (5):

“(6) The Commission is designated, for the purposes of Article 49(1) of the Digital Services Regulation, as—

(a) the competent authority (other than in respect of Articles 30, 31 and 32 of that Regulation), and

(b) the Digital Services Coordinator.”.

**Amendment of section 33 of Principal Act**

9. Section 33 of the Principal Act is amended—

(a) in subsection (1)—

(i) by the insertion of the following paragraph after paragraph (b):

“(ba) the Competition and Consumer Protection Commission;”,

and

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<sup>2</sup> OJ L277, 27.10.2022, p. 1

(ii) by the insertion of the following paragraph after paragraph (d):

“(da) an intermediary service provider;”,

(b) in subsection (2)—

(i) by the insertion of the following paragraph after paragraph (b):

“(ba) in the case of subsection (1)(ba), where the Commission considers that the disclosure is necessary and proportionate—

(i) for the effective implementation of the Digital Services Regulation, or

(ii) for the purposes of transferring a complaint or part of a complaint to the Competition and Consumer Protection Commission, where a complaint, or part of a complaint made under section 201 relates to a failure to comply with the Digital Services Regulation;”,

and

(ii) by the insertion of the following paragraph after paragraph (d):

“(da) in the case of subsection (1)(da), where the Commission considers that a complaint, or part of a complaint, made under section 201 is made in relation to an intermediary service provider, and the Commission considers that the disclosure is necessary and proportionate for the purposes of considering a complaint or part of a complaint made under that section;”,

(c) by the insertion of the following subsections after subsection (3):

“(3A) Where the Commission processes or discloses special categories of personal data in accordance with this section, it shall only do so where the Commission considers that the disclosure is necessary and proportionate in accordance with the Data Protection Regulation and the Act of 2018.

(3B) The Minister may make regulations prescribing suitable and specific measures for the processing of special categories of personal data under this section.

(3C) Where personal data processed by the Commission is required for the purposes of the prevention, investigation, detection or prosecution of a criminal offence, the data—

(a) may be processed for as long as it is required for such prevention, investigation, detection or prosecution, and

(b) shall be permanently deleted after it is no longer required for such prevention, investigation, detection or prosecution.”,

and

(d) by the insertion of the following subsection after subsection (9):

“(10) In this section—

‘Act of 2018’ means the Data Protection Act 2018;

‘special categories of personal data’ has the same meaning as it has in the Act of 2018;

‘suitable and specific measures’ means measures to be taken to safeguard the fundamental rights and freedoms of data subjects in processing the personal data of those data subjects and may include measures specified in section 36(1) of the Act of 2018.”.

### **Amendment of section 36 of Principal Act**

**10.** Section 36 of the Principal Act is amended, in subsection (2)—

(a) by the insertion of the following paragraph after paragraph (b):

“(ba) the disclosure is made to the Competition and Consumer Protection Commission for the purposes of the Digital Services Regulation including where, in the opinion of the person making the disclosure, the information may relate to the commission of an offence under this Act,”,

and

(b) by the insertion of the following subsection after subsection (3):

“(3A) Notwithstanding any other enactment or rule of law, if information, in the opinion of any body or person referred to in paragraphs (b) to (d) of subsection (2), may relate to the commission of an offence under this Act, then the information may be disclosed by that person or body to—

(a) a Commissioner,

(b) a member of the staff of the Commission, or

(c) an authorised officer.”.

### **Professional secrecy under Digital Services Regulation**

**11.** The Principal Act is amended by the insertion of the following section after section 36:

“**36A.** (1) Notwithstanding section 36 and without prejudice to the exchange and the use of information referred to in Chapter IV of the Digital Services Regulation, a Commissioner, a member of the staff of the Commission, a person working under the supervision of the Commission or any other person involved shall not contravene Article 84 of the Regulation.

- (2) A person who, without reasonable excuse, contravenes subsection (1) shall be guilty of a category 3 offence.”.

#### **Amendment of section 38 of Principal Act**

**12.** Section 38 of the Principal Act is amended—

- (a) by the deletion of subsection (1),
- (b) in subsection (2), by the substitution of “any decision” for “any other decision”, and
- (c) in subsection (5)(a), by the substitution of “subsection (2)” for “subsection (1) or (2)”.

#### **Amendment of section 139Z of Principal Act**

**13.** Section 139Z of the Principal Act is amended, in subsection (1)(c), by the substitution of “children” for “minors”.

#### **Amendment of section 139ZF of Principal Act**

**14.** (1) Section 139ZF of the Principal Act is amended by the substitution of the following subsection for subsection (1):

“(1) The Commission shall prepare, and may revise, an e-Commerce compliance strategy setting out its approach to ensuring that—

- (a) no requirements that are inconsistent with the limitations placed on the liability of intermediary service providers by Articles 4 to 6 of the Digital Services Regulation, and
- (b) no general obligation contrary to Article 8 of that Regulation to monitor the information intermediary service providers transmit or store, or actively to seek facts or circumstances indicating illegality, are imposed on those providers by virtue of online safety codes, online safety guidance materials or advisory notices.”.

(2) The e-Commerce compliance strategy currently in operation on the commencement of *subsection (1)* shall continue to apply.

#### **Interpretation (Part 8B)**

**15.** The Principal Act is amended by the substitution of the following section for section 139ZG:

“**139ZG.** (1) In this Part—

‘authorised officer’ means a person appointed to be an authorised officer under section 139ZH(1), and ‘the authorised officer’, in

relation to an investigation, means the authorised officer carrying out the investigation;

‘contravention’ means—

- (a) a failure to comply with section 46J, 46K, 46L, 46M(2) or (3), a media service code, a media service rule, section 46P(1) or (2), section 106(3), section 127(6), section 128B(1) or (2), any rules made under section 128C, an online safety code, section 159B(1) (or any rules made under section 159B(6)) or section 159C(1) (or any rules made under section 159C(3) or (6)),
- (b) an infringement by a relevant intermediary service provider of any of the designated provisions of the Digital Services Regulation,
- (c) anything for which section 139ZK(8A) or 139ZR(9A) or paragraph 14A of Schedule 4 provides that a person may be liable to an administrative financial sanction in accordance with this Part, or
- (d) anything for which section 139ZLB(10) or 139ZZGB(7) provides that a person may be liable to an administrative financial sanction in accordance with this Part;

‘designated provision’ in relation to the Digital Services Regulation means any of the provisions of the Regulation other than Article 30, 31 or 32 or Section 5 of Chapter III;

‘Digital Services investigation’ means an investigation where the suspected contravention falls within paragraph (b) of the definition of ‘contravention’;

‘inquiry subject’ in relation to an investigation or other proceedings under this Part, means the person whose contravention or suspected contravention is the subject of the investigation or other proceedings;

‘place’ includes—

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

‘relevant equipment’ means, in relation to an investigation, any electronic, photographic, magnetic, optical or other equipment, including a computer, which may be used for processing or holding relevant material;

‘relevant intermediary service provider’ means any of the following:

- (a) an intermediary service provider whose main establishment is located in the State;
- (b) an intermediary service provider to which Article 13(1) applies and whose legal representative designated under that Article resides or is established in the State;
- (c) an intermediary service provider to which Article 13(1) applies, but which has failed to designate a legal representative under that Article;

‘relevant material’ means, in relation to an investigation, any document, information, or content, however communicated, recorded or stored, which may be relevant to the investigation;

‘very large online platform’ means an online platform designated by a decision of the European Commission under Article 33(4);

‘very large online search engine’ means an online search engine designated by a decision of the European Commission under Article 33(4).

- (2) A word or expression used in this Part that is also used in the Digital Services Regulation has, unless the context otherwise requires, the same meaning in this Part as it has in that Regulation.
- (3) Unless the context otherwise requires, a reference in this Part to a numbered Article is a reference to the Article so numbered of the Digital Services Regulation.”.

#### **Amendment of section 139ZI of Principal Act**

**16.** Section 139ZI of the Principal Act is amended by the insertion of the following subsections after subsection (3):

- “(4) Where the provider of a very large online platform or very large online search engine would be the inquiry subject, no direction may be given under subsection (1) in relation to a contravention that is an infringement of the Digital Services Regulation if the European Commission has initiated proceedings for the same infringement.
- (5) Where the suspected contravention is an infringement of the Digital Services Regulation by a person falling within paragraph (c) of the definition of ‘relevant intermediary service provider’ in section 139ZG, a direction may be given under subsection (1) only if—
  - (a) the Commission has given the notification required by Article 56(7), and
  - (b) no notification under Article 56(7) referring to the same infringement has been given by the European Commission or a



Member State Digital Services Coordinator, or any that has been given has been withdrawn.

- (6) Where a direction is given under subsection (1) and the suspected contravention is an infringement of the Digital Services Regulation, the Commission shall notify—
- (a) the European Commission,
  - (b) the European Board for Digital Services, and
  - (c) each Member State Digital Services Coordinator.”.

#### **Amendment of section 139ZJ of Principal Act**

17. Section 139ZJ of the Principal Act is amended—

- (a) by the substitution of “inquiry subject” for “provider” in each place where it occurs, and
- (b) by the insertion of the following subsection after subsection (3):
  - “(4) In the case of an investigation pursuant to a direction under section 139ZI(1) which is a joint investigation to which Article 60 applies, the authorised officer shall also give the inquiry subject notice in writing of—
  - (a) the Member State Digital Services Coordinators or other Member State competent authorities participating in the investigation, and
  - (b) the deadline for the conclusion of the investigation.”.

#### **Notice of communication under Article 58(5)**

18. The Principal Act is amended by the insertion of the following section after section 139ZJ:

- “**139ZJA.** Where, at any time after the commencement of an investigation pursuant to a direction under section 139ZI(1), the Commission makes a communication under Article 58(5) relating to the suspected contravention which is the subject of the investigation, the Commission shall as soon as is practicable give the inquiry subject notice in writing that the communication has been made.”.

#### **Amendment of section 139ZK of Principal Act**

19. Section 139ZK of the Principal Act is amended—

- (a) in subsection (1)—
  - (i) by the insertion of “pursuant to a direction under section 139ZI(1)” after “For the purposes of an investigation”,

- (ii) by the substitution of “may, subject to subsection (1A), do any of the following” for “may do any of the following”,
  - (iii) in paragraph (a), by the insertion of “except in the case of an investigation to which paragraph (aa) applies,” before “subject to”,
  - (iv) by the insertion of the following paragraph after paragraph (a):
    - “(aa) in the case of a Digital Services investigation, or an investigation where the suspected contravention falls within paragraph (c) or (d) of the definition of ‘contravention’ in section 139ZG, subject to subsection (7), at any reasonable time, enter any place that the authorised officer has reasonable grounds for believing is used—
      - (i) by the inquiry subject for purposes related to the inquiry subject’s trade, business, craft or profession, or
      - (ii) by a relevant person for purposes related to that person’s trade, business, craft or profession;”,
  - (v) in paragraph (b), by the substitution of “(a) or (aa)” for “(a)”,
  - (vi) in paragraph (c), by the substitution of “(a), (aa) or (b)” for “(a) or (b)”, and
  - (vii) in paragraph (g), by the substitution of “a designated online service or an intermediary service” for “or a designated online service”,
- (b) by the insertion of the following subsections after subsection (1):
- “(1A) In the case of a Digital Services investigation, or an investigation where the suspected contravention falls within paragraph (c) or (d) of the definition of ‘contravention’ in section 139ZG, a requirement under paragraph (d), (e), (f), (g), (h), (j) or (n) of subsection (1) may be imposed only on the following persons:
    - (a) the inquiry subject;
    - (b) a relevant person;
    - (c) a member of staff or representative, or former member of staff or representative, of the inquiry subject or a relevant person.
  - (1B) In paragraph (aa) of subsection (1) and in subsection (1A), ‘relevant person’ means a person acting for purposes related to the person’s trade, business, craft or profession who may reasonably be aware of information relating to the suspected contravention.”,
- (c) in subsection (2), by the substitution of “(j) of subsection (1)” for “(j)”,
- (d) in subsection (3), by the substitution of “an investigation pursuant to a direction under section 139ZI(1)” for “the investigation”, and
- (e) by the insertion of the following subsections after subsection (8):

- “(8A) Without prejudice to subsection (8), a person may, subject to subsection (8B), be liable to an administrative financial sanction in accordance with this Part if in the course of a Digital Services investigation he or she—
- (a) obstructs an authorised officer in the exercise of his or her powers under subsection (1)(aa), (b) or (c),
  - (b) fails or refuses to comply with a requirement of an authorised officer under subsection (1)(d), (e), (f) or (g),
  - (c) in purported compliance with a requirement under this section, gives to an authorised officer information which is false or misleading in a material respect, or
  - (d) fails to rectify—
    - (i) any failure on his or her part to comply with a requirement of an authorised officer under subsection (1)(d), (e), (f) or (g), or
    - (ii) any information which he or she has given to an authorised officer in purported compliance with a requirement under this section and which is false or misleading in a material respect.
- (8B) Where, in the course of a Digital Services investigation, a person other than the inquiry subject does an act or makes an omission referred to in any paragraph of subsection (8A), that subsection does not authorise the imposition of an administrative financial sanction on that person unless, before the act or omission occurred, the person was given in reasonable time by notice in writing by an authorised officer all relevant information relating to the exercise of the power, or to the request or requirement, referred to in that paragraph, including information about—
- (a) the time within which the person was required to comply with the exercise of the power or with the request or the requirement,
  - (b) the maximum amount of the administrative financial sanction that could be imposed on the person, and
  - (c) the effect of section 139ZS(2), and the sections referred to there, in relation to the imposition of an administrative financial sanction.”.

### **Use of powers for other purposes of Digital Services Regulation**

**20.** The Principal Act is amended by the insertion of the following section after section 139ZK:

- “**139ZKA.** (1) A person authorised by the Commission, under subsection (2), may direct an authorised officer to exercise powers under section 139ZK, as that section applies in accordance with subsection (3), for the purpose of assisting the Commission to perform its functions—

- (a) under Article 57(2) in relation to an investigation by a Member State Digital Services Coordinator or other Member State competent authority,
  - (b) under Article 60(4) in relation to a joint investigation led by a Member State Digital Services Coordinator, or
  - (c) under Article 66(3) in relation to an investigation conducted by the European Commission.
- (2) The Commission may authorise any Commissioner or member of its staff for the purposes of subsection (1).
- (3) Where a direction is given under subsection (1), sections 139ZK and 139ZL apply for the purposes referred to in that subsection as they apply in relation to a Digital Services investigation.
- (4) Before exercising powers under section 139ZK as applied by subsection (3), an authorised officer shall give the inquiry subject a notice in writing which—
- (a) identifies the investigation or exercise of investigative powers referred to in subsection (1), and
  - (b) states that the powers may be exercised by an authorised officer for the purposes of the investigation.”.

#### **Insertion of sections 139ZLA and 139ZLB in Principal Act**

21. The Principal Act is amended by the insertion of the following sections after section 139ZL:

##### **“Enforcement of investigatory powers by daily payment penalty**

- 139ZLA.** (1) A penalty of a daily payment (in this section referred to as a ‘daily payment penalty’) may be imposed on a person in accordance with this section for the purpose of enforcing an obligation imposed on that person by an authorised officer in the exercise, in a Digital Services investigation, of any power conferred on the authorised officer by section 139ZK.
- (2) Where it appears to an authorised officer to be necessary to impose a daily payment penalty on a person, the authorised officer may give the person a notice in writing which—
- (a) specifies the obligation referred to in subsection (1) in respect of which the notice is given,
  - (b) gives the person all relevant information relating to the obligation,
  - (c) states the date by which the person must comply with the obligation,

- (d) states that, if the person fails to comply with the obligation by that date, the authorised officer intends to refer the matter to the Commission for a decision whether to impose a daily payment penalty on the person, for each day during which the failure continues, beginning with the day following that date,
  - (e) states why it appears to the authorised officer to be necessary to impose the penalty,
  - (f) states the maximum daily amount of the penalty that the Commission may impose, and
  - (g) invites the person to make written submissions to the Commission regarding the matters to which the notice relates within the period specified in the notice or such further period as the Commission may allow.
- (3) The date specified under subsection (2)(c) may not be earlier than the date on which the notice under subsection (2) is given.
  - (4) The amount of a penalty imposed under this section on a person for each day, during which the failure referred to in subsection (2)(d) continues, shall not exceed 5 per cent of the person's average daily income or turnover in the preceding financial year.
  - (5) Where it appears to an authorised officer that the person to whom a notice under subsection (2) has been given has failed to comply with the obligation specified in the notice by the date specified under subsection (2)(c), the authorised officer may refer the matter to the Commission.
  - (6) Where a matter is referred to the Commission under subsection (5) and it appears to the Commission, after considering any written submissions made by the person to whom the notice under subsection (2) was given within the period specified in accordance with subsection (2)(g), that it is necessary to impose a daily payment penalty on the person for the purpose of enforcing the obligation specified in the notice, the Commission may—
    - (a) determine the daily amount of the penalty to be imposed, and the date on which it is to commence, and
    - (b) by notice in writing to the person, impose the penalty.
  - (7) The functions of the Commission under this section (except this subsection) shall be exercised by a division of the Commission consisting of such uneven number of Commissioners, not being less than 3, as the Commission may determine.
  - (8) If the person who gave the direction under section 139ZI for the investigation referred to in subsection (1) to be carried out is a

Commissioner, the division exercising functions under this section shall not include that Commissioner.

