

# Legislation of 2022 and Anticipated Developments of 2023: Corporate, Commercial, Disputes and General

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## CONTENTS

<b>PART I</b> .....	<b>1</b>
<b>1. An Annual Technical Preliminary</b> .....	<b>1</b>
<b>2. An Additional Technical Preliminary: Statutory Instruments</b> .....	<b>1</b>
<b>3. Key Acts, Statutory Instruments and EU Legislative Instruments of 2022</b> .....	<b>1</b>
<b>PART II</b> .....	<b>2</b>
<b>4. Administration of Civil Justice</b> .....	<b>2</b>
<b>5. Administration of Criminal Justice</b> .....	<b>12</b>
<b>6. Aviation</b> .....	<b>16</b>
<b>7. Betting, Gaming and Lotteries</b> .....	<b>19</b>
<b>8. Broadcasting and Communications</b> .....	<b>20</b>
<b>9. Competition and State Aid</b> .....	<b>23</b>
<b>10. Company Law and Corporate Governance</b> .....	<b>24</b>
<b>11. Commercial Law</b> .....	<b>29</b>
<b>12. Consumer Law</b> .....	<b>30</b>
<b>13. Data Protection and Information Society</b> .....	<b>35</b>
<b>14. Education</b> .....	<b>37</b>
<b>15. Employment</b> .....	<b>39</b>
<b>16. Health Services and Public Health</b> .....	<b>48</b>
<b>17. Intellectual Property</b> .....	<b>51</b>
<b>18. Professions</b> .....	<b>52</b>
<b>19. Public Law (General)</b> .....	<b>52</b>
<b>20. Public Law (Regulatory)</b> .....	<b>56</b>
<b>21. Transport</b> .....	<b>58</b>

## PART I

### 1. An Annual Technical Preliminary

We reiterate the oft-repeated and important cautionary note regarding commencement and remind you that – especially with primary legislation – it does not follow from the fact that a measure is “enacted” that it is “in force”, and that an increasing number of statutory instruments are providing for delayed commencement of some or all of their provisions.

As regards commencement dates, recall the default position regarding both an act and an SI: if no provision is made for delayed commencement, then:

- in the case of an act, every provision of the statute comes into operation on the date of its passing;<sup>1</sup> and
- in the case of a statutory instrument, every provision of an SI comes into operation “at the end of the day before the day on which the statutory instrument is made” (*ie* the midnight preceding the moment of signature).

### 2. An Additional Technical Preliminary: Statutory Instruments

Recall that not every statutory instrument must be assigned a statutory instrument number and that some that are relevant to our practice may be certified by the Attorney General as not requiring to be published<sup>2</sup>. We have encountered this in particular in the area of pensions.

### 3. Key Acts, Statutory Instruments and EU Legislative Instruments of 2022

In 2022:

- 52 acts (excluding bills to amend the Constitution) were enacted (2007: 42; 2008: 25; 2009: 46; 2010: 40; 2011: 42; 2012: 54; 2013: 51; 2014: 44; 2015: 66; 2016: 22, 2017: 41, 2018: 42, 2019: 53, 2020: 32 and 2021: 50);
- 742 SIs (2007: 873; 2008: 609; 2009: 594; 2010: 689; 2011: 741; 2012: 592; 2013: 584; 2014: 621; 2015: 642; 2016: 685, 2017: 646, 2018: 665, 2019: 693, 2020: 760 and 2021: 782);
- the State became obliged to transpose a further (approximately) 41 EU directives (2007: 116; 2008: 76; 2009: 69; 2010: 110; 2011: 132; 2012: 52; 2013: 73; 2014: 66; 2015: 59; 2016: 73, 2017: 32, 2018: 60, 2019: 55, 2020: 30 and 2021: 30);
- the State became subject to approximately 1,088 directly-applicable EU Regulations (2007: 1,733; 2008: 1,403; 2009: 1,390; 2010: 1,357; 2011: 1,458; 2012: 1,393; 2013: 1,500; 2014: 1,551; 2015: 1,412; 2016: 1,298, 2017: 1,246, 2018: 1032, 2019: 815, 2020: 1,072 and 2021: 1,040); and
- the State became subject to approximately 1,407 formal Decisions of the Commission, Parliament, Council and other EU institutions (2007: 1,313; 2008: 1,253; 2009: 1,144; 2010: 1,151; 2011: 1,332; 2012: 1,232; 2013: 1,199; 2014: 1,314; 2015: 1,250; 2016: 1,191, 2017: 1,221, 2018: 1091, 2019: 1,141, 2020: 1,313 and 2021: 1,382).

These notes have been prepared on the basis of material that is available to us on **31 January 2023**.

We are grateful to our colleagues in Knowledge Team, and especially Morris Hung, Michael McNamee, Jonathan Murchan and Eileen Collins for their assistance in the preparation of these notes.

<sup>1</sup> Interpretation Act 2005, section 16(1).

<sup>2</sup> Statutory Instruments Act 1947, section 2(3), (4) and (5).

## PART II

### 4. Administration of Civil Justice

#### *Acts of the Oireachtas:*

#### 4.1 **Civil Law (Miscellaneous Provisions) Act 2022**

Part 8 of the Act, which has been commenced, makes special provisions for the empanelling and summoning of a jury at a Stardust inquest. Fresh inquests were directed by the Attorney General in 2019.

#### 4.2 **Competition (Amendment) Act 2022**

This Act, signed into law on 29 June 2022 but not yet commenced, implements the ECN+ Directive to ensure that national competition authorities across the EU, such as the CCPC and Comreg, have similar powers of investigation and enforcement. The Act significantly enhances the powers of these “competent authorities” and provides greater tools to tackle anticompetitive practices. The Act goes beyond the EU requirements in certain respects.

Bid-rigging is now also expressly listed as prohibited behaviour. The *mens rea* element to certain existing offences has also changed. Fines for criminal violations have increased, up to the greater of €50 million or 20% of turnover. Outside of the criminal sphere, there will now be a power to impose administrative financial sanctions and other sanctions for a breach of competition law, subject to confirmation by the High Court. Civil fines of up to €10 million or 10% of the total worldwide turnover of the undertaking or association of undertakings in the financial year preceding the decision may be imposed.

Under the new administrative sanctions process, the Act allows a competent authority to investigate potential breaches of competition law and where it forms the preliminary view that an infringement of competition law may have occurred or may be occurring and that the matter is not to be treated as a criminal matter, it may issue a statement of objections. Where a competent authority suspects that there is a risk an undertaking will cause serious and irreparable harm to competition, it may issue a prohibition notice as an interim measure.

The competent authority will hear submissions from the undertaking concerned and the matter may be resolved at that stage. Otherwise, it can be referred to an independent adjudication officer who has the same powers, privileges and rights as a High Court judge when hearing civil proceedings. An adjudication officer may also impose a periodic penalty payment on an undertaking for non-compliance with a “hearing requirement”. The adjudication officer will deal with the complaint on a “balance of probabilities” test and will decide on the question of any sanction. This can include structural or behavioural remedies and further periodic penalty payments. The sanctions will be subject to court confirmation. There is also an appeal to the High Court (though not on findings of fact) and a case-stated procedure.

The Act also introduces a leniency programme under which the CCPC may grant immunity from an administrative financial sanction to the first undertaking in a cartel that submits evidence of an infringement of competition law, provided they satisfy certain conditions. A possible reduction of up to 50% of sanction is available to a subsequent participant in the same cartel that applies for leniency.

There are also amendments to the area of merger control. For example, the CCPC may require parties to notify transactions that do not meet the applicable financial thresholds where the CCPC considers that it may have “an effect on competition in markets for goods or services in the State”. If the parties fail to do so, the CCPC will be able to investigate. The CCPC will also be able to impose interim measures where necessary in relation to a matter. Failure to comply with these measures may result in criminal sanctions including daily fines for non-compliance.

Where a transaction was implemented without clearance and will substantially lessen competition in markets for goods or services in the State, the CCPC will be able to take steps to unwind it or remedy the position. There are criminal sanctions for a breach here.

In addition to the notifying parties, the CCPC will also be able to direct requests for information to third parties who “may have information relevant to the Commission’s consideration of the merger or acquisition”.

Investigative powers under the Competition and Consumer Protection Act 2014 and the Communications Regulation Act 2002 are also strengthened. Powers under the Criminal Justice (Surveillance) Act 2009 are extended to the CCPC.<sup>3</sup>

#### 4.3 **Insurance (Miscellaneous Provisions) Act 2022**

Amongst other measures, this Act enables the collection by the Central Bank of Ireland of certain information regarding deductions by insurance undertakings from amounts paid in respect of claim settlements, and for that purpose, amends the Central Bank (National Claims Information Database) Act 2018. For further information on this Act see the accompanying Finance and Financial Services Lecture paper at 15.1.

#### 4.4 **Garda Síochána (Compensation) Act 2022**

This Act replaces the system under the Garda Síochána (Compensation) Acts 1941 to 2003 providing for the granting out of public moneys of compensation for malicious personal injuries (including injuries causing death) to current or former member of the Garda Síochána. It aims to make the procedure more efficient and to keep claims out of court through the involvement of PIAB. The Act has not yet been commenced.

#### 4.5 **Personal Injuries Resolution Board Act 2022**

The Act sets out certain reforms in relation to the Personal Injury Assessment Board. First, its name is changed to the Personal Injuries Resolution Board to reflect an expanded remit. This remit now includes a new mediation process. The mediation process will be voluntary. Mediators may be internal or external to the Board but the policy preference is for the former. There is an expansion in the types of claim that may be considered by the Board. It will now be able to deal with claims of a wholly psychological nature. It will also have additional time to assess claims where an injury is yet to settle rather than releasing them to litigation. It will be able to seek proof of identity on application and disclose information to An Garda Síochána to reduce fraud. The Act also provides that where a claimant takes litigation following an assessment accepted by the respondent, the assessment will have the status of an offer of tender payment. The court can disapply this rule if the respondent was not actually in a position to pay the assessment amount at the time of acceptance. The Board is also given additional functions around the collection and publication of personal injuries data; research; and the promotion of public awareness. Finally, the Act also provides for offences relating to providing false or misleading information in an application or assessment to the Board. The Act has not yet been commenced.<sup>4</sup>

### ***Statutory Instruments (Commencement Orders):***

#### 4.6 **Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) (Amendment) Regulations 2022<sup>5</sup>**

These Regulations, in operation from 14 January 2022, amend the Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) Regulations 2013 to modify the application form set out in the Schedule thereto in order to substitute “€1,500” for “€400”. This reflects an increase in the value of assets a debtor may have considered as part of the eligibility criteria for a Debt Relief Notice.

#### 4.7 **Cervicalcheck Tribunal Act 2019 (Section 12(3A)) (Extension of Period for Making of Claims) Order 2022<sup>6</sup>**

This Order, in effect from 24 January 2022, extends the period for receipt of claims by the CervicalCheck Tribunal to 26 July 2022.

<sup>3</sup> A video presentation is available which discusses the legislative changes here.

<sup>4</sup> A briefing on this Act is available [here](#).

<sup>5</sup> SI 18 of 2022.

<sup>6</sup> SI 28 of 2022.

- 4.8 **District Court (Fees) (Amendment) Order 2022<sup>7</sup>**  
This Order relates to licensing. It amends the District Court (Fees) Order 2014. It substitutes Article 4C to provide for certain fee exemptions where an application is for a special exemption order that, if granted, would have effect on or after 26 January 2022 and expire on or before 1 May 2022.
- 4.9 **Personal Injuries Assessment Board (Fees) (Amendment) Regulations 2022<sup>8</sup>**  
These Regulations, in operation from 11 April 2022, further amend the Personal Injuries Assessment Board (Fees) Regulations 2004 to increase the charge (from €600 to €1050) which the Personal Injuries Assessment Board may make on respondents in respect of the dealing by the Board with an application for assessment under s11 Personal Injuries Assessment Board Act 2003.
- 4.10 **Rules of the Superior Courts (Powers of Attorney) 2022<sup>9</sup>**  
These Rules make technical and ancillary amendments to the Rules of the Superior Courts (No 1) (Powers of Attorney Act 1996) 2000 by the insertion of Regulation 4 to provide that the forms relating to enduring powers of attorney set out in the appendix to that instrument be inserted into the Rules of the Superior Courts as Appendix MM, from 26 April 2022.
- 4.11 **Rules of the Superior Courts (Lodgment and Tender) 2022<sup>10</sup>**  
These Rules substitute O22, r1(9) Rules of the Superior Courts to provide for a defendant to make or increase a lodgment or tender without leave of the court upon delivery of a further medical report by a plaintiff in personal injuries proceedings, from 26 April 2022.
- 4.12 **Personal Insolvency Act 2012 (Prescribed Protective Certificate Personal Insolvency Arrangement Application Form) Regulations 2022<sup>11</sup>**  
These Regulations prescribe the form to be used when making an application for a protective certificate in respect of a proposal for a Personal Insolvency Arrangement. These Regulations also revoke the Personal Insolvency Act 2012 (Prescribed Protective Certificate Personal Insolvency Arrangement Application Form) Regulations 2013, from 29 April 2022.
- 4.13 **Personal Insolvency Act 2012 (Prescribed Protective Certificate Debt Settlement Arrangement Application Form) Regulations 2022<sup>12</sup>**  
These Regulations prescribe the form to be used when making an application for a protective certificate in respect of a proposed Debt Settlement Arrangement. These Regulations also revoke the Personal Insolvency Act 2012 (Prescribed Protective Certificate Debt Settlement Arrangement Application Form) Regulations 2013, from 29 April 2022.
- 4.14 **Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) Regulations 2022<sup>13</sup>**  
These Regulations prescribe the form to be used when making an application for a Debt Relief Notice. These Regulations also revoke the Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) Regulations 2013 and the Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) (Amendment) Regulations 2022, from 29 April 2022.
- 4.15 **Rules of the Superior Courts (Companies Act 2014, Part 10A) 2021<sup>14</sup>**  
These Rules amend the Rules of the Superior Courts by the insertion of a new O74C and amendment of O75 r3(1)(b) to facilitate the operation of the Companies (Rescue Process for Small and Micro Companies) Act 2021, from 9 May 2022.

<sup>7</sup> SI 34 of 2022.

<sup>8</sup> SI 124 of 2022.

<sup>9</sup> SI 185 of 2022.

<sup>10</sup> SI 186 of 2022.

<sup>11</sup> SI 213 of 2022.

<sup>12</sup> SI 214 of 2022.

<sup>13</sup> SI 215 of 2022.

<sup>14</sup> SI 218 of 2022.

4.16 **Personal Insolvency Act 2012 (Prescribed Financial Statement) (Amendment) Regulations 2022**<sup>15</sup>

These Regulations amend the Personal Insolvency Act 2012 (Prescribed Financial Statement) Regulations 2014 by substituting the forms set out therein, from 10 May 2022. The first form is a Prescribed Financial Statement for an application for a Debt Relief Notice and the second is a similar statement in the context of an application for a protective certificate or the making of a proposal for, review or variation of a Debt Settlement Arrangement or Personal Insolvency Arrangement.

4.17 **Choice of Court (Hague Convention) Act 2015 (Section 2) Order 2022**<sup>16</sup>

This Order specifies the States which are Contracting States for the purposes of s2 Choice of Court (Hague Convention) Act 2015, and includes the text of Declarations made pursuant to Article 21 of the Convention by Denmark, the EU and the UK. The declarations relate to the exclusion of certain types of insurance contracts from the scope of the Convention. The Order also sets out a Note Verbale from the UK in relation to its accession to the Convention in its own right following its exit from the EU. Finally, this Order revokes the Choice of Court (Hague Convention) Act 2015 (Section 2) Order 2018, from 11 May 2022.

4.18 **Courts (Supplemental Provisions) Act 1961 (Judicial Remuneration) (Section 46(9)) Order 2022**<sup>17</sup>

This Order sets out the annual sums payable by way of remuneration, as of 1 July 2022, to members of the judiciary appointed before 1 January 2012.

4.19 **Courts (Supplemental Provisions) Act 1961 (Judicial Remuneration) (Section 46(9A)) Order 2022**<sup>18</sup>

This Order sets out the remuneration payable to judges appointed on or after 1 January 2012, from 1 July 2022.

4.20 **European Union (Preventive Restructuring) Regulations 2022**<sup>19</sup>

These Regulations, from 27 July 2022, amend the Companies Act 2014 to transpose the requirements of EU Directive on Preventive Restructuring Frameworks (EU) 2019/1023.<sup>20</sup> The Directive sets down minimum rules for Member State preventative restructuring frameworks, in order to remove barriers to effective preventive restructuring of viable debtors in financial difficulties across the EU.

Amongst other amendments (see 10.1 on new director's duties), Part 10 of the Act which deals with examinerships is amended. As a pre-requisite to the appointment of an examiner in cases involving cross-border elements, the court must now be satisfied that the proposed examiner has "sufficient experience and expertise to perform the role". Examinership bars new proceedings being brought, and existing proceedings being advanced, against the company without leave of the court. The Regulations provide a specific carve-out for proceedings brought by employees against the company, which can be brought or advanced without court approval.

The independent expert's report will now include a view on whether a "best-interest-of-creditors test" is met with respect to the continuation of the undertaking.

The Regulations now provide that an examiner's scheme will not be binding on creditors whose interests will be impaired by the scheme and who were not given notice of a meeting which they would have been entitled to attend; an examiner is further required to ensure that all such impaired creditors are invited to attend such a meeting.

Formerly, an examiner's scheme could be confirmed by the court with the approval of at least one class of impaired creditors. The Regulations have introduced two alternative approval thresholds.

<sup>15</sup> SI 228 of 2022.

<sup>16</sup> SI 238 of 2022.

<sup>17</sup> SI 317 of 2022.

<sup>18</sup> SI 318 of 2022.

<sup>19</sup> SI 380 of 2022.

<sup>20</sup> For further information see our briefing [here](#). A video presentation is also available.

In the first, a majority of the voting classes of impaired creditors have accepted the proposals, provided that at least one of those classes is a secured creditor or is senior to the ordinary unsecured creditors. In the second, the proposals are accepted by at least one class of creditors whose interests are impaired. However this is subject to the caveat that the approving class must be “in the money” i.e. a class that would receive some payment or interest in the event that the company were liquidated.

The Regulations do not impact the 100-day period within which the examiner must lodge proposals in court. The court can extend this period beyond 100 days pending the confirmation hearing and compliance with any conditions precedent to the scheme. The Regulations introduce a “long-stop” date of 12 months of court protection from the presentation of the petition.

Another important change is the restriction on the exercise of certain rights, including early termination rights, under contracts during the examinership. With regard to financial contracts, a number of existing EU legal instruments, including the EU Collateral Directive (Directive 2002/47/EC) and EU Settlement Finality Directive (Directive 98/26/EC) are not impacted by Directive 2019/1023.

There is also an alteration to the discretion the examiner has to certify any liabilities during the protection period as expenses. There is also provision for how liabilities incurred during the period of protection are treated during a subsequent winding up. Additional information is set out that must now be included in a proposed scheme of arrangement.

The Regulations also set out what a court may consider when it is making an order with respect to cessation of protection of company and termination of appointment of examiner.

- 4.21 **Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2022**<sup>21</sup>  
These Regulations update Schedule 1 of the Agriculture Appeals Act 2001 setting out the list of Schemes which may be referred to the Agriculture Appeals Office for appeal.
- 4.22 **The European Union (Decisions in Matrimonial Matters and in Matters of Parental Responsibility and International Child Abduction) Regulations 2022**<sup>22</sup>  
These Regulations give full effect to Council Regulation (EU) No. 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility and on international child abduction (recast).
- 4.23 **District Court (Fees) (Amendment) (No. 2) Order 2022**<sup>23</sup>  
This Order further amends the District Court (Fees) Order 2014 by the substitution of “€150” for “€300” in Column (2) of Part 4 of the Schedule, at reference number 7, from 28 September 2022. This fee relates to a Special Exemption Order in the context of licensing.
- 4.24 **Rules of the Superior Courts (Procedure on Default) 2022**<sup>24</sup>  
These Rules substitute O27, r9 Rules of the Superior Courts to clarify the procedure where the court directs an unless order following an application for judgment in default of defence, from 8 September 2022. The court should, to the extent possible, determine the specific relief claimed in the statement of claim to which it considers the plaintiff to be entitled in the event of the failure of the defendant to deliver a defence.
- 4.25 **International Protection Act 2015 (Procedures and Periods for Appeals) (Amendment) Regulations 2022**<sup>25</sup>  
These regulations amend the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017 (SI 116 of 2017) to further the effective processing of appeal applications by the International Protection Appeals Tribunal. The regulations shorten certain time periods connected with the holding of an oral hearing where the appeal is against a report

<sup>21</sup> SI 383 of 2022.

<sup>22</sup> SI 400 of 2022.

<sup>23</sup> SI 479 of 2022.

<sup>24</sup> SI 454 of 2022.

<sup>25</sup> SI 542 of 2022.



that contains a finding under s39(4) of the International Protection Act 2015 , and IPAT has decided that it is in the interests of justice to hold an oral hearing. The time for sending notice of the oral hearing is reduced to 10 working days in advance of the oral hearing. The time for lodging of additional documents with the Tribunal is reduced to 5 working days. The regulations introduce a new and separate application form, Schedule 1A, for use in an appeal against a report that contains a finding under s39(4). All other appeal applications are to be made on the revised Schedule 1 form.

4.26 **Civil Law (Miscellaneous Provisions) Act 2022 (Section 55) (Stardust Inquest Jury Summons) Regulations 2022<sup>26</sup>**

These Regulations prescribe a form of jury summons for the purposes of summoning jurors for a Stardust inquest as provided for in s55(3) Civil Law (Miscellaneous Provisions) Act 2022, from 4 November 2022.

4.27 **Justice (Delegation of Ministerial Functions) Order 2022<sup>27</sup>**

This Order provides for the delegation of functions of the Minister for Justice to the Minister of State at the Department of Justice. These include powers under the Betting Acts 1931 to 2015, Firearms Acts 1925 to 2009, Part III of the Firearms and Offensive Weapons Act 1990 and the Gaming and Lotteries Acts 1956 to 2019. The delegation does not include the power to prosecute an offence.

**Statutory Instruments (Commencement Orders):**

4.28 **Cervicalcheck Tribunal Act 2019 (Commencement) Order 2022<sup>28</sup>**

This Order appoints 23 May 2022 as the date on which the CervicalCheck Tribunal Act 2019, insofar as it is not already in operation, shall come into operation.

4.29 **Insurance (Miscellaneous Provisions) Act 2022 (Commencement) Order 2022<sup>29</sup>**

This Order appoints 8 July 2022 as the day on which the Act, other than sections 7 and 8 shall come into operation. It appoints 1 October 2022 as the day on which section 7 and section 8, in so far as it relates to the insertion of section 16A into the Consumer Insurance Contracts Act 2019, shall come into operation and 1 January 2023 as the day on any remaining provisions of the Act shall come into operation.

4.30 **Civil Law (Miscellaneous Provisions) Act 2022 (Parts 1, 4, 5 and 8) (Commencement) Order 2022<sup>30</sup>**

This Order appoints 22 July 2022 as the date on which Parts 1, 4, 5 and 8 Civil Law (Miscellaneous Provisions) Act 2022 shall come into operation. Part 8 of the Act makes special provisions for the empanelling and summoning of a jury at a Stardust inquest. Fresh inquests were directed by the Attorney General in 2019.

4.31 **Judicial Council Act 2019 (Commencement) Order 2022<sup>31</sup>**

This Order appoints 3 October 2022 as the date on which Judicial Council Act 2019, so far as it is not already in operation, shall come into operation. Provisions commenced include those relating to complaints concerning the conduct of a judge.

**Other Developments:**

4.32 **Law Reform Commission Consultation Paper on compensating victims of crime**

The paper sets out the key concepts that the LRC is considering in relation to reform of the state-funded Criminal Injuries Compensation Scheme which compensates the victims of crime. It looks at the nature of awards; eligibility for compensation; how the compensation process operates;

<sup>26</sup> SI 552 of 2022.

<sup>27</sup> SI 629 of 2022.

<sup>28</sup> SI 240 of 2022.

<sup>29</sup> SI 346 of 2022.

<sup>30</sup> SI 370 of 2022.

<sup>31</sup> SI 489 of 2022.

who makes decisions on awards; and what a reformed statutory scheme should look like.

4.33 **Law Reform Commission Consultation Paper on the liability of clubs, societies and other unincorporated associations**

Many voluntary non-profit associations, clubs, societies and other groups are unincorporated associations. They do not have a legal existence separate and distinct from their members: the association is simply the collection of members. The LRC examines the legal implications of such arrangements and proposes certain reforms. Contributors are requested to make submissions before 15 March 2023

***Anticipated Developments (Ireland):***

4.34 **Civil Reform Bill**

Heads of a Civil Reform Bill are in preparation. Following on from the 2020 Review of the Administration of Civil Justice (“Kelly Report”), in May 2022 the Minister for Justice published an Implementation Plan on Civil Justice Efficiencies and Reform Measures.<sup>32</sup> The implementation plan identified 7 work streams aligned to the main themes from the Kelly Report, and set out the timelines for implementation over the next 3 years. These are:

- Civil procedure in the courts: To reform a range of practices and procedures to improve and modernise the civil courts to ensure timelier hearings and reduce delay.
- Discovery: To reform the system of discovery to reduce the cost of litigation, improve procedures and reduce delay.
- Judicial review: To consider primary legislation for the non-statutory system of judicial review with the aim of enhancing the timeliness, efficiency and cost effectiveness of the process and to amend elements of the Rules of Court.
- Multi-party litigation: To legislate for a comprehensive multi-party action procedure in Ireland.
- Litigation costs: To consider and advance measures to reduce the costs of litigation, including costs to the State.
- Facilitating court users: To achieve more effective outcomes for court users, with particular emphasis on vulnerable court users.
- Technology and e-litigation: To create a secure digital environment to facilitate e-litigation and to modernise the digital facilities of Irish civil courts.

The Review Group unable to reach consensus was on whether to introduce a scale of legal costs and if it should be mandatory. The Department of Justice has commissioned economic research in this area. When completed, this research together with appropriate legal advice on its findings and implications, will inform policy proposals which the Minister will bring to Government next year. The objective will be to reduce the cost of litigation and to improve access to justice.

4.35 **Representative Actions for the Protection of the Collective Interests of Consumers Bill**

The Bill gives effect to Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers. It sets out rules to ensure that a representative action mechanism for the protection of the collective interests of consumers is available across EU Member States, while providing appropriate safeguards to avoid abusive litigation. Representative actions will be brought on behalf of groups of consumers by designated “qualified entities”. These will be non-profit organisations which have a track record in representing the collective interests of consumers and which meet certain other criteria. The Directive was due for

<sup>32</sup> This can be accessed [here](#).

transposition in December 2022. The General Scheme of the Irish implementing Bill has now finished pre-legislative scrutiny.

4.36 **Judicial Appointments Commission Bill 2022**

This Bill proposes significant reforms to the process of judicial appointments. It provides for the establishment of a new Judicial Appointments Commission ("JAC") which will have an equal number of lay and judicial members and will be chaired by the Chief Justice. The JAC will set out best practice selection procedures, including interviews, and the knowledge, skills and attributes required of judges. The Bill is currently at Committee Stage in the Seanad.

4.37 **Courts and Civil Law (Miscellaneous Provisions) Bill 2022**

This wide-ranging Bill proposes amendments to a variety of legislation, including to the Civil Liability Act 1961 relating to the indexation of periodic payments for personal injuries. The Civil Liability and Courts Act 2004 will be amended in relation to pre-action offers to settle clinical negligence claims. The Data Protection Act 2018 will be amended to extend jurisdiction for data protection actions to the District Court. There are also planned amendments to the Bankruptcy Act 1988, for example, in relation the disclaimer of onerous property; duties of debtors in the context of the completion of a statement of affairs; distribution of the estate; and bankruptcy payment orders. The Occupiers Liability Act 1995 will also be amended to provide additional protection to occupiers. It is also proposed to amend the Arbitration Act 2010 to legalise the funding of international commercial arbitration.

4.38 **Family Court Bill**

This will provide for the establishment of a Family High Court, Family Circuit Court and Family District Court as divisions of the existing courts. It will deal with issues such as the reallocation of jurisdiction in family law proceedings between the family courts. When enacted, the Bill will form an intrinsic part of the reform of the family justice system, providing many of the building blocks essential to the development of a more efficient and user-friendly family court system; that puts families at the centre of its activities, facilitates access to specialist supports and encourages the use of appropriate dispute resolution in family law proceedings. The Bill has completed the first stage of Seanad Éireann.

4.39 **Court Proceedings (Delays) Bill**

This Bill provides for statutory compensation for delay in litigation where it amounts to a breach of Article 6 of the European Convention on Human Rights. This Bill is listed as a priority in the Government's Legislation Programme for Spring 2023.

4.40 **Aarhus Convention Bill**

This Bill aims to consolidate and further Ireland's implementation of the access to justice provisions of the Aarhus Convention. The Bill is included in the Government's Legislation Programme for Spring 2023 but is not listed as a priority.

4.41 **Defamation (Amendment) Bill**

This Bill updates aspects of defamation law, following statutory review of the Defamation Act 2009.<sup>33</sup> Heads of Bill are in preparation. The major proposals arising from the review include:

- an end to juries in defamation cases;
- easier access to justice for individuals whose reputation is unfairly attacked;
- clearer protection for responsible public interest journalism;
- reducing legal costs and delays;
- measures to encourage prompt correction and apology, where mistakes are made; and new measures to combat abuse;

<sup>33</sup> The Report of the Review of the Defamation Act 2009 can be accessed [here](#).

- make it easier to grant orders directing online service providers to disclose the identity of an anonymous poster of defamatory material.

4.42 **Financial Services and Pensions Ombudsman (Amendment) Bill**

The Heads of a Bill will be prepared to amend the Financial Services and Pensions Ombudsman (FSPO) Act 2017 to take account of the *Zalewski* ruling, and to update elements where the FSPO could be viewed as administering justice.<sup>34</sup>

4.43 **Personal Insolvency (Amendment) (No. 2) Bill**

This will update aspects of personal insolvency legislation, following statutory review of Personal Insolvency Acts. Heads are in preparation.

**EU Instruments:**

4.44 **Regulation (EU) 2022/850 on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system), and amending Regulation (EU) 2018/1726**

This Regulation aims to establish an IT system that allows for the swift, direct, interoperable, sustainable, reliable and secure cross-border electronic exchange of case-related data, while respecting the right to protection of personal data. Under the Regulation, although not mandatory, the e-CODEX system should be viewed as the preferred solution for an interoperable, secure and decentralised communication network between national IT systems for judicial cooperation in civil and criminal matters.

4.45 **Commission Decision (EU) 2022/494 confirming the participation of Ireland in Regulation (EU) 2021/693 establishing the Justice Programme**

This decision confirms Ireland's participation in Regulation (EU) 2021/693 establishing the justice programme. This runs from 2021-2027. The legislation's general objective is to further develop a European area of justice based on the rule of law, including the judiciary's independence and impartiality, mutual recognition, mutual trust and judicial cooperation.

4.46 **Council Decision (EU) 2022/1206 concerning the accession of the EU to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters**

This refers to the Hague 2019 Judgments Convention. The decision approves the EU's accession to the convention. This convention sets a minimum standard for the circulation of foreign judgments in civil and commercial matters among the countries that are party to it. It promotes access to justice and facilitates international trade, investment and mobility by reducing the risks and costs of cross-border litigation. It allows EU citizens and businesses to have rulings by a court in the EU recognised and enforced in non-EU countries that are also a party to the convention. It also ensures that non-EU country judgments are recognised and enforced in the EU only where fundamental principles of EU law are respected. The UK is conducting a consultation (until 9 February 2023) as to whether it should accede to the convention. If it does, this will fill some of the gaps left post-Brexit as regards the enforcement of judgments between the UK and the EU.<sup>35</sup>

4.47 **Commission Decision (EU) 2022/1437 confirming the participation of Ireland in Regulation (EU) 2021/2260 amending Regulation (EU) 2015/848 on insolvency proceedings**

This decision confirms Ireland's participation in Regulation (EU) 2021/2260. There are no specific conditions attached to that participation and no need for transitional measures.

4.48 **Commission Implementing Decision (EU) 2022/219 establishing rules of procedure for the review, pursuant to Article 22(1) of Council Regulation (EC) No 58/2003, of the legality of acts of executive agencies which injure a third party and have been referred to the Commission by any person directly or individually concerned**

Pursuant to Article 22(1) of Regulation (EC) No 58/2003, the Commission may be asked to review the legality of any act of an executive agency which injures a third party. This decision establishes

<sup>34</sup> A video presentation is available discussing the case of *Zalewski v Workplace Relations Commission* [2021] IESC 24.

<sup>35</sup> For further information see our briefing [here](#).

rules of procedure applicable to that review process. These rules do not apply to review procedures undertaken by the Commission on its own initiative nor those instituted by Member States under that Regulation.

4.49 **Council Regulation (EU) 2022/555 amending Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights**

Regulation (EC) No 168/2007 established the EU Agency for Fundamental Rights, an EU-level body providing assistance and expertise relating to fundamental rights in the EU. It lays down the agency's main tasks and objectives, functioning and internal governance. In light of the findings of the external evaluation and internal analysis, targeted technical amendments are being made to the founding Regulation. These are aimed at aligning certain provisions with the Common Approach on decentralised agencies agreed between the EU institutions in July 2012, and also clarifying the scope of the activities of the Agency since the entry into force of the Lisbon Treaty.

***Anticipated Developments (EU):***

4.50 **Proposal for a Directive on adapting non-contractual civil liability rules to artificial intelligence (“AI Liability Directive”)**

The objective of this proposal is to promote the rollout of trustworthy AI to harvest its full benefits for the internal market. It does so by ensuring victims of damage caused by AI obtain equivalent protection to victims of damage caused by products in general. It also reduces legal uncertainty of businesses developing or using AI regarding their possible exposure to liability and prevents the emergence of fragmented AI-specific adaptations of national civil liability rules.<sup>36</sup>

4.51 **Proposal for a Directive on liability for defective products**

The existing Product Liability Directive (“PLD”) provides an EU-level system for compensating people who suffer physical injury or damage to property due to defective products. This proposal aims to:

- ensure liability rules reflect the nature and risks of products in the digital age and circular economy;
- ensure there is always a business based in the EU that can be held liable for defective products bought directly from manufacturers outside the EU;;
- ease the burden of proof in complex cases and ease restrictions on making claims, while ensuring a fair balance between the legitimate interests of manufacturers, injured persons and consumers in general; and
- ensure legal certainty by better aligning the PLD with the “new legislative framework” created by Decision 768/2008/EC 7 and with product safety rules, and by codifying PLD-related case law.

4.52 **Proposal for a Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)**

This proposal is one of the actions under the European Democracy Action Plan that aim to strengthen media pluralism and media freedom in the European Union. The objective of the proposal is to protect targets of strategic lawsuits against public participation (“SLAPPs”) and prevent the phenomenon from further expanding in the EU. By developing a common EU understanding on what constitutes a SLAPP and by introducing procedural safeguards, the proposal aims to provide courts with effective means to deal with SLAPPs and targets with the means to defend themselves.

<sup>36</sup> See our briefing [here](#).

## 5. Administration of Criminal Justice

### **Acts of the Oireachtas:**

#### 5.1 **Defence Forces (Evidence) Act 2022**

The principal purpose of this Act is to provide for members of the Military Police to take and use DNA and other bodily samples for the purposes of their investigations, including outside the jurisdiction when Defence Force personnel are deployed overseas. It will also provide for the establishment of a DNA (Military Police) Database System, to be administered by Forensic Science Ireland, to hold DNA profiles generated from DNA samples taken from persons under this Act. It also deals with the destruction of evidence and DNA profiles. The Act mirrors the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014.

### **Statutory Instruments:**

#### 5.2 **European Union (Criminal Justice (Mutual Assistance) Act 2008) (Amendment) Regulations 2022<sup>37</sup>**

These regulations, in operation from 31 January 2022, amend the Criminal Justice (Mutual Assistance) Act 2008 to give effect to Titles VIII and XI of Part Three of the Trade and Cooperation Agreement following the UK's exit from the EU.

#### 5.3 **Criminal Justice (Mutual Assistance) Act 2008 (Designation of United Kingdom) Order 2022<sup>38</sup>**

This Order, in operation from 1 February 2022, designates the UK for the purposes of mutual assistance between the State and the UK under the Criminal Justice (Mutual Assistance) Act 2008, in accordance with certain international instruments set out in the Schedule to the Order, from 1 February 2022.

#### 5.4 **Rules of the Superior Courts (Criminal Procedure Act 2021) 2022<sup>39</sup>**

These Rules, in operation from 16 March 2022, amend the Rules of the Superior Courts by the insertion of a new Order 85A and Forms Nos 7 and 8 in Appendix DD to facilitate the operation of the Criminal Procedure Act 2021, from 16 March 2022. The amendments relate to preliminary hearings in the Central Criminal Court.

#### 5.5 **Extradition (Australia) Order 2022<sup>40</sup>**

The effect of this Order, in operation from 30 March 2022, is to apply the provisions of Part II of the Extradition Act 1965 to Australia in respect of offences specified in Article II of the 1985 Treaty on Extradition between Ireland and Australia. In 2019 Article II was amended to include revenue offences.

#### 5.6 **Circuit Court Rules (Criminal Procedure Act 2021) 2022<sup>41</sup>**

These Rules insert a new O68C to the Circuit Court Rules and insert Forms 56 and 57 into the Schedule of those Rules to facilitate the operation of the Criminal Procedure Act 2021, from 16 September 2022.

#### 5.7 **European Union (Right to Information in Criminal Proceedings) Regulations 2022<sup>42</sup>**

These Regulations give effect to Directive 2012/13/EU on the right to information in criminal proceedings. They provide that a District Court summons must be accompanied by certain written information on the procedural rights of the person served, namely: the right of access to

<sup>37</sup> SI 38 of 2022.

<sup>38</sup> SI 44 of 2022.

<sup>39</sup> SI 122 of 2022.

<sup>40</sup> SI 134 of 2022.

<sup>41</sup> SI 453 of 2022.

<sup>42</sup> SI 549 of 2022.

a solicitor; the entitlement to free legal advice and the conditions for obtaining such advice; the right to interpretation and translation.

**5.8 Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (Elimination) (Prescribed Persons) Regulations 2022<sup>43</sup>**

Section 44 of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 deals with the taking of and otherwise dealing with DNA samples from prescribed persons for elimination purposes. Under these Regulations, visitors to Forensic Science Ireland are prescribed for the purposes of s44. A visitor is a person, other than a member of the staff of FSI, who enters the laboratory space of FSI and may thereby contaminate crime scene samples.

***Statutory Instruments (Commencement Orders):***

**5.9 Criminal Procedure Act 2021 (Commencement) Order 2022<sup>44</sup>**

This Order appoints 28 February 2022 as the date on which the Criminal Procedure Act 2021 shall come into operation. This Act makes a number of significant changes to criminal procedure, including the introduction of preliminary trial hearings, and the wider provision of documentation to juries, to assist them with their deliberations.<sup>45</sup>

**5.10 Criminal Evidence Act 1992 (Section 13) (Commencement) Order 2022<sup>46</sup>**

This Order appoints 30 June 2022 as the date on which s13 Criminal Evidence Act 1992 shall come into operation for a Special Criminal Court. It allows for the giving of evidence through a live television link.

**5.11 Criminal Justice (Victims of Crime) Act 2017 (Commencement) Order 2022<sup>47</sup>**

This Order appoints 30 June 2022 as the date on which s30(b)(ii) Criminal Justice (Victims of Crime) Act 2017 shall come into operation for a Special Criminal Court. It allows for the giving of evidence through a live television link.

**5.12 Consumer Rights Act 2022 (Commencement) Order 2022<sup>48</sup>**

This Order appoints 29 November 2022 as the day on which the Consumer Rights Act 2022 other than section 161, shall come into operation.

***Anticipated Developments (Ireland):***

**5.13 Garda Síochána (Recording Devices) Bill 2022**

The main purpose of the Bill is to provide a robust statutory framework for An Garda Síochána to use digital recording devices to support their key functions, such as the investigation, detection, prevention and prosecution of criminal offences, safeguarding against and preventing threats to public safety and public order, and in matters relating to the security of the State. This includes the use of bodyworn cameras by the Garda Síochána as recommended in the Report of the Commission of the Future of Policing in Ireland (COFPI). This Bill has completed the first stage in the Dáil.

**5.14 Criminal Justice (Incitement to Hatred or Violence and Hate Crime) Bill**

This will amend the law relating to the prohibition of incitement to violence or hatred against a person or a group of persons on account of certain characteristics (referred to as protected characteristics) of the person or the group of persons. It will provide for an offence of condoning, denying or grossly trivialising genocide, war crimes, crimes against humanity and crimes against peace and, in doing so, give effect to Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. It will provide for certain offences aggravated by hatred in the Criminal Damage

<sup>43</sup> SI 738 of 2022.

<sup>44</sup> SI 79 of 2022.

<sup>45</sup> See #44498013 at paragraph 6.2 for further information.

<sup>46</sup> SI 308 of 2022.

<sup>47</sup> SI 309 of 2022.

<sup>48</sup> SI 596 of 2022.

Act 1991, the Criminal Justice (Public Order) Act 1994 and the Non-Fatal Offences against the Person Act 1997. It will repeal the Prohibition of Incitement to Hatred Act 1989. It will provide for hatred against a person or a group of persons on account of protected characteristics to be an aggravating factor in sentencing for certain offences.

- 5.15 **Garda Síochána (Powers) Bill**  
This Bill codifies police powers of search, arrest and detention and procedural rights of suspects. These powers will also be modernised to take into account developments in modern technology. Heads of Bill have been approved and pre-legislative scrutiny has taken place.
- 5.16 **Inspection of Places of Detention Bill**  
This Bill will provide for inspection of all places of detention to facilitate the ratification of OPCAT. The Bill also provides for the appointment and functions of the Chief Inspector of Place of Detention. Heads of a Bill were approved in June 2022. Pre-legislative scrutiny has taken place.
- 5.17 **Criminal Justice (Community Sanctions) Bill**  
This will provide for a modern statement of the law governing community sanctions and the role of the Probation Service in the criminal justice system. Revised Heads are in preparation.
- 5.18 **Criminal Justice (Engagement of Children in Criminal Activity) Bill**  
This Bill will criminalise adults who induce or groom children into committing offences. Pre-legislative scrutiny reported in May 2021.
- 5.19 **Criminal Justice (Legal Aid) Bill**  
This will update and strengthen the system of granting of criminal legal aid and to transfer the responsibility for the administration of the main scheme and ad-hoc schemes to the Legal Aid Board. Work is underway on the Bill.
- 5.20 **Criminal Justice (Passenger Name Record) Bill**  
This will comply with an EU Council commitment to extend to internal EU flights the requirements of EU Directive 2016/681 on the use of passenger name record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. Work is underway.
- 5.21 **Criminal Justice (Sexual Offences and Human Trafficking) Bill**  
This Bill will provide for amendments to the sexual offences legislation arising from the recommendations of the O'Malley review and the recommendations of the Law Reform Commission and AGO and to put the proposed new National Referral Mechanism for Human Trafficking on a statutory footing. Heads of Bill have been approved and pre-legislative scrutiny has taken place.
- 5.22 **Criminal Justice (Terrorist Offences) Bill**  
This will give effect to EU Directive 2017/541 on combating terrorism which is directed at the foreign terrorist fighter phenomenon and includes offences of travelling to commit a terrorist offence, facilitating travel to commit a terrorist offence and receiving training for terrorism. Heads of Bill were approved in September 2020 and pre-legislative scrutiny has been waived.
- 5.23 **Cybercrime Bill**  
This will give effect to those provisions of the Council of Europe Convention on Cybercrime 2001 not already provided for in national law in order to enable ratification of the convention. Work is underway.
- 5.24 **International Criminal Court (Amendment) Bill**  
This will give effect to the Kampala Amendment to the Rome Statute of the International Criminal Court in relation to the crime of aggression. Work is underway.
- 5.25 **Proceeds of Crime (Amendment) Bill**  
This will implement the recommendations of the Department of Justice Proceeds of Crime Criminal Assets Bureau review. Work is underway.



- 5.26 **Criminal Justice (Miscellaneous Provisions) Bill 2022**  
Amendments made by the Bill include in respect of the offence of conspiracy to murder, stalking and non-fatal strangulation and suffocation.
- 5.27 **Criminal Justice (Mutual Recognition of Custodial Sentences) Bill 2021**  
The Bill implements EU Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the EU. It sets out how the transfer of sentenced prisoners will work within the EU. The new system is in addition to a current system operating under a Council of Europe Convention.
- 5.28 **Sex Offenders (Amendment) Bill 2021**  
The Bill strengthens the management and monitoring of sex offenders in the community. The Bill changes the notification requirements for sex offenders; introduces electronic monitoring of certain sex offenders; provides for the Garda Síochána to disclose information relating to convicted sex offenders, in extenuating circumstances; and creates a legislative basis for the assessment and management of risk posed by sex offenders. The Bill is at second stage before the Seanad.
- 5.29 **European Arrest Warrant (Amendment) Bill 2022**  
The Bill amends the European Arrest Warrant Act 2003 to ensure that Irish law is fully consistent with Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA). This follows the initiation in 2020 of EU infringement proceedings by the European Commission against Ireland. The Bill has completed second stage in the Seanad.

***EU Instruments:***

- 5.30 **Commission Delegated Directive (EU) 2022/1326 amending the Annex to Council Framework Decision 2004/757/JHA as regards the inclusion of new psychoactive substances in the definition of ‘drug’**  
Council Framework Decision 2004/757/JHA lays down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking. The Commission can adopt delegated legislation to include new psychoactive substances in the definition of ‘drug’ as it has done here.
- 5.31 **Decision (EU) 2022/480 on setting up a committee of inquiry to investigate the use of the Pegasus and equivalent surveillance spyware, and defining the subject of the inquiry, as well as the responsibilities, numerical strength and term of office of the committee**  
This is a decision to establish a committee of inquiry to investigate alleged contraventions, or maladministration in implementation of Union law as regards the use of the Pegasus and equivalent surveillance spyware to monitor journalists, politicians, law enforcement officials, diplomats, lawyers, business people, civil society actors and other actors. It will collect information on the extent to which Member States, including but not limited to Hungary and Poland, or third countries use intrusive surveillance in a way that violates the rights and freedoms enshrined in the Charter, as well as assess the level of risk this poses to the values enshrined in Article 2 TEU, such as democracy, the rule of law and respect for human rights.
- 5.32 **Regulation (EU) 2022/991 amending Regulation (EU) 2016/794, as regards Europol’s cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol’s role in research and innovation**  
Europol supports and strengthens action by the competent authorities of the Member States in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy. To reflect the increased importance of Europol’s role in addition to the evolving and complex security threats, additional tasks are conferred on Europol while preserving the responsibilities of the Member States in the area of national security.