- (9) A decision of the Commission to impose a daily payment penalty does not take effect unless it is confirmed on appeal under section 139ZX or on summary application under section 139ZY, as those sections apply in accordance with section 139ZZAA.

**Power to require intermediary service provider to take interim measures**

**139ZLB.** (1) Where in the course of a Digital Services investigation it appears to the Commission from information provided by an authorised officer—

- (a) that there is *prima facie* evidence—
- (i) that the inquiry subject has committed a contravention which is an infringement of the Digital Services Regulation, and
- (ii) that the contravention is continuing,
- (b) that the suspected contravention gives rise to a risk of serious harm occurring before a decision in relation to the suspected contravention could be made under section 139ZS, and
- (c) that measures could be taken by the inquiry subject that would avoid or reduce that risk,

the Commission may, by notice in writing to the inquiry subject, require the inquiry subject to take those measures by a date stated in the notice.

- (2) A notice under subsection (1) shall—
- (a) state the suspected contravention,
- (b) state the grounds on which it appears to the Commission that there is *prima facie* evidence that the suspected contravention has occurred and is continuing, and
- (c) state the grounds on which it appears to the Commission that the suspected contravention gives rise to a risk of serious harm occurring before a decision in relation to the suspected contravention could be made under section 139ZS.
- (3) A notice under subsection (1) ceases to have effect on the earliest of the following to occur:
- (a) the taking of a decision under section 139ZS in relation to the suspected contravention;
- (b) the discontinuance of the investigation referred to in subsection (1);
- (c) the revocation of the notice by the Commission.

- (4) The functions of the Commission under this section (except this subsection) shall be exercised by a division of the Commission consisting of such uneven number of Commissioners, not being less than 3, as the Commission may determine.
- (5) If the person who gave the direction under section 139ZI for the investigation referred to in subsection (1) to be carried out is a Commissioner, the division exercising functions under this section shall not include that Commissioner.
- (6) A person who, without reasonable excuse, fails to comply with a notice under subsection (1) shall be guilty of a category 1 offence.
- (7) Where an offence has been committed under subsection (6) by a body corporate and the offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a person who was either a director, manager, secretary or other officer of the body corporate, or a person purporting to act in such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the offence committed by the body corporate.
- (8) Where the affairs of a body corporate are managed by its members, subsection (7) applies in relation to the acts or defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.
- (9) Any proceedings, including summary proceedings, under subsection (7) shall not be instituted except by or with the consent of the Director of Public Prosecutions.
- (10) Without prejudice to subsection (6), a person who fails to comply with a notice under subsection (1) may be liable to an administrative financial sanction in accordance with this Part.”.

#### **Amendment of section 139ZM of Principal Act**

#### **22. Section 139ZM of the Principal Act is amended—**

- (a) by the substitution of “inquiry subject” for “provider” in each place where it occurs,
- (b) in subsection (1), by the insertion of “pursuant to a direction under section 139ZI(1)” after “an investigation”,
- (c) in subsection (2)—
  - (i) in paragraph (d), by the substitution of “section 139ZK,” for “section 139ZK, and”,

- (ii) in paragraph (e), by the substitution of “section 139ZK,” for “section 139ZK.”, and
- (iii) by the insertion of the following paragraphs after paragraph (e):
  - “(f) in the case of a Digital Services investigation which is a joint investigation, anything of a similar nature to the material, equipment, statements, admissions and submissions referred to in paragraphs (c) to (e), obtained by any participating Member State Digital Services Coordinator or other Member State competent authority, and
  - (g) any views communicated by the European Commission under Article 59(3).”,
- (d) in subsection (6), by the substitution of “and any views to which subsection (7A) applies to the inquiry subject” for “to the provider”,
- (e) in subsection (7), by the substitution of “, any submissions made in accordance with a notice under subsection (3)(d), and any views to which subsection (7A) applies” for “and any submissions made under subsection (3)(d)”,
- (f) by the insertion of the following subsection after subsection (7):
  - “(7A) This subsection applies, in the case of a report under this section, to—
    - (a) any views communicated by the European Commission under Article 59(3) in relation to the matter to which the report relates, and
    - (b) any views of Member State Digital Services Coordinators that Article 60(2) requires to be taken into account in relation to that matter.”,
- (g) in subsection (8), by the substitution of “any submissions made in accordance with a notice under subsection (3)(d), and any views to which subsection (7A) applies” for “and any such submissions”, and
- (h) by the substitution of the following subsection for subsection (9):
  - “(9) A person who receives a final report or any submissions or views under subsection (8) shall not, without the prior authorisation of the Commission, disclose the existence or the content of the report or those submissions or views to any other person.”.

**Information about decision process following joint investigation to which Article 60 applies**

23. The Principal Act is amended by the insertion of the following section after section 139ZM:

“**139ZMA.** In the case of an investigation pursuant to a direction under section 139ZI(1) which is a joint investigation to which Article 60



applies, the authorised officer shall, not later than the time when he or she provides a final report in compliance with section 139ZM(6), inform the inquiry subject of the effect of section 139ZSA.”.

#### **Amendment of section 139ZN of Principal Act**

**24.** Section 139ZN of the Principal Act is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) Subject to the provisions of this Part and Schedule 4, the Commission may make rules providing for the conduct of investigations under this Chapter, the exercise of powers under section 139ZK as applied by section 139ZKA, and the conduct of its proceedings under Chapters 3 and 4.”,

and

(b) by the substitution of the following subsection for subsection (2):

“(2) In making rules under subsection (1), the Commission shall have regard to the need for fairness and efficiency in the conduct of such investigations and proceedings and the exercise of such powers, in particular the need to address conflicts of interest which may arise in investigations or proceedings or the exercise of powers.”.

#### **Amendment of section 139ZP of Principal Act**

**25.** Section 139ZP of the Principal Act is amended—

(a) in subsection (1), by the substitution of “conduct of an investigation, or the exercise of powers under section 139ZK as applied by section 139ZKA,” for “conduct of an investigation”, and

(b) in subsection (2), by the substitution of “inquiry subject” for “provider”.

#### **Amendment of section 139ZR of Principal Act**

**26.** Section 139ZR of the Principal Act is amended—

(a) by the substitution of “inquiry subject” for “provider” in each place where it occurs,

(b) in subsection (1), by the substitution of the following paragraph for paragraph (b):

“(b) a notice in writing stating that the inquiry subject may make submissions in writing to the Commission on the final report and any views to which section 139ZM(7A) applies within the period of 28 days from the date the inquiry subject receives the notice or views, or such further period as the Commission may allow.”,

- (c) in subsection (2), by the substitution of “the final report and any views to which section 139ZM(7A) applies” for “the final report”,
- (d) in subsection (4)—
  - (i) in paragraph (c), by the insertion of “or in an oral hearing under paragraph (d)” after “paragraph (b)”, and
  - (ii) in paragraph (d), by the insertion of “in accordance with Schedule 4” after “hearing”,
- (e) by the insertion of the following subsections after subsection (6):
  - “(6A) Where, after the authorised officer has complied with subsections (6) and (7) of section 139ZM, the European Commission under Article 59(3) communicates its views and requests the matter to be reviewed, the Commission—
    - (a) shall give the inquiry subject notice in writing of those views and the request, and
    - (b) may, following the review, take any action that appears to it to be necessary to ensure compliance with the Digital Services Regulation, which may include referring the matter back to the authorised officer to reopen the investigation.
  - (6B) Where an investigation is reopened in accordance with subsection (6A)(b), this Part applies as if references to the final report on the investigation were references to the final report on the reopened investigation, but that does not affect anything done before the reopening of the investigation.”,

and

- (f) by the insertion of the following subsection after subsection (9):
  - “(9A) Without prejudice to subsections (8) and (9), a person may be liable to an administrative financial sanction in accordance with this Part if, in a case where the report referred to in subsection (1)(b) relates to a Digital Services investigation, the person—
    - (a) fails to comply with a request for further information under subsection (4)(a) or (b),
    - (b) in purported compliance with a request for further information under subsection (4)(a) or (b), gives to the Commission information which the person knows to be false or misleading in any material respect, or
    - (c) fails to rectify—
      - (i) any failure on his or her part to comply with a request for further information under subsection (4)(a) or (b), or

- (ii) any information which he or she has given to the Commission in purported compliance with a requirement under subsection (4)(a) or (b) and which is false or misleading in a material respect.”.

#### **Amendment of section 139ZS of Principal Act**

27. Section 139ZS of the Principal Act is amended—

- (a) by the substitution of “person” for “provider” in each place where it occurs, and
- (b) in subsection (3), by the substitution of the following paragraph for paragraph (a):

“(a) the final report provided under subsection (7) of section 139ZM and any submissions or views provided with the report in accordance with that subsection,”.

#### **Decision following joint investigation to which Article 60 applies**

28. The Principal Act is amended by the insertion of the following section after section 139ZS:

- “**139ZSA.** (1) A decision under section 139ZS, where the report referred to in subsection (1) of that section relates to a joint investigation to which Article 60 applies, constitutes the preliminary position referred to in that Article, and (subject to subsections (5) to (7)) sections 139ZT, 139ZU and 139ZV do not apply in relation to the decision.
- (2) As soon as is practicable after making a decision to which subsection (1) applies, the Commission shall give notice in writing of the decision to the inquiry subject.
  - (3) A notice under subsection (2) shall—
    - (a) set out the decision and the reasons for it, and
    - (b) state the effect of subsections (1) and (5) to (7).
  - (4) Where the Commission makes a communication under Article 60(2) in relation to a decision to which subsection (1) applies, the Commission shall as soon as is practicable give the inquiry subject notice in writing that the communication has been made.
  - (5) If in relation to a decision to which subsection (1) applies—
    - (a) no referral is made under Article 60(3), or
    - (b) following a referral, the European Commission does not make a request under Article 59(3) for the matter to be reviewed,the Commission shall adopt the decision as its final decision.

- (6) If, in relation to a decision to which subsection (1) applies, the European Commission makes a request under Article 59(3) for the matter to be reviewed, the Commission may, following the review and subject to Article 59(3), do any of the following:
- (a) adopt the decision as its final decision;
  - (b) request a person authorised under section 139ZI(2) to give a direction under subsection (1) of that section for a new investigation;
  - (c) take any other action that appears to the Commission to be necessary to ensure compliance with the Digital Services Regulation.
- (7) Where the Commission adopts a decision to which subsection (1) applies as its final decision, sections 139ZT, 139ZU and 139ZV shall apply in relation to the decision.”.

#### **Amendment of section 139ZT of Principal Act**

29. Section 139ZT of the Principal Act is amended—

- (a) by the substitution of the following subsection for subsection (1):

“(1) The Commission shall, as soon as is practicable after making a decision under section 139ZS, give notice in writing of the decision to the inquiry subject.”,
  - (b) by the substitution, other than in subsection (6), of “inquiry subject” for “provider” in each place where it occurs,
  - (c) by the insertion of the following subsections after subsection (5):

“(5A) Subsection (5) does not apply to a decision where the suspected contravention falls within paragraph (c) of the definition of ‘contravention’ in section 139ZG.

(5B) Where the decision referred to in subsection (1) relates to a contravention falling within paragraph (b) or (d) of the definition of ‘contravention’ in section 139ZG, the Commission shall provide a copy of the notice referred to in that subsection to—

    - (a) the European Commission,
    - (b) the European Board for Digital Services, and
    - (c) each Member State Digital Services Coordinator.”,
- and
- (d) in subsection (6), by the substitution of “any other person” for “a person other than the provider”.

**Amendment of section 139ZU of Principal Act**

30. Section 139ZU of the Principal Act is amended—

- (a) by the substitution, other than in subsection (3), of “person” for “provider” in each place where it occurs,
- (b) by the substitution of the following subsection for subsection (3):
  - “(3) Where a person makes submissions to the Commission under subsection (2)(b), the Commission may by notice in writing request the person to provide, within a specified period, such further information as the Commission considers appropriate for the purposes of determining the amount of the sanction.”,

and

- (c) by the substitution of the following subsection for subsection (4):
  - “(4) A person who—
    - (a) without reasonable excuse fails to comply with a request under subsection (3), or
    - (b) in purported compliance with a request under subsection (3), gives to the Commission information which the person knows to be false or misleading in any material respect,shall be guilty of a category 2 offence.”.

**Amendment of section 139ZV of Principal Act**

31. Section 139ZV of the Principal Act is amended, in subsection (3), by the substitution of “inquiry subject” for “provider”.

**Amendment of section 139ZW of Principal Act**

32. Section 139ZW of the Principal Act is amended—

- (a) by the substitution of the following subsection for subsection (1):
  - “(1) In the case of a contravention falling within paragraph (a) of the definition of ‘contravention’ in section 139ZG—
    - (a) where the inquiry subject is an individual, the amount of an administrative financial sanction imposed under section 139ZS shall not exceed €20,000,000, but shall not be such as would be likely to cause the inquiry subject to be adjudicated bankrupt, and
    - (b) where the inquiry subject is not an individual, the amount of an administrative financial sanction imposed under section 139ZS shall not exceed—
      - (i) €20,000,000, or

- (ii) if greater, 10 per cent of the relevant turnover of the inquiry subject in the financial year preceding the date of the decision under section 139ZS to impose the sanction,

but shall not be such as would be likely to cause the inquiry subject to cease trading.”,

- (b) by the insertion of the following subsections after subsection (1):

“(1A) In the case of a contravention falling within paragraph (b) or (d) of the definition of ‘contravention’ in section 139ZG, the amount of an administrative financial sanction imposed under section 139ZS shall not exceed 6 per cent of the turnover of the inquiry subject in the financial year preceding the date of the decision under section 139ZS to impose the sanction.

(1B) In the case of a contravention falling within paragraph (c) of the definition of ‘contravention’ in section 139ZG, the amount of an administrative financial sanction imposed under section 139ZS shall not exceed one per cent of the income or turnover of the inquiry subject in the financial year preceding the date of the decision under section 139ZS to impose the sanction.”,

- (c) in subsection (2)—

- (i) by the substitution of “subsection (1)(b)(ii)” for “subsection (1)(b)”, and
- (ii) by the deletion of “of the provider”,

- (d) in subsection (3)—

- (i) by the substitution, other than in paragraphs (e) and (k), of “inquiry subject” for “provider” in each place where it occurs,
- (ii) in paragraph (e), by the substitution of “by the inquiry subject, or by any other person in which the inquiry subject” for “by the provider or by any person in which that provider”,

- (iii) in paragraph (k)—

- (I) by the substitution of “in the case of a body corporate, the extent to which” for “the extent to which”, and
- (II) by the substitution of “body” for “provider”,

- (iv) in paragraph (l), by the substitution of “income or turnover” for “turnover”, and

- (v) by the insertion of the following paragraph after paragraph (l):

“(la) any views communicated by the European Commission under Article 59(3) that are relevant to the amount of the sanction;”,

- (e) in subsection (4), by the substitution of the following paragraph for paragraph (b):

“(b) be set with a view to deterring the inquiry subject, and, where the inquiry subject is a provider of broadcasting services, audiovisual on-demand media services, designated online services or intermediary services, other such providers, from committing a contravention.”,

and

(f) by the deletion of subsection (5).

#### **Amendment of section 139ZX of Principal Act**

**33.** Section 139ZX of the Principal Act is amended—

- (a) by the deletion of subsection (2),
- (b) by the substitution, other than in subsection (3), of “inquiry subject” for “provider” in each place where it occurs, and
- (c) in subsection (3)—
  - (i) by the substitution of “the application of the inquiry subject” for “the application of a provider to whom a decision under section 139ZS relates”, and
  - (ii) in paragraph (b), by the substitution of “the control of the inquiry subject” for “the control of the provider”.

#### **Amendment of section 139ZY of Principal Act**

**34.** Section 139ZY of the Principal Act is amended—

- (a) in subsection (1), by the substitution of “inquiry subject” for “provider” in each place where it occurs, and
- (b) in subsection (4), by the substitution of “The inquiry subject” for “A provider”.