## 6. Aviation

### **Acts of the Oireachtas:**

#### 6.1 **Air Navigation and Transport Act 2022**

This Act, parts of which came into effect on 22 December 2022, is intended to establish the Irish Air Navigation Service as a DAC limited by shares in order to provide air navigation services in relation to civil aviation. The Irish Aviation Authority's aviation regulatory functions will be combined with those of the Commission for Aviation Regulation, including to review the market power of airport authorities and the regulation of airport charges.

### **Statutory Instruments:**

#### 6.2 **Irish Aviation Authority (Regulation of Irish Coast Guard Aviation Operations) Order 2022<sup>49</sup>**

This Order provides for the regulation of Irish Coast Guard aviation operations under national aviation law, including civil aviation operations provided for the Irish Coast Guard by way of contract, and also provides for a requirement for operators engaging in Irish Coast Guard aviation operations to hold a national coast guard approval issued by the Authority. This Order recognises the requirements under EU Law to ensure that Coast Guard activities and services are carried out with due regard to the safety objectives of the European Aviation Safety Agency Regulations. This Order does not extend to UAS operations (such as drones) undertaken by or on behalf of the Irish Coast Guard, which are regulated under the national regulations relating to the operation of UAS.

#### 6.3 **European Union (Civil Aviation Security) Regulations 2022<sup>50</sup>**

These Regulations confer powers on airport operators and other entities, including the Defence Forces, that are necessary to undertake screening and security controls under European civil aviation security regulations, from 4 July 2022.

#### 6.4 **Aircraft Noise (Dublin Airport) Regulation Act 2019 Levy No. 4 Regulations 2022<sup>51</sup>**

These Regulations impose a levy on Dublin Airport Authority in respect of the costs incurred by Fingal County Council in its capacity as competent authority for the purposes of EU Regulation 598/2014 on noise-related operating restrictions at EU airports and sets the airport levy payable at €1.4m for the period from 1 January 2022 to 31 December 2022.

#### 6.5 **Aviation Regulation Act 2001 (Levy No 23) Regulations 2022<sup>52</sup>**

These Regulations, from 9 December 2022, impose a levy on certain specified classes of aviation and travel trade undertakings set out in the Schedule, for the purpose of meeting expenses incurred by the Commission for Aviation Regulation in the discharge of its functions under the Aviation Regulation Act 2001, as amended. The fees set out in the Schedule in respect of the various licencing and approval functions are inclusive of the percentage change in the Consumer Price Index for the period October 2021 to October 2022.

### **Statutory Instruments (Commencement Orders):**

#### 6.6 **Air Navigation and Transport Act 2022 (Commencement) Order 2022<sup>53</sup>**

This Order appoints 22 December 2022 as the date on which Part 1 (other than section 8), Part 2, Part 8, Part 9, Part 10 (other than section 97) and Part 11 of the Air Navigation and Transport Act 2022 shall come into operation.

<sup>49</sup> SI 212 of 2022.

<sup>50</sup> SI 330 of 2022.

<sup>51</sup> SI 577 of 2022.

<sup>52</sup> SI 643 of 2022.

<sup>53</sup> SI 741 of 2022.

### ***Anticipated Developments (Ireland):***

#### **6.7 Air Navigation and Transport (International Aviation Agreements) (Amendment) Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme, proposes to make legal provision for the Beijing Convention 2010 and the Montreal Protocol 2014 in Ireland. The Heads of Bill are in preparation.

### ***EU Instruments:***

#### **6.8 Commission Delegated Regulation (EU) 2022/201 amending Regulation (EU) No 748/2012 as regards management systems and occurrence-reporting systems to be established by design and production organisations, as well as procedures applied by the Agency**

This Regulation, which entered into force on 30 December 2021 and which will apply from 7 March 2023 (other than Article 2 which will apply from 7 March 2022), adds the Standards and Recommended Practices to the existing requirements to complete the elements of a safety management system established in Annex 19 to the Chicago Convention, amends Regulation (EU) 748/2012 to ensure that the occurrence-reporting system is aligned with the principles of Regulation (EU) 376/2014, and amends the requirements for the EU Aviation Safety Agency relating to design certification, oversight and enforcement.

#### **6.9 Commission Implementing Regulation (EU) 2022/203 amending Regulation (EU) 748/2012 as regards management systems and occurrence-reporting systems to be established by competent authorities**

This Regulation, which entered into force on 6 March 2022 and which will apply from 7 March 2023 (with the exception of Article 2 which will apply from 7 March 2022), introduces management system and occurrence reporting system requirements for all approved design and production organisations to comply with the International Civil Aviation Organisation International Standards and Recommended Practices.

#### **6.10 Commission Delegated Regulation (EU) 2022/208 amending Regulation (EU) No 139/2014 as regards the requirements for all-weather operations**

This Regulation, which entered into force on 3 January 2022 and which will apply from 1 August 2022, amends Regulation (EU) 139/2014 to include specific requirements as regards the availability and maintenance of visual and non-visual aids and of any other equipment necessary to support all-weather operations, as well as specific operational procedures applicable to the aerodrome operator that address the surface movement guidance and control system and low-visibility operations at aerodromes.

#### **6.11 Commission Implementing Regulation (EU) 2022/938 amending Implementing Regulation (EU) 2017/373 as regards the requirements for aeronautical data catalogue and aeronautical information publication**

This Regulation, which entered into force on 15 August 2022, amends the common requirements for providers of air traffic management / air navigation services and other air traffic management network functions for general air traffic and their oversight, in relation to low-visibility procedures and hazardous surface conditions due to snow, ice, slush, frost and water.

#### **6.12 Commission Implementing Regulation (EU) 2022/410 amending Regulation (EU) 1321/2014 as regards the continuing airworthiness management in a single air carrier business grouping**

This Regulation, which entered into force on 30 March 2022, amends Regulation (EU) 1321/2014 to allow air carriers that are licensed in accordance with Regulation (EC) 1008/2008 and which form part of a single air carrier business grouping to contract a continuing airworthiness management organisation within that grouping for the continuing airworthiness management of aircraft.

- 6.13 **Commission Implementing Regulation (EU) 2022/594 amending Regulation (EC) 474/2006 as regards the list of air carriers banned from operating or subject to operational restrictions within the Union**
- 6.14 **Commission Implementing Regulation (EU) 2022/862 amending Regulation (EC) 474/2006 as regards the list of air carriers banned from operating or subject to operational restrictions within the Union**
- 6.15 **Commission Implementing Regulation (EU) 2022/2295 amending Regulation (EC) 474/2006 as regards the list of air carriers banned from operating or subject to operational restrictions within the Union**  
These Regulations amend, from various dates, the list of air carriers that are subject to an operating ban within the Union (under Regulation (EC) 474/2006).
- 6.16 **Commission Implementing Regulation (EU) 2022/1174 amending Implementing Regulation (EU) 2015/1998 as regards certain detailed measures for the implementation of the common basic standards on aviation security**  
This Regulation, which entered into force on 27 July 2022 and which applies from 1 July 2022 (save for points (32) and (28) of the Annex which apply from 1 January 2023), amends detailed aviation security measures in the interest of legal clarity.
- 6.17 **Commission Implementing Regulation (EU) 2022/1254 amending Regulation (EU) 2015/640 as regards the introduction of new additional airworthiness requirements**  
This Regulation, which entered into force on 9 August 2022, amends Regulation (EU) 2015/640 to provide for new airworthiness requirements of helicopters, tyre specifications for large aeroplanes, and specifications for rotorcraft.
- 6.18 **Commission Delegated Regulation (EU) 2022/1358 amending Regulation (EU) No 748/2012 as regards the implementation of more proportionate requirements for aircraft used for sport and recreational aviation**  
This Regulation, which entered into force on 25 August 2022 and which will apply from 25 August 2023, amends Regulation (EU) 748/2012 to provide for relevant industry standards as an alternative to design certification for aircraft used for sport and recreational aviation, and to provide for uniform environmental protection requirements for both type certification and declaration of design compliance.
- 6.19 **Commission Implementing Regulation (EU) 2022/1360 amending Regulation (EU) 1321/2014 as regards the implementation of more proportionate requirements for aircraft used for sport and recreational aviation**  
This Regulation, which entered into force on 17 August 2022 and which will apply from 25 August 2023, amends Regulation (EU) 1321/2014 to provide more proportionate continuing airworthiness requirements for aircraft used for sport and recreational aviation and to provide for relevant Aircraft Maintenance Programme matters.
- 6.20 **Commission Implementing Regulation (EU) 2022/1361 amending Regulation (EU) 748/2012 as regards the certification, oversight and enforcement tasks of the competent authorities in the implementation of the rules concerning the organisations involved in the design and production of aircraft used for sport and recreational aviation**  
This Regulation, which entered into force on 17 August 2022 and which will apply from 25 August 2023, amends Regulation (EU) 748/2012 to provide for certification, oversight and enforcement tasks of design and production organisations designated as competent authorities, which will implement the new proportionate rules and procedures for sports and recreational aircraft (introduced by Regulation (EU) 2022/1360).
- 6.21 **Commission Delegated Regulation (EU) 2022/1645 laying down rules for the application of Regulation (EU) 2018/1139, as regards requirements for the management of information security risks with a potential impact on aviation**

**safety for organisations covered by Regulations (EU) No 748/2012 and (EU) No 139/2014**

This Regulation, which entered into force on 3 August 2022 and which will apply from 16 October 2025, sets out requirements for the management of information security risks with a potential impact on aviation safety which should be consistently applied across all aviation domains.

**6.22 Regulation (EU) 2022/2038 amending Regulation (EEC) No 95/93 as regards temporary relief from the slot utilisation rules at EU airports due to an epidemiological situation or military aggression**

This Regulation establishes specific rules and the relief from general slot utilisation rules for air carriers for the period from 30 October 2022 until 28 October 2023 in order to mitigate the effects of an epidemiological crisis and Russia's war against Ukraine, on air traffic. The Regulation lays down the conditions under which air carriers continue to be entitled to series of slots under Articles 8(2) and 10(2) of Regulation (EEC) 95/93 and to establish requirements for air carriers to release unused capacity.

**6.23 Commission Implementing Regulation (EU) 2022/2203 amending Regulation (EU) 965/2012 as regards the applicability of the requirements for locating an aircraft in distress**

This Regulation, which entered into force on 4 December 2022, designates certain aeroplanes that must be equipped with robust and automatic means to accurately determine, following an accident during which the aeroplane is severely damaged, the location point of the end of flight.

**6.24 Commission Implementing Decision (EU) 2022/2324 amending Decision 2008/294/EC, to include additional access technologies and measures for the operation of mobile communications services on aircraft (MCA services) in the EU**

This Decision amends Decision 2008/294/EC to allow the operation of 5G connectivity on aircraft and sets out the applicable harmonised technical conditions for such mobile communication services on board aircraft. Member States must make the specified frequency bands for 5G available for mobile communication services on board aircraft on a non-interference and non-protected basis, by 30 June 2023.

**6.25 Commission Decision (EU) 2022/785 approving the revised Network Performance Plan for the third reference period of the Single European Sky performance scheme (2020-2024)**

This Decision approves the revised Performance Plan for the third reference period of the Single European Sky performance scheme (2020-2024), submitted by the Network Manager on 30 September 2021.

## **7. Betting, Gaming and Lotteries**

### ***Statutory Instruments:***

**7.1 Horse and Greyhound Racing Fund Regulations 2022<sup>54</sup>**

These Regulations specify the amount of €1,640,991,713 for the purposes of section 12(5) of the Horse and Greyhound Racing Act 2001, from 13 December 2022.

### ***Statutory Instruments (Commencement Orders):***

**7.2 Greyhound Racing Act 2019 (Sections 9 and 10) (Commencement) Order 2022<sup>55</sup>**

This Order appoints 1 March 2022 as the date on which sections 9 and 10 of the Greyhound Racing Act 2019 come into operation, which relate to the constitution of the Rásaíocht Con Éireann.

**7.3 Greyhound Racing Act 2019 (Commencement) Order 2022<sup>56</sup>**

<sup>54</sup> SI 673 of 2022.

<sup>55</sup> SI 80 of 2022.

<sup>56</sup> SI 524 of 2022.

This Order appoints 20 October 2022 as the date on which sections 7 and 27 to 29, and Parts 7 and 8 (other than section 51) of the Greyhound Racing Act 2019 come into operation, which revoke Greyhound Industry (Control Committee and Control Appeal Committee) Regulations, provide for greyhounds' traceability, welfare and substance use regulations, and provide for matters relating to the Board's investigations and racing sanctions.

### ***Anticipated Developments (Ireland):***

#### **7.4 Gambling Regulation Bill 2022**

The Gambling Regulation Bill proposes to establish a gambling regulator to be known as the Gambling Regulatory Authority of Ireland which will be responsible for licensing and regulating gambling, and to ensure compliance with obligations that are imposed on licensees as well as on persons who are involved in the advertising, promotion and sponsorship of gambling. This Bill further proposes the establishment of a National Gambling Exclusion Register and a Social Impact Fund. Children will be prohibited from participating in gambling or being employed in the gambling industry. As of 6 December 2022, this Bill is currently before Dáil Third Stage.

## **8. Broadcasting and Communications**

### ***Acts of the Oireachtas:***

#### **8.1 Online Safety and Media Regulation Act 2022**

The Online Safety and Media Regulation Act 2022 was enacted on 10 December 2022 and no provision has yet been commenced.

The Act amends the Broadcasting Act 2009 in order to establish Coimisiún na Meán (the "Media Commission"), dissolve the Broadcasting Authority of Ireland, establish a regulatory framework for online safety, update the regulation of television broadcasting and video on-demand services and transpose the revised Audiovisual Media Services Directive into Irish law.

The regulatory framework for online safety will be overseen by an Online Safety Commissioner, who will be empowered to make binding Online Safety Codes to hold designated online services to account for how they tackle the availability of some of the most serious forms of harmful online content. The Act will also empower the Commissioner to introduce an individual complaints mechanism on a phased basis, focusing initially on children and to order the removal or limitation-of-availability of specific items of harmful online content, either on foot of a complaint or on the Commissioner's own initiative.

The Act will also update the regulation of television broadcasting and video on-demand services and will bring the latter under statutory regulation for the first time. Providers of video on-demand services will (as broadcasters are currently) be subject to binding codes and rules, including in relation to advertising, accessibility and impartiality in news and current affairs.

The Media Commission will be empowered to investigate suspected breaches of the Act and to enforce its provisions (by administrative sanction (up to €20m or 10% of turnover) as well as criminal prosecution). These powers will include the appointment of authorised officers and the power to require the provision of information.

The Media Commission will also have a key role in promoting media sustainability and development through a Media Development Commissioner. The Commissioner will be responsible for creating and maintaining funding schemes for media production and training, including schemes to support professional journalistic practices and future schemes envisaged under the Report of the Future of Media Commission.

#### **8.2 Communications (Retention of Data) (Amendment) Act 2022**

This Act amends the Communications (Retention of Data) Act 2011 and remains subject to commencement. It provides for a revised regime for the retention of and access to telecommunications traffic and location data, so that it may continue to be used for criminal

justice and national security purposes, so that national law will be aligned with the CJEU's recent decisions in *Digital Rights Ireland*<sup>57</sup>, *Tele2/Watson*<sup>58</sup> and *La Quadrature du Net*<sup>59</sup>.

### **Statutory Instruments:**

- 8.3 **European Communities (Mobile Telephone Roaming) Regulations 2022**<sup>60</sup>  
These Regulations give full effect to Regulation (EU) 612/2022 on roaming on public mobile communications networks within the EU, from 1 July 2022 until 30 June 2032. Mobile phone users across the EU benefit from free 'roam-like-at-home' arrangements during the ten-year period and will be informed of charges with increased transparency. These Regulations also provide for access to emergency numbers and facilities abroad.
- 8.4 **European Union (Electronic Communications Code) Regulations 2022**<sup>61</sup>  
These Regulations give effect to Directive (EU) 2018/1972 establishing the European Electronic Communications Code and will come into operation on such day as the Minister appoints and publishes in *Iris Oifigiúil* (it is unusual to provide for the commencement of a statutory instrument by reference to an act or event external to the instrument itself).
- The Electronic Communications Code: • updates end-user rights that are enjoyed by consumers of electronic communications services; • places electronic communications within the scope of the Universal Services regime; • updates rules governing the assignment and use of radio spectrum; • reforms the regime governing access to infrastructure obligations on operators; and • expands the scope of the regulatory framework to include new market players.
- 8.5 **Wireless Telegraphy (Further Temporary Electronic Communications Services Licences) (No 4) Regulations 2022**<sup>62</sup>  
These Regulations, in effect from 28 March 2022, prescribe matters in relation to the further temporary licences for apparatus for wireless telegraphy for terrestrial systems capable of providing Electronic Communications Services in the 700 MHz Duplex and the 2.1 GHz Bands to address the temporary impact upon Electronic Communications Networks and Electronic Communications Services from the extraordinary situation arising from COVID-19.
- 8.6 **Wireless Telegraphy (Liberalised Use and Related Licences in the 700 MHz Duplex, 2.1 GHz, 2.3 GHz and 2.6 GHz Bands) (Amendment) Regulations 2022**<sup>63</sup>  
These Regulations prescribe matters in relation to the amendment of the commencement date of MBSA2 Liberalised Use Licences granted in the 2.1 GHz Band under the Wireless Telegraphy (Liberalised Use and Related Licences in the 700 MHz Duplex, 2.1 GHz, 2.3 GHz and 2.6 GHz Bands) Regulation 2021, from 27 September 2022.
- 8.7 **Wireless Telegraphy (Short-Term Electronic Communication Services Licences) Regulations 2022**<sup>64</sup>  
These Regulations prescribe matters in relation to the Short-Term Electronic Communications Services Licences in the 700 MHz Duplex and the 2.1 GHz Band. These Licences address the potential short-term impact upon Electronic Communications Networks and Electronic Communications Services caused by the then-upcoming expiry of licences in the 2.1 GHz Band and 700 MHz Duplex, from 27 September 2022.

### **Anticipated Developments (Ireland):**

#### **8.8 Communications Regulation Bill 2022**

<sup>57</sup> Cases C-293/12 and C-594/12.

<sup>58</sup> Cases C-203/15 and C-698/15.

<sup>59</sup> Cases C-511/18, C-512/18 and C-520/18.

<sup>60</sup> SI 315 of 2022.

<sup>61</sup> SI 444 of 2022.

<sup>62</sup> SI 138 of 2022.

<sup>63</sup> SI 483 of 2022.

<sup>64</sup> SI 484 of 2022.

This Bill is intended to give further effect to Directive 2018/1872 establishing the European Communications Code, by providing that public electronic communications network and service providers must take appropriate and proportionate measures in order to manage the risks that are posed to the security of networks and services.

The Bill would empower the Minister for Environment, Climate and Communications to take measures to safeguard the security of supply of critical components, provide for measures to assist consumers and other end-users and to enhance dispute-resolution and complaint procedures. The ComReg civil and criminal enforcement regime will be updated to provide for interim measures and administrative sanctions applicable to breaches of regulatory provisions and of ComReg's binding decisions.

#### 8.9 **Digital Services Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme for priority drafting, proposes to implement Regulation (EU) 2022/2065 on a Single Market for Digital Services (the "Digital Services Act") including to designate the Media Commission as the competent authority (known as the Digital Services Coordinator) under the Regulation for Ireland. The Heads of Bill are in preparation.

#### 8.10 **Interception of Postal Packets and Telecommunications Messages (Regulation) (Amendment) Bill**

This Bill proposes to amend various pieces of legislation in respect of electronic communications. The Bill is included in the Spring 2023 Government Legislation Programme where it is indicated that the Heads of Bill are in preparation.

### **EU Instruments:**

#### 8.11 **Digital Markets Act<sup>65</sup>**

The Digital Markets Act ("DMA"), a directly-applicable EU Regulation: • lays down harmonised rules relating to "gatekeepers" in the digital sector across the EU; • imposes obligations against anti-competitive or unfair practices on such gatekeepers; and • designates the European Commission as the enforcement authority of the DMA. The DMA entered into force on 1 November 2022 and most of its provisions will apply from 2 May 2023.

Under the DMA, an undertaking will be designated as a gatekeeper if it enjoys an entrenched position in a core platform service which serves as an important gateway for business users to reach end users (such as search engines and social networks). This determination will be made based on turnover and user metrics.

In respect of core platform services provided or offered to business users or end users established or located in the Union, gatekeepers, among other things, should not: (a) engage in preferential treatment, (b) impede interoperability of software, or (c) track end users outside of the core platform service for the purpose of targeted advertising without effective consent.

Gatekeeper platforms will have to: (i) allow inter-operability of their own services with third parties in specific situations; (ii) allow business users to access data that they generate in their use of the platform; (iii) provide advertisers and publishers with necessary tools and information to independently verify their advertisements hosted by the gatekeeper; and (iv) allow business users to promote their offers and conclude contracts with their customers outside the platform.

#### 8.12 **Digital Services Act<sup>66</sup>**

The Digital Services Act ("DSA"), a directly-applicable EU Regulation, creates a harmonised approach to the protection of online users' fundamental rights and fosters greater competition in the digital marketplace. The DSA entered into force on 16 November 2022 and will apply from 17 February 2024.

<sup>65</sup> Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828.

<sup>66</sup> Regulation (EU) 2022/2065 on a Single Market For Digital Services and amending Directive 2000/31/EC.



The DSA focuses on regulating the content on online intermediary service providers (“OIPs”), with enhanced obligations imposed on very large online platforms (“VLOPs”) and on very large online search engines (“VLOSEs”) which have more than 45 million users in the EU.

The DSA will impose obligations which will be enforced by the European Commission, non-compliance with which will be penalised by fines up to 6% of annual global turnover, including but not limited to: (a) OIPs will be required to implement user-friendly reporting mechanisms to enable users to notify the platform of the presence of illegal content; (b) OIPs will have to assess and limit risks that their platforms pose to children, and targeted advertising aimed at children will be prohibited; (c) compliance with a crisis response mechanism under the DSA which will allow for intervention by the European Commission in times of a threat to public health or safety; (d) VLOPs having to conduct annual risk assessments at their own expense to screen their processes for dealing with various risks including that of illegal online content; and (e) VLOPs having to establish an independent compliance function to oversee adherence to the DSA.

## **9. Competition and State Aid**

### ***Acts of the Oireachtas:***

#### **9.1 Competition (Amendment) Act 2022**

The Competition (Amendment) Act 2022 transposes into Irish law Directive (EU) 2019/1 (the “ECN+ Directive”), which had been due to be implemented by 4 February 2021. A commencement order is required under the Act but, as of January 2023, none has yet been made.

As described in detail at 4.2, once commenced, the Act will make procedural changes to competition law, will increase administrative fines imposed for breaches of competition law in Ireland and will increase the enforcement powers of the Competition and Consumer Protection Commission (the “CCPC”) and of the Commission for Communications Regulation (“ComReg”). Those enhanced powers will include both administrative and criminal sanctions. Such administrative fines will be subject to a maximum of €10m or 10% of total worldwide turnover, whichever is greater. The Act will also empower the CCPC and ComReg to utilise leniency or immunity powers.

There are also amendments to the merger control jurisdiction of the CCPC. For example, the CCPC may require parties to notify transactions that do not meet the applicable financial thresholds where the CCPC considers that a transaction may have “an effect on competition in markets for goods or services in the State”. If the parties fail to do so, the CCPC will be able to investigate. The CCPC will also be able to impose interim measures where necessary in relation to a matter. Failure to comply with these measures may result in criminal sanctions including daily fines for non-compliance.

Where a transaction has been implemented without clearance and will substantially lessen competition in markets for goods or services in the State, the CCPC will be able to take steps to unwind that transaction or otherwise to remedy the position, as well as to prosecute for a criminal offence in respect of the failure. In addition to information-gathering powers in respect of the notifying parties, the CCPC will also be able to direct requests for information to third parties who “may have information relevant to the Commission’s consideration of the merger or acquisition”.

### ***Anticipated Developments (Ireland):***

#### **9.2 Agriculture and Food Supply Chain (Market Transparency) Bill**

This Bill is to establish a new authority (the National Food Ombudsman) to enforce Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (the “Unfair Trading Practices Directive”) and to have a specific role in analysing and reporting on price and market data in Ireland. As of 19 December 2022, the Bill has completed Dáil First Stage.

### ***EU Instruments:***

#### **9.3 Commission Regulation (EU) 2022/2455 on the application of Article 101(3) TFEU to certain categories of research and development agreements**

This Regulation extends the period of application of Regulation (EU) No 1217/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements until 30 June 2023. This exempts certain agreements, decisions and concerted practices pursuant to research and technological development activities from the scope of Article 101(1) TFEU. The Regulation is intended to allow the European Commission adequate time in which to complete the process for the adoption of a new block exemption regulation for research and development agreements.

#### **9.4 Commission Regulation (EU) 2022/2456 on the application of Article 101(3) TFEU to certain categories of specialisation agreements**

This Regulation extends the period of application of Regulation (EU) No 1218/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements until 30 June 2023. This exempts certain categories of specialisation agreement from the scope of Article 101(1) TFEU. The Regulation is intended to allow the European Commission adequate time in which to complete the process for the adoption of a new block exemption regulation for specialisation agreements.

## **10. Company Law and Corporate Governance**

### ***Statutory Instruments:***

#### **10.1 European Union (Preventive Restructuring) Regulations 2022<sup>67</sup>**

These Regulations, from 27 July 2022, amend the Companies Act 2014 to transpose the requirements of Directive (EU) 2019/1023 as regards corporate insolvency.

These Regulations provide for definitions of new terms such as “executory contracts”, codify directors’ duty to creditors in the event of insolvency or probable insolvency, and oblige directors to have regard to early warning mechanisms of pending insolvency, and changes to bring examinership in line with the minimum rules under the Directive.

Directors are under a fiduciary duty to have regard to the interests of a company’s creditors where the directors become aware of the company’s insolvency. Further, a director “who believes or has reasonable cause to believe” that the company is or is likely to be “unable to pay its debts” must have regard to:

- (a) the interests of creditors,
- (b) the need to take steps to avoid insolvency, and
- (c) the need to avoid deliberate or grossly negligent conduct that threatens the viability of the company’s business.

As with every other fiduciary duty of a director also, these duties are owed by directors to the company alone and are not enforceable directly by creditors.

In determining the companies’ position, a director may have regard to an Early Warning System which is made available by the Corporate Enforcement Authority on its website to alert companies in order to better prevent or overcome insolvencies.

The existing Irish examinership regime is largely preserved with amendments that harmonise minimum requirements under the Directive, including that an examiner must be sufficiently qualified and requiring the examiner to notify creditors of an examiner’s scheme. Significant changes under these Regulations include allowing proceedings to be brought by employees against the company during examinership without court approval, and preventing creditors from

<sup>67</sup> SI 380 of 2022.

withholding performance or terminating executory contracts, including essential executory contracts, to the detriment of the company by reason of the commencement of examinership.

10.2 **Companies Act 2014 (Disqualification and Restriction Undertakings) Regulations 2022**<sup>68</sup>

These Regulations prescribe: • the form of the disqualification undertaking form and the restriction undertaking form, incorporating the notices required under section 850(3) and section 852(3) of the Companies Act 2014; • the “disqualification acceptance document” and “restriction acceptance document” under section 854(1); • the statement of legal effects as specified in section 850(4)(b) and section 852(4)(b); and • the particulars to be furnished by the Corporate Enforcement Authority to the Companies Registration Office under section 851(3)(a), all from 9 December 2022.

10.3 **Companies Act 2014 (Section 12A(1)) (Covid-19) Order 2022**<sup>69</sup>

This Order extended – to 31 December 2022 – the “interim period” as defined in section 2 of the Companies Act 2014 in respect of the amendments effected by the specified provisions of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020, including: sections 3 to 9 (including execution of instruments in counterparts, separately, under section 43A of the Companies Act, and the giving of notice, and the calculation of quorums, for general meetings and the holding of general meetings online); section 11 (voting on polls at general meetings, including online); sections 13 to 16 (including extending the maximum period of examinership of a company to 150 days and increasing the individual and aggregate debt thresholds for companies to €50,000); and sections 18 to 25 (the holding of creditors’ meetings online).

10.4 **Companies Act 2014 (Section 12A(1)) (Covid-19) (No 2) Order 2022**<sup>70</sup>

This Order extends – to 31 December 2023 – the “interim period” as defined in section 2 of the Companies Act 2014 in respect of certain of the amendments effected by the specified provisions of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020, including: sections 3, 4 and 6 to 9 (including the giving of notice, and the calculation of quorums, for general meetings and the holding of general meetings online); section 11 (voting on polls at general meetings, including online); sections 14 to 16 (including increasing the individual and aggregate debt thresholds for companies to €50,000); and sections 18 to 25 (the holding of creditors’ meetings online).

The provisions in respect of the execution of instruments in counterparts, separately, under section 43A of the Companies Act, and the extension of the maximum period of examinership of a company lapsed on 31 December 2022.

10.5 **Industrial and Provident Societies Act 1893 (Section 14A(1)) (Covid-19) Order 2022**<sup>71</sup>

This Order extended – to 31 December 2022 – the “interim period” as defined in section 79 of the Industrial and Provident Societies Act 1893 in respect of amendments effected by Part 3 of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020, which allows annual general meetings and general meetings during the interim period to be held by electronic means.

10.6 **Industrial and Provident Societies Act 1893 (Section 14A(1)) (Covid-19) (No 2) Order 2022**<sup>72</sup>

This Order extends – to 31 December 2023 – the “interim period” as defined in section 79 of the Industrial and Provident Societies Act 1893 in respect of amendments effected by Part 3 of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020, which allows annual general meetings and general meetings during the interim period to be held by electronic means.

<sup>68</sup> SI 646 of 2022.

<sup>69</sup> SI 220 of 2022.

<sup>70</sup> SI 648 of 2022.

<sup>71</sup> SI 219 of 2022.

<sup>72</sup> SI 649 of 2022.

### **Statutory Instruments (Commencement Orders):**

#### **10.7 Companies (Corporate Enforcement Authority) Act 2021 (Commencement) Order 2022<sup>73</sup>**

This Order appoints 6 July 2022 as the date on which the Companies (Corporate Enforcement Authority) Act 2021 (other than section 35 (director PPSN requirement)) came into operation.

Although the bulk of the 2021 Act relates to the establishment and functions of the Corporate Enforcement Authority, the commencement of the 2021 Act also entailed some important unrelated changes to companies legislation, including: • clarification as to the uses to which a company's share premium account may lawfully be put; • clarification that a commonly used structure in group re-organisations (in which a company transfers its undertaking to another company in consideration for a share issue to the transferring company's shareholders) is lawful where the transferring company has distributable reserves that are at least equal to the value of the undertaking that is transferred; • where a company acquires its own shares through a merger or division, those shares can be treated as treasury shares and may be cancelled or re-issued; • a reduction of capital effected in accordance with the Companies Act is not to be a distribution under that Act and does not require the rules on distributions to be followed (in addition to following the processes to effect the reduction of capital); • the acquisition by an unlimited company of its own shares will not require the use of distributable reserves; and • (*not yet commenced*) a director will be required to provide the Companies Registration Office (the "CRO") with the director's PPSN (or equivalent ID) when presenting certain documents. This is intended to ensure that there is no confusion as to the identity of a director where (as is often the case) the CRO encounters common names.

#### **10.8 Companies Act 2014 (Corporate Enforcement Authority) (Establishment Day) Order 2022<sup>74</sup>**

This Order appoints 7 July 2022 to be the establishment day for the purposes of Chapter 3A (inserted by section 10 of the Companies (Corporate Enforcement Authority) Act 2021) of Part 15 Companies Act 2014. On the establishment day, the Corporate Enforcement Authority replaced the Director of Corporate Enforcement.

### **Anticipated Developments (Ireland):**

#### **10.9 Transposition of Directive (EU) 2019/2121 as regards cross-border conversions, mergers and divisions (the "Mobility Directive")**

The Mobility Directive lays down rules on cross-border conversions and cross-border divisions and amends the existing rules on EU cross-border mergers. The Directive also introduces a new rule applicable to cross-border conversions, mergers and divisions, in order to avoid abuses of the processes.

As at 31 December 2022, the Mobility Directive is listed by the Department of Enterprise, Trade and Employment as awaiting transposition; the Department states that the draft Regulations were submitted to the Office of the Parliamentary Counsel on 10 December 2021 for legal scrutiny and settlement. However, the transposition deadline of 31 January 2023 has not been met. We understand that the transposition will provide two options for a company that currently is planning a cross-border merger: (a) an Irish company currently planning to engage in a cross-border merger and seeking to rely on the current legislative regime will be entitled to publish the common draft terms in advance of the new Regulations and the company will then have a six-month period within which to hold its general meeting to approve draft terms and complete the transaction under the current regime; or (b) companies may wait until the new Regulations are in place.

<sup>73</sup> SI 335 of 2022.

<sup>74</sup> SI 337 of 2022.

10.10 **Companies (Administrative, Governance and Insolvency Amendment) Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme, is intended to give effect to outstanding Programme for Government commitments on rights of workers as creditors, trading entities splitting operations and transactional avoidance.

10.11 **Miscellaneous Provisions (Transparency and Registration of Limited Partnerships and Business Names) Bill 2023**

This Bill, which is included in the Spring 2023 Government Legislation Programme, is intended to reform the Limited Partnerships Act 1907 and the Registration of Business Names Act 1963 in order to strengthen Ireland’s regulatory framework and to respond to concerns raised in relation to the transparency of limited partnerships. The Heads of Bill are in preparation.

10.12 **Co-Operative Societies Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme, is intended to consolidate and modernise the existing Industrial and Provident Societies legislation and to ensure that an effective legislative framework suitable for the diverse range of organisations using the co-operative model in Ireland is in place. The General Scheme of the Bill was published in November 2022.

**EU Instruments:**

10.13 **Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies and related measures**

This Directive aims to increase the representation of women among directors of listed companies and improve gender balance in their decision-making process. The Directive entered into force on 27 December 2022 and has a transposition deadline of 28 December 2024. The Directive applies to any company with a registered office in the EU and the shares of which are admitted to trading on an EU-regulated market, and does not apply to SMEs.

Member States must subject listed companies either to the objective of having, by 30 June 2026, boards on which members of the under-represented sex hold at least 40% of non-executive director positions, or 33% of all director positions (including both executive and non-executive). Listed companies which do not achieve these objectives will have to adjust their selection process for appointment or election to director positions. Clear, neutrally formulated and unambiguous criteria will have to be applied in a non-discriminatory manner throughout the entire selection process. There will be an element of positive discrimination: when choosing between candidates that are equally qualified in terms of suitability, competence and professional performance, priority will have to be given to the candidate of the under-represented sex unless there are reasons of greater legal weight such as the pursuit of other diversity policies.

Under the Directive, upon the request of a candidate during selection for appointment as a director, listed companies will have to inform the candidate of the qualification criteria that are being applied, the objective comparative assessment of the candidates and, where relevant, specific considerations that tip the balance in favour of a candidate who is not of the under-represented sex.

10.14 **Corporate Sustainability Reporting Directive<sup>75</sup>**

The Corporate Sustainability Reporting Directive (“CSRD”) will amend the current reporting regime under the Non-Financial Reporting Directive<sup>76</sup> (“NFRD”) in order to expand the scope of reporting companies and introduce more detailed reporting requirements for sustainability issues such as environment, social and governance (“ESG”), human rights considerations, employee-related matters and anti-corruption and anti-bribery matters.

The new sustainability reporting requirements will apply to all “large companies” (under section 280H of the Companies Act 2014) and to all companies any of the debt or equity securities of which are listed on an EU-regulated market except listed micro undertakings, as well as non-EU

<sup>75</sup> Directive (EU) 2022/2464 as regards corporate sustainability reporting.

<sup>76</sup> Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

companies where they have at least one EU subsidiary or branch and meet certain turnover thresholds.

The CSRD will oblige in-scope companies to disclose information on societal and environment impacts of their operation and connected with their value chain, along with their business model, strategy and policy incorporating sustainability. The information reported will have to conform to European Sustainability Reporting Standards that are to be adopted by way of delegated acts to increase consistency and comparability. Such information will have to be certified by an accredited independent auditor or certifier and published in company management reports.

The CSRD will apply on a phased basis:

- reporting in 2025, on the financial year 2024, for large public-interest companies (with over 500 employees) that are already subject to the NFRD;
- reporting in 2026, on the financial year 2025, for companies that are not currently subject to the NFRD (with more than 250 employees and / or €40 million in turnover and / or €20m in total assets);
- reporting in 2027, on the financial year 2026, for listed SMEs except micro undertakings, small and non-complex credit institutions and captive insurance undertakings. An opt-out will be possible for in-scope SMEs for the first two years; and
- reporting in 2029, on the financial year 2028, for in-scope third-country undertakings.

On 30 January 2023, the Department of Enterprise, Trade and Employment issued a public consultation on the Member State options contained within the CSRD ahead of its transposition into Irish law. Submissions are requested no later than 9 March 2023.

### ***Anticipated Developments (EU):***

#### **10.15 Proposal for a Directive on corporate sustainability due diligence<sup>77</sup>**

The European Commission and the Council of the EU have adopted their texts for negotiations on the proposed Corporate Sustainability Due Diligence Directive as of 1 December 2022. The Parliament is expected to adopt its position in the first half of 2023.

The proposed Directive would impose a due diligence duty on large companies to identify – and, where necessary, prevent, end or mitigate – adverse impacts on human rights and on the environment, with respect to of their own activities, those of their subsidiaries and those carried out by their business partners in the value chain. It also requires certain larger in-scope companies to adopt plans to ensure that their business model and strategy are compatible with the Paris Agreement’s objectives in limiting global warming.

The proposal would require directors to set up and oversee the implementation of due diligence systems and to integrate due diligence into corporate strategy. Directors will also be required take into account the human rights, climate change and environmental consequences of their decisions while fulfilling their duty to act in what each director considers to be the interests of the company. The Directive would impose penalties and civil liabilities for violating the obligations that it would create.

This proposed Directive will first apply to large EU limited liability companies and to non-EU companies that meet certain employee headcount and turnover thresholds. Two year later, the rules would apply to companies in high-impact sectors such as textiles, agriculture and mineral extraction which would be subject to lower employee and turnover thresholds.

<sup>77</sup> Proposal for a Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937.

**10.16 Proposal for a Directive to further expand and upgrade the use of digital tools and processes in company law**

This proposed Directive is included as a new initiative for Q1 2023 in the 2023 European Commission Work Programme. This company law initiative aims to improve the transparency of EU companies by making more information available on a cross-border basis, enable cross-border use of trustworthy company data and further modernise EU company law rules in a digital context.

**11. Commercial Law**

***Anticipated Developments (Ireland):***

**11.1 Screening of Third-Country Transactions Bill 2022**

This Bill is intended to give further effect to the directly-applicable Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the EU, and to refine the application of the Regulation by applying aspects of national policy. The Bill has completed Dáil Committee Stage. In the face of many comments and submissions that it received in respect of the Bill as it was initiated, the Department revisited aspects of it and on 25 January 2023 the Bill was amended by the Select Committee on Enterprise, Trade and Employment.

The Bill proposes to develop an “Investment Screening Mechanism” which will empower the Minister for Enterprise, Trade and Employment to respond to perceived threats to Ireland’s security and public order that may be posed by particular types and sources of foreign investment, and to prevent or mitigate such threats. The amendments at Committee stage have focussed on the definitions of “acquire”, “control”, “transaction”; on when a person is to be regarded as exercising (decisive) control of an asset or of an undertaking; on the deletion of references to “indirect” in the application of the Bill to relevant assets, undertakings and transactions; and by connecting relevant transactions more closely to the matters that the EU Regulation addresses.

As it stands currently (having been amended in Committee Stage), the Bill provides for:

- a notification requirement for transactions with a value greater than €2m, involving a third country party (or connected person) and which would result in a change in control of an asset in the State or in the third country party acquiring all or part of, or any interest in, an undertaking in the State, and which would relate to, or impact upon, any of the matters that the EU Regulation prescribes<sup>78</sup>;
- the conferral on the Minister of a power to review a transaction even if no notification is required, at any time up to 15 months after the transaction is completed and up to 15 months before the Bill comes into force as an Act (but subject to (a) in the case of a non-notified notifiable transaction, the later of a long-stop date of five years after the transaction is completed or six months after the Minister has become aware of it, and (b) in the case of a non-notifiable transaction, 15 months after the transaction is completed);
- the conferral of a power on the Minister, to be exercised in the interests of state security or public order, to either prohibit the completion of a transaction, or to unwind an in-scope completed transaction, or to permit the completion of a transaction but subject to conditions that the Minister may specify;
- a requirement that the Minister must normally complete a screening decision in 90 days (135 days if the Minister has sought further information); and

<sup>78</sup> These are “(a) critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure; (b) critical technologies and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No 428/2009, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies; (c) supply of critical inputs, including energy or raw materials, as well as food security; (d) access to sensitive information, including personal data, or the ability to control such information; [and] (e) the freedom and pluralism of the media.”

- an appeal process which will establish a panel of persons to adjudicate in respect of a decision of the Minister, with due regard to the potentially sensitive subject-matter. An appeal will lie to the High Court from the decision of an adjudicator.

#### 11.2 **Control of Exports Bill**

This Bill, which is included in the Spring 2023 Government Legislative Programme for priority publication, is intended to repeal and replace the Control of Exports Act 2008 and to ensure that Ireland has a comprehensive and robust framework for regulating the export of controlled goods, principally “dual use” and “military” items. In August 2020 the Government approved the Heads of Bill and pre-legislative scrutiny has taken place.

#### 11.3 **Industrial Development (Miscellaneous Provisions) Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme, is intended to permit the Industrial Development Agency Ireland to establish and participate in corporate partnerships, with the sole purpose of developing critical industrial and commercial property in regional locations. The revised Heads of Bill are in preparation.

### ***EU Instruments:***

#### 11.4 **Council Directive (EU) 2022/890 of 3 June 2022 amending Directive 2006/112/EC as regards the extension of the application period of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud**

Council Directive 2006/112/EC provides for Member States to use, on an optional basis, the reverse charge mechanism (RCM) for the payment of VAT on supplies of pre-defined goods and services that are susceptible to fraud, in particular, Missing Trader Intra-Community (MTIC) fraud. That Directive also provides for the Quick Reaction Mechanism (QRM) special measure, which offers Member States, under certain strict conditions, a faster procedure that allows for the introduction of the RCM, resulting in a more adequate and effective response to sudden and massive fraud. The application period for both mechanisms is extended from 30 June 2022 to 31 December 2026.

## **12. Consumer Law**

### ***Acts of the Oireachtas:***

#### 12.1 **Circular Economy and Miscellaneous Provisions Act 2022**

This Act, only some provisions of which have been commenced<sup>79</sup>, places an existing Government circular economy strategy on a statutory footing. For these purposes, “circular economy” means “an economic model and the policies and practices which give effect to that model in which: (a) production and distribution processes in respect of goods, products and materials are designed so as to minimise the consumption of raw materials associated with the production and use of those goods, products and materials, (b) the delivery of services is designed so as to reduce the consumption of raw materials, (c) goods, products and materials are kept in use for as long as possible thereby further reducing the consumption of raw materials and impacts harmful to the environment, (d) the maximum economic value is extracted from goods, products, and materials by the persons using them, and (e) goods, products and materials are recovered and regenerated at the end of their useful life;...”

The strategy set out the first high-level steps for the transition to the circular economy but it is intended that subsequent iterations will feature increasingly detailed and ambitious targets. The strategy will set out targets in respect of construction and retail, among other areas. The targets to be set out in respect of any particular sector of the economy must include some or all of the following: • reductions in material resource consumption and the use of non-recyclable materials; • increases in the use of re-usable products and materials; • increased levels of repair

<sup>79</sup> The Circular Economy and Miscellaneous Provisions Act 2022 (Commencement of Certain Provisions) Order 2022 (SI 420 of 2022) commences Part 1 of the Act (other than section 5) and Part 6.



and re-use of products and materials; and • improved maintenance and optimised use of goods, products and materials.

Where the Minister has set targets for a sector, they must also promote the entering into by sector participants of voluntary sectoral agreements in respect of those targets. In addition, the existing Environment Fund is to be re-designated as the Circular Economy Fund with the objectives more closely aligned with the promotion of the circular economy. The Act also introduces a number of other measures in relation to waste management: • a mandatory segregation and incentivised charging regime for commercial waste, similar to what currently exists for the household market; • new powers to include additional requirements in the permits held by waste collectors; • requiring local authority waste management plans to include targets related to reuse and repair and introducing a new waste recovery levy to apply to waste sent for recovery, such as heat-to-energy, in Ireland or abroad; and • allowing for the regulation of end-of-waste and by-product notifications to the EPA and determinations or decisions following such notifications (intended to streamline the process, cut delays for industry and support the availability of recycled secondary raw materials in the Irish market).

Sections 1-4 (Preliminary and General) and section 41 (Amendment of the Environmental Protection Agency Act 1992) commenced on 23 August 2022 while section 42 (Amendment of the Electricity Regulation Act 1999) commenced upon enactment. All other provisions of the Act are yet to be commenced.

## 12.2 Consumer Rights Act 2022

The Consumer Rights Act 2022 gives effect to Directive (EU) 2019/770 on consumer contracts for the supply of digital content and digital service and to Directive (EU) 2019/771 concerning aspects of consumer contracts for the sale of goods. Other than section 161 (which provides for a right to consumers to price reduction or termination of a contract where a trader has carried out prohibited acts or practices), the Act came into operation on 29 November 2022<sup>80</sup>.