#### **Insertion of Chapter 4A into Part 8B of Principal Act**

**35.** Part 8B of the Principal Act is amended by the insertion of the following Chapter after Chapter 4:

##### “CHAPTER 4A

##### *Daily payment penalty under section 139ZLA: appeal and confirmation*

#### **Daily payment penalty under section 139ZLA: appeal and confirmation**

**139ZZAA.** (1) A person to whom a notice under section 139ZLA(6) is given may, within 28 days from the date on which the notice is received, appeal to the High Court against the decision to impose the daily payment penalty.

- (2) Subsections (3) to (7) and (9) of section 139ZX apply for the purposes of an appeal under this section as they apply for the purposes of an appeal by the inquiry subject under that section subject to the following and any other necessary modifications:
  - (a) references to an administrative financial sanction are references to a daily payment penalty under section 139ZLA;
  - (b) references to the appropriate court are references to the High Court.
- (3) Where the person to whom a notice under section 139ZLA(6) is given does not appeal in accordance with subsection (1) against the decision to impose a daily payment penalty, the Commission shall, as soon as is practicable after the expiration of the period referred to in subsection (1), and on notice to that person, make an application in a summary manner to the Circuit Court for confirmation of the decision.
- (4) Section 139ZY(2) to (8) apply for the purposes of an application under subsection (3) subject to the following and any other necessary modifications:
  - (a) the reference to an administrative financial sanction is a reference to a daily payment penalty under section 139ZLA;
  - (b) references to an appeal under section 139ZX(1) are references to an appeal under subsection (1) of this section;
  - (c) references to section 139ZY(1) are references to subsection (3) of this section.”.

#### **Amendment of section 139ZZB of Principal Act**

**36.** Section 139ZZB of the Principal Act is amended—

- (a) in subsection (1), by the substitution of “the inquiry subject directing the inquiry subject” for “provider the subject of the decision directing him or her”,
- (b) in subsection (2), by the substitution of “inquiry subject” for “provider”,
- (c) in subsection (4), by the substitution of “person” for “provider”, and
- (d) in subsection (5), by the substitution of “by a body corporate” for “by a provider of a designated online service that is a body corporate”.

#### **Insertion of sections 139ZZBA and 139ZZBB in Principal Act**

**37.** The Principal Act is amended by the insertion of the following sections after section 139ZZB:

##### **“Daily payment for failure to comply with notice to end contravention**

- 139ZZBA.** (1) Where the Commission gives a notice under section 139ZZB to an intermediary service provider in respect of a contravention that is an



infringement of the Digital Services Regulation, the Commission may, for the purpose of enforcing the notice, impose a penalty of a daily payment (in this section referred to as a ‘daily payment penalty’) on the provider.

- (2) Before the Commission makes a decision to impose a daily payment penalty on a provider, the Commission shall give the provider a notice in writing which—
  - (a) states that if the provider fails to take the steps stated under section 139ZZB(2)(a) by a date specified in the notice under this subsection, the Commission intends to impose a daily payment penalty on the provider for each day during which the failure continues, beginning with the day following that date,
  - (b) states why it appears to the Commission to be necessary to impose the penalty,
  - (c) states the maximum daily amount of the penalty that the Commission may impose, and
  - (d) invites the provider to make written submissions to the Commission, regarding the matters to which the notice relates within the period specified in the notice or such further period as the Commission may allow.
- (3) The date specified under subsection (2)(a)—
  - (a) may not be earlier than the end of the period specified under section 139ZZB(2)(b), and
  - (b) may not be earlier than the date on which the notice under subsection (2) is given.
- (4) The amount of a penalty imposed under this section shall not exceed, for each day during which the failure referred to in subsection (2)(a) continues, 5 per cent of the provider’s average daily turnover in the preceding financial year.
- (5) Where the intermediary service provider fails to take the steps stated under section 139ZZB(2)(a) by the date specified in the notice under subsection (2), the Commission, after considering any written submissions made by the provider within the period referred to in subsection (2)(d), may—
  - (a) determine the daily amount of the penalty to be imposed, and the date on which it is to commence, and
  - (b) by notice in writing to the provider, impose the penalty.
- (6) A decision of the Commission to impose a daily payment penalty under this section does not take effect unless it is confirmed on appeal

under section 139ZX or on summary application under section 139ZY, as those sections apply in accordance with section 139ZZBB.

**Daily payment penalty under section 139ZZBA: appeal and confirmation**

- 139ZZBB.** (1) The provider to whom a notice under section 139ZZBA(5) is given may, within 28 days from the date on which the notice is received, appeal to the High Court against the decision to impose the daily payment penalty.
- (2) Subsections (3) to (7) and (9) of section 139ZX apply for the purposes of an appeal by a provider under this section, as they apply for the purposes of an appeal by the inquiry subject under subsection (1) of that section, subject to the following and any other necessary modifications:
- (a) references to an administrative financial sanction are references to a daily payment penalty under section 139ZZBA;
- (b) references to the appropriate court are references to the High Court.
- (3) Where the provider to whom a notice under section 139ZZBA(5) is given does not appeal in accordance with subsection (1) against the decision to impose a daily payment penalty, the Commission shall, as soon as is practicable after the expiration of the period referred to in subsection (1), and on notice to the provider, make an application in a summary manner to the Circuit Court for confirmation of the decision.
- (4) Section 139ZY(2) to (8) apply for the purposes of an application under subsection (3) subject to the following and any other necessary modifications:
- (a) references to an appeal under section 139ZX(1) are references to an appeal under subsection (1) of this section;
- (b) references to section 139ZY(1) were references to subsection (3) of this section.”.

**Access blocking order where Digital Services Regulation infringed**

- 38.** Part 8B of the Principal Act is amended by the insertion of the following Chapter after Chapter 6:

“CHAPTER 6A

*Access blocking order where Digital Services Regulation infringed*

**Further notice to end infringement of Digital Services Regulation**

- 139ZZCA.** (1) Where the Commission has given a notice under section 139ZZB to an intermediary service provider in respect of a contravention that is an infringement of the Digital Services Regulation, and it appears to the Commission that—

- (a) the provider has failed to comply with the notice within the period specified under section 139ZZB(2),
- (b) the contravention is continuing,
- (c) the other powers of the Commission pursuant to Article 51 to put an end to the contravention have been exhausted, and
- (d) the contravention is causing serious harm that cannot be avoided through the exercise of other powers,

the Commission may, by notice in writing to the provider, request the management body of the provider to consider the steps required by the notice under section 139ZZB and to propose what steps the provider should now be required to take to put an end to the contravention, and within what period.

- (2) A notice under subsection (1) shall state the time within which the management body must comply with the request.
- (3) Where the management body of a provider makes a proposal in accordance with a notice under subsection (1), the Commission may give a further notice in writing to the provider directing the provider to put an end to the contravention referred to in subsection (1) and stating—
  - (a) the steps which the Commission requires the provider to take to put an end to the contravention, and
  - (b) the period within which those steps must be taken.
- (4) Section 139ZZB(4) to (7), and sections 139ZZBA and 139ZZBB, apply in relation to a notice under subsection (3) as they apply in relation to a notice under section 139ZZB.
- (5) The giving of a notice under subsection (3) does not affect the application of section 139ZZB(4) to (7), 139ZZBA or 139ZZBB in relation to the earlier notice under section 139ZZB.

#### **Access blocking order in case of infringement of Digital Services Regulation**

**139ZZCB.** (1) Where—

- (a) the management body of an intermediary service provider fails to make a proposal in accordance with a notice under section 139ZZCA(1),
- (b) the Commission gives an intermediary service provider a notice under subsection (3) of section 139ZZCA, and the period referred to in paragraph (b) of that subsection expires without the Commission being satisfied that the contravention has ended, or

- (c) the European Commission makes a request to the Commission pursuant to Article 82(1) in respect of the provider of a very large online platform or very large online search engine,

the Commission may apply to the High Court for an order requiring a relevant intermediary service provider (referred to in this section as the provider of the ‘carrying service’) to block access in the State to an intermediary service (referred to in this section as the ‘subject service’) provided by the provider referred to in paragraph (a), (b) or (c).

- (2) An application under subsection (1) shall be made on notice to—
  - (a) the provider of the carrying service,
  - (b) the provider of the subject service, and
  - (c) any other person appearing to the Commission to have a legitimate interest.
- (3) Where paragraph (a) of subsection (1) applies, the Commission shall, before making an application under that subsection, give notice in writing to the persons referred to in subsection (2)—
  - (a) stating that it intends to make an application under subsection (1),
  - (b) setting out the order it intends to apply for and the addressees of that order, and
  - (c) stating that the persons to whom the notice is given may submit written observations to the Commission within a period specified in the notice of not less than 10 working days beginning with the day on which the notice is received.
- (4) Where the Commission gives notice under subsection (3), no application under subsection (1) may be made before the end of the period specified under subsection (3)(c).
- (5) On an application under subsection (1) the court may make an order requiring the blocking of access to the subject service if it is satisfied in relation to the relevant infringement—
  - (a) that the infringement is continuing,
  - (b) that the infringement entails a criminal offence involving a threat to the life or safety of persons,
  - (c) where subsection (1)(a) or (b) applies, that all reasonable steps for the Commission to take to put an end to the infringement have been taken, and
  - (d) that, having regard to the nature, gravity, recurrence and duration of the infringement, an order under this section is proportionate and

will not unduly restrict access to lawful information by users of the subject service.

- (6) The High Court may provide in an order under this section that a requirement imposed by the order is subject to such conditions as it considers necessary.
- (7) Subject to subsection (8), an order under this section shall have effect for a period of not more than 28 days.
- (8) The High Court may provide that the Commission may with leave of the court extend the period for which an order under this section has effect for further periods of not more than 28 days, subject to the maximum number of extensions specified by the court.
- (9) The Commission may make an application, in accordance with subsection (8), for leave to extend the period for which an order under this section has effect only if, having regard to the rights and interests of all those affected by the order, it considers that—
  - (a) the provider has failed to take the necessary measures to put an end to the relevant infringement, and
  - (b) the extension will not unduly restrict access to lawful information by users of the subject service, having regard to the number of recipients affected and whether any adequate and readily accessible alternative exists.
- (10) Where in relation to an order under this section—
  - (a) no application, or no further application, may be made in accordance with subsection (8) for leave to extend the period for which the order has effect, but
  - (b) having regard to the rights and interests of all those affected by the order, the Commission considers that the conditions referred to in subsection (9)(a) and (b) are satisfied,the Commission may make a further application under subsection (1).
- (11) The provider of the carrying service or the subject service may apply to the High Court to vary or discharge an order under this section in the event that there is any material change in the circumstances which gave rise to the order.
- (12) In this section, references to the provider of the carrying service blocking access to the subject service, where the carrying service is an application store service, include references to the provider of the carrying service blocking the downloading of software used to provide the subject service or to access the subject service.
- (13) In this section—

‘application store service’ means a service the main purpose of which is to facilitate the download of, or access to, application software at endpoints of the internet;

‘relevant infringement’ means—

- (a) where subsection (1)(a) or (b) applies, the contravention referred to in section 139ZZCA(1), and
- (b) where subsection (1)(c) applies, the infringement to which the request by the European Commission relates.”.

#### **Amendment of section 139ZZD of Principal Act**

39. Section 139ZZD of the Principal Act is amended, in subsection (5), by the substitution of “Article 8 of the Digital Services Regulation” for “Article 15 of the E-Commerce Directive”.

#### **Other enforcement measures**

40. Part 8B of the Principal Act is amended by the insertion of the following Chapter after Chapter 7:

#### “CHAPTER 7A

#### *Other enforcement measures*

#### **Compliance notice**

- 139ZZGA.** (1) Where a person authorised by the Commission under subsection (2) is of the opinion that a relevant intermediary service provider has infringed a provision of the Digital Services Regulation to which this section applies, that person may direct an authorised officer to serve a notice (in this section referred to as a ‘compliance notice’) on the provider.
- (2) The Commission may authorise any Commissioner or member of its staff for the purposes of subsection (1).
  - (3) A compliance notice shall—
    - (a) state the contravention to which it relates,
    - (b) state the grounds on which the person authorised under subsection (2) is of the opinion referred to in subsection (1),
    - (c) for the purpose of ensuring compliance by the provider with the provision which is the subject of the contravention, require the provider to do or refrain from doing anything specified in the notice by a date specified in the notice, and

- (d) contain information regarding the bringing of an appeal under subsection (7) against the notice, including information specifying the manner in which an appeal may be brought.
- (4) An authorised officer may withdraw a compliance notice at any time.
- (5) An authorised officer may amend a compliance notice by notice in writing to the provider to substitute any later date for the date for the time being specified under subsection (3)(c) or this subsection.
- (6) A date specified under subsection (3)(c) or (5) must be later than the date by which an appeal under subsection (7) may be brought.
- (7) A provider may, not later than 14 days after the service on the provider of a compliance notice, appeal against the notice to the District Court.
- (8) An appeal under subsection (7) shall be brought in the manner specified in accordance with subsection (3)(d).
- (9) The authorised officer and the provider concerned shall be entitled to be heard and to adduce evidence at the hearing of an appeal under subsection (7).
- (10) The District Court shall, on an appeal under subsection (7) against a compliance notice, do one of the following:
  - (a) affirm the notice;
  - (b) cancel the notice;
  - (c) cancel the notice and require the provider to comply with such directions as may be given by the court.
- (11) A provider on whom a compliance notice is served, who fails to comply with the notice by the due date, shall be guilty of an offence and liable on summary conviction to a class B fine or imprisonment for a term not exceeding 6 months or both.
- (12) The due date for the purposes of subsection (11) is:
  - (a) where no appeal is brought under subsection (7), the date for the time being specified in the compliance notice in accordance with subsection (3)(c) or (5);
  - (b) where an appeal against the notice is brought under subsection (7) and the court affirms the notice, the day falling immediately after the expiration of the period of 14 days from the date on which the court affirms the notice.
- (13) Nothing done under this section prevents or restricts the taking of any other action for the purpose of enforcing a provision to which this section applies.

- (14) This section applies to Articles 11, 12, 13(4), 14(1), (2), (5) and (6), 15(1), 16(1), 21(1) and (4), 24(2), 25 and 26(1)(a), (b), (c) and (d).

**Power to enter into commitment agreement with intermediary service provider**

**139ZZGB.** (1) The Commission may at any time enter into an agreement in writing with a relevant intermediary service provider under which the provider agrees to take measures that appear to the Commission to address any issue relating to compliance by the provider with the designated provisions of the Digital Services Regulation.

- (2) An agreement under this section is referred to in this section as a ‘commitment agreement’.
- (3) A commitment agreement may include provision under which the Commission agrees, subject to the terms of the agreement, not to take specified steps in relation to matters or findings addressed by the agreement.
- (4) A commitment agreement, unless terminated under subsection (5) or (6), is binding on the parties for the period specified in the agreement.
- (5) A commitment agreement may be amended or terminated by the parties by agreement in writing.
- (6) The Commission may terminate a commitment agreement by giving notice in writing to the provider if—
- (a) the provider does not comply with the agreement, or
  - (b) it appears to the Commission that information provided by the provider and relied on by the Commission for the purposes of entering into the agreement was, in a material respect, incomplete, misleading or false.
- (7) A provider who fails to comply with a commitment agreement may be liable to an administrative financial sanction in accordance with this Part.”.

**Insertion of Part 15 in Principal Act**

**41.** The Principal Act is amended by the insertion of the following Part after Part 14:



## “PART 15

## DIGITAL SERVICES

## CHAPTER 1

*Interpretation***Interpretation (Part 15)**

**186.** (1) In this Part—

‘certification conditions’ means the conditions specified in Article 21(3);

‘designation conditions’ means the conditions specified in Article 40(8);

‘out-of-court dispute settlement body’ means a person certified under section 193(3)(a);

‘vetted researcher’ means a person designated as a vetted researcher under section 187(5)(a).

- (2) A word or expression used in this Part that is also used in the Digital Services Regulation has, unless the context otherwise requires, the same meaning in this Part as it has in that Regulation.
- (3) Unless the context otherwise requires, a reference in this Part to a numbered Article is a reference to the Article so numbered of the Digital Services Regulation.

## CHAPTER 2

*Vetted researchers, trusted flaggers and out-of-court settlement bodies***Designation of vetted researchers**

**187.** (1) A person who applies to the Commission under Article 40(8) to be designated as a vetted researcher shall do so in the form and manner specified by the Commission and such application shall specify the research to which the application relates.

- (2) Where a Member State Digital Services Coordinator provides the Commission with an initial assessment conducted in accordance with Article 40(9) together with the application and supporting documents submitted to the Coordinator, any information provided by the Member State Digital Services Coordinator in accordance with this subsection shall be deemed to be an application under subsection (1) by the person who submitted the application to the Coordinator.
- (3) At any time after receiving an application under subsection (1), and before determining the application, the Commission may by notice in

writing require the person applying under subsection (1) to provide additional information to the Commission and where the Commission does so, the person shall comply with that requirement within the period specified in the request.

- (4) Additional information referred to in subsection (3) may include information the Commission considers is appropriate for, or relevant to, the making of a reasoned request in accordance with Article 40(4).
- (5) Where the Commission is satisfied that a person, the subject of the application under subsection (1)—
  - (a) meets the designation conditions, the Commission may designate that person as a vetted researcher for the research referred to in the application, or
  - (b) does not meet the designation conditions, the Commission may refuse to designate that person as a vetted researcher for the research referred to in the application.
- (6) Where the Commission makes a decision under subsection (5), the Commission shall notify the person, the subject of the application under subsection (1), in writing of the decision.
- (7) A provider of a very large online platform (within the meaning of section 139ZG) or of a very large online search engine (within the meaning of section 139ZG) shall provide access to data to a vetted researcher where the Commission has issued a reasoned request under Article 40(4) for that vetted researcher.
- (8) The Commission shall provide a copy of the reasoned request issued under Article 40(4) to the vetted researcher concerned.

#### **Termination of data access**

- 188.** (1) Where a vetted researcher has been granted data access following a reasoned request for such access under Article 40(4), the Commission shall terminate the access where the Commission has determined that the vetted researcher no longer meets the designation conditions, following an investigation—
- (a) on the Commission's own initiative, or
  - (b) based on information received by the Commission from third parties.
- (2) Where the Commission proposes to terminate data access in accordance with subsection (1), the Commission shall notify the vetted researcher in writing of the proposed termination.
  - (3) A notification under subsection (2) shall include particulars of the following:

- (a) the proposal to terminate access under subsection (1) and the reason for it;
- (b) that the researcher is entitled to make representations in accordance with section 196 regarding the proposal to terminate access;
- (c) that if the researcher does not make such representations, the proposed termination under subsection (1) shall come into operation 14 days from the date of the service of the notification;
- (d) that the researcher is entitled to seek a review of the decision to terminate access in accordance with section 189.

### **Review of refusal of designation or revocation of designation**

#### **189. (1) Where—**

- (a) an application for designation is refused by the Commission under section 187(5)(b), or
- (b) the data access of a vetted researcher is proposed to be terminated by the Commission under section 188,

the applicant or the vetted researcher may, within 14 days from the date of the service of the notification under section 187(6) or 188(2), request in writing a review (in this section referred to as a ‘review request’) of such refusal or proposed termination in the form and manner specified by the Commission.

- (2) The review request shall state the grounds on which the person making the request seeks a review of the refusal or proposed termination, as the case may be.
- (3) The Commission shall, upon receipt of the review request, appoint an independent person (in this section referred to as a ‘reviewer’) to carry out a review in accordance with this section.
- (4) The reviewer shall, as soon as is practicable after being appointed, review the decision to refuse the application or the proposal to terminate the data access and may recommend to the Commission that—
  - (a) the decision should be affirmed, or
  - (b) the decision should be set aside and the Commission reconsider the decision.
- (5) The reviewer shall, within 14 days of making a recommendation under subsection (4), notify the person who made the review request, of the recommendation and the reasons for it.

### **Award of trusted flagger status**

- #### **190. (1) An entity established in the State that applies to the Commission under Article 22(2) to be awarded status as a trusted flagger shall do so in**

the form and manner specified by the Commission (and an entity that so applies is in this section referred to as an ‘applicant’).

- (2) At any time after receiving an application and before determining the application, the Commission may by notice in writing require the applicant to provide additional information to the Commission and where the Commission does so, the applicant shall comply with that requirement within the period specified in the request.
- (3) Where the Commission is satisfied that an applicant—
  - (a) meets the specified conditions, the Commission may award the applicant status as a trusted flagger, or
  - (b) does not meet the specified conditions, the Commission may refuse to award the applicant status as a trusted flagger.
- (4) Where the Commission makes a decision under subsection (3), the Commission shall notify the applicant in writing of the decision.
- (5) In this section and in section 191, ‘specified conditions’ means the conditions specified in Article 22(2).

#### **Revocation of status as trusted flagger**

- 191.** (1) Where the Commission proposes to revoke the status of a trusted flagger under Article 22(7), the Commission shall notify the trusted flagger in writing of the proposed revocation.
- (2) A notification under subsection (1) shall include particulars of the following:
- (a) the proposal to revoke the status of the trusted flagger under Article 22(7) and the reason for it;
  - (b) that the trusted flagger is entitled to make representations in accordance with section 196 regarding the proposal to revoke the status of the trusted flagger;
  - (c) that if the trusted flagger does not make such representations, the proposed revocation of the status of the trusted flagger under Article 22(7) shall come into operation 14 days from the date of the service of the notification;
  - (d) that the trusted flagger is entitled to seek a review of the decision to revoke the status of the trusted flagger in accordance with section 192.

#### **Review of refusal of designation or revocation of designation**

- 192.** (1) Where—
- (a) an application by an entity to be awarded status as a trusted flagger is refused by the Commission under section 190(3)(b), or

(b) the status of a trusted flagger is proposed to be revoked by the Commission under section 191,

the entity or the trusted flagger may, within 14 days from the date of the notification under section 190(4) or 191(1), request in writing a review (in this section referred to as a ‘review request’) of such refusal or proposed revocation, in the form and manner specified by the Commission.

- (2) The review request shall state the grounds on which the entity or trusted flagger making the request seeks a review of the refusal or proposed revocation, as the case may be.
- (3) The Commission shall, upon receipt of the review request, appoint an independent person (in this section referred to as a ‘reviewer’) to carry out a review in accordance with this section.
- (4) The reviewer shall, as soon as is practicable after being appointed, review the decision to refuse the award of status as a trusted flagger or to revoke the status as a trusted flagger and may recommend to the Commission that—
  - (a) the decision should be affirmed, or
  - (b) the decision should be set aside and that the Commission reconsider the decision.
- (5) The reviewer shall, within 14 days of making a recommendation under subsection (4), give notice to the entity or trusted flagger who made the review request, of the recommendation and the reasons for it.

#### **Certification of out-of-court dispute settlement bodies**

- 193.** (1) A person who applies to the Commission under Article 21 to be certified as an out-of-court dispute settlement body shall do so in the form and manner specified by the Commission (and a person who so applies is in this section referred to as an ‘applicant’).
- (2) At any time after receiving an application and before determining the application, the Commission may by notice in writing require the applicant to provide additional information to the Commission and, where the Commission does so, the applicant shall comply with that requirement within the period specified in the notice.
  - (3) Where the Commission is satisfied that an applicant—
    - (a) meets the certification conditions, the Commission may certify the applicant as an out-of-court dispute settlement body, or
    - (b) does not meet the certification conditions, the Commission may refuse to certify the applicant as an out-of-court dispute settlement body.

- (4) Where the Commission makes a decision under subsection (3), it shall notify the applicant in writing of the decision.

**Revocation of certification as out-of-court dispute settlement body**

- 194.** (1) Where the Commission proposes to revoke the certification of an out-of-court dispute settlement body under Article 21(7), it shall notify the out-of-court dispute settlement body concerned in writing of the proposed revocation.
- (2) A notification under subsection (1) shall include particulars of the following:
- (a) the proposal to revoke the certification under Article 21(7) and the reason for it;
  - (b) that the out-of-court dispute settlement body is entitled to make representations in accordance with section 196 regarding the proposal to revoke the certification;
  - (c) that if the out-of-court dispute settlement body does not make such representations, the proposed revocation of the certification under Article 21(7) shall come into operation 14 days from the date of the service of the notification;
  - (d) that the out-of-court dispute settlement body is entitled to seek a review of the decision to revoke the certification in accordance with section 195.

**Review of refusal of certification or revocation of certification**

- 195.** (1) Where—
- (a) an application for certification as an out-of-court dispute settlement body is refused by the Commission under section 193(3)(b), or
  - (b) the certification of an out-of-court dispute settlement body is proposed to be revoked by the Commission under section 194,
- the body may, within 14 days from the date of the notification under section 193(4) or 194(1), request in writing a review (in this section referred to as a ‘review request’) of such refusal or proposed revocation in the manner and form specified by the Commission.
- (2) The review request shall state the grounds on which the body or out-of-court dispute settlement body making the request seeks a review of the refusal or proposed revocation, as the case may be.
- (3) The Commission shall, upon receipt of the review request, appoint an independent person (in this section referred to as a ‘reviewer’) to carry out a review in accordance with this section.

- (4) The reviewer shall, as soon as is practicable after being appointed, review the decision to refuse or revoke the designation and may recommend to the Commission that—
  - (a) the decision should be affirmed, or
  - (b) the decision should be set aside and that the Commission reconsider the decision.
- (5) The reviewer shall, within 14 days of making a recommendation under subsection (4), give notice to the person who made the review request, of the recommendation and the reasons for it.

### **Representations**

#### **196. (1) Where—**

- (a) a vetted researcher has been notified of a proposal to terminate data access under section 188,
- (b) a trusted flagger has been notified of a proposal to revoke the status of the trusted flagger under section 191, or
- (c) an out-of-court dispute settlement body has been notified of a proposal to revoke the certification of the out-of-court dispute settlement body under section 194,

the researcher, flagger or body may make representations to the Commission about such proposal.

- (2) The Commission shall have regard to any representations made to it under subsection (1) in deciding whether to proceed with the proposed termination or revocation concerned.

#### **(3) Where—**

- (a) a researcher, flagger or body makes representations to the Commission in accordance with subsection (1), and
- (b) the Commission decides to give effect to the proposed termination of data access, revocation of the status of trusted flagger or revocation of certification as an out-of-court dispute settlement body,

the termination or revocation shall come into operation 14 days from the date of the notification under section 188, 191 or 194.

### **Investigation of trusted flagger, vetted researcher or out-of-court dispute settlement body**

- 197. (1)** For the purposes of an investigation in accordance with Articles 21(7), 22(7) and 40(1), the Commission may appoint a member of the staff of the Commission as an investigator to investigate—

- (a) the award of a status as a trusted flagger in accordance with Article 22(7),
  - (b) the certification of an out-of-court dispute settlement body in accordance with Article 21(7), or
  - (c) the designation as a vetted researcher in accordance with Article 40(10).
- (2) An investigation under this section shall be carried out by a Digital Services investigator without undue delay and where the investigation concerns the status of a trusted flagger, that status shall be suspended during the period of the investigation.
- (3) For the purposes of an investigation undertaken in accordance with this section, the Digital Services investigator may—
- (a) inspect and make copies of any books, records or other documents (including books, records or documents stored in non-legible form), or take extracts therefrom, relating to the trusted flagger, vetted researcher or out-of-court dispute settlement body,
  - (b) by notice in writing, request the trusted flagger, vetted researcher or out-of-court dispute settlement body to provide additional information to him or her, and
  - (c) request any person at the place of work or premises of the trusted flagger, vetted researcher or out-of-court dispute settlement body concerned, including the owner or person in charge of that place or premises, to give the Digital Services investigator such information and assistance as he or she may reasonably require for the purposes of an investigation under this section.
- (4) A person requested to provide information or assistance in accordance with subsection (3)(c) shall comply with a request of the Digital Services investigator to provide such information and assistance as he or she may reasonably require for the purposes of the investigation.
- (5) In this section, ‘Digital Services investigator’ means an investigator appointed under subsection (1).

### CHAPTER 3

#### *Miscellaneous*

#### **Orders to act against illegal content**

- 198.** (1) Where an authority in the State issues an order to act against one or more specific items of illegal content under Article 9(1), the authority shall ensure that the order meets the conditions specified in Article 9(2).



- (2) Any order issued in the State under Article 9 shall be transmitted to the Commission by the authority who issues it, and such transmission shall include any information received from an intermediary service provider of the effect given to the order under Article 9(1).

#### **Orders to provide information**

- 199.** (1) Where an authority in the State issues an order to provide specific information under Article 10(1), the authority shall ensure that the order meets the conditions specified in Article 10(2).
- (2) Any order issued in the State under Article 10 shall be transmitted to the Commission by the authority who issues it, and such transmission shall include any information received from an intermediary service provider of the effect given to the order under Article 10(1).

#### **Fees**

- 200.** (1) The Commission may specify a fee to accompany—
  - (a) an application referred to in section 187, 190 or 193, and
  - (b) a review request made under section 189, 192 or 195.
- (2) The Commission may specify different fees for different classes of application or review request.

#### **Complaints to Commission concerning Digital Services Regulation**

- 201.** (1) A person (in this section referred to as ‘a complainant’) may make a complaint to the Commission, in the manner and form specified by the Commission, that there has been a failure by an intermediary service provider to comply with a provision of the Digital Services Regulation.
- (2) The Commission shall carry out an initial assessment of the complaint made under subsection (1) and, having done so, may transmit the complaint to—
  - (a) the Competition and Consumer Protection Commission where the complaint concerns Article 30, 31 or 32,
  - (b) the Digital Services Coordinator of establishment, where considered appropriate, accompanied by an opinion, or
  - (c) the European Commission where the complaint concerns Articles 33 to 42.
- (3) The Commission shall notify the complainant where the complaint has been transmitted under subsection (2).
- (4) The Commission shall, where it does not transmit the complaint under subsection (2), carry out a further assessment of the complaint and may take any of the following actions:

- (a) serve an intermediary service provider a compliance notice under section 139ZZGA;
  - (b) investigate the complaint in accordance with section 139ZI(1);
  - (c) dismiss the complaint where the Commission finds—
    - (i) the complaint is frivolous or vexatious or was not made in good faith, or
    - (ii) the subject matter of the complaint is trivial;
  - (d) take such other action in respect of the complaint as the Commission considers appropriate.
- (5) The Commission shall notify the complainant and the intermediary service provider to which the complaint relates of the complaint made under this section and of any action proposed by the Commission under subsection (4).
- (6) A notification under subsection (5) shall—
- (a) include particulars of the complaint,
  - (b) state that the intermediary service provider to which the complaint relates may make representations under subsection (7), and
  - (c) specify the date by which any representations shall be made under subsection (7).
- (7) An intermediary service provider the subject of a complaint made under subsection (1) and notified under subsection (6) may, within the time specified by the Commission in such notification, make representations to the Commission about such complaint.
- (8) The Commission shall have regard to any representations made to it under subsection (7) in deciding whether to proceed with any proposed action under subsection (4).
- (9) The Commission shall notify the complainant and the intermediary service provider the subject of the complaint made under subsection (1) in writing of its decision under subsection (4).

### **Offences**

- 202.** (1) A person who knowingly or recklessly provides false or misleading information to the Commission in relation to an application referred to in section 187, 190 or 193 or under section 196 or 197(3) shall be guilty of a category 2 offence.
- (2) A person, while not awarded status as a trusted flagger or whose status as a trusted flagger is revoked, who holds themselves out as a trusted flagger, shall be guilty of a category 3 offence.”.

**Amendment of Schedule 4 to Principal Act**

42. Schedule 4 to the Principal Act is amended by the insertion of the following paragraph after paragraph 14:

“14A. Without prejudice to paragraph 13, a person may be liable to an administrative financial sanction in accordance with Part 8B if in an oral hearing where the suspected contravention is an infringement of the Digital Services Regulation he or she knowingly gives false or misleading evidence on oath or affirmation.”.