For the purposes of the Act:

- a “consumer” means an individual who is acting for purposes that are “wholly or mainly outside the person’s trade, business, craft or profession.” The “wholly or mainly” requirement is new and is designed to clarify dual-purpose contract situations (*ie* where the contract is concluded for purposes partly within and partly outside the person’s trade, and the trade purposes is not predominant, such that the person should still be considered to be a consumer); and
- a “trader” means a natural person, or a legal person<sup>81</sup> (such as a company) who is acting for purposes relating to the person’s trade, business, craft or profession, and includes any person acting in the name, or on behalf, of the trader.

The Act is large and – for a consumer enactment – complex. For two principal reasons, the law in force immediately prior to the commencement of the Act on 29 November 2022 remains relevant: • the Act applies only to in-scope contracts that are entered into from 29 November 2022 (so that there will remain a ‘tail’ of consumer contracts that are outside the Act); and • the Act applies only to B2C (trader-to-consumer) contracts: the Act does not have any application to B2B / other non-consumer contracts (the law in respect of which will largely be unaffected).

Most provisions of the Act are complementary to each other and apply in combination with each other: few Parts of the Act are mutually exclusive. In this way, for example, provisions regulating distance contracts also apply to a sales contract in respect of goods, where that contract is concluded by distance means. It also is likely that the same contract will also be subject to the general provisions regulating the inclusion of unfair terms, etc.

<sup>80</sup> SI 596 of 2022.

<sup>81</sup> Whether that legal person is owned privately or publicly or is owned partly privately and partly publicly.

The Act tackles areas where consumers are particularly vulnerable with a strong focus on regulating terms and conditions as well as the online shopping environment. Traders are banned from using certain ‘black list’ unfair terms and are warned that other ‘grey list’ terms can only be used in limited circumstances. In the online environment, the Act specifically outlaws fake reviews and places a legal obligation on traders to ensure that any reviews on their website are from real and verified consumers. Particular care will be required to ensure that pre-contractual advertising, in whatever form, is honest, accurate and not misleading. Practices used to attract consumers, for example, customer product reviews, must be real.

The Act not merely consolidates, but also significantly enhances and modernises, many consumer protection laws and aligns them more closely with rules applying across the EU. Consumer protections are extended to digital goods and services so that consumers are protected when they use cloud-based services or buy downloadable or streamed goods and services, such as games, films, music and software.

Contracts governing the supply of digital content or digital services to consumers (*eg* governing downloads, streaming, cloud-based services, etc) are subject to new legislative obligations and provisions that will be deemed to form part of the relevant contract (without an ability to exclude or override them). These requirements will apply generally to such contracts, subject to limited exceptions (such as where the contract is for the supply of gambling or financial services). The trader will be required to supply the digital content or digital services in conformity with the relevant contract, with the consumer becoming entitled to various remedies if the trader fails to do this. Notably, traders will also be prohibited from using content that was provided or created by the consumer under the contract, subject to limited exceptions.

For the sale of goods (only one part of what the Act addresses), the Act creates a new regime to replace the Sale of Goods Act 1893 with updated and more extensive requirements (recall that the 1893 Act continues to apply to relevant contracts that existed when the Act came into force). Where a sales contract is concluded between a trader and a consumer, the trader must deliver goods that are in conformity with the contract at the relevant time. To be in conformity, the goods must comply with sections 16 to 19, where applicable. Otherwise, the consumer has the right to the remedies specified in Chapter 3 of Part 2. Conformity is to be assessed according to objective requirements (which will always apply) and subjective requirements (which will be unique to the interaction between the consumer and the trader).

The Act sets out a regime for how faulty goods and services must be repaired or replaced. After-sale obligations on traders have increased: for example, consumers must be informed of and supplied with updates that are necessary to maintain the goods in conformity with the original sales contract.

The Act overhauls consumer protections in relation to contracts for the supply of services, bringing them into line with contracts for the supply of goods (such as in respect of reasonable fitness of a service for the intended purpose). Importantly, there is a new prohibition (which includes provision of criminal liability of a trader) on contractual terms that exclude or limit the liability of the “trader” under the relevant provisions of the Act.

There also are new powers for the Competition and Consumer Protection Commission (the “CCPC”)<sup>82</sup> to act where traders do not comply with the new law. These increased enforcement powers include increased penalties, for particular breaches of the laws, of up to 4% of turnover in the relevant Member State(s), or up to a maximum of €2m.

It may be necessary for traders to adjust contractual terms and conditions in order to comply with the Act. Particular emphasis will be required to avoid the use of unfair terms and any statements that might suggest a consumer’s rights are being unlawfully restricted (as well as being unenforceable against the consumer, the restriction could also lead to a criminal prosecution of the trader and, where relevant, directors and officers of a body corporate).

<sup>82</sup> This is part of a wider enhancement of the consumer-related powers of the CCPC, including to under EU Directive 2020/1828 on representative actions for the protection of the collective interests of consumers.

Part 7 of the Act sets out the criminal enforcement powers and penalties in respect of offences provided for in the Act.

In relation to the prosecution of summary offences, the CCPC has enforcement functions generally across the Act. Other regulators have enforcement functions in specific areas. For example, the Central Bank and Comreg both have an enforcement role under Parts 4 and 6<sup>83</sup> in respect of an offence relating to a function that is exercisable by either of them. ComReg also has an enforcement role in respect of Part 5 offences.<sup>84</sup>

Section 10 of the Communications Regulation Act 2002 which deals with ComReg's functions has been amended to ensure that it can carry out the functions now assigned to it under the new legislation.

Most of the offences are aimed at "traders". This term is defined in section 2. It includes a natural person, or a legal person who is acting for purposes relating to the person's trade, business, craft or profession. It includes any person acting in the name, or on behalf, of the trader. A legal person can be privately or publically owned, or both.

In addition, under section 143 where an offence is committed by a body corporate and this was done with the consent, connivance or approval of an officer of that body or someone acting in that capacity, or can be attributed to any wilful neglect by them, that person also commits an offence and can be prosecuted and punished as if they were guilty of the original offence. There is a similar provision in relation to the members of a body corporate where it is managed by its members.

A defendant will be successfully defend a prosecution under the Act if it can prove that it exercised due diligence and took all reasonable precautions to avoid the commission of the offence. That is a two-step test.

On conviction on indictment for an offence under the Act, the maximum penalty is €60,000 or imprisonment for up to 18 months or to both.<sup>85</sup>

If the offence in question is a Part 5 or Part 6 offence, there are, what are termed "indicative and non-exhaustive criteria" that the court must take into account if applicable in relation to determining what penalty to impose. These are:

- (a) the nature, gravity, scale and duration of the infringement;
- (b) any action taken by the person to mitigate or remedy the damage suffered by consumers;
- (c) any previous infringements of the provisions of any of those Parts by that person;
- (d) the financial benefits gained or losses avoided by the person due to the infringement, if the relevant data are available;
- (e) any penalties imposed on the person for the same infringement in other Member States in cross-border cases where that information is available;
- (f) any other aggravating or mitigating factors applicable in the circumstances of the case.

Mutual assistance mechanisms and coordinated actions mechanisms were established by Regulation (EU) 2017/2394. This regulation deals with cooperation between Member State national authorities on consumer protection law and allows for the exchange of information. It is by virtue of this legislation that the court will know about penalties imposed by other Member States in cross-border cases.

<sup>83</sup> Part 4 deals with service contracts and Part 6 deals with unfair terms in consumer contracts.

<sup>84</sup> Part 5 deals with consumer information, cancellation and other rights.

<sup>85</sup> Section 142(1).

If a person is convicted of an offence under the Act, in addition to any penalty that the court may impose, they will most likely be also liable for the costs and expenses of the proceedings and the underlying investigation. This is because under section 145 on convicting a person of an offence under the Act, the court shall, unless satisfied that there are special and substantial reasons for not so doing, order the person to pay to the relevant authority; the costs and expenses, measured by the court, incurred by that authority in relation to the investigation, detection and prosecution of the offence. Section 145(2) expressly states that an order for these costs and expenses is in addition to and not instead of any fine or penalty the court may impose.

In addition, under section 146, if a trader is convicted of an offence under the Act, the relevant authority that brought the proceedings can apply to court on behalf of an aggrieved consumer for a compensation order. This requires the trader to pay an appropriate amount of compensation to that consumer in respect of the damage sustained by them as a result of the offence. The consumer must consent to this application being brought on their behalf. A compensation order may be instead of or in addition to any penalty the court may impose itself. The court decides what is appropriate compensation having regard to the evidence and to any submissions made by the trader concerned, the aggrieved consumer and the prosecutor. The compensation cannot exceed the amount set by law as the limit of the court's jurisdiction in tort.

It also cannot exceed the amount of the damages that, in the opinion of the court, the aggrieved consumer would be entitled to recover if they brought a civil action in respect of the issue. If they have brought such a civil action, then the compensation order will not be made as there shouldn't be any double recovery by the consumer. If the consumer gets a compensation order and then tries to bring a civil action in respect of the same issue, any damages there will be reduced by reference to the amount already awarded as compensation.

If a compensation order is made, the court can specify the time for payment but if it does not, the trader has 30 days to pay. If the trader does not pay in time, then the consumer can enter judgment in court for that amount. That judgment is enforceable against the trader as if it was a court judgment given in civil proceedings.

In addition to laying out dedicated offences and penalties under the Act itself, the Act also amends the European Union (Cooperation Between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2020. When amended, these Regulations will specify that, where (i) an offence is committed under Parts 5 or 6 of the Act or certain provisions of the Consumer Protection Act 2007 and (ii) this also constitutes an intra-EU or relevant widespread infringement under those Regulations, then fines can be imposed of up to 4% of relevant turnover or €2 million, depending on the circumstances. In deciding what level of penalty to impose, again the court can take into account the "indicative and non-exhaustive criteria" mentioned above.

This change implements Directive (EU) 2019/2161 which deals with the better enforcement and modernisation of Union consumer protection rules. It is also known as the Omnibus Directive.

### ***Statutory Instruments:***

#### **12.3 European Union (Requirements to Indicate Product Prices) (Amendment) Regulations 2022<sup>86</sup>**

These Regulations, from 28 November 2022, amend the European Communities (Requirements to Indicate Product Prices) Regulation 2002. They oblige a trader to indicate the prior price applied in any announcement (promotional statement) of a price reduction of a product during a period of not less than 30 days before the application of the reduction in price. Breach of the obligation is an offence.

<sup>86</sup> SI 597 of 2022.

## 13. Data Protection and Information Society

### **Statutory Instruments:**

#### 13.1 **Data Protection Act 2018 (Access Modification) (Health) Regulations 2022**<sup>87</sup>

These Regulations regulate subject access to health data where the application of that right would be likely to cause serious harm to the physical or mental health of the data subject, but only to the extent to which, and only for as long as, such application would be likely to cause such harm.

#### 13.2 **Health Identifiers**

The Health Identifiers Act 2014 provides for assignment of a unique number to an individual to whom a health service is being, has been or may be provided and for the assignment of a unique number to a person who provides a health service. The 2014 Act also provides for the establishment and maintenance of registers in respect of such numbers and other particulars of the individuals and other persons to whom the numbers are assigned, consistent with privacy and data protection, and provides for the processing of such data.

Following the commencement of relevant provisions of the 2014 Act in 2022<sup>88</sup>, statutory instruments in 2022 designated the HSE, the National Treatment Purchase Fund and relevant health practitioners as “health service providers” for the purposes of the 2014 Act<sup>89</sup> and prescribed the additional categories of information that may be held and processed for these purposes, in addition to those in the definition of “other identifying particulars in section 2(1) of the 2014 Act<sup>90</sup>.

#### 13.3 **Data Protection Act 2018 (Section 60(6)) (Office of the Ombudsman) Regulations 2022**<sup>91</sup>

#### 13.4 **Data Protection Act 2018 (Section 60(6)) (Irish Auditing and Accounting Supervisory Authority) Regulations 2022**<sup>92</sup>

#### 13.5 **Data Protection Act 2018 (Section 60(6)) (Corporate Enforcement Authority) Regulations 2022**<sup>93</sup>

#### 13.6 **Data Protection Act 2018 (Section 60(6)) (Competition and Consumer Protection Commission) Regulations 2022**<sup>94</sup>

These Regulations each provide in a similar manner for restrictions on the rights and obligations that are provided for in Articles 12 to 22 and in Article 34, and in Article 5 (insofar as any of its provisions correspond to the rights and obligations in Articles 12 to 22), of the GDPR, in respect of processing of personal data by the relevant public authority (in performance of its functions) to which a particular set of Regulations applies.

### **Statutory Instruments (Commencement Orders):**

#### 13.7 **Data Sharing and Governance Act 2019 (Commencement of Certain Provisions) Order 2022**<sup>95</sup>

The Data Sharing and Governance Act 2019 (Commencement of Certain Provisions) Order 2021<sup>96</sup> (made on 7 July 2021) provided that all then-not-yet-commenced provisions of the Data Sharing and Governance Act 2019 (other than subsections 6(2) and 6(3)) were to come into operation on 7 July 2021 and that subsections 6(2) and 6(3) were to come into operation on 31 March 2022.

<sup>87</sup> SI 121 of 2022.

<sup>88</sup> Health Identifiers Act 2014 (Commencement) Order 2022 (SI 154 of 2022).

<sup>89</sup> Health Identifiers Act 2014 (Health Service Providers) Regulations 2022 (SI 156 of 2022).

<sup>90</sup> Health Identifiers Act 2014 (Other Identifying Particulars) Regulations 2022 (SI 155 of 2022).

<sup>91</sup> SI 221 of 2022.

<sup>92</sup> SI 601 of 2022.

<sup>93</sup> SI 602 of 2022.

<sup>94</sup> SI 603 of 2022.

<sup>95</sup> SI 137 of 2022.

<sup>96</sup> SI 332 of 2021.

This Order (made on 23 March 2022) amends the 2021 Order to adjust that commencement date for subsections 6(2) and 6(3) to 16 December 2022.

Subsections 6(2) and 6(3) of the Data Sharing and Governance Act 2019 provide that necessity and proportionality assessments by the Data Protection Commission for data processing in public interest or in exercise of official authority will not apply to the disclosure of information by one public body to another.

**13.8 Civil Law (Miscellaneous Provisions) Act 2022 (Parts 1, 4, 5 and 8) (Commencement) Order 2022<sup>97</sup>**

This Order appoints 22 July 2022 as the day on which Parts 1, 4, 5 and 8 of the Civil Law (Miscellaneous Provisions) Act 2022 shall come into operation.

Part 5, Civil Law (Miscellaneous Provision) Act 2022 provides for the collection and processing of personal data by relevant officers for relevant immigration enactments and social welfare enactments in accordance with the GDPR and Data Protection Act 2018.

***Anticipated Developments (Ireland):***

**13.9 Cyber-Security Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme, proposes to establish the National Centre for Cyber-Security on a statutory basis and to specify its mandate, role and powers.

**13.10 Cybercrime Bill**

This long-proposed Bill, which has been maintained in the Spring 2023 Government Legislation Programme, proposes to give effect to those provisions of the Council of Europe Convention on Cybercrime 2001 that have not already been provided for in national law, in order to enable ratification of the Convention.

**13.11 Independent Commission on Information Retrieval Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme, proposes to establish the cross-border Independent Commission on Information Retrieval in Irish law as part of the Government's obligations under the 2014 Stormont House Agreement. The Heads of Bill are in preparation.

***EU Instruments:***

**13.12 Commission Implementing Regulation (EU) 2022/1862 establishing the lists of reserved and blocked domain names under the .eu top-level domain in accordance with Regulation (EU) 2019/517**

This Regulation, which entered into force on 13 October 2022, adopts lists of reserved and blocked domain names notified to the European Commission by Member States under Regulation (EU) 2019/517 on the implementation and functioning of the .eu top-level domain name.

**13.13 NIS 2 Directive<sup>98</sup>**

This Directive lays down measures that aim to achieve a high common level of cybersecurity across the Union to improve functioning of the internal market. The transposition deadline for this Directive is 17 October 2024 and measures should apply from 18 October 2024.

The Directive imposes cybersecurity risk-management and reporting obligations on certain entities, including those identified as critical entities from sectors such as energy, transport, health and banking. Member States are required to adopt national cybersecurity strategies and to designate or establish competent authorities, cyber crisis management authorities, single points of contact on cybersecurity and computer security incident response teams; supervisory

<sup>97</sup> SI 370 of 2022.

<sup>98</sup> Directive (EU) 2022/2555 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148.

and enforcement obligations on Member States; and rules and obligations on cybersecurity information sharing.

### ***Anticipated Developments (EU):***

#### **13.14 Proposal for an EU “E-Privacy Regulation”<sup>99</sup>**

The existing EU e-Privacy Directive (Directive 2002/58/EC) is intended to be updated and replaced by a new EU E-Privacy Regulation. As of yet, the E-Privacy Regulation has not been finalised and there is no clear date on which it is expected to be finalised. The proposed E-Privacy Regulation is listed as a priority pending proposal on the Commission’s 2023 work programme.

The scope of the E-Privacy Regulation will encompass electronic communications content and metadata of natural persons and legal entities, which is broader than the GDPR, which only applies to personal data. The scope will also extend to new forms of communication and technologies such as ‘over-the-top’ services (such as instant messaging applications, email services and machine-to-machine transmissions). Rules on the use of cookies and direct marketing will also be revised.

#### **13.15 Proposal for an EU “Data Act”<sup>100</sup>**

Published in February 2022, the proposed Data Act proposes to establish a harmonised legal framework for industrial, non-personal data sharing in the EU. The proposal is currently undergoing inter-institutional negotiations within the European Council and the European Parliament. The proposed Data Act will make more data available for use and provide for rules on who can access what data and how, across all economic sectors within the EU.

## **14. Education**

### ***Acts of the Oireachtas:***

#### **14.1 Higher Education Authority Act 2022**

This Act repeals and replaces the Higher Education Authority Act 1971 and amends a series of enactments pertaining to the governance of designated higher education institutions. It provides for changes to the functions and governance of An tÚdarás um Ard-Oideachas which oversees designated institutions of higher education. Under the Act, the Minister is to prepare a strategy for tertiary education. The funding and accountability mechanism of An tÚdarás requires the preparation and adoption of a corporate plan that gives effect to that strategy. An tÚdarás must also prepare and submit to the Minister for approval a draft strategic action plan providing for equity of access, participation and promotion of success in higher education. The Act also provides for the designation and removal of designation of higher education providers as designated institutions, the composition of governing bodies of which has also been amended.

#### **14.2 Education (Provision in Respect of Children with Special Needs) Act 2022**

This Act, in force since 25 July 2022<sup>101</sup>, makes provision in respect of children with special educational needs. It obliges patrons and boards of management of schools to co-operate with the National Council for Special Education in the performance by the Council of its functions under the Education for Persons with Special Educational Needs Act 2004 relating to the provision of education to children with special educational needs. This co-operation includes, in particular, the provision and operation of a special class or classes when requested to do so by the Council. The Act also empowers the Minister for Education to give directions relating to provision for education for children with special educational needs and to provide for compliance with such directions.

<sup>99</sup> Proposal for a Regulation concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (“Regulation on Privacy and Electronic Communications”).

<sup>100</sup> Proposal for a Regulation on harmonised rules on fair access to and use of data (“Data Act”).

<sup>101</sup> Education (Provision in Respect of Children with Special Educational Needs) Act 2022 (Commencement) Order 2022 (SI 382 of 2022).

### **Statutory Instruments:**

- 14.3 **Trinity College, Dublin (Supplemental Charter) Order 2022**<sup>102</sup>  
This Government Order recognises and gives effect to a proposed supplement to the Royal Charter and Letters Patent of TCD in order to ensure greater diversity in, and equality among, the members of the Board of the College and “to ensure that such membership is broadly reflective of the composition of Irish society...”
- 14.4 **Technological Universities Act 2018 (Section 36) (Appointed Day) Order 2022**<sup>103</sup>  
This Order provides for the reconstitution of Galway-Mayo Institute of Technology, Letterkenny Institute of Technology and Institute of Technology, Sligo as Atlantic Technological University / Ollscoil Teicneolaíochta an Atlantaigh.
- 14.5 **Technological Universities Act 2018 (Section 36) (Appointed Day) (No 2) Order 2022**<sup>104</sup>  
This Order provides for the reconstitution of Waterford Institute of Technology and Institute of Technology, Carlow as South East Technological University / Ollscoil Teicneolaíochta an Airdheiscirt.
- 14.6 **Education Act 1998 (Unregistered Persons) (Amendment) Regulations 2022**<sup>105</sup>  
These Regulations permit the payment, out of Department of Education funds, of certain student teachers who meet prescribed criteria.
- 14.7 **Education Act 1998 (Composition of National Council for Curriculum and Assessment) Order 2022**<sup>106</sup>  
These Regulations prescribe the membership of the National Council for Curriculum and Assessment.
- 14.8 **Student Grant Scheme 2022**<sup>107</sup>  
This Scheme applies in relation to the provision of grants to students in the 2022/23 academic year, where such year begins on or after 1 September 2022. It provides for the payment of maintenance grants, fee grants and postgraduate fee contributions.
- 14.9 **Student Grant (Amendment) Scheme 2022**<sup>108</sup>  
This statutory instrument amends the 2022 Scheme in order to increase many of the relevant grants and contributions.
- 14.10 **Student Grant (Amendment) (No 2) Scheme 2022**<sup>109</sup>  
This statutory instrument further amends the 2022 Scheme in order to increase many of the maintenance grants payable under that Scheme.
- 14.11 **Student Support Regulations 2022**<sup>110</sup>  
These Regulations prescribe “approved institutions”, “approved courses” and “classes of persons” for the purposes of the Student Support Act 2011.

<sup>102</sup> SI 587 of 2022.

<sup>103</sup> SI 56 of 2022.

<sup>104</sup> SI 175 of 2022.

<sup>105</sup> SI 68 of 2022.

<sup>106</sup> SI 206 of 2022.

<sup>107</sup> SI 118 of 2022.

<sup>108</sup> SI 579 of 2022.

<sup>109</sup> SI 655 of 2022.

<sup>110</sup> SI 119 of 2022.



### ***Anticipated Developments (Ireland):***

#### **14.12 Education (Miscellaneous Provisions) Bill**

It is proposed that this Bill will make “technical amendments” to education legislation.

#### **14.13 Education (Student and Parent Charter) Bill 2019**

This Bill proposes to require the boards of management of schools to prepare, publish and implement charters for students and parents and to empower the Minister to make guidelines in accordance with which charters must be prepared, published and implemented. The Minister would also be empowered to direct a board of management in respect of such a charter.

### **15. Employment**

#### ***Acts of the Oireachtas:***

#### **15.1 Redundancy Payments (Amendment) Act 2022**

The Act amends the Redundancy Payments Act 1967 to make provision for payment of an additional sum from the Social Insurance Fund to an employee who is made redundant by 31 January 2025 and whose redundancy lump sum is reduced by virtue of a period of lay-off between 13 March 2020 and 31 January 2022 as a result of Covid-19 related restrictions. The amount of that additional sum is equal to the difference between the actual lump sum due to the person on redundancy and the amount to which they would have been entitled but for the relevant period of lay-off.