## PART 3

COMPETITION AND CONSUMER PROTECTION COMMISSION AS COMPETENT AUTHORITY FOR DIGITAL SERVICES  
REGULATION FOR ARTICLES 30 TO 32 OF THE DIGITAL SERVICES REGULATION

## CHAPTER 1

*Interpretation***Interpretation (Part 3)**

43. (1) In this Part—

“authorised officer” has the same meaning as it has in the Act of 2014, and “the authorised officer”, in relation to an investigation, means the authorised officer carrying out the investigation;

“category 1 offence” means an offence the penalties for which are specified in *section 80(1)*;

“category 2 offence” means an offence the penalties for which are specified in *section 80(2)*;

“Commission” means the Competition and Consumer Protection Commission;

“contravention” means—

- (a) an infringement by a relevant provider of Article 30, 31 or 32,
- (b) anything for which *section 52* or *section 61* or *paragraph 15* of the *Schedule* provides or that a person may be liable to an administrative financial sanction in accordance with this Part, or
- (c) anything for which *section 54* or *section 79* provides that a person may be liable to an administrative financial sanction in accordance with this Part;

“Digital Services investigation” means an investigation pursuant to a direction under *section 49(1)* where the suspected contravention is an infringement of Article 30, 31 or 32;

“Digital Services Regulation” means Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022<sup>3</sup> on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act);

“enactment” has the same meaning as it has in the Interpretation Act 2005;

“inquiry subject” in relation to an investigation or other proceedings under this Part, means the person whose contravention or suspected contravention is the subject of the investigation or other proceedings;

“intermediary service provider” means a provider of intermediary services;

“Member State competent authority” means an authority that is designated by a Member State (other than the State) as a competent authority for the purposes of Article 49(1);

“Member State Digital Services Coordinator” means an authority that is designated by a Member State (other than the State) as a Digital Services Coordinator for the purposes of Article 49(2);

“provider” means a provider of an online platform;

“relevant provider” means any of the following:

- (a) a provider whose main establishment is located in the State;
- (b) a provider to which Article 13(1) applies and whose legal representative designated under that Article resides or is established in the State;
- (c) a provider to which Article 13(1) applies but which has failed to designate a legal representative under that Article;

“very large online platform” means an online platform designated by a decision of the European Commission under Article 33(4);

“very large online search engine” means an online search engine designated by a decision of the European Commission under Article 33(4).

- (2) A word or expression used in this Part that is also used in the Digital Services Regulation has, unless the context otherwise requires, the same meaning in this Part as it has in that Regulation.
- (3) Unless the context otherwise requires, a reference in this Part to a numbered Article is a reference to the Article so numbered of the Digital Services Regulation.

## CHAPTER 2

### *Functions of Competition and Consumer Protection Commission*

#### **Designation of Commission as competent authority in respect of Articles 30, 31 and 32 of Digital Services Regulation**

**44.** The Commission is designated, for the purposes of Article 49(1), as the competent

<sup>3</sup> OJ L277, 27.10.2022, p. 1

authority in respect of Articles 30, 31 and 32.

#### **Co-operation between Commission and Coimisiún na Meán**

- 45.** (1) The Commission may enter into an agreement (in this section referred to as a “co-operation agreement”) with Coimisiún na Meán for the purposes of—
- (a) facilitating co-operation between the Commission and Coimisiún na Meán in the performance of their respective functions in so far as they relate to the Digital Services Regulation,
  - (b) ensuring, as far as practicable, consistency between decisions made or other steps taken by the Commission and Coimisiún na Meán in so far as any part of those decisions or steps relates to the Digital Services Regulation, and
  - (c) enabling the Commission to be consulted in relation to any decisions relating to the Digital Services Regulation made by Coimisiún na Meán.
- (2) A co-operation agreement shall include provisions—
- (a) enabling each party to furnish to the other party information in its possession if the information is required by that other party for the purpose of the performance by it of any of its functions in so far as the functions relate to the Digital Services Regulation,
  - (b) enabling each party to forbear to perform any of their respective functions in so far as the functions relate to the Digital Services Regulation in circumstances where it is satisfied that the other party is performing functions in relation to that Regulation, and
  - (c) requiring each party to consult with the other party before performing any functions relating to the Digital Services Regulation in circumstances where the respective exercise by each party of the functions concerned involves the determination of issues relating to the Digital Services Regulation that are identical to one another or are within the same category of such an issue, being a category specified in the co-operation agreement.
- (3) A co-operation agreement may be varied by the Commission and Coimisiún na Meán.
- (4) The Commission shall, within one month after the agreement (or the variation of it) has been made, furnish the Minister with a copy of a co-operation agreement (including any variation of such an agreement) that has been made.
- (5) A co-operation agreement, or any variation made to it, shall be in writing and, as soon as is practicable after the agreement or variation has been made and furnished to the Minister, the Commission may publish the agreement on a website maintained by it.
- (6) Without prejudice to *subsection (7)*, nothing in any enactment shall be read as preventing the provisions of a co-operation agreement from having effect in accordance with their terms.

- (7) If information is furnished by one party to the other party pursuant to a provision of a co-operation agreement of the kind referred to in *subsection (2)(a)*, the provisions of any enactment concerning the disclosure of that information by the first-mentioned party shall apply to the second-mentioned party with respect to that information.
- (8) A failure by the Commission or Coimisiún na Meán to comply with a provision of a co-operation agreement shall not invalidate the exercise by the Commission or Coimisiún na Meán of any power.

#### **Construction of references for Act of 2014**

46. Parts 1 and 2 of the Act of 2014 (other than sections 17 and 19) shall apply for the purposes of the Digital Services Regulation and this Part in relation to the functions of the Commission under this Part, subject to the following and any other necessary modifications:
- (a) in sections 10(1)(d) and (e), 24, 35 and 36, references to the relevant statutory provisions shall be construed as including a reference to *Part 3* of the *Digital Services Act 2024*;
  - (b) in section 10(1), as if the following paragraph were substituted for paragraph (c):
    - “(c) to carry out an investigation into any suspected breach of the Digital Services Regulation that may be occurring or has occurred, either—
      - (i) on its own initiative,
      - (ii) when requested to do so by Coimisiún na Meán,
      - (iii) in response to a complaint made to it by any person, or
      - (iv) to assist with an investigation conducted by the European Commission or a Member State Digital Services Coordinator or Member State competent authority;”;
  - (c) in section 18(1), the reference to functions under this Act shall be construed as including a reference to functions under *Part 3* of the *Digital Services Act 2024*;
  - (d) in section 36(4), references to an investigation into an offence under any of the relevant statutory provisions (other than the Act of 2002) shall be construed as including references to an investigation into a suspected contravention (within the meaning of contravention in *section 43* of the *Digital Services Act 2024*).

#### **Disclosure of personal data**

47. (1) The Commission may, in the circumstances referred to in *subsection (2)*, disclose personal data to any of the following:
- (a) Coimisiún na Meán;
  - (b) the Garda Síochána;

- (c) an intermediary service provider;
  - (d) a body prescribed in regulations made by the Minister.
- (2) The circumstances referred to in *subsection (1)* are:
- (a) in the case of *subsection (1)(a)*, where the Commission considers that the disclosure is necessary and proportionate—
    - (i) for the effective implementation of the Digital Services Regulation, or
    - (ii) for the purposes of transferring a complaint or part of a complaint to Coimisiún na Meán, where the complaint, or part of the complaint, made to the Commission relates to the failure to comply with the Digital Services Regulation;
  - (b) in the case of *subsection (1)(b)*, where the Commission considers that the disclosure is necessary and proportionate for the prevention or investigation of a criminal offence;
  - (c) in the case of *subsection (1)(c)*, where a complaint, or part of a complaint, made under *section 48* is made in relation to an intermediary service provider, and the Commission considers that the disclosure is necessary and proportionate for the purposes of considering the complaint or part of the complaint under that section;
  - (d) in the case of *subsection (1)(d)*, where the Commission considers that the disclosure is necessary and proportionate in such other circumstances as may be prescribed in regulations made by the Minister.
- (3) Where the Commission discloses a person's personal data under this section, the Commission shall notify the person of the disclosure in so far as it is practicable to do so.
- (4) Where the Commission processes or discloses special categories of personal data in accordance with this section, it shall only do so where the Commission considers that the disclosure is necessary and proportionate in accordance with the Data Protection Regulation and the Act of 2018.
- (5) The Minister may prescribe suitable and specific measures for the processing of special categories of personal data under this section.
- (6) Where personal data processed by the Commission is required for the purposes of the prevention, investigation, detection or prosecution of a criminal offence, the data—
- (a) may be processed for as long as it is required for such prevention, investigation, detection or prosecution, and
  - (b) shall be permanently deleted after it is no longer required for such prevention, investigation, detection or prosecution.
- (7) The matters that section 19(1) of the Data Sharing and Governance Act 2019 requires to be specified or included in a data-sharing agreement shall be specified or included in any agreement entered into by the Commission for the disclosure to another body

of personal data in accordance with *subsection (1)*, subject to the following modifications to the description of those matters in section 19(1) of that Act:

- (a) references to the data-sharing shall be construed as references to any disclosure under the agreement;
- (b) the reference in paragraph (d) to the public body concerned shall be construed as a reference to the body with whom the agreement is entered into;
- (c) the reference in paragraph (f) to a public body shall be construed as a reference to a party to the agreement;
- (d) the following paragraph shall be substituted for paragraph (r):
  - “(r) include in a schedule to the agreement a statement summarising the grounds on which the Commission considers the disclosure of the information to be necessary and proportionate as described in any paragraph of *section 47(2)* of the *Digital Services Act 2024*.”.
- (8) The Minister may prescribe a body for the purposes of *subsection (1)(d)* where he or she is satisfied that disclosure by the Commission of personal data to the body, in the circumstances referred to in *subsection (2)*, is necessary for the performance by the Commission or the body prescribed of functions in the public interest or for the effective implementation of the Digital Services Regulation.
- (9) The Minister may prescribe a body for the purposes of *subsection (2)(d)* where he or she is satisfied that disclosure by the Commission of personal data to the body, in the circumstances prescribed, is necessary for the performance by the Commission or such a body of functions in the public interest or for the effective implementation of the Digital Services Regulation.
- (10) The Minister shall consider whether it is necessary to carry out an assessment of the impact of regulations made for the purposes of *subsection (1)(d)* or *(2)(d)* on the processing of personal data before making the regulations and, where he or she considers it necessary to do so, shall carry out the assessment.
- (11) The Commission shall give a copy of any agreement referred to in *subsection (7)* to the Minister.
- (12) In this section—
  - “Act of 2018” means the Data Protection Act 2018;
  - “personal data” has the same meaning as it has in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>4</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);
  - “special categories of personal data” has the same meaning as it has in the Act of 2018;

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4 OJ L119, 4.5.2016, p. 1



“suitable and specific measures” means measures to be taken to safeguard the fundamental rights and freedoms of data subjects in processing the personal data of those data subjects and may include measures specified in section 36(1) of the Act of 2018.

### **Complaints to Commission concerning Digital Services Regulation**

- 48.** (1) Where a complaint, or part of a complaint, has been transmitted to the Commission by Coimisiún na Meán under section 201(2) of the Principal Act, the Commission shall carry out an assessment of the complaint and may take any of the following actions:
- (a) serve a compliance notice under *section 78* on the intermediary service provider, the subject of a complaint made under section 201(1) of the Principal Act;
  - (b) investigate the complaint in accordance with *section 49*;
  - (c) dismiss the complaint where the Commission finds that—
    - (i) the complaint is frivolous or vexatious or was not made in good faith, or
    - (ii) the subject matter of the complaint is trivial;
  - (d) transmit the complaint, or part of the complaint, to Coimisiún na Meán where the Commission is of the opinion that—
    - (i) the complaint or part of the complaint does not concern Article 30, 31 or 32, or
    - (ii) the intermediary service provider, the subject of the complaint, is not a relevant provider;
  - (e) take such other action in respect of the complaint as the Commission considers appropriate.
- (2) The Commission shall notify the person who made the complaint and the intermediary service provider, the subject of a complaint made under section 201(1) of the Principal Act, of a complaint transmitted to it under section 201(2) of the Principal Act and of any action proposed by the Commission under *subsection (1)*.
- (3) A notification under *subsection (2)* shall—
- (a) include particulars of the complaint,
  - (b) state that the intermediary service provider may make representations under *subsection (4)*, and
  - (c) specify the date by which any representations shall be made under *subsection (4)*.
- (4) An intermediary service provider, the subject of a complaint made under section 201(1) of the Principal Act, may, within the time specified by the Commission in a notification under *subsection (2)*, make representations to the Commission about the complaint to which the notification relates.

- (5) The Commission shall have regard to any representations made to it under *subsection (4)* in deciding whether to proceed with any proposed action under *subsection (1)*.
- (6) The Commission shall notify the complainant and the intermediary service provider in writing of its decision under *subsection (5)*.

## CHAPTER 3

*Investigations***Commencement and terms of investigation**

- 49.** (1) If a person authorised by the Commission under *subsection (2)* believes there is reason to suspect that there has been a contravention, the person may direct an authorised officer to carry out an investigation of the suspected contravention.
- (2) The Commission may authorise any member of the Commission or any member of its staff for the purposes of *subsection (1)*.
  - (3) The person who directs the authorised officer to carry out an investigation under *subsection (1)* shall define the terms of the investigation in writing.
  - (4) Where the provider of a very large online platform or very large online search engine would be the inquiry subject, no direction may be given under *subsection (1)* in relation to a contravention that is an infringement of Article 30, 31 or 32 if the European Commission has initiated proceedings for the same infringement.
  - (5) Where the suspected contravention is an infringement of Article 30, 31 or 32 by a person falling within *paragraph (c)* of the definition of “relevant provider” in *section 43*, a direction may be given under *subsection (1)* only if—
    - (a) Coimisiún na Meán has given the notification required by Article 56(7), and
    - (b) no notification under Article 56(7) referring to the same infringement has been given by the European Commission or a Member State Digital Services Coordinator, or any that has been given has been withdrawn.
  - (6) Where a direction is given under *subsection (1)* and the suspected contravention is an infringement of Article 30, 31 or 32—
    - (a) the Commission shall notify Coimisiún na Meán, and
    - (b) Coimisiún na Meán shall notify—
      - (i) the European Commission,
      - (ii) the European Board for Digital Services, and
      - (iii) each Member State Digital Services Coordinator.
  - (7) Where, at any time after the commencement of an investigation pursuant to a direction under *subsection (1)*, Coimisiún na Meán makes a communication under Article 58(5) relating to the suspected contravention which is the subject of the

investigation, the Commission shall as soon as is practicable give the inquiry subject notice in writing that the communication has been made.

#### **Investigatory powers: oral hearings**

- 50.** (1) An authorised officer may conduct an oral hearing if he or she considers it necessary for the purposes of an investigation pursuant to a direction under *section 49(1)*.
- (2) The *Schedule*, and any rules made by the Commission under *section 57*, shall have effect for the purposes of an oral hearing referred to in *subsection (1)*.

#### **Use of investigatory powers for other purposes of Digital Services Regulation**

- 51.** An authorised officer may exercise powers under section 36 of the Act of 2014 (as applied by *section 46*) and *section 50* of this Act, for the purpose of assisting the Commission to perform its functions—
- (a) under Article 57(2) in relation to an investigation by a Member State Digital Services Coordinator or other Member State competent authority,
  - (b) under Article 60(4) in relation to a joint investigation led by a Member State Digital Services Coordinator, or
  - (c) under Article 66(3) in relation to an investigation conducted by the European Commission.

#### **Enforcement of investigatory powers by administrative financial sanctions**

- 52.** (1) This section applies, in relation to a Digital Services investigation, to each of the following persons:
- (a) the inquiry subject;
  - (b) a relevant person;
  - (c) a member of staff or representative, or former member of staff or representative, of the inquiry subject or a relevant person,
- and “relevant person” in this subsection means a person acting for purposes related to the person’s trade, business, craft or profession who may reasonably be aware of information relating to the suspected contravention to which the investigation relates.
- (2) Without prejudice to section 35(8) of the Act of 2014, a person to whom this section applies may, subject to *subsection (3)*, be liable to an administrative financial sanction in accordance with this Part if in the course of a Digital Services investigation he or she—
- (a) obstructs or impedes an authorised officer in the exercise of his or her powers under subsection (1)(a), (b), (c) or (e) of section 36 of that Act,
  - (b) fails to comply with a request or requirement of an authorised officer under subsection (1)(d), (f), (g) or (h) of that section,

- (c) in purported compliance with a request or requirement under that section, gives to an authorised officer information that is false or misleading in a material respect, or
  - (d) fails to rectify—
    - (i) any failure on his or her part to comply with a request or requirement of an authorised officer under subsection (1)(d), (f), (g) or (h) of that section, or
    - (ii) any information which he or she has given to an authorised officer in purported compliance with a request or requirement under that section and which is false or misleading in a material respect.
- (3) Where, in the course of a Digital Services investigation, a person other than the inquiry subject does an act or makes an omission referred to in any paragraph of *subsection (2)*, that subsection does not authorise the imposition of an administrative financial sanction on that person unless, before the act or omission occurred, the person was given in reasonable time by notice in writing by an authorised officer all relevant information relating to the exercise of the power, or to the request or requirement, referred to in that paragraph, including information about—
- (a) the time within which the person was required to comply with the exercise of the power or with the request or the requirement,
  - (b) the maximum amount of the administrative financial sanction that could be imposed on the person, and
  - (c) the effect of *section 62(2)*, and the sections referred to there, in relation to the imposition of an administrative financial sanction.