#### **15.2 Payment of Wages (Amendment) (Tips and Gratuities) Act 2022**

This Act amends the Payment of Wages Act 1991 to introduce new rules as to how certain employers should share tips, gratuities and service charges amongst their staff. The Minister is given various powers to make regulations in relation to the application of the new rules or aspects thereof.<sup>111</sup>

Employees in scope are entitled to receive electronic tips and gratuities (“tips”) and they must be distributed in a fair manner.<sup>112</sup> As a general rule, an employer cannot retain any share of electronic tips. However, in certain circumstances a fair amount may be deducted e.g. where the employer regularly performs the same work as the employee(s) to a substantial degree or to cover bank charges for the use of electronic modes of tipping.

Any charge called a “service charge” or anything that would lead a customer to believe it is a charge for service, whether received electronically or by any other means, will have to be distributed to staff as if it were a tip received by electronic means. Breach of this obligation is a criminal offence.

In the event of a complaint under the Workplace Relations Act 2015, the Act sets out a list of factors to be taken into account when considering whether a distribution of tips is fair e.g. seniority or experience of the employee or the value of income that they generate for the business.

The employer must provide ongoing statements to employees showing the amount of tips obtained in a period and the portion paid to the individual employee for that particular period. Breach of this obligation is a criminal offence.

An employer must consult with employees before establishing or making a material change to its policy on the way in which tips are distributed amongst employees, or on the way in which mandatory charges will be treated. However, employee consent is not required.

<sup>111</sup> See Payment of Wages Act 1991 (Application of Sections 4B to 4F) Regulations 2022 (SI 544 of 2022).

<sup>112</sup> While employers are required to set out their policy on cash tips, such tips are outside this provision.

Employers must also clearly display their policy on how tips and service charges are distributed. Those who use contract workers to deliver services will be required to display an equivalent notice for them.<sup>113</sup> Breach of these obligations is a criminal offence.

An employer must now also include its policy regarding the distribution of tips and service charges in the employee's core terms and conditions of employment within 5 days of commencing employment. Employers cannot use tips and gratuities to "make up" contractual rates of pay and cannot make a deduction from a person's wage in relation to tips and gratuities.

The legislation will be reviewed after one year to assess its effectiveness and decide if further measures are needed.

### 15.3 **Sick Leave Act 2022**

The Act introduces a statutory right to sick pay for up to 3 sick leave days. The Minister can vary the number of days upwards by regulations. The Minister must take a variety of factors into account when doing so, for example, the state of the economy and society generally and the views of employers. The Minister cannot increase the statutory entitlement by more than 3 days in any one set of regulations. The Minister cannot increase the statutory entitlement in the first 12 months following the commencement of the relevant provision of the Act and cannot make more than one set of regulations in any 12-month period. The Minister can also prescribe the daily rate of sick pay.<sup>114</sup>

To avail of statutory sick pay, an employee must have completed 13 weeks continuous service with his or her employer. A medical certificate must be produced by the employee.

The Act does not prevent an employer setting out more favourable provisions on sick pay in a contract of employment and the obligations under the Act will not apply where this is the case. An employee's other employment rights are protected where the employee is availing of statutory sick leave and an employee cannot be penalised for taking this leave.

Employers must retain records of any statutory sick leave days taken by employees. These records must be kept for a period of 4 years. Breach of this obligation is an offence.

The Labour Court may exempt an employer with severe financial difficulties from the application of this Act.

### 15.4 **Protected Disclosures (Amendment) Act 2022**

The Protected Disclosures Act 2014 provides protection against penalisation for workers who raise allegations of "relevant wrongdoing" in the workplace. The 2022 Act amends this 2014 Act and transposes the EU Whistle-blower Directive.<sup>115</sup> It strengthens the protection of whistle-blowers and imposes significant additional new obligations on employers and others who receive protected disclosures.

First, the Act amends the list of relevant wrongdoings which can be the subject of a protected disclosure to include a breach of a broad range of EU measures listed in the Act or conduct that defeats the object or purpose of these measures. These include measures on public procurement, financial services, prevention of money laundering, terrorist financing, product safety and compliance, transport safety, protection of the environment and humans, radiation protection and nuclear safety, food and feed safety and animal health and welfare, public health, consumer protection, protection of data privacy, security of network and information systems, together with acts and omissions which affect the financial interests of the Union or which relate to the internal market.

The Act clarifies that matters concerning "interpersonal grievances exclusively affecting a reporting person" are not relevant wrongdoings which qualify for protection.

<sup>113</sup> See Payment of Wages Act 1991 (Display of Notices) Regulations 2022 (SI 545 of 2022).

<sup>114</sup> See Sick Leave Act 2022 (Prescribed Daily Rate of Payment) Regulations 2022 (SI 607 of 2022).

<sup>115</sup> Directive (EU) 2019/1937.

The Act now provides for anonymous disclosure. Persons who report anonymously are protected if their identity is subsequently revealed and they suffer penalisation. Recipients of anonymous reports are not obliged to accept and follow up on them but can do so if they think this is appropriate.

The new protections will have a broader application than before. In addition to the range of workers already protected by the legislation, shareholders, members of the administrative, management or supervisory body of an undertaking, volunteers and those who acquire information during a recruitment or other pre-contractual process are now brought into scope.

The categories of conduct amounting to “penalisation” are also expanded.

As things stand, a particular procedure is set out in the 2014 Act for making a protected disclosure and invoking the protections of that Act. There is a tiered disclosure regime, started internally and moving out wider.

In relation to internal reporting, new obligations will require all private sector organisations with 250 or more employees to establish formal reporting channels and procedures for the making of protected disclosures. There is detail in the Act as to how these should operate.

From 17 December 2023 this obligation will be expanded to organisations with between 50 and 249 employees. However, certain categories of employer, including those in the public sector and financial services firms must comply immediately with the legislation, regardless of size. Following appropriate risk assessment, the Minister can expand these categories by regulation.

Where an individual decides to report externally, then the report can be made to a prescribed person e.g. a regulator or to the new Office of the Protected Disclosures Commissioner (“Commissioner”) by way of external reporting channels and procedures, which must be put in place. There is detail in the Act as to how these should operate.

An individual who is or was employed by a public body may make a report to a relevant Minister in limited circumstances subject to satisfying certain criteria. This could be where a report has already been made to their employer and the individual “reasonably believes” there has been “inadequate follow-up”. The Minister will transmit the report promptly to the Commissioner.

As regards disclosure through other external channels e.g. the media, the previous requirements that the making of the disclosure is reasonable and not for personal gain have been removed.

The Act establishes the new Office of the Protected Disclosures Commissioner in the Office of the Ombudsman to support the operation of the amended legislation. The Commissioner will direct protected disclosures to the most appropriate body when it is unclear which body is responsible. The Commissioner will also take on responsibility for transmitting all protected disclosures sent to Ministers of the Government to the most appropriate authority for assessment and follow up. Where no other suitable person with the required competence can be identified by the Office of the Protected Disclosures Commissioner, the Commissioner will follow up directly on the report and is given detailed powers here.

Interim relief in respect of penalisation has been widened. The burden of proof in proceedings under the Workplace Relations Act 2015 or in tort for penalisation will be on the other side to prove that the act or omission concerned was unrelated to the making of any protected disclosure.

Compensation for penalisation can be reduced by up to 25 per cent where the investigation of the relevant wrongdoing was not the main motivation for making the disclosure.

A person who suffers damage resulting from a report in which the reporting person knowingly reported false information, has a right of action in tort against the reporting person.

Numerous new offences are contained within the Act including, significantly, hindering or attempting to hinder a worker in making a report; penalising or threatening penalisation (including to related persons or entities); bringing vexatious proceedings; breaching the duty of

confidentiality to reporting persons; and failing to establish, maintain and operate internal reporting channels. Such offences, for which corporate officers may also in certain instances be liable to be prosecuted, may attract significant fines of up to €250,000 and terms of imprisonment of up to two years. It will also be an offence for a person to make a report containing any information that they know to be false.

The Act contains protection for the confidentiality both of the reporting person and any person referred to in a protected disclosure, although this is not absolute. The obligation does not apply, for instance, where disclosure is required by law. The Act will typically require that a reporting person be informed before their identity is disclosed, unless, for instance, such information would jeopardise an investigation.

There are also detailed provisions around data protection and record-keeping. There are also amendments around ministerial guidance for public entities and annual reporting and information and advice measures for the public.<sup>116</sup>

**15.5 Local Government (Maternity Protection and Other Measures for Members of Local Authorities) Act 2022**

This Act amends the Maternity Protection Act 1994 to extend leave entitlements under that Act to members of local authorities. It also amends the Local Government Act 2001 to provide that a casual vacancy in the membership of a local authority does not arise when a member is absent due to taking leave under the Maternity Protection Act 1994. It also permits, in certain circumstances, a person to temporarily take the place of a member who is absent from the local authority for an extended period e.g. because the member is taking maternity leave under the new provisions.

***Statutory Instruments:***

**15.6 Organisation of Working Time (Covid-19 Commemoration) Regulations 2022<sup>117</sup>**

These Regulations appoint 18 March 2022 as a public holiday and further appoint the first Monday of every February to be a public holiday, except where 1 February happens to fall on a Friday, in which case that day will be a public holiday, every year from Monday 6 February 2023 onwards.

**15.7 Irish Human Rights and Equality Commission Act 2014 (Code of Practice on Sexual Harassment and Harassment at Work) Order 2022<sup>118</sup>**

This Order, in effect from 7 March 2022, sets out a Code of Practice on Sexual Harassment and Harassment at Work in the Schedule, and declares it to be an approved code of practice for the purposes of the Irish Human Rights and Equality Commission Act 2014.

**15.8 Irish Human Rights and Equality Commission Act 2014 (Code of Practice on Equal Pay) Order 2022<sup>119</sup>**

This Order, in effect from 7 March 2022, sets out a Code of Practice on Equal Pay in the Schedule, and declares it to be an approved code of practice for the purposes of the Irish Human Rights and Equality Commission Act 2014.

**15.9 Employment Regulation Order (Contract Cleaning Industry Joint Labour Committee) 2022<sup>120</sup>**

This Order, in effect from 1 April 2022, revokes the Employment Regulation (Amendment) Order (Contract Cleaning Industry Joint Labour Committee) 2020 and fixes the statutory minimum rates of remuneration and other conditions of employment for workers employed in the contract cleaning industry.

<sup>116</sup> For more information see our briefing [here](#).

<sup>117</sup> SI 50 of 2022.

<sup>118</sup> SI 106 of 2022.

<sup>119</sup> SI 107 of 2022.

<sup>120</sup> SI 110 of 2022.

15.10 **Employment Equality Act 1998 (Section 20A) (Gender Pay Gap Information) Regulations 2022**<sup>121</sup>

These Regulations set out the procedure for the determination of hourly remuneration and provide for the manner and timing of publication of information in relation to remuneration of male and female employees. These Regulations set out the type of information to be published including the difference between the mean hourly remuneration, bonuses and benefits in kind of relevant employees of the male gender and that of relevant employees of the female gender. These Regulations came into operation on 31 May 2022 with the first information set to be published in December 2022.

15.11 **Employment Permits (Amendment) Regulations 2022**<sup>122</sup>

These Regulations amend the Employment Permits Regulations 2017 to increase the quota of general employment permits for meat processor operatives, remove the quota of general employment permits for bricklayers and plasterers, replace references to “Irish Residence Permit pin” with “Irish Residence Permit Registration Number”, and add the occupations of cardiac physiologist, medical scientist, occupational therapist, physiotherapist, podiatrist / chiropodist, psychologist, speech and language therapist and pharmacist to the Critical Skills Occupations List in Schedule 3, from 14 June 2022.

15.12 **European Union (Posting of Workers) (Amendment) Regulations 2022**<sup>123</sup>

These Regulations, in operation from 13 June 2022, amend the European Union (Posting of Workers) Regulations 2016 to give effect to Directive (EU) 2020/1057. That Directive lays down specific rules for posting of professional drivers in the commercial road transport sector and for the effective enforcement of these rules. It sets out rules that are better adapted to the highly mobile nature of work in the sector. It aims to remove discrepancies between EU countries’ interpretation, application and enforcement of the relevant rules. It is designed to make the sector fair, efficient and socially accountable, whilst at the same time offering greater legal certainty, easing the administrative burden for transport operators and preventing distortions in competition. The Irish Regulations also give effect to s2 Part II of Annex 31 of the Trade and Cooperation Agreement between the EU and the UK to take account of Brexit.

15.13 **Parent’s Leave and Benefit Act 2019 (Extension of Periods of Leave) Order 2022**<sup>124</sup>

This Order extends the leave entitlements under s5 and s16 Parent’s Leave and Benefit Act 2019 (as amended) from 5 to 7 weeks as of 1 July 2022.

15.14 **Córas Iompair Éireann Pension Scheme for Regular Wages Staff (Amendment) Scheme (Confirmation) Order 2022**<sup>125</sup>

This Order confirms the amendment of existing schemes relating to the CIÉ regular wages staff scheme. It provides for the continuance of subsisting rights or liabilities accrued by any person who died, or retired from or left service prior to the operative date, various amendments relating to those in active service including to normal retirement age, lump sum gratuity payable, promotions and provisions for new entrants to the scheme as well as certain governance changes.

15.15 **Córas Iompair Éireann Spouses’ and Children’s Pension Scheme for Regular Wages Staff (Amendment) Scheme (Confirmation) Order 2022**<sup>126</sup>

This Order confirms the amendment of the existing CIÉ regular wages staff spouses’ and children’s pensions schemes consistent with amendments to the related main scheme, the Córas Iompair Éireann Pension Scheme for Regular Wages Staff, from 18 July 2022.

15.16 **Córas Iompair Éireann Defined Contribution Scheme for Regular Wages Staff Scheme (Confirmation) Order 2022**<sup>127</sup>

<sup>121</sup> SI 264 of 2022.

<sup>122</sup> SI 273 of 2022.

<sup>123</sup> SI 320 of 2022.

<sup>124</sup> SI 333 of 2022.

<sup>125</sup> SI 343 of 2022.

<sup>126</sup> SI 344 of 2022.

<sup>127</sup> SI 345 of 2022.

This Order confirms the scheduled CIÉ contribution scheme to establish a defined contribution pension scheme for members of the C oras Iompair  ireann Pension Scheme for Regular Wages Staff which will operate in conjunction with that scheme in certain circumstances.

15.17 **European Union (Organisation of Working Time in Inland Waterway Transport) Regulations 2022**<sup>128</sup>

These Regulations, from 27 July 2022, transpose Directive 2014/112/EU implementing the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport. These Regulations set out the maximum hours of work and minimum hours of rest for mobile workers aboard craft operating on inland waterways in the State. They also set out the requirements for rest periods and annual leave. The Regulations require records detailing hours of work and rest to be maintained monthly in arrears and to be signed off by the boatmaster and the worker and retained for 12 months.

15.18 **Industrial Training (Sporting Grounds Industry) Order 2022**<sup>129</sup>

This Order defines the activities of the sporting grounds industry in relation to which SOLAS shall exercise its functions in the creation of statutory apprenticeships.

15.19 **Employment Permits (Amendment) (No. 2) Regulations 2022**<sup>130</sup>

These Regulations amend the Employment Permits Regulations 2017 (SI No 95 of 2017) to introduce a new quota of general employment permits and new application requirements for vehicle roadworthiness testers.

15.20 **European Union (Posting of Drivers) Regulations 2022**<sup>131</sup>

These Regulations give effect to Article 1(11)(b) Directive (EU) 2020/1057 and Article 463 Trade and Cooperation Agreement between the EU and the UK which sets down minimum enforcement activities to be implemented by Member States concerning posted driver obligations and which provides that certain documents should be available in the vehicle for inspection during roadside checks, from 2 September 2022.

15.21 **Employment Regulation Order (Early Years' Service No. 1 Joint Labour Committee) 2022**<sup>132</sup>

This Order fixes the statutory minimum rates of remuneration and other conditions of employment for the category of workers entitled Early Years Educator and SAC Practitioner – entry grade level.

15.22 **Employment Regulation Order (Early Years' Service No. 2 Joint Labour Committee) 2022**<sup>133</sup>

This Order fixes the statutory minimum rates of remuneration and other conditions of employment for the category of workers entitled Lead Educators (Room Leaders) and School Age Childcare (SAC) Coordinators (including graduate rate), Deputy/Assistant Manager, Centre Manager (including graduate rate).

15.23 **National Minimum Wage Order 2022**<sup>134</sup>

This Order sets the national minimum hourly rate of pay from 1 January 2023 at  11.30, and the board and lodging rates as follows; Lodgings:  26.70 per week, or  3.81 per day. Board:  1.01 per hour worked.

15.24 **Payment of Wages Act 1991 (Application of Sections 4B to 4F) Regulations 2022**<sup>135</sup>

<sup>128</sup> SI 392 of 2022.

<sup>129</sup> SI 405 of 2022.

<sup>130</sup> SI 412 of 2022.

<sup>131</sup> SI 438 of 2022.

<sup>132</sup> SI 457 of 2022.

<sup>133</sup> SI 458 of 2022.

<sup>134</sup> SI 500 of 2022.

<sup>135</sup> SI 544 of 2022.

These Regulations prescribe the employers or class of employer to whom section 4B to 4E, Payment of Wages Act 1991 (inserted by section 3, Payment of Wages (Amendment) (Tips and Gratuities) Act 2022) will apply with effect from 1 December 2022.<sup>136</sup> They include employers in a variety of service areas such as the sale of food and beverages, guest accommodation, guided tours, non-surgical cosmetic procedures, gaming, licensed bookmaking and transport.

15.25 **Payment of Wages Act 1991 (Display of Notices) Regulations 2022**<sup>137</sup>

These Regulations prescribe the manner by which a tips and gratuities notice or a contract workers tips and gratuities notice must be displayed in accordance with s4E to s4F Payment of Wages Act 1991 (as inserted by s3 Payment of Wages (Amendment) (Tips and Gratuities) Act 2022), from 1 December 2022.

15.26 **Sick Leave Act 2022 (Prescribed daily rate of payment) Regulations 2022**<sup>138</sup>

These Regulations specify the prescribed daily rate of payment payable to an employee as statutory sick leave, being the lesser of €110 or 70% of the employee's pay. There is further detail on the calculation of

15.27 **Employment Permits (Amendment) (No. 3) Regulations 2022**<sup>139</sup>

These Regulations amend the Employment Permits Regulations 2017 to introduce new quotas of general employment permits, and new application requirements and grant restrictions, for the roles of care workers, home carers and bus and coach drivers, to introduce a further quota for dairy farm assistants, and to change the defined term of "carer in a private home" to "carer of a person with exceptional medical needs".

15.28 **European Union (Transparent and Predictable Working Conditions) Regulations 2022**<sup>140</sup>

These Regulations give effect to Directive (EU) 2019/1152 on transparent and predictable working conditions in the EU from 16 December 2022. They amend the Terms of Employment (Information) Act 1994, Organisation of Working Time Act 1997, Protection of Employees (Fixed-Term Work) Act 2003 and Workplace Relations Act 2015. In summary, the Regulations make 8 principal changes:

- A 6 month limit will now apply to probationary periods for most new-hires in the private sector. The maximum duration for a public servant's probationary period is now 12 months;
- Employers will no longer be able to require exclusive service from their employees without further justification;
- A range of new terms will now need to be included in an employee's statement of terms of employment and the five-day statement;
- The time period in which an employer must furnish the statement of terms of employment has been shortened from 2 months to 1 month;
- Certain employees will be able to refuse work without adverse consequence where the work is scheduled outside pre-agreed reference hours;
- Employers who are required by law or by a collective agreement to provide training to an employee for their role must now provide that training without cost as part of the employee's working time and during working hours where possible;

<sup>136</sup> See paragraph 16.2 above.

<sup>137</sup> SI 545 of 2022.

<sup>138</sup> SI 607 of 2022.

<sup>139</sup> SI 677 of 2022.

<sup>140</sup> SI 686 of 2022.

- Employees who have completed their probationary periods may request “more predictable and secure working conditions” from their employers (where this is an option);
- The cohort of individuals to whom the statement of terms and the five-day statement must be furnished has been widened.<sup>141</sup>

***Statutory Instruments (Commencement Orders):***

- 15.29 **Redundancy Payments (Amendment) Act 2022 (Commencement) Order 2022**<sup>142</sup>  
This Order appoints 19 April 2022 as the date on which the Redundancy Payments (Amendment) Act 2022, other than s4, shall come into operation.<sup>143</sup>
- 15.30 **Gender Pay Gap Information Act 2021 (Commencement) Order 2022**<sup>144</sup>  
This Order appoints 31 May 2022 as the date on which the Gender Pay Gap Information Act 2021 shall come into operation.
- 15.31 **Paternity Leave and Benefit Act 2016 (Commencement) Order 2022**<sup>145</sup>  
This Order appoints 1 July 2022 as the date on which paragraph (b)(iii) of the definition of “relevant parent” in s2(1) of the Paternity Leave and Benefit Act 2016 shall come into operation. This refers to a person (other than the mother of the child) who is a parent of the child under section 5 of the Children and Family Relationships Act 2015 where the child is a donor-conceived child within the meaning of Part 2 of that Act. It extends leave entitlements under the 2016 Act to them.
- 15.32 **Parent’s Leave and Benefit Act 2019 (Commencement) Order 2022**<sup>146</sup>  
This Order appoints 1 July 2022 as the date on which paragraph (b)(iii) of the definition of “relevant parent” in s2(1) of the Parent’s Leave and Benefit Act 2019 shall come into operation. This refers to a person who is a parent of the child under section 5 of the Children and Family Relationships Act 2015 where the child is a donor-conceived child within the meaning of Part 2 of that Act. It extends leave entitlements under the 2019 Act to them.
- 15.33 **Paternity Leave and Benefit Act 2016 (Section 31) (Commencement) Order 2022**<sup>147</sup>  
This Order appoints 1 July 2022 as the date on which s31 of the 2016 Act amending s241 of the Social Welfare Consolidation Act 2005, shall come into operation. The effect of this commencement is to include under the definition of “relevant parent” for the purposes of paternity benefit, a parent of a child under section 5 of the Children and Family Relationships Act 2015 where the child is a donor-conceived child within the meaning of Part 2 of that Act.
- 15.34 **Parent’s Leave and Benefit Act 2019 (Section 29) (Commencement) Order 2022**<sup>148</sup>  
This Order appoints 1 July 2022 as the date on which s29 of the Parent’s Leave and Benefit Act 2019 insofar as it relates to the insertion of paragraph (b)(ii)(III) of the definition of “relevant parent” in section 61F(1) of the Social Welfare Consolidation Act 2005, shall come into operation. The effect of this commencement is to include under the definition of “relevant parent” for the purposes of parent’s benefit, a parent of a child under section 5 of the Children and Family Relationships Act 2015 where the child is a donor-conceived child within the meaning of Part 2 of that Act.

<sup>141</sup> Please see our briefing [here](#) for further detail on these regulations.

<sup>142</sup> SI 174 of 2022.

<sup>143</sup> Section 4 has also been commenced (6 July 2022). See section 4(2) of the Redundancy Payments (Amendment) Act 2022 which links commencement to the commencement of section 11 of the Companies (Corporate Enforcement Authority) Act 2021.

<sup>144</sup> SI 263 of 2022.

<sup>145</sup> SI 331 of 2022.