#### **Enforcement of investigatory powers by daily payment penalty**

- 53.** (1) A penalty of a daily payment (in this section referred to as a “daily payment penalty”) may be imposed on a person in accordance with this section for the purpose of enforcing an obligation imposed on that person by an authorised officer in the exercise, in a Digital Services investigation, of any power conferred on the authorised officer by section 36 of the Act of 2014, as applied by *section 46*.
- (2) Where it appears to an authorised officer to be necessary to impose a daily payment penalty on a person, the authorised officer may give the person a notice in writing which—
- (a) specifies the obligation referred to in subsection (1) in respect of which the notice is given,
  - (b) gives the person all relevant information relating to the obligation,
  - (c) states the date by which the person must comply with the obligation,
  - (d) states that, if the person fails to comply with the obligation by that date, the authorised officer intends to refer the matter to the Commission for a decision

- whether to impose a daily payment penalty on the person, for each day during which the failure continues, beginning with the day following that date,
- (e) states why it appears to the authorised officer to be necessary to impose the penalty,
  - (f) states the maximum daily amount of the penalty that the Commission may impose, and
  - (g) invites the person to make written submissions to the Commission regarding the matters to which the notice relates within the period stated in the notice or such further period as the Commission may allow.
- (3) The date specified under *subsection (2)(c)* may not be earlier than the date on which the notice under *subsection (2)* is given.
  - (4) The amount of a penalty imposed under this section on a person for each day during which the failure referred to in *subsection (2)(d)* continues shall not exceed 5 per cent of the person's average daily income or turnover in the preceding financial year.
  - (5) Where it appears to an authorised officer that the person to whom a notice under *subsection (2)* has been given has failed to comply with the obligation specified in the notice by the date specified under *subsection (2)(c)*, the authorised officer may refer the matter to the Commission.
  - (6) Where a matter is referred to the Commission under *subsection (5)* and it appears to the Commission, after considering any written submissions made by the person to whom the notice under *subsection (2)* was given within the period specified in accordance with *subsection (2)(g)*, that it is necessary to impose a daily payment penalty on the person for the purpose of enforcing the obligation specified in the notice, the Commission may—
    - (a) determine the daily amount of the penalty to be imposed, and the date on which it is to commence, and
    - (b) by notice in writing to the person, impose the penalty.
  - (7) The functions of the Commission under this section (except this subsection) shall be exercised by a division of the Commission consisting of such uneven number of members of the Commission, not being less than 3, as the Commission may determine.
  - (8) If the person who gave the direction under *section 49* for the investigation referred to in *subsection (1)* to be carried out is a member of the Commission, the division exercising functions under this section shall not include that member.
  - (9) A decision of the Commission to impose a daily payment penalty does not take effect unless it is confirmed on appeal under *section 68* or on summary application under *section 69*, as those sections apply in accordance with *section 72*.

**Power to require provider to take interim measures**

54. (1) Where, in the course of a Digital Services investigation, it appears to the Commission from information provided by an authorised officer—
- (a) that there is *prima facie* evidence—
    - (i) that the inquiry subject has committed a contravention which is an infringement of Article 30, 31 or 32, and
    - (ii) that the contravention is continuing,
  - (b) that the suspected contravention gives rise to a risk of serious harm occurring before a decision in relation to the suspected contravention could be made under *section 62*, and
  - (c) that measures could be taken by the inquiry subject that would avoid or reduce that risk,
- the Commission may, by notice in writing to the inquiry subject, require the inquiry subject to take those measures by a date stated in the notice.
- (2) A notice under *subsection (1)* shall—
- (a) state the suspected contravention,
  - (b) state the grounds on which it appears to the Commission that there is *prima facie* evidence that the suspected contravention has occurred and is continuing, and
  - (c) state the grounds on which it appears to the Commission that the suspected contravention gives rise to a risk of serious harm occurring before a decision in relation to the suspected contravention could be made under *section 62*.
- (3) A notice under *subsection (1)* ceases to have effect on the earliest of the following to occur:
- (a) the taking of a decision under *section 62* in relation to the suspected contravention;
  - (b) the discontinuance of the investigation referred to in *subsection (1)*;
  - (c) the revocation of the notice by the Commission.
- (4) The functions of the Commission under this section (except this subsection) shall be exercised by a division of the Commission consisting of such uneven number of members of the Commission, not being less than 3, as the Commission may determine.
- (5) If the person who gave the direction under *section 49* for the investigation referred to in *subsection (1)* to be carried out is a member of the Commission, the division exercising functions under this section shall not include that member.
- (6) A person who without reasonable excuse fails to comply with a notice under *subsection (1)* shall be guilty of a category 1 offence.

- (7) Where an offence has been committed under *subsection (6)* by a body corporate and the offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a person who was either a director, manager, secretary or other officer of the body corporate, or a person purporting to act in such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the offence committed by the body corporate.
- (8) Where the affairs of a body corporate are managed by its members, *subsection (7)* applies in relation to the acts or defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.
- (9) Without prejudice to *subsection (6)*, a person who fails to comply with a notice under *subsection (1)* may be liable to an administrative financial sanction in accordance with this Part.

#### **Report of authorised officer**

- 55.** (1) As soon as is practicable after the completion of an investigation pursuant to a direction under *section 49(1)*, an authorised officer shall prepare a draft report of the investigation.
- (2) In preparing the draft report referred to in *subsection (1)*, the authorised officer shall consider, in so far as they are relevant to the investigation—
- (a) the terms of the investigation,
  - (b) any document, information or content obtained in the course of the investigation,
  - (c) any statement or admission made by any person in the course of the investigation,
  - (d) any submissions made by any person for the purposes of the investigation,
  - (e) where the investigation under *section 49(1)* is part of a joint investigation under Article 60 led by Coimisiún na Meán, anything of a similar nature to what is referred to in *paragraphs (b) to (d)*, obtained by any participating Member State Digital Services Coordinator or other Member State competent authority, and
  - (f) any views communicated by the European Commission under Article 59(3).
- (3) The authorised officer shall, as soon as is practicable after preparing the draft report, give the inquiry subject—
- (a) a copy of the draft report,
  - (b) a copy of any material relied upon by the authorised officer in preparing the draft report,
  - (c) a copy of this section, and
  - (d) a notice in writing stating that the inquiry subject may, not later than 28 days from the date on which it receives the notice, or such further period as the

authorised officer considers necessary, make submissions in writing to the authorised officer on the draft report.

- (4) The authorised officer shall, as soon as is practicable after the expiration of the period referred to in *subsection (3)(d)*, and having considered any submissions made under that subsection, make any revisions to the draft report which, in the opinion of the authorised officer are warranted, and finalise the report.
- (5) An authorised officer shall not make any recommendation, or express any opinion, in a draft report under *subsection (1)* or in a final report under *subsection (4)*, as to whether an administrative financial sanction should be imposed under *section 62* in the event that the Commission is satisfied that the inquiry subject has committed a contravention, or as to the amount of any such sanction imposed.
- (6) An authorised officer shall, as soon as is practicable after the draft report has been finalised under *subsection (4)*, provide a copy of the final report and any views to which *subsection (8)* applies to the inquiry subject.
- (7) An authorised officer shall, as soon as is practicable after the draft report has been finalised under *subsection (4)*, provide a copy of the final report, any submissions made in accordance with a notice under *subsection (3)(d)*, and any views to which *subsection (8)* applies, to the Commission.
- (8) This subsection applies, in the case of a report under this section, to—
  - (a) any views communicated by the European Commission under Article 59(3) in relation to the matter to which the report relates, and
  - (b) any views of Member State Digital Services Coordinators that Article 60(2) requires to be taken into account in relation to that matter.
- (9) An authorised officer may provide a copy of the final report, any submissions made in accordance with a notice under *subsection (3)(d)*, and any views to which *subsection (8)* applies to such other persons as he or she considers appropriate.
- (10) A person who receives a final report or any submissions or views under *subsection (9)* shall not, without the prior authorisation of the Commission, disclose the existence or the content of the report or those submissions or views to any other person.
- (11) A person who, without reasonable excuse, contravenes *subsection (10)* shall be guilty of a category 1 offence.

**Information about decision process following joint investigation to which Article 60 applies**

- 56.** In the case of an investigation pursuant to a direction under *section 49(1)* which is a joint investigation to which Article 60 applies, the authorised officer shall, not later than the time when he or she provides a final report in compliance with *section 55(6)*, inform the inquiry subject of the effect of *section 63*.



**Rules**

57. (1) Subject to the provisions of this Part and the *Schedule*, the Commission may make rules providing for the conduct of investigations under this Chapter, the exercise of powers under *section 51*, and the conduct of its proceedings under *Chapters 4* and *5*.
- (2) In making rules under *subsection (1)*, the Commission shall have regard to the need for fairness and efficiency in the conduct of such investigations and proceedings and the exercise of powers under *section 51*, in particular the need to address conflicts of interest which may arise in investigations or proceedings or the exercise of powers.
- (3) The Commission shall publish rules made under *subsection (1)* on a website maintained by it.

**Guidelines**

58. (1) The Commission may make guidelines with respect to the operation of this Chapter, *Chapters 4* and *5*, the *Schedule* and any rules made under *section 57*.
- (2) The Commission shall publish any guidelines made under this section, and any amendment to or revocation of those guidelines, on a website maintained by it.

**Conduct of investigations**

59. (1) Subject to the provisions of this Part and the *Schedule*, any rules made under *section 57* and any guidelines made under *section 58*, an authorised officer may follow such procedures for the conduct of an investigation, or the exercise of powers under *section 51*, as he or she considers appropriate.
- (2) An authorised officer shall, in the conduct of an investigation, take reasonable steps to keep the inquiry subject informed as to the progress of the investigation.

## CHAPTER 4

*Decision of Commission***Division of Commission**

60. (1) The functions of the Commission under this Chapter (except this subsection), *Chapter 5* (except *sections 69, 70* and *71*) and the *Schedule* shall, unless otherwise stated, be exercised by a division of the Commission consisting of such uneven number of members of the Commission, not being less than 3, as the Commission may determine.
- (2) If the person who directed that an investigation be carried out under *section 49* is a member of the Commission, the division exercising functions in relation to the investigation shall not include that member.

**Action by Commission after receiving report**

- 61.** (1) After the authorised officer has complied with *subsections (6) and (7) of section 55* the Commission shall, subject to *subsection (2)*, give the inquiry subject—
- (a) a copy of this section, and
  - (b) a notice in writing stating that the inquiry subject may make submissions in writing to the Commission on the final report and any views to which *section 55(8)* applies within the period of 28 days from the date the inquiry subject receives the notice or views, or such further period as the Commission may allow.
- (2) The Commission need not comply with *subsection (1)* if it holds an oral hearing under *subsection (3)* at which the inquiry subject may make submissions to it on the final report and any views to which *section 55(8)* applies.
- (3) The Commission shall at any time after the authorised officer has complied with *subsections (6) and (7) of section 55* conduct an oral hearing in accordance with the *Schedule* if it considers it necessary to do so in order for the procedures under this Part to operate fairly.
- (4) The Commission may, at any time after the authorised officer has complied with *subsections (6) and (7) of section 55*, do any of the following that it considers necessary to resolve an issue of fact or otherwise enable it to make a decision under *section 62*:
- (a) request the inquiry subject to provide the Commission with further information within such period as the Commission specifies;
  - (b) request any other person to provide the Commission with further information within such period as the Commission specifies;
  - (c) for the purposes of a request under *paragraph (b)* or in an oral hearing under *paragraph (d)*, provide a copy of the final report, or of part of the final report, with any redactions the Commission considers necessary, to the person the request is made to;
  - (d) conduct an oral hearing in accordance with the *Schedule*.
- (5) As soon as is practicable after making a request under *subsection (4)(b)*, the Commission shall give the inquiry subject a copy of the request.
- (6) As soon as is practicable after receiving any information pursuant to a request under *subsection (4)(b)*, the Commission shall give the inquiry subject—
- (a) a copy of the information, and
  - (b) a notice in writing stating that the inquiry subject may make submissions in writing to the Commission on the information within the period of 20 working days from the date the inquiry subject receives the notice, or such further period as the Commission may allow.

- (7) Where, after the authorised officer has complied with *subsections (6) and (7) of section 55*, the European Commission under Article 59(3) communicates its views and requests the matter to be reviewed, the Commission—
- (a) shall give the inquiry subject notice in writing of those views and the request, and
  - (b) may, following the review, take any action that appears to it to be necessary to ensure compliance with the Digital Services Regulation, which may include referring the matter back to the authorised officer to reopen the investigation.
- (8) Where an investigation is reopened in accordance with *subsection (7)(b)*, this Part applies as if references to the final report on the investigation were references to the final report on the reopened investigation, but that does not affect anything done before the reopening of the investigation.
- (9) A person who receives a copy of a report, or of part of a report, under *subsection (4)(c)* shall not, without the prior authorisation of the Commission, disclose the existence or the content of the report to any other person.
- (10) A person who, without reasonable excuse—
- (a) fails to comply with a request for further information under *subsection (4)(a) or (b)*, or
  - (b) contravenes *subsection (9)*,
- shall be guilty of a category 2 offence.
- (11) A person who, in purported compliance with a request for further information under *subsection (4)(a) or (b)*, gives to the Commission information which the person knows to be false or misleading in any material respect shall be guilty of a category 2 offence.
- (12) Without prejudice to *subsections (10) and (11)*, a person may be liable to an administrative financial sanction in accordance with this Part if, in a case where the report referred to in *subsection (1)(b)* relates to a Digital Services investigation, the person—
- (a) fails to comply with a request for further information under *subsection (4)(a) or (b)*,
  - (b) in purported compliance with a request for further information under *subsection (4)(a) or (b)*, gives to the Commission information which the person knows to be false or misleading in any material respect, or
  - (c) fails to rectify—
    - (i) any failure on his or her part to comply with a request for further information under *subsection (4)(a) or (b)*, or
    - (ii) any information which he or she has given to the Commission in purported compliance with a requirement under *subsection (4)(a) or (b)* and which is false or misleading in a material respect.

- (13) A statement or admission made by a person pursuant to a request for further information under *subsection (4)(a) or (b)*, shall not be admissible in evidence in proceedings brought against the person for an offence, other than an offence under *subsection (11)*, and this shall be explained to the person in ordinary language by the Commission.

### **Decision by Commission**

- 62.** (1) The Commission shall decide, in respect of a person who is the subject of a report under *section 55*—
- (a) whether or not it is satisfied on the balance of probabilities that the person has committed the contravention to which the investigation relates, and
  - (b) if so, whether or not to impose an administrative financial sanction.
- (2) A decision under *subsection (1)* that a contravention has been committed, or that an administrative financial sanction shall be imposed, does not take effect unless it is confirmed on appeal under *section 68* or on summary application under *section 69*.
- (3) For the purposes of making a decision under *subsection (1)*, the Commission shall consider—
- (a) the final report provided under *subsection (7) of section 55* and any submissions or views provided with the report in accordance with that subsection,
  - (b) any evidence adduced or submissions made during an oral hearing conducted under *section 61*,
  - (c) any information provided as a result of a request under *section 61(4)*, and
  - (d) any submissions made pursuant to a notice under *subsection (1) or (6) of section 61*.
- (4) In deciding under *subsection (1)(b)* whether or not to impose an administrative financial sanction, the Commission shall have regard to the matters referred to in *paragraphs (a), (b), (c), (d), (e), (g), (h), (i), (j) and (k) of subsection (3) of section 67*.

### **Decision following joint investigation to which Article 60 applies**

- 63.** (1) A decision under *section 62*, where the report referred to in *subsection (1)* of that section relates to a joint investigation to which Article 60 applies, constitutes the preliminary position referred to in that Article, and (subject to *subsections (5) to (7)*) *sections 65, 66 and 67* do not apply in relation to the decision.
- (2) As soon as is practicable after making a decision to which *subsection (1)* applies, the Commission shall give notice in writing of the decision to the inquiry subject.
- (3) A notice under *subsection (2)* shall—
- (a) set out the decision and the reasons for it, and
  - (b) state the effect of *subsections (1) and (5) to (7)*.

- (4) Where Coimisiún na Meán makes a communication under Article 60(2) in relation to a decision to which *subsection (1)* applies, the Commission shall as soon as is practicable give the inquiry subject notice in writing that the communication has been made.
- (5) If in relation to a decision to which *subsection (1)* applies—
  - (a) no referral is made under Article 60(3), or
  - (b) following a referral, the European Commission does not make a request under Article 59(3) for the matter to be reviewed,the Commission shall adopt the decision as its final decision.
- (6) If, in relation to a decision to which *subsection (1)* applies, the European Commission makes a request under Article 59(3) for the matter to be reviewed, the Commission may, following the review and subject to Article 59(3), do any of the following:
  - (a) adopt the decision as its final decision;
  - (b) request a person authorised under *section 49(2)* to give a direction under *subsection (1)* of that section for a new investigation;
  - (c) take any other action that appears to the Commission to be necessary to ensure compliance with the Digital Services Regulation.
- (7) Where the Commission adopts a decision to which *subsection (1)* applies as its final decision, *sections 65, 66 and 67* shall apply in relation to the decision.