<sup>146</sup> SI 332 of 2022.

<sup>147</sup> SI 361 of 2022.

<sup>148</sup> SI 362 of 2022.



- 15.35 **Protected Disclosures (Amendment) Act 2022 (Commencement) Order 2022**<sup>149</sup>  
This Order appoints 1 January 2023 as the date on which Protected Disclosures (Amendment) Act 2022 shall come into operation.
- 15.36 **Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 (Commencement) Order 2022**<sup>150</sup>  
This Order appoints 27 October 2022 as the date on which the Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 shall come into operation.
- 15.37 **Sick Leave Act 2022 (Commencement) Order 2022**<sup>151</sup>  
This Order commences the Sick Leave Act 2022 in two stages. Certain provisions are commenced on 29 November 2022 with the Act fully commenced by 1 January 2023.

### ***Anticipated Developments (Ireland):***

- 15.38 **Work-Life Balance and Miscellaneous Provisions Bill 2022**  
The aim of this Bill is to increase the participation of women in the labour market and the take-up of family-related leave and flexible working arrangements. Changes include amendment of the Parental Leave Act 1998 to entitle certain employees to leave for medical care purposes and to request flexible working arrangements for caring purposes. It will also have provisions for domestic violence leave. The Bill will transpose the EU Directive (EU) 2019/1158 on Work Life Balance for Parents and Carers. The transposition deadline was August 2022. The proposed Right to Request Remote Working Bill has been brought forward and incorporated into this Bill. The Bill is currently at Committee Stage in the Seanad.
- 15.39 **Protection of Employees (Employers' Insolvency) (Amendment) Bill**  
This will review and update the legislation governing the protection of employees during their employer's insolvency. The Heads of Bill are in preparation.
- 15.40 **Maternity leave for Members of the Oireachtas Bill 2023**  
This Bill will make provision for maternity leave for members of the Oireachtas. Heads are in preparation.
- 15.41 **Equality Acts (Amendment) Bill 2023**  
This Bill will make provision for proposed amendments to the equality legislation arising from the Review of the Equality Acts. Heads are in preparation.
- 15.42 **Employment Permits Bill 2022**  
The primary purpose of the legislation is to consolidate and update the current legislative framework concerning employment permits as set out in the Employment Permits Acts of 2003 and 2006 (as amended), which will be repealed. The updates are intended to improve clarity and to retain the core focus of a vacancy led employment permits system oriented toward meeting the skills and labour needs of the State. The Bill will also introduce a Seasonal Employment Permit and provide for additional conditions for the granting of an employment permit. The Bill has completed the third stage of the Dáil.

### ***EU Instruments:***

- 15.43 **Directive (EU) 2022/431 of the European Parliament and of the Council of 9 March 2022 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work**  
Directive 2004/37/EC protects workers against risks to their health and safety from exposure to carcinogens or mutagens at work. This Directive strengthens this protection. New limit values are set in light of available information, including up-to-date scientific data and an assessment of the

<sup>149</sup> SI 510 of 2022.

<sup>150</sup> SI 543 of 2022.

<sup>151</sup> SI 606 of 2022.

socioeconomic impact and availability of exposure measurement protocols and techniques at the place of work.

15.44 **Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union**

This Directive establishes minimum requirements at Union level and sets out procedural obligations for the adequacy of statutory minimum wages. It enhances effective access of workers to minimum wage protection, in the form of a statutory minimum wage where it exists, or is provided for in collective agreements. This Directive also promotes collective bargaining on wage-setting. Minimum wages are considered to be adequate if they are fair in relation to the wage distribution in the relevant Member State and if they provide a decent standard of living for workers based on a full-time employment relationship. The adequacy of statutory minimum wages is determined and assessed by each Member State in view of its national socioeconomic conditions, including employment growth, competitiveness and regional and sectoral developments. Member States' prerogative to introduce and maintain more favourable provisions is not affected.

15.45 **Council Decision (EU) 2022/2296 of 21 November 2022 on guidelines for the employment policies of the Member States**

The Union has developed and implemented policy coordination instruments for economic and employment policies. As part of those instruments, guidelines for the employment policies of the Member States are set out in the Annex to this Decision. These, together with the broad guidelines for the economic policies of the Member States and of the Union set out in Council Recommendation (EU) 2015/1184 form the Integrated Guidelines. They are to guide policy implementation in the Member States and in the Union, reflecting the interdependence between the Member States. The resulting set of coordinated European and national policies and reforms are to constitute an appropriate overall sustainable economic, employment and social policy mix, which should achieve positive spill over effects for labour markets and society at large, and effectively respond to the impact of the COVID-19 pandemic, Russia's war of aggression against Ukraine and the rising cost of living. The Integrated Guidelines should serve as a basis for country-specific recommendations that the Council may address to Member States

***Anticipated Developments (EU):***

15.46 **Proposal for a Directive on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU**

The aim of this proposal is to establish binding standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, including self-employment. Together with a parallel proposal (FN COM(2022)689), this proposal aims at creating a strengthened framework for equality bodies in the European Union to promote equal treatment and equal opportunities and combat discrimination on all grounds and in the fields set out by the Equality Directives.

15.47 **Proposal for a Directive amending Directive 2009/148/EC on the protection of workers from the risks related to exposure to asbestos at work**

Directive 2009/148/EC, the Asbestos at Work Directive (AWD), protects workers against risks to their health arising or likely to arise from exposure to asbestos at work. Under the AWD, for all activities in which workers are or may be exposed to dust from asbestos or materials containing asbestos, exposure must be reduced to a minimum and in any case below the fixed binding occupational-exposure limit. Following the latest scientific and technological developments, this Proposal revises that limit to improve the protection of workers exposed to asbestos and thus further reduce the probability for workers to contract asbestos-related diseases.

**16. Health Services and Public Health**

***Acts of the Oireachtas:***

**16.1 Health Miscellaneous Provisions Act 2022**

This Act amends the Health Acts in order to confer certain functions on the Minister for Children, Equality, Disability, Integration and Youth, and to provide for consultation in certain matters between, and for the joint functions of, the Minister for Health and the Minister for Children, Equality, Disability, Integration and Youth. The Act also revises corporate governance and accountability arrangements of the Health Service Executive.

**16.2 Health (Miscellaneous Provisions) (No 2) Act 2022**

This Act amends the Health Act 1970 to provide for certain exemptions from charges for acute in-patient services and related matters.

***Statutory Instruments:***

**16.3 Medical Devices**

- (a) In Vitro Diagnostic Medical Devices Regulations 2022<sup>152</sup>
- (b) European Union (National Research Ethics Committees for Performance Studies of In Vitro Diagnostic Medical Devices) Regulations 2022<sup>153</sup>
- (c) In Vitro Diagnostic Medical Devices (Registration) Regulations 2022<sup>154</sup>

**16.4 Medicinal Products**

- (a) Medicinal Products (Safety Features on Packaging) Regulations 2022<sup>155</sup>
- (b) Medicinal Products (Control of Manufacture) (Amendment) (No 2) Regulations 2022<sup>156</sup>
- (c) Medicinal Products (Control of Wholesale Distribution) (Amendment) Regulations 2022<sup>157</sup>
- (d) Medicinal Products (Control of Placing on the Market) (Amendment) Regulations 2022<sup>158</sup>
- (e) Medicinal Products (Prescription and Control of Supply) (Amendment) (No 4) Regulations 2022<sup>159</sup>
- (f) Medicinal Products (Prescription and Control of Supply) (Amendment) (No 5) Regulations 2022<sup>160</sup>
- (g) Medicinal Products (Prescription and Control of Supply) (Amendment) Regulations 2023<sup>161</sup>

**16.5 Clinical Trials**

- (a) European Communities (Clinical Trials on Medicinal Products for Human Use) (Amendment) Regulations 2022<sup>162</sup>
- (b) European Union (Clinical Trials on Medicinal Products for Human Use) (Principal) (Amendment) Regulations 2022<sup>163</sup>

<sup>152</sup> SI 256 of 2022.

<sup>153</sup> SI 257 of 2022.

<sup>154</sup> SI 365 of 2022.

<sup>155</sup> SI 270 of 2022.

<sup>156</sup> SI 414 of 2022.

<sup>157</sup> SI 415 of 2022.

<sup>158</sup> SI 416 of 2022.

<sup>159</sup> SI 402 of 2022.

<sup>160</sup> SI 467 of 2022.

<sup>161</sup> SI 11 of 2023.

<sup>162</sup> SI 417 of 2022.

<sup>163</sup> SI 418 of 2022.

## 16.6 **Ethics**

- (a) European Union (National Research Ethics Committees for Performance Studies of in Vitro Diagnostic Medical Devices) (Amendment) Regulations 2022<sup>164</sup>
- (b) European Union (National Research Ethics Committee for Clinical Investigations of Medical Devices) (Amendment) Regulations 2022<sup>165</sup>

### ***Anticipated Developments (Ireland):***

#### 16.7 **Mother and Baby Institutions Payment Scheme Bill 2022**

This Bill provides for the establishment of a scheme to make payments and make available without charge, certain health services to certain people in recognition of the circumstances they experienced while they were resident in Mother and Baby and County Home Institutions in the State. The Bill is currently at Report Stage in the Dáil.

#### 16.8 **National Research Ethics Committees Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme, intends to reform and modernise the current research ethics committee framework in Ireland by providing for the establishment of National Research Ethics Committees in key areas of health research. The Heads of Bill were approved on 2 February 2021 and pre-legislative scrutiny has taken place.

#### 16.9 **Health Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme, intends to amend the Health Act 2004 to provide for changes to corporate and service planning processes amongst other provisions. The Heads of Bill were approved on 2 February 2021 and pre-legislative scrutiny has taken place.

#### 16.10 **Health (Adult Safeguarding) Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme, intends to underpin a planned national health sector policy on safeguarding vulnerable or at-risk adults in the context of their interactions with the health sector. Work is underway.

#### 16.11 **Health (Amendment) Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme for priority drafting, intends to regulatory enhancements to the Health Act 2007 to enhance governance and oversight of nursing homes and other designated centres. The Heads of Bill were approved in October 2022 and pre-legislative scrutiny has taken place.

#### 16.12 **Health Information (Amendment) Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme for priority drafting, intends to provide a robust legislative framework for the processing of health information to support a modern integrated health service. The Heads of Bill are in preparation.

#### 16.13 **Health (Assisted Human Reproduction) Bill 2022**

This Bill intends to provide a legislative framework for the regulation of assisted human reproduction practices and associated research. The Bill seeks to establish a body to be known as Assisted Human Reproduction Regulatory Authority to administer a comprehensive regulatory scheme for assisted human reproduction treatment providers and research involving embryos and embryonic stem cells. The Bill is currently at Dáil Third Stage.

#### 16.14 **Health (Abolition of Public Inpatient Charges) Bill 2023**

This Bill proposes to amend the Health Act 1970 to abolish acute public in-patient charges for people accessing care as a public patient in all public hospitals. When enacted, this legislation will remove the acute public in-patient charge of €80 per day, up to a maximum of €800 in a year (including day-case charges), for people accessing care as a public patient in all public hospitals. The General Scheme and Heads of Bill were published on 25 January 2023 and the Department

<sup>164</sup> SI 725 of 2022.

<sup>165</sup> SI 726 of 2022.

of Health stated that the Bill would be referend to the Office of the Attorney General for priority drafting.

16.15 **Health (Termination of Pregnancy Services (Safe Access Zones)) Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme for priority publication, intends to ensure safe access to premises at which termination of pregnancy services may be provided. The Heads of Bill were approved on 27 July 2022 and pre-legislative scrutiny is ongoing.

16.16 **Human Tissue (Transportation, Post-Mortem, Anatomical Examination and Public Display) Bill**

This Bill provides for organ donation and transplantation in respect of both deceased and living donors, an opt-out system of consent for deceased organ donation, post-mortem practices and procedures, anatomical examination/education and training and public display of bodies after death.

16.17 **Public Health (Tobacco and Nicotine Inhaling Products) Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme for priority publication, intends to introduce a licensing system for the sale of tobacco and nicotine inhaling products (including e-cigarettes) as well as a prohibition on the sale of nicotine inhaling products such as e-cigarettes to and by minors, and other additional enforcement tools. The Heads of Bill were approved on 22 October 2019 and pre-legislative scrutiny has taken place.

16.18 **Northern Ireland Planned Healthcare Scheme Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme, intends to introduce a statutory scheme enabling persons resident in the State to access and be reimbursed for private healthcare in Northern Ireland by the HSE provided such healthcare is publicly available within Ireland. The Heads of Bill are in preparation.

## 17. Intellectual Property

### **Statutory Instruments:**

17.1 **European Union (Copyright and Related Rights applicable to certain Online Transmissions and Retransmissions) Regulations 2022**<sup>166</sup>

These Regulations amend the Copyright and Related Rights Act 2000 in order to give effect to Directive (EU) 2019/789 and to give further effect to Directive 93/83/EEC. These Regulations define “broadcasting organisation” and insert into the 2000 Act provisions covering ancillary online services, transmission of programmes by direct injection and cable and non-cable retransmission, with effect from 14 July 2022.

17.2 **European Communities (Artist’s Resale Right) (Amendment) Regulations 2022**<sup>167</sup>

These Regulations further amend the European Communities (Artist’s Resale Right) Regulations 2006 in order to better support creators of original works of visual and plastic art in claiming resale royalties arising from the resale of works sold through the professional art market, with effect from 21 July 2022.

<sup>166</sup> SI 357 of 2022.

<sup>167</sup> SI 375 of 2022.

## 18. Professions

### **Statutory Instruments:**

#### 18.1 Solicitors

- (a) The Solicitors Acts 1954 to 2015 (Apprentices' Fees) Regulations 2022<sup>168</sup>
- (b) Solicitors Professional Indemnity Insurance (Amendment) Regulations 2022<sup>169</sup>
- (c) Solicitors Practising Certificate (Application Fee) Regulations 2022<sup>170</sup>
- (d) Registered European Lawyers Qualifying Certificate (Application Fee) Regulations 2022<sup>171</sup>

#### 18.2 General

- (a) European Union (Regulated Professions Proportionality Assessment) Regulations 2022<sup>172</sup>

#### 18.3 Medical

- (a) Dietitians Registration Board Approved Qualifications Bye-law 2022<sup>173</sup>
- (b) Election of Members for Appointment to the Medical Scientists Registration Board Bye-Law 2022<sup>174</sup>
- (c) Medical Scientists Registration Board Approved Qualifications Bye-law 2022.<sup>175</sup>
- (d) Nurses and Midwives (Fitness to Practise Subcommittee) Rules 2022<sup>176</sup>
- (e) Radiographers Registration Board Approved Qualifications and Divisions of the Register (Amendment) Bye-law 2022<sup>177</sup>
- (f) Social Workers Registration Board Approved Qualifications Bye-law 2022<sup>178</sup>
- (g) Veterinary Council of Ireland (Prescription of Educational Qualifications) Regulations 2022<sup>179</sup>
- (h) Veterinary Council of Ireland (Recognition of Qualifications and Registration of Veterinary Nurses) Regulations 2022<sup>180</sup>
- (i) Veterinary Council of Ireland (Recognition of Qualifications and Registration) (Veterinary Practitioner) Regulations 2022<sup>181</sup>

## 19. Public Law (General)

### **Acts of the Oireachtas:**

#### 19.1 Electoral Reform Act 2022

This Act provides for the establishment of an independent An Coimisiún Toghcháin (Electoral Commission for Ireland), the modernisation of electoral registration process through a shared database managed by a designated registration authority, the improvement of accessibility of

<sup>168</sup> SI 269 of 2022.

<sup>169</sup> SI 585 of 2022.

<sup>170</sup> SI 692 of 2022.

<sup>171</sup> SI 693 of 2022.

<sup>172</sup> SI 413 of 2022.

<sup>173</sup> SI 347 of 2022.

<sup>174</sup> SI 468 of 2022.

<sup>175</sup> SI 305 of 2022.

<sup>176</sup> SI 236 of 2022.

<sup>177</sup> SI 252 of 2022.

<sup>178</sup> SI 311 of 2022.

<sup>179</sup> SI 280 of 2022.

<sup>180</sup> SI 281 of 2022.

<sup>181</sup> SI 282 of 2022.

voting facilities and facilitation of elections during a pandemic or COVID-19, and regulation of online political advertising and electoral information.

The Act provides that the Electoral Commission shall have functions in: • the registration of political parties; • Dáil and European Parliament constituency boundary reviews; • local electoral area boundary reviews; • research, advisory and voter education functions; and • oversight of the electoral register across all registration authorities.

The Act further amends the Electoral Act 1997 to enhance transparency in relation to donations to political parties and to provide for the preparation of consolidated annual statements of accounts by political parties.

#### 19.2 **Water Services (Amendment) Act 2022**

This Act amends the Gas Act 1976, the Water Services Act 2013, the Water Services (No 2) Act 2013, the Water Services Act 2017 and other enactments in order to: • provide that Irish Water is to be known only as Uisce Éireann; and • provide for the reorganisation of Uisce Éireann, the separation of Uisce Éireann from Ervia<sup>182</sup>, the removal of Ervia's function relating to Uisce Éireann and the dissolution of the Water Advisory Body<sup>183</sup>.

Certain staff, rights, liabilities and records from Ervia will be transferred to Uisce Éireann. The Act makes further provision for the board and chief executive officer of Uisce Éireann, amends the accounting and reporting requirements of Uisce Éireann, and provides for accountability of Uisce Éireann to a Committee of Dáil Éireann.

#### 19.3 **Tailte Éireann Act 2022**

This Act (not yet commenced) provides for the establishment of a body to be known as Tailte Éireann and for the dissolution of the Property Registration Authority and of Ordnance Survey Ireland and for the transfer of their functions to Tailte Éireann. It also provides for the transfer of the functions of the Commissioner of Valuation and the Boundary Surveyor to Tailte Éireann.

#### 19.4 **Eirgrid, Electricity and Turf (Amendment) Act 2022**

Section 13 of the Act increases the limit of aggregate borrowings of Bord na Móna to €650m.

#### 19.5 **Animal Health and Welfare and Forestry (Miscellaneous Provisions) Act 2022**

A regards forestry, Part 3 of this Act empowers the Minister to provide by regulation for a scheme to facilitate the planting of “native tree areas” (as defined).

#### 19.6 **Assisted Decision-Making (Capacity) (Amendment) Act 2022**

In order to give further and better effect in the State to the 2006 UN Convention on the Rights of Persons with Disabilities, this Act strengthens the assisted decision-making provisions of the Act and makes additional provision in respect of the obligations of those acting under an enduring power of attorney.

### **Statutory Instruments:**

#### 19.7 **Government Administration**

In 2022 a number of Government Orders were made for the purpose of delegating some ministerial functions to a minister of state in the relevant Department<sup>184</sup>. Under the Ministers and Secretaries (Amendment) (No 2) Act 1977, notwithstanding such a delegation the relevant powers remain exercisable also by the minister in whom they are primarily vested and whose function is being delegated.

<sup>182</sup> Water Services (Amendment) Act 2022 (Appointed Day) Order 2022 (SI 682 of 2022).

<sup>183</sup> Water Services (Amendment) Act 2022 (Dissolution Day) Order 2022 (SI 683 of 2022).

<sup>184</sup> The Orders were: • Environment, Climate and Communications(Delegation of Ministerial Functions) Order 2022 (SI 298 of 2022); • Education (Delegation of Ministerial Functions) Order 2022 (SI 399 of 2022); • Enterprise, Trade and Employment (Delegation of Ministerial Functions) Order 2022; and • Justice (Delegation of Ministerial Functions) Order 2022.

19.8 **General Government Secured Borrowings Order 2022**<sup>185</sup>

A legacy of the financial crash but nonetheless still ‘real’ and important for State bodies and for those lending to them, this Order (the latest iteration of a number that have been made since 2011) supplements section 67 of the Credit Institutions (Stabilisation) Act 2010 to provide that secured borrowing by any of the many prescribed State bodies (which includes many approved housing bodies and some other private sector entities that receive a large amount of State funding) is subject to the consent of the Minister of Finance.

Section 67 also provides that, in the event that any prescribed body grants any security over any asset without such ministerial consent, then, by operation of law, the “facility lenders” will rank *pari passu* and *pro rata* with the relevant lenders in that security. For these purposes, the “facility lenders” are (a) the International Monetary Fund, (b) the European Financial Stabilisation Mechanism, (c) the European Financial Stability Facility, and (d) the lender under any bilateral loan agreement with a Member State.

Section 67 of the 2010 Act itself (and not this Order) subjects local authorities to the same provisions.

19.9 **National Transport Authority (Extension of Remit) (Fares Scheme) Order 2022**<sup>186</sup>

This Order extends the geographic area in respect of which the National Transport Authority may make a fares scheme under section 59 of the Dublin Transport Authority Act 2008 from the Greater Dublin Area to the entire State.

19.10 **National Archives**

A number of statutory instruments were made in 2022 to: (a) add An Bord Pleanála to the Schedule to the National Archives Act 1986 as a body the records of which may be preserved by the National Archives<sup>187</sup>; and (b) provide for the transfer to the National Archives of records relating to the Good Friday Agreement and which are held by the Department of the Taoiseach<sup>188</sup>, the Department of Justice<sup>189</sup>, the Department of Foreign Affairs<sup>190</sup> and the Office of the Attorney-General<sup>191</sup>.

19.11 **Water Services (No 2) Act 2013 (Property Vesting Day) Order 2022**<sup>192</sup>

19.12 **Water Services (No 2) Act 2013 (Property Vesting Day) (No 2) Order 2022**<sup>193</sup>

19.13 **Water Services (No 2) Act 2013 (Property Vesting Day) (No 3) Order 2022**<sup>194</sup>

These Orders provide for the transfer of specified items of infrastructure from relevant local authorities to Irish Water (now Uisce Éireann).

**Statutory Instruments (Commencement Orders):**

19.14 **Official Languages Act 2003 (Establishment Day) Order 2022**<sup>195</sup>

This Order appoints 20 June 2022 to be the establishment day of Oifig Choimisinéir na dTeangacha Oifigiúla.

19.15 **Official Languages (Amendment) Act 2021 (Commencement) Order 2022**<sup>196</sup>

This Order appoints 20 June 2022 as the day on which section 1 (definitions), section 2(c) (definitions), section 8 (matters related to the Irish Language Services Advisory Committee), and

<sup>185</sup> SI 581 of 2022.

<sup>186</sup> SI 368 of 2022.

<sup>187</sup> National Archives Act 1986 (Section 1(2)(d)) Order 2022 (SI 359 of 2022).

<sup>188</sup> National Archives Act 1986 (Section 8(1A)) (Transfer of Departmental Records) Order 2022 (SI 660 of 2022).

<sup>189</sup> National Archives Act 1986 (Section 8(1A)) (Transfer of Departmental Records) (No 2) Order 2022 (SI 661 of 2022).

<sup>190</sup> National Archives Act 1986 (Section 8(1A)) (Transfer of Departmental Records) (No 3) Order 2022 (SI 662 of 2022).

<sup>191</sup> National Archives Act 1986 (Section 8(1A)) (Transfer of Departmental Records) (No 4) Order 2022 (SI 663 of 2022).

<sup>192</sup> SI 300 of 2022.

<sup>193</sup> SI 499 of 2022.

<sup>194</sup> SI 674 of 2022.