#### **Notice and publication of decision of Commission**

- 64.** (1) The Commission shall, as soon as is practicable after making a decision under *section 62*, give notice in writing of the decision to the inquiry subject.
- (2) The notice under *subsection (1)* shall set out the decision made and the reasons for it.
  - (3) If the Commission decides that a contravention has occurred, the notice shall also—
    - (a) state that the decision does not take effect unless it is confirmed on appeal under *section 68* or on summary application under *section 69*, and
    - (b) state that, if the inquiry subject does not appeal under *section 68*, the Commission will, as soon as is practicable after the expiration of the period for the making of an appeal referred to in *section 68(1)*, make an application in a summary manner for confirmation of the decision under *section 69*.
  - (4) If the Commission decides to impose an administrative financial sanction, the notice shall also—
    - (a) state that the inquiry subject may make submissions in relation to the application of *section 67* to the determination of the amount of the sanction,
    - (b) state either that—

- (i) those submissions may be made at an oral hearing, under *section 65(2)(a)*, on a date specified in the notice, or
    - (ii) those submissions may be made in writing, under *section 65(2)(b)*, within a period specified in the notice in accordance with that section,
  - and
  - (c) state that the Commission may request further information under *section 65(3)*.
- (5) Where the decision made under *section 62* relates to a contravention falling within *paragraph (a)* or *(c)* of the definition of “contravention” in *section 43*, the Commission shall publish the decision on a website maintained by it and that publication shall include the following matters:
- (a) the name of the inquiry subject;
  - (b) the nature of the suspected contravention to which the investigation related;
  - (c) the reasons for the decision;
  - (d) such other particulars, reports or material as the Commission considers appropriate.
- (6) Where a notice under *subsection (1)* relates to a contravention referred to in *paragraph (a)* or *(c)* of the definition of “contravention” in *section 43*, a copy of the notice—
- (a) shall be provided by the Commission to Coimisiún na Meán, and
  - (b) shall be provided by Coimisiún na Meán to—
    - (i) the European Commission,
    - (ii) the European Board for Digital Services, and
    - (iii) each Member State Digital Services Coordinator.
- (7) The Commission may provide a copy of a notice referred to in *subsection (1)* to any other person where it considers it appropriate to do so.
- (8) A person who receives a copy of a notice under *subsection (7)* prior to the publication of the decision under *subsection (5)* shall not, without the prior authorisation of the Commission, disclose the existence or the content of the notice, including any content redacted in accordance with *subsection (10)* from a notice published under *subsection (5)*, to any other person.
- (9) A person who, without reasonable excuse, contravenes *subsection (8)* shall be guilty of a category 2 offence.
- (10) The Commission may, for the purposes of publication under *subsection (5)*, redact any particulars which appear to the Commission—
- (a) to be commercially sensitive, or
  - (b) to relate to the commission of an offence.

## CHAPTER 5

*Administrative financial sanctions***Submissions and requests for information**

- 65.** (1) *Subsections (2) and (3)* apply where the Commission has made a decision under *section 62* to impose an administrative financial sanction on a person.
- (2) The person may make submissions to the Commission in relation to the application of *section 67* to the determination of the amount of the sanction—
- (a) at an oral hearing held in accordance with the *Schedule*, where the Commission considers it necessary, or
- (b) otherwise, in writing, within the period of 10 working days from the date the person receives the notice under *section 64*, or such longer period as the Commission may specify in the notice.
- (3) Where a person makes submissions to the Commission under *subsection (2)(b)*, the Commission may by notice in writing request the person to provide, within a specified period, such further information as the Commission considers appropriate for the purposes of determining the amount of the sanction.
- (4) A person who—
- (a) without reasonable excuse fails to comply with a request under *subsection (3)*, or
- (b) in purported compliance with a request under *subsection (3)*, gives to the Commission information which the person knows to be false or misleading in any material respect,
- shall be guilty of a category 2 offence.

**Determination of amount of administrative financial sanction**

- 66.** (1) Where a decision has been made under *section 62* to impose an administrative financial sanction, the Commission shall determine the amount of the sanction in accordance with *section 67*.
- (2) The Commission shall make the determination as soon as is practicable after—
- (a) where *section 65(2)(a)* applies, the date of the oral hearing referred to in that paragraph, or
- (b) where *section 65(2)(b)* applies, the expiry of the period or further period referred to in that paragraph, or if applicable the period specified in any notice under *section 65(3)*,
- whether or not any submissions have been made or information provided.
- (3) As soon as is practicable after making the determination, the Commission shall give the inquiry subject a notice in writing of the determination and the reasons for it.

- (4) As soon as is practicable after giving the notice under *subsection (3)*, the Commission shall publish the notice on a website maintained by it.
- (5) The Commission may, for the purposes of publication under *subsection (4)*, redact any particulars from the notice which appear to the Commission—
  - (a) to be commercially sensitive, or
  - (b) to relate to the commission of an offence.

#### **Limitations on amount of administrative financial sanction**

67. (1) In the case of a contravention falling within *paragraph (a)* or *(c)* of the definition of “contravention” in *section 43*, the amount of an administrative financial sanction imposed under *section 62* shall not exceed 6 per cent of the annual turnover of the inquiry subject in the financial year preceding the date of the decision under *section 62* to impose the sanction.
- (2) In the case of a contravention falling within *paragraph (b)* of that definition, the amount of an administrative financial sanction imposed under *section 62* shall not exceed one per cent of the annual income or turnover of the inquiry subject in the financial year preceding the date of the decision under *section 62* to impose the sanction.
- (3) The Commission shall have regard to the following matters in determining the amount of the administrative financial sanction imposed under *section 62*:
- (a) the nature, gravity and duration of the contravention;
  - (b) the degree of harm to particular people or to the public caused as a result of the contravention;
  - (c) the extent of any failure by the inquiry subject to co-operate with an investigation, provided that acknowledgement of a contravention shall not in itself constitute grounds for reduction of a sanction;
  - (d) any explanation accepted by the Commission for the contravention or the failure to co-operate with an investigation;
  - (e) any gain (financial or otherwise) made, or any loss (financial or otherwise) avoided, by the inquiry subject or by any person in which the inquiry subject has a pecuniary interest or beneficial interest, as a consequence of the contravention;
  - (f) whether a previous decision under *section 62* in respect of the inquiry subject has been confirmed or made by the appropriate court (within the meaning of *section 68*) under *section 68* or confirmed by the Circuit Court under *section 69*;
  - (g) the nature and timeliness of any steps taken by the inquiry subject to bring the contravention to an end, and any steps taken by the inquiry subject to remedy the consequences of the contravention;
  - (h) the absence or ineffectiveness of internal mechanisms or procedures intended to prevent such a contravention;



- (i) the extent to which the contravention was contributed to by the act or omission of a third party, and the extent to which the inquiry subject took steps to identify, and mitigate the effect of, the act or omission;
  - (j) the extent to which the contravention was contributed to by circumstances beyond the control of the inquiry subject, and the extent to which the inquiry subject took steps to identify, and mitigate the effect of, those circumstances;
  - (k) in the case of a body corporate, the extent to which the management of the body knew, or ought to have known, that the contravention was occurring or would occur;
  - (l) the income or turnover of the inquiry subject in the financial years during which the contravention occurred, and the ability of the inquiry subject to pay a sanction;
  - (m) any views communicated by the European Commission under Article 59(3) that are relevant to the amount of the sanction;
  - (n) any submissions made by the inquiry subject under *section 65(2)* in relation to the determination of the amount of the sanction;
  - (o) any further information given to the Commission by the inquiry subject in response to a request under *section 65(3)*;
  - (p) previous determinations under this section which have been confirmed or made by the appropriate court (within the meaning of *section 68*) under *section 68* or confirmed by the Circuit Court under *section 69*.
- (4) The amount of an administrative financial sanction imposed under *section 62* shall—
- (a) be proportionate to the nature of the contravention, and
  - (b) be set with a view to deterring the inquiry subject and, where the inquiry subject is a provider, other providers, from committing a contravention.

### **Appeal against decision**

- 68.** (1) The inquiry subject to whom a decision under *section 62* relates may, within 28 days from the date on which the notice referred to in *section 64* is received, or where *section 66* applies, within 28 days from the date on which the notice referred to in *section 66(3)* is received, appeal to the appropriate court against the decision.
- (2) The appropriate court may, on the application of the inquiry subject, extend the period for the making of an appeal under *subsection (1)*, where it is satisfied that—
- (a) there is good and sufficient reason for doing so,
  - (b) the circumstances that resulted in the failure to bring an appeal within the period referred to in *subsection (1)* were outside the control of the inquiry subject, and
  - (c) an application for confirmation has not been determined under *section 69*.
- (3) In considering an appeal, the appropriate court—

- (a) shall have regard to the record of the decision the subject of the appeal, and
  - (b) may, where it considers it necessary for the fair and proper determination of the appeal, consider any evidence adduced or submission made by the inquiry subject, whether or not already adduced or made to the authorised officer or the Commission.
- (4) Subject to *subsection (6)*, the appropriate court may, on the hearing of an appeal under *subsection (1)*—
  - (a) confirm the decision, or
  - (b) subject to *subsection (5)*—
    - (i) set aside the decision,
    - (ii) set aside the decision and replace it with such other decision as the court considers it just and appropriate to make, including a decision not to impose an administrative financial sanction, or a decision to impose an administrative financial sanction of a different amount, or
    - (iii) remit the decision for reconsideration by the Commission, subject to such directions as the court considers appropriate.
- (5) A decision of the Commission may not be set aside or remitted by the appropriate court under *subsection (4)(b)* for error of law or fact unless the appropriate court is satisfied that the Commission committed a serious and significant error in making the decision, or that the Commission committed a series of minor errors which, when taken together, amount to a serious and significant error.
- (6) For the purposes of *subsection (4)*, *sections 62(4)* and *67* shall apply to the appropriate court and references to the Commission in those sections shall be construed as references to the appropriate court.
- (7) Where the appropriate court is the Circuit Court it may make such interim or interlocutory orders in any proceedings under *subsection (1)* or *(2)* as it considers appropriate.
- (8) The appropriate court may direct how the costs of an appeal under this section are to be borne.
- (9) In this section, “appropriate court” means—
  - (a) where no administrative financial sanction is imposed under *section 62* or where the amount of any administrative financial sanction imposed does not exceed €75,000, or such other sum as stands specified in law as that court’s jurisdiction in tort, the Circuit Court, or
  - (b) in any other case, the High Court.

**Circuit Court confirmation of decision**

69. (1) Where the inquiry subject to whom a decision under *section 62* relates does not appeal against the decision in accordance with *section 68(1)*, the Commission shall, as soon as is practicable after the expiration of the period referred to in *section 68(1)*, and on notice to the inquiry subject, make an application in a summary manner to the Circuit Court for confirmation of the decision.
- (2) On the hearing of an application under *subsection (1)*, the Circuit Court shall confirm the decision unless it is satisfied, on the basis of the evidence that was before the Commission when making the decision—
- (a) that the Commission made an error of law which is—
- (i) manifest from the record of the decision, and
- (ii) fundamental so as to deprive the decision of its basis,
- or
- (b) that any administrative financial sanction imposed is manifestly disproportionate.
- (3) If under *subsection (2)* the Circuit Court does not confirm the decision it may—
- (a) annul the decision, or
- (b) remit it for reconsideration by the Commission, subject to such directions as it considers appropriate.
- (4) The inquiry subject may, as soon as is practicable after receiving notice of the application under *subsection (1)*, inform the Commission in writing that it does not intend to appear at, or make submissions at, the hearing of the application.
- (5) If an application to extend the period for the making of an appeal against a decision is made under *section 68(2)* to the High Court, the Circuit Court shall make an order staying any application under *subsection (1)* for the confirmation of that decision until the High Court has made a decision under *section 68(2)*.
- (6) If the High Court makes an order under *section 68(2)* extending the period for the making of an appeal under *section 68(1)* against a decision, the Circuit Court shall make an order staying any application under *subsection (1)* for the confirmation of that decision until the High Court has made a decision on the appeal under *section 68(4)*.
- (7) The Circuit Court may make such interim or interlocutory orders as it considers appropriate in any proceedings under *subsection (1)*.
- (8) The Circuit Court may direct how the costs of an application under *subsection (1)* are to be borne.

**Treatment of amounts paid in respect of administrative financial sanctions**

70. A payment received by the Commission of any amount due to it pursuant to a decision confirmed or made under *section 68* or confirmed under *section 69* shall be paid into, or

disposed of for the benefit of, the Exchequer in such manner as the Minister for Finance may direct.

### **Reference on point of law to High Court**

71. (1) Where a division of the Commission decides, before the making of a decision under *section 62*, or where a decision is made under that section to impose an administrative financial sanction, before the making of a determination under *section 66*, to refer any question of law arising under *Chapter 4* or *Chapter 5* to the High Court, the Commission shall refer the question.
- (2) Subject to *subsection (3)*, no appeal shall lie to the Court of Appeal from a decision of the High Court on a reference under *subsection (1)*.
- (3) The High Court may grant leave to appeal, where it certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Court of Appeal.

## CHAPTER 6

### *Daily payment penalty under section 53: appeal and confirmation*

#### **Daily payment penalty under section 53: appeal and confirmation**

72. (1) A person to whom a notice under *section 53(6)* is given may, within 28 days from the date on which the notice is received, appeal to the High Court against the decision to impose the daily payment penalty.
- (2) *Subsections (2) to (6) and (8) of section 68* apply for the purposes of an appeal by a person under this section as they apply for the purposes of an appeal by the inquiry subject under *subsection (1) of that section* subject to the following and any other necessary modifications:
- (a) references to an administrative financial sanction are references to a daily payment penalty under *section 53*;
- (b) references to the appropriate court are references to the High Court.
- (3) Where the person to whom a notice under *section 53(6)* is given does not appeal in accordance with *subsection (1)* against the decision to impose a daily payment penalty, the Commission shall, as soon as is practicable after the expiration of the period referred to in *subsection (1)*, and on notice to that person, make an application in a summary manner to the Circuit Court for confirmation of the decision.
- (4) *Section 69(2) to (8)* apply for the purposes of an application under *subsection (3)* subject to the following and any other necessary modifications:
- (a) the reference to an administrative financial sanction is a reference to a daily payment penalty under *section 53*;
- (b) references to an appeal under *section 68(1)* are references to an appeal under *subsection (1) of this section*;

(c) references to *section 69(1)* are references to *subsection (3)* of this section.

## CHAPTER 7

### *Notice to end contravention*

#### **Notice to end contravention**

73. (1) Where—

- (a) the Commission has decided under *section 62* that it is satisfied that a contravention that is an infringement by a relevant provider of Article 30, 31 or 32 has occurred, and
- (b) the Commission's decision in so far as it relates to the occurrence of the contravention is confirmed under *section 68* or *69* or is replaced under *section 68* with a decision to the same effect,

the Commission may, if it is of the view that the contravention is continuing, give notice in writing to the provider directing the provider to put an end to the contravention.

(2) A notice under *subsection (1)* shall state—

- (a) the steps which the Commission requires the provider to take to put an end to the contravention, and
- (b) the period within which those steps must be taken.

(3) A notice under *subsection (1)* shall be given as soon as is practicable after the date on which the decision is confirmed under *section 68* or *69* or is replaced under *section 68* with a decision to the same effect.

(4) A person who without reasonable excuse fails to comply with a notice under *subsection (1)* shall be guilty of a category 1 offence.

(5) Where an offence has been committed under *subsection (4)* by a body corporate and the offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a person who was either a director, manager, secretary or other officer of the body corporate, or a person purporting to act in such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the offence committed by the body corporate.

(6) Where the affairs of a body corporate are managed by its members, *subsection (5)* applies in relation to the acts or defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

**Daily payment for failure to comply with notice to end contravention**

74. (1) Where the Commission gives a notice under *section 73* to a provider, the Commission may, for the purpose of enforcing the notice, impose a penalty of a daily payment (in this section referred to as a “daily payment penalty”) on the provider.
- (2) Before the Commission makes a decision to impose a daily payment penalty on a provider, the Commission shall give the provider a notice in writing which—
- (a) states that if the provider fails to take the steps stated under *section 73(2)(a)* by a date specified in the notice under this subsection, the Commission intends to impose a daily payment penalty on the provider for each day during which the failure continues, beginning with the day following that date,
  - (b) states why it appears to the Commission to be necessary to impose the penalty,
  - (c) states the maximum daily amount of the penalty that the Commission may impose, and
  - (d) invites the provider to make written submissions to the Commission regarding the matters to which the notice relates within the period specified in the notice or such further period as the Commission may allow.
- (3) The date specified under *subsection (2)(a)*—
- (a) may not be earlier than the end of the period specified under *section 73(2)(b)*, and
  - (b) may not be earlier than the date on which the notice under *subsection (2)* is given.
- (4) The amount of a penalty imposed under this section shall not exceed, for each day during which the failure referred to in *subsection (2)(a)* continues, 5 per cent of the provider’s average daily turnover in the preceding financial year.
- (5) Where the provider fails to take the steps stated under *section 73(2)(a)* by the date specified in the notice under *subsection (2)*, the Commission, after considering any written submissions made by the provider within the period referred to in *subsection (2)(d)*, may—
- (a) determine the daily amount of the penalty to be imposed, and the date on which it is to commence, and
  - (b) by notice in writing to the provider, impose the penalty.
- (6) A decision of the Commission to impose a daily payment penalty under this section does not take effect unless it is confirmed on appeal under *section 68* or on summary application under *section 69*, as those sections apply in accordance with *section 75*.

**Daily payment penalty under *section 74*: appeal and confirmation**

75. (1) The provider to whom a notice under *section 74(5)* is given may, within 28 days from the date on which the notice is received, appeal to the High Court against the decision to impose the daily payment penalty.

- (2) *Subsections (2) to (6) and (8) of section 68* apply for the purposes of an appeal by a provider under this section as they apply for the purposes of an appeal by the inquiry subject under *subsection (1)* of that section subject to the following and any other necessary modifications:
- (a) references to an administrative financial sanction are references to a daily payment penalty under *section 74*;
  - (b) references to the appropriate court are references to the High Court.
- (3) Where the provider to whom a notice under *section 74(5)* is given does not appeal in accordance with *subsection (1)* against the decision to impose a daily payment penalty, the Commission shall, as soon as is practicable after the expiration of the period referred to in *subsection (1)*, and on notice to the provider, make an application in a summary manner to the Circuit Court for confirmation of the decision.
- (4) *Section 69(2) to (8)* apply for the purposes of an application under *subsection (3)* subject to the following and any other necessary modifications:
- (a) the reference to an administrative financial sanction is a reference to a daily payment penalty under *section 74*;
  - (b) references to an appeal under *section 68(1)* are references to an appeal under *subsection (1)* of this section;
  - (c) references to *section 69(1)* are references to *subsection (3)* of this section.

## CHAPTER 8

*Access blocking order***Further notice to end contravention**

- 76.** (1) Where the Commission has given a notice under *section 73* to a provider in respect of a contravention, and it appears to the Commission that—
- (a) the provider has failed to comply with the notice within the period stated under *section 73(2)*,
  - (b) the contravention is continuing,
  - (c) the other powers of the Commission pursuant to Article 51 to put an end to the contravention have been exhausted, and
  - (d) the contravention is causing serious harm that cannot be avoided through the exercise of other powers,

the Commission may, by notice in writing to the provider, request the management body of the provider to consider the steps required by the notice under *section 73* and to propose what steps the provider should now be required to take to put an end to the contravention, and within what period.

- (2) A notice under *subsection (1)* shall state the time within which the management body must comply with the request.
- (3) Where the management body of a provider makes a proposal in accordance with a notice under *subsection (1)*, the Commission may give a further notice in writing to the provider directing the provider to put an end to the contravention referred to in *subsection (1)* and stating—
  - (a) the steps which the Commission requires the provider to take to put an end to the contravention, and
  - (b) the period within which those steps must be taken.
- (4) *Section 73(4) to (6)*, and *sections 74 and 75*, apply in relation to a notice under *subsection (3)* as they apply in relation to a notice under *section 73*.
- (5) The giving of a notice under *subsection (3)* does not affect the application of *section 73(4) to (6)*, *74* or *75* in relation to the earlier notice under *section 73*.

### Access blocking order

#### 77. (1) Where—

- (a) the management body of a provider fails to make a proposal in accordance with a notice under *section 76(1)*, or
- (b) the Commission gives a provider a notice under *subsection (3)* of *section 76*, and the period referred to in *paragraph (b)* of that subsection expires without the Commission being satisfied that the contravention has ended,

the Commission may apply to the High Court for an order requiring a relevant provider (referred to in this section as the provider of the “carrying service”) to block access in the State to an intermediary service (referred to in this section as the “subject service”) provided by the provider referred to in *paragraph (a)* or *(b)*.

- (2) An application under *subsection (1)* shall be made on notice—
  - (a) to the provider of the carrying service,
  - (b) to the provider of the subject service, and
  - (c) to any other person appearing to the Commission to have a legitimate interest.
- (3) Before making an application under *subsection (1)*, the Commission shall give notice in writing to the persons referred to in *subsection (2)*—
  - (a) stating that it intends to make an application under *subsection (1)*,
  - (b) setting out the order it intends to apply for and the addressees of that order, and
  - (c) stating that the persons to whom the notice is given may submit written observations to the Commission within a period specified in the notice of not less than 10 working days beginning with the day on which the notice is received.



- (4) No application under *subsection (1)* may be made before the end of the period specified under *subsection (3)(c)*.
- (5) On an application under *subsection (1)* the court may make an order requiring the blocking of access to the subject service if it is satisfied in relation to the relevant infringement—
  - (a) that the infringement is continuing,
  - (b) that the infringement entails a criminal offence involving a threat to the life or safety of persons,
  - (c) that all reasonable steps for the Commission to take to put an end to the infringement have been taken, and
  - (d) that, having regard to the nature, gravity, recurrence, and duration of the infringement, an order under this section is proportionate and will not unduly restrict access to lawful information by users of the subject service.
- (6) The High Court may provide in an order under this section that a requirement imposed by the order is subject to such conditions as it considers necessary.
- (7) Subject to *subsection (8)*, an order under this section shall have effect for a period of not more than 28 days.
- (8) The High Court may provide that the Commission may, with leave of the court, extend the period for which an order under this section has effect for further periods of not more than 28 days subject to the maximum number of extensions specified by the court.
- (9) The Commission may make an application in accordance with *subsection (8)* for leave to extend the period for which an order under this section has effect only if, having regard to the rights and interests of all those affected by the order, it considers that—
  - (a) the provider has failed to take the necessary measures to put an end to the relevant infringement, and
  - (b) the extension will not unduly restrict access to lawful information by users of the subject service, having regard to the number of recipients affected and whether any adequate and readily accessible alternative exists.
- (10) Where in relation to an order under this section no application, or no further application, may be made in accordance with *subsection (8)* for leave to extend the period for which the order has effect, but having regard to the rights and interests of all those affected by the order, the Commission considers that the conditions referred to in *subsection (9)(a)* and *(b)* are satisfied, the Commission may make a further application under *subsection (1)*.
- (11) The provider of the carrying service or the subject service may apply to the High Court to vary or discharge an order under this section in the event that there is any material change in the circumstances which gave rise to the order.

- (12) In this section, references to the provider of the carrying service blocking access to the subject service, where the carrying service is an application store service, include references to the provider of the carrying service blocking the downloading of software used to provide the subject service or to access the subject service.
- (13) In this section—
- “application store service” means a service the main purpose of which is to facilitate the download of, or access to, application software at endpoints of the internet;
- “relevant infringement” means the contravention referred to in *section 76(1)*.

## CHAPTER 9

*Other enforcement measures***Compliance notices**

- 78.** (1) Where an authorised officer is of the opinion that a relevant provider has infringed a provision of the Digital Services Regulation to which this section applies, the authorised officer may serve a notice (in this section referred to as a “compliance notice”) on the provider.
- (2) A compliance notice shall—
- (a) state the contravention to which it relates,
  - (b) state the grounds on which the authorised officer is of the opinion referred to in *subsection (1)*,
  - (c) for the purpose of ensuring compliance by the provider with the provision which is the subject of the contravention, require the provider to do or refrain from doing anything specified in the notice by a date specified in the notice, and
  - (d) contain information regarding the bringing of an appeal under *subsection (6)* against the notice, including information specifying the manner in which an appeal may be brought.
- (3) An authorised officer may withdraw a compliance notice at any time.
- (4) An authorised officer may amend a compliance notice by notice in writing to the provider to substitute any later date for the date for the time being specified under *subsection (2)(c)* or this subsection.
- (5) A date specified under *subsection (2)(c)* or (4) must be later than the date by which an appeal under *subsection (6)* may be brought.
- (6) A provider may, not later than 14 days after the service on the provider of a compliance notice, appeal against the notice to the District Court.
- (7) An appeal under *subsection (6)* shall be brought in the manner specified in accordance with *subsection (2)(d)*.

- (8) The authorised officer and the provider concerned shall be entitled to be heard and to adduce evidence at the hearing of an appeal under *subsection (6)*.
- (9) The District Court shall, on an appeal under *subsection (6)* against a compliance notice, do one of the following:
  - (a) affirm the notice;
  - (b) cancel the notice;
  - (c) cancel the notice and require the provider to comply with such directions as may be given by the court.
- (10) A provider on whom a compliance notice is served who fails to comply with the notice by the due date shall be guilty of an offence and liable on summary conviction to a class B fine or imprisonment for a term not exceeding 6 months, or both.
- (11) The due date for the purposes of *subsection (10)* is:
  - (a) where no appeal is brought under *subsection (6)*, the date for the time being specified in the compliance notice in accordance with *subsection (2)(c)* or *(4)*;
  - (b) where an appeal against the notice is brought under *subsection (6)* and the court affirms the notice in accordance with *subsection (9)(a)*, the day falling immediately after the expiration of the period of 14 days from the date on which the court affirms the notice.
- (12) Nothing done under this section prevents or restricts the taking of any other action for the purpose of enforcing a provision to which this section applies.
- (13) This section applies to Articles 30, 31 and 32.

#### **Power to enter into commitment agreement with provider**

- 79.** (1) The Commission may at any time enter into an agreement in writing with a relevant provider under which the provider agrees to take measures that appear to the Commission to address any issue relating to compliance by the provider with Article 30, 31 or 32.
- (2) An agreement under this section is referred to in this section as a “commitment agreement”.
  - (3) A commitment agreement may include provision under which the Commission agrees, subject to the terms of the agreement, not to take specified steps in relation to matters or findings addressed by the agreement.
  - (4) A commitment agreement, unless terminated under *subsection (5)* or *(6)*, is binding on the parties for the period specified in the agreement.
  - (5) A commitment agreement may be amended or terminated by the parties by agreement in writing.
  - (6) The Commission may terminate a commitment agreement by giving notice in writing to the provider if—

- (a) the provider does not comply with the agreement, or
  - (b) it appears to the Commission that information provided by the provider and relied on by the Commission for the purposes of entering into the agreement was, in a material respect, incomplete, misleading or false.
- (7) A provider who fails to comply with a commitment agreement may be liable to an administrative financial sanction in accordance with this Part.

## CHAPTER 10

### *Offences under Part 3*

#### **Categories of offences**

- 80.** (1) A person guilty of an offence under this Part that is stated to be a category 1 offence shall be liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
  - (b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 10 years, or both.
- (2) A person guilty of an offence under this Part or the *Schedule* that is stated to be a category 2 offence shall be liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
  - (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or both.

#### **Summary proceedings for offences under *Part 3***

- 81.** Summary proceedings for an offence under this Part may be brought and prosecuted by the Commission.

## PART 4

### MISCELLANEOUS

#### **Amendment of section 24 of Act of 2014**

- 82.** Section 24 of the Act of 2014 is amended, in subsection (1), by the substitution of “section 25 and section 25A, and section 15AV of the Act of 2002,” for “section 25, and section 15AV of the Act of 2002”.

**Professional secrecy under Digital Services Regulation**

**83.** The Act of 2014 is amended by the insertion of the following section after section 25:

- “**25A.** (1) Notwithstanding section 25 and without prejudice to the exchange and use of information referred to in Chapter IV of the Digital Services Regulation, an authorised officer, a member of staff of the Commission, a member of the Commission, a person engaged by the Commission in any other capacity or any other person involved shall not contravene Article 84 of the Regulation.
- (2) A person who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both.
- (3) In this section, ‘Digital Services Regulation’ means Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022<sup>5</sup> on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).”.

**Amendment of Online Safety and Media Regulation Act 2022**

**84.** Section 42 of the Online Safety and Media Regulation Act 2022 is amended by the substitution of “Section 134 of the Principal Act” for “The Principal Act”.

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<sup>5</sup> OJ L277, 27.10.2022, p. 1

SCHEDULE  
ORAL HEARINGS

1. (1) This Schedule applies to an oral hearing under *section 50, 61(3) or (4)(d), or 65(2)(a)*.
- (2) In this Schedule—
  - “authorised officer” has the same meaning as it has in *Part 3*;
  - “conducting authority” means—
    - (a) in relation to an oral hearing under *section 50*, the authorised officer conducting the hearing, and
    - (b) in relation to an oral hearing under *section 61(3) or (4)(d) or 65(2)(a)*, the Commission;
  - “relevant equipment” means any electronic, photographic, magnetic, optical or other equipment, including a computer, which may be used for processing or holding relevant material;
  - “relevant material” means any document, information, or content, however communicated, recorded or stored, which may be relevant to a matter to which the oral hearing relates;
  - “remote hearing” means a hearing in which—
    - (a) the participants, including the conducting authority, are not all in the one place, and
    - (b) one or more of them participate in the hearing by means of electronic communications technology permitting real time transmission and real-time two-way audiovisual, or audio, communications.
- (3) This Schedule is without prejudice to *section 18* of the Act of 2014.
2. The conducting authority may by notice in writing require a person to attend or participate in an oral hearing at a time and place specified in the notice—
  - (a) to give evidence in respect of any matter in issue, or
  - (b) to produce any relevant material or relevant equipment which is within the person’s possession or control or which the person is able to procure.
3. At an oral hearing, the conducting authority may take evidence on oath or affirmation, and may administer an oath for that purpose.
4. (1) The conducting authority may allow a witness at an oral hearing to give evidence by tendering a written statement.
- (2) A statement tendered under *subparagraph (1)* shall be verified by oath or affirmation.
5. A person giving evidence at an oral hearing, including an authorised officer, may be examined and cross-examined at the oral hearing.

6. The conducting authority is bound by the rules of evidence in the conduct of an oral hearing, subject to such exceptions to the rule against hearsay evidence as may be provided for by rules under *section 57*.
7. A person to whom notice is given under *paragraph 2* shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in that paragraph as if the person were a witness before the High Court.
8. Where a person to whom notice is given under *paragraph 2* does not comply with a requirement referred to in that paragraph, the conducting authority may apply in a summary manner to the Circuit Court, on notice to that person, for an order requiring the person to comply with the requirement within a period to be specified by the Court, and the Court may make the order sought or such other order as it thinks fit or refuse to make any order.
9. Nothing in this Schedule 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.
10. The conducting authority, where it is satisfied that special circumstances arise which so necessitate, may—
  - (a) hold an oral hearing otherwise than in public, or partly otherwise than in public, or
  - (b) require that any information is not disclosed in an oral hearing, or not otherwise published or reported where the Commission considers that—
    - (i) it is commercially sensitive,
    - (ii) its publication may prejudice an ongoing investigation by the Commission, the Garda Síochána or any other public body, or
    - (iii) it is personal data.
11. The Commission may pay or reimburse out of moneys at its disposal, in whole or in part, the reasonable travelling and subsistence expenses of a person required to attend an oral hearing.
12. An oral hearing may be held by remote hearing.
13. A person who, without reasonable excuse, knowingly gives false or misleading evidence on oath or affirmation shall be guilty of an offence and shall be liable—
  - (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months, or both, or
  - (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years, or both.
14. A person who does not comply with a requirement under *paragraph 2* or *paragraph 10(b)* shall be guilty of a category 2 offence.

15. Without prejudice to *paragraph 13*, a person may be liable to an administrative financial sanction in accordance with *Part 3* if in an oral hearing where the suspected contravention is an infringement of Article 30, 31 or 32 of the Digital Services Regulation, he or she knowingly gives false or misleading evidence on oath or affirmation.
16. A statement or admission made by a person in the course of an oral hearing shall not be admissible in evidence in proceedings brought against the person for an offence, other than an offence under *paragraph 13*, and this shall be explained to the person in ordinary language by the conducting authority.