<sup>195</sup> SI 312 of 2022.

<sup>196</sup> SI 313 of 2022.



section 20 (title, citation and commencement) of the Official Languages (Amendment) Act 2021 come into operation.

- 19.16 **Official Languages (Amendment) Act 2021 (Commencement) (No 2) Order 2022**<sup>197</sup>  
This Order brought section 6 of the Official Languages (Amendment) Act 2021 into effect on 10 October 2022, requiring that a public body must ensure that at least 20% of any advertising placed by the body in any year is in the Irish language, and at least 5% of any money expended by the body on advertising in any year shall be used to place advertising in the Irish language through Irish language media.

***Anticipated developments:***

- 19.17 **Gas (Amendment) Bill**  
This Bill, which is included in the Autumn 2022 Government Legislation Programme, proposes to provide for the integration of Ervia (the former BGÉ) into Gas Networks Ireland. This Bill should be read with the proposed Water Services (Separation) Bill.
- 19.18 **Road Safety Authority (Amendment) Bill**  
This Bill, which is included in the Autumn 2022 Government Legislation Programme, proposes to update the Road Safety Authority Act 2006.
- 19.19 **Civil Service Regulation (Amendment) Bill**  
This Bill, which is included in the Spring 2023 Government Legislation Programme for priority publication, proposes to amend the Civil Service Regulation Acts 1956-2005 and the Public Service Management Act 1997. The primary purpose of the Bill is to allow management decisions in respect of serious disciplinary sanctions, up to and including dismissal, to be devolved within the civil service. In April 2018 the Government approved the Heads of Bill and pre-legislative scrutiny has taken place.
- 19.20 **Financial Services and Pensions Ombudsman (Amendment) Bill**  
This Bill, which is included in the Spring 2023 Government Legislation Programme for priority drafting, proposes to amend the Financial Services and Pensions Ombudsman Act 2017 to take account of the *Zalewski*<sup>198</sup> ruling and update elements where the Financial Services and Pensions Ombudsman could be viewed as administering justice.
- 19.21 **Charities (Amendment) Bill**  
This Bill, which is included in the Spring 2023 Government Legislation Programme for priority publication, proposes to amend the Charities Act 2009 in respect of matters including accounting, audit and reporting requirements, the responsibilities of trustees and the operation of the Register of Charities. The Heads of Bill were approved on 26 April 2022 and pre-legislative scrutiny has taken place.
- 19.22 **Supports for Survivors of Residential Institutional Abuse Bill**  
  
This Bill enables the provision of supports to survivors of abuse in residential institutions and provides for the dissolution of the Residential Institutions Statutory Fund Board (Caranua). Heads of Bill are in preparation.
- 19.23 **Support for Irish Survivors of Thalidomide Bill**  
This Bill provides a package of health and personal social services and other supports to survivors of thalidomide. The Bill is included in the Government's Legislation Programme for Spring 2023 but it is not listed as a priority.

<sup>197</sup> SI 511 of 2022.

<sup>198</sup> *Zalewski v Adjudication Officer* [2019] IESC 17.

19.24 **Electoral (Amendment) Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme, is intended to extend the franchise at presidential elections if a proposal to amend the Constitution accordingly is first approved. The Heads of Bill are in preparation.

19.25 **Emergency Management and Fire and Public Safety Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme, proposes to underpin current established emergency management practice at national and local level, to consolidate and update the Fire Services Acts 1981 and 2003, to revise and enhance the legislative approach to safety at funfairs and to amend the legislation dealing with the licensing of indoor events.

**20. Public Law (Regulatory)**

***Acts of the Oireachtas:***

20.1 **Sea-Fisheries (Miscellaneous Provisions) Act 2022**

This Act amends the Sea-Fisheries and Maritime Jurisdiction Act 2006 in order to give effect to Article 92 of Council Regulation (EC) 1224/2009 and Title VII of Commission Implementing Regulation (EU) 404/2011 and, in that regard, to provide for a system of registration and regulation of, and for assigning points for regulatory infractions to, masters of sea-fishing boats who are Irish citizens.

20.2 **Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022**

This Act, which is dealt with in more detail in the presentation on Real Estate, provides for the establishment of a register to be known as the Construction Industry Register Ireland, which will be maintained by the Construction Industry Federation<sup>199</sup> as the registration body. The registration body is to regulate providers of building works and to determine the standards and competence that is to be required of providers of building works and to investigate and adjudicate upon any complaints against such providers. An adjudication by the registration body in respect of certain matters will be subject to appeal to an appeals committee.

***Statutory Instruments:***

20.3 ***European Union (Market Surveillance) (Compliance with Certain Products) Regulations 2022***<sup>200</sup> ***(Revoked)***

20.4 ***European Union (Market Surveillance and Compliance of Certain Products) Regulations 2022***<sup>201</sup>

These Regulations give further and better effect to Regulation (EU) 2019/1020 on market surveillance and compliance of products by setting out the provisions and procedures in Irish law for the deployment of the strengthened market surveillance powers of the national market surveillance authorities in order to provide for the free movement of relevant products within the EU. The relevant products are regulated in accordance with EU harmonised legislation specified in the annexes to Regulation (EU) 2019/1020 and relate to goods such as packaging; end-of-life vehicles; paints, varnishes, vehicle refinishing products and activities; batteries and accumulators; and certain electrical and electronic equipment.

20.5 ***European Union (Sea-Fisheries and Maritime Jurisdiction Act 2006) (Amendment) Regulations 2022***<sup>202</sup>

These Regulations amend section 28 of the Sea-Fisheries and Maritime Jurisdiction Act 2006 in order to provide that, where mandatory forfeiture as may be required by the section would be disproportionate, the relevant court may adjust the penalty accordingly.

<sup>199</sup> Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022 (Appointment of Registration Body) Order 2023 (SI 8 of 2023).

<sup>200</sup> SI 108 of 2022.

<sup>201</sup> SI 261 of 2022.

<sup>202</sup> SI 407 of 2022.

- 20.6 **Sea-Fisheries (Community Control System) (Amendment) Regulations 2022**<sup>203</sup>  
These Regulations make technical amendments to the amend the Sea-Fisheries (Community Control System) Regulations 2016.
- 20.7 **Charities Act 2009 (Section 33) (Relevant Regulator) Order 2022**<sup>204</sup>  
This Order clarifies, from 8 June 2022, that the definition of “relevant regulator” in section 33(6) of the Charities Act 2009 includes the Approved Housing Bodies Regulatory Authority and the Registrar of Companies.
- 20.8 **Sanctions**  
2022 saw more than 50 sanctions-related statutory instruments in respect of various jurisdictions and organisations, with 25 relating to sanctions against Russia in respect of its war against Ukraine. Irish sanctions always are in pursuance of United Nations or EU measures.

### ***Anticipated Developments (Ireland):***

- 20.9 **Sale of Alcohol Bill**  
This Bill, which is included in the Spring 2023 Government Legislation Programme for priority drafting, seeks to codify the law relating to the sale and consumption of alcohol and to provide for licensing reforms to support the hospitality industry. The Heads of Bill were approved on 25 October 2022.

If enacted, responsibility for licensing will be transferred from the Circuit Court to the District Court to allow more opportunity for community voices to be heard. The proposed system significantly reduces the number of licenses that are available and renewal online will be possible where there are no objections. The current licensing “extinguishment” requirement, whereby anyone seeking to open a new licensed premises must first purchase a license from an existing holder, will be removed (for the process of obtaining a seven day on-licence) after a transition period of three years following the enactment of the Bill. The “extinguishment” requirement will remain in place for off licenses that already are in existence upon enactment and new licenses granted may not be sold for “extinguishment” purposes.

Under the Bill, opening hours for licensed premises will be standardised across the week. In place of the current system requiring special exemption orders to extend opening hours, new late bar and nightclub permits, as well as cultural amenity venue licenses, will govern such venues. Such new categories of licenses will be subject to standardised requirements and will require court approval.

- 20.10 **Regulation of Lobbying (Amendment) Bill**  
This Bill proposes to amend and extend the Regulation of Lobbying Act 2015 by extending the definition of lobbying to bring certain informal business groups without employees within the scope of the Act, improving the functionality of the Lobbying Register and strengthening existing legislation and its enforcement.
- 20.11 **Ethics in Public Office Bill**  
This Bill, which is included in the Spring 2023 Government Legislation Programme, proposes to reform and consolidate the Ethics in Public Office legislation. The Heads of Bill are in preparation.

<sup>203</sup> SI 463 of 2022.

<sup>204</sup> SI 276 of 2022.

***EU Instruments:***

20.12 ***European Union (Restrictive Measures Against Serious Human Rights Violations and Abuses) Regulations 2022***<sup>205</sup> ***(Revoked)***

20.13 ***European Union (Restrictive Measures Against Serious Human Rights Violations and Abuses) (No 2) Regulations 2022***<sup>206</sup>

These Regulations prescribe penalties in Ireland for breach of any of the provisions of the directly applicable Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses. The sanctions are targeted at people and entities (including the Wagner Group) that are listed in the Schedule to the EU Regulation.

***Anticipated Developments (EU):***

20.14 ***Proposal for a Directive on the definition of criminal offences and penalties for the violation of EU restrictive measures***

Against the background of inconsistent enforcement of restrictive measures, the differences in Member States' criminal definitions and penalties, and the lack of criminal investigations and prosecutions, the European Commission has adopted this Proposal which aims to: (a) approximate definitions of criminal offences related to the violation of EU restrictive measures; (b) ensure effective, dissuasive and proportionate penalty types and levels for criminal offences related to the violation of EU restrictive measures; (c) foster cross-border investigation and prosecution; and (d) improve the operational effectiveness of national enforcement chains to foster investigations, prosecutions and sanctioning.

**21. Transport**

***Acts of the Oireachtas:***

21.1 ***Civil Law (Miscellaneous Provisions) Act 2022***

This Act, in force from 27 July 2022<sup>207</sup>, provides for, among a large number of unrelated matters: • (Part 6) the establishing of a scheme to be operated by the Minister for Transport to support certain road haulage operators; and • (Part 7) amendments to the Road Traffic Acts 1961 and 2010 to provide for the recognition of certain driving licences held by persons to whom permission to reside in the State is given under section 60(6) of the International Protection Act 2015 (principally Ukraine).

21.2 ***Merchant Shipping (Investigation of Marine Casualties) (Amendment) Act 2022***

This Act amends the Merchant Shipping (Investigation of Marine Casualties) Act 2000 to adjust the composition of the Marine Casualty Investigation Board and to provide for notification of marine casualties to the Board and to the Marine Survey Office. The Act also amends the definition of "Safety Convention" in the Merchant Shipping (Safety Convention) Act 1952.

***Statutory Instruments: Maritime***

21.3 ***European Union (Passenger Ships) (Amendment) Regulations 2022***<sup>208</sup>

These Regulations, in effect from 17 January 2022, amend the European Union (Passenger Ships) Regulations 2019 in order to give further effect to Directive 2009/45/EC on safety rules and standards for passenger ships, as amended by Regulation (EU) 2020/411, as regards the safety requirements for passenger ships engaged on domestic voyages and the Schedule of Sea Areas listed in Schedule 2.

<sup>205</sup> SI 132 of 2022.

<sup>206</sup> SI 242 of 2022.

<sup>207</sup> Civil Law (Miscellaneous Provisions) Act 2022 (Parts 6 and 7) (Commencement) Order 2022 (SI 390 of 2022).

<sup>208</sup> SI 19 of 2022.

- 21.4 **Merchant Shipping (Passenger Ships) (Amendment) Rules 2022**<sup>209</sup>  
These Rules amend Schedule 1 (Sea Areas) to the Merchant Shipping (Passenger Ships) Rules 2020<sup>210</sup> in relation to two Sea Area locations off the South Coast of Ireland (both adjacent to Fastnet Rock).
- 21.5 **Merchant Shipping (Radio Installations Survey) Rules 2022**<sup>211</sup>  
These Rules implement the provisions of the survey and certification regime of the International Convention for the Safety of Life at Sea 1974 (SOLAS), in respect of radio installations surveys for merchant ships. The Rules clarify that suitably qualified surveyors that have successfully gone through the Department's selection process and are placed on the panel of surveyors may undertake certain radio surveys on behalf of the Department on ships to which the Rules apply.
- 21.6 **European Union (Port Reception Facilities for the Delivery of Waste From Ships) Regulations 2022**<sup>212</sup>  
These Regulations transpose Directive (EU) 2019/883 on port reception facilities for the delivery of waste from ships with the aim of protecting the marine environment against the negative effects of discharge of waste from ships using ports located in the State, while ensuring the smooth operation of maritime traffic, by improving the availability and use of adequate port reception facilities and the delivery of waste to those facilities.
- 21.7 **European Union (Marine Equipment) (Amendment) Regulations 2022**<sup>213</sup>  
These Regulations amend the European Union (Marine Equipment) Regulations 2017 in respect of conformity assessment of prescribed varieties of marine equipment.
- 21.8 **Merchant Shipping (Life-Saving Appliances) (Amendment) Rules 2022**<sup>214</sup>  
These Rules amend the Merchant Shipping (Life-Saving Appliances) Rules 2018 in order to give effect to amendments to the International Convention for the Safety of Life at Sea (SOLAS) 1974 insofar as they relate to Chapter III, which deals with life-saving appliances and arrangements. The amended Rules relate to matters such as drills, muster lists, plans and procedures for recovery of persons from the water and maintenance and inspection of life-saving appliances.

### ***Statutory Instruments: Road (Licensing)***

- 21.9 **European Union (Licensing of Drivers) (Amendment) Regulations 2022**<sup>215</sup>  
These Regulations give further effect to Directive 2006/126/EC and amend the Road Traffic (Licensing of Drivers) Regulations 2006 by the deletion of regulation 10(2), from 21 February 2022.
- 21.10 **Road Traffic (Licensing of Drivers) (Amendment) Regulations 2022**<sup>216</sup>  
These Regulations, in operation from 21 February 2022, further amend the Road Traffic (Licensing of Drivers) Regulations 2006 by inserting a new paragraph 10(2) (previously deleted by SI 52 of 2022) and substituting regulation 41(1)(d) in order to raise the age from 70 to 75 for the mandatory provision of a medical report when applying for a learner permit or driving licence.

<sup>209</sup> SI 49 of 2022.

<sup>210</sup> SI 640 of 2020.

<sup>211</sup> SI 222 of 2022.

<sup>212</sup> SI 351 of 2022.

<sup>213</sup> SI 450 of 2022.

<sup>214</sup> SI 466 of 2022.

<sup>215</sup> SI 52 of 2022.

<sup>216</sup> SI 53 of 2022.

21.11 **Road Traffic (Licensing of Drivers) (Amendment) (No 2) Regulations 2022**<sup>217</sup>  
These Regulations amend the Road Traffic (Licensing of Drivers) Regulation 2006 as of 22 April 2022, to provide for noting on a driving licence that that licence has been issued in exchange for a licence issued by the driver licensing authority in Ukraine.

21.12 **Road Traffic (Recognition of Foreign Driving Licences Held by Relevant Persons) (Ukraine) Order 2022**<sup>218</sup>  
This Order provides for the recognition of Ukrainian driving licences held by persons with a permission to reside under section 60(6) of the International Protection Act 2015, for use in Ireland while that permission is valid, from 2 September 2022.

***Statutory Instruments: Road  
(Regulation of Parking and Use)***

21.13 **Road Traffic (Signs) (Amendment) Regulations**<sup>219</sup>  
These Regulations provide for regulatory traffic signs that may be installed by road authorities at zebra pedestrian crossings without belisha beacons, from 5 October 2022.

21.14 **Road Traffic (Traffic and Parking) (Amendment) Regulations 2022**<sup>220</sup>  
These Regulations provide for the introduction of zebra pedestrian crossings without belisha beacons, from 5 October 2022.

21.15 **Local Authorities (Traffic Wardens) Act 1975 (Fixed Charge Offences) Regulations 2022**<sup>221</sup>  
These Regulations specify which parking offences are deemed to be fixed charge offences for the purposes of section 3 of the Local Authorities (Traffic Wardens) Act 1975, determine the amount of fixed charge for each offence and prescribe the form of notice and document to be used in the enforcement of those fixed charge offences, with effect from 1 January 2023.

21.16 **Road Traffic Act 2010 (Part 3) (Fixed Charge Offences) Regulations 2022**<sup>222</sup>  
These Regulations specify which offences involving the driving or use of mechanically propelled vehicles and pedal cycles are fixed charge offences for the purposes of section 34 of the Road Traffic Act 2010 and determine the amount of the fixed charge for each offence.

21.17 **Road Traffic (Prescribed Charge – Removal of Clamp) Regulations 2022**<sup>223</sup>  
These Regulations, in effect from 1 March 2022, revoke the Road Traffic (Immobilisation of Vehicles) Regulations 2017 and prescribe the amount of the charge to be paid for the removal of an immobilisation device (€125), the form of the notice to be affixed to a clamped vehicle and the manner in which, and the person to whom, such charge is to be paid when a vehicle is clamped on a public road.

21.18 **Road Traffic (Ordinary Speed Limits – Buses, Heavy Goods Vehicles, etc) (Amendment) Regulations 2022**<sup>224</sup>  
These Regulations correct a drafting discrepancy by re-introducing the provisions of the Road Traffic (Ordinary Speed Limits – Buses, Heavy Goods Vehicles, Etc) (Amendment) Regulations 2012 into the Road Traffic (Ordinary Speed Limits - Buses, Heavy Goods Vehicles, Etc) Regulations 2008.

<sup>217</sup> SI 193 of 2022.

<sup>218</sup> SI 434 of 2022.

<sup>219</sup> SI 516 of 2022.

<sup>220</sup> SI 517 of 2022.

<sup>221</sup> SI 525 of 2022.

<sup>222</sup> SI 526 of 2022.

<sup>223</sup> SI 54 of 2022.

<sup>224</sup> SI 255 of 2022.

- 21.19 **Road Traffic (Parking in Disabled Person’s Parking Bay) Regulations 2022**<sup>225</sup>  
These Regulations make it an offence to park in a disabled person’s parking bay other than for the convenience of a disabled person permit-holder, from 31 August 2022.

**Statutory Instruments: Road  
(Public Service Vehicles)**

- 21.20 **Taxi Regulation (Maximum Fares) Order 2022**<sup>226</sup>  
This Order sets the maximum fares that may be charged by the driver of a taxi in respect of a journey undertaken in the State in line with the table contained in the Schedule to the Order, from 1 September 2022.
- 21.21 **Small Public Service Vehicle (Cashless Payment Facility) Regulations 2022**<sup>227</sup>  
These Regulations, in operation from 1 September 2022, require drivers of taxis to carry a functioning cashless payment device while operating and to accept cashless payments for any journey. They also provide for associated guidelines and requirements regarding standards and security of payment devices.
- 21.22 **Small Public Service Vehicle (Contingency Measure – Vehicle Supply) (Maximum Permissible Age) Regulations 2022**<sup>228</sup>  
As an exceptional provision and contingency measure resulting from the current vehicle supply issues, these Regulations amend regulation 31 of the Taxi Regulation (Small Public Service Vehicle) Regulations 2015 in order to raise the maximum permissible age requirements for taxis (not wheelchair-accessible) to 10 years and for taxis (wheelchair-accessible) to 15 years.
- 21.23 **Small Public Service Vehicle (Fixed Payment Offences and Driver Licence Period) Regulations 2022**<sup>229</sup>  
These Regulations amend Schedule 8 of the Taxi Regulation (Small Public Service Vehicle) Regulations 2015 in relation to the prescribed amounts for fixed payment offences and to add a prescribed amount for offences in relation to unreasonable refusal to provide services to a passenger seated in their wheelchair, together with an amendment to the period of validity of an SPSV driver licence.
- 21.24 **European Union (Posting of Drivers) Regulations 2022**<sup>230</sup>  
These Regulations give effect to Article 1 (11)(b) of Directive (EU) 2020/1057 and Article 463 of the Trade and Cooperation Agreement which sets down minimum enforcement activities to be implemented by Member States concerning posted driver obligations and which provides that certain documents should be available in the vehicle for inspection during roadside checks, from 2 September 2022.

**Statutory Instruments: Road  
(Roadworthiness)**

- 21.25 **Authorisation of Commercial Vehicle Roadworthiness Test Operators and Testers (Amendment) Regulations 2022**<sup>231</sup>  
These Regulations amend the Authorisation of Commercial Vehicle Roadworthiness Test Operators and Testers Regulations 2013 in order to: (a) prescribe standards as required by section 11(2) of the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012; (b) adjust the requirements for test premises; (c) delay the requirement to comply with standards to 19 March 2027, which shall allow (i) premises that already meet standards to be authorised for up to 10 years, (ii) sufficient time for upgrading of premises that do not meet standards, and

<sup>225</sup> SI 427 of 2022.

<sup>226</sup> SI 293 of 2022.

<sup>227</sup> SI 294 of 2022.

<sup>228</sup> SI 588 of 2022.

<sup>229</sup> SI 589 of 2022.

<sup>230</sup> SI 438 of 2022.

<sup>231</sup> SI 475 of 2022.

(iii) affected CVR test operators to renew their authorisations using existing premises until 18 March 2027 and subsequently using upgraded premises which meet standards until 18 March 2034; and (d) introduce dimension tolerances for testing premises (where dimensions are close to the minimum required) in very limited circumstances where there will be no material impact on the standard of testing or the standard of the premises.

**21.26 Road Traffic (National Car Test) (Amendment) Regulations 2023<sup>232</sup>**

These Regulations adjust the National Car Test test criteria in order to take account of the fitting of eCall technology to some vehicles.

***Statutory Instruments: Road (Roads and Enforcement)***

**21.27 Roads Act 1993 (Classification of Regional Roads) (Amendment) Order 2022<sup>233</sup>**

This Order amends the Schedule of the Roads Act 1993 (Classification of Regional Roads) Order 2012 to address road classification issues regarding the R444 in Counties Offaly and Westmeath, from 2 September 2022.

**21.28 European Union (Road Transport Activities Checks) (Amendment) Regulations 2022<sup>234</sup>**

These Regulations amend the European Communities (Road Transport Activities Checks) Regulations 2007 in order to give further effect to Directive 2006/22/EC, as amended by Directive (EU) 2020/1057 and Article 465 of the EU-UK Trade and Cooperation Agreement, from 27 July 2022. The amendments include a requirement for the Road Safety Authority to “organise a system of appropriate and regular checks both at the roadside and at the premises of transport undertakings.”

***Anticipated Developments (Ireland)***

**21.29 Road Traffic and Roads Bill 2021**

This Bill is intended to provide for traffic management on the M50, the motor insurance database and other road traffic matters as well as provisions relating to micro mobility (e-bikes, e-scooters, etc.).

The Bill will introduce the concept of “powered personal transporter” which will be excluded from the definition of a mechanically propelled vehicle under the Road Traffic Act 1961, and which will be subject to specific technical standards and in-use regulations. The Bill will also update the definition of pedal cycles to include those equipped with auxiliary electric motors, thus incorporating “e-bikes” into the regulation of pedal cycles. Usual traffic rules, as well as the exemption from registration and tax requirements, will apply to e-bikes.

**21.30 Merchant Shipping (Investigation of Marine Accidents) Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme for priority drafting, is intended to establish a new independent Marine Accident Investigation Unit within the Department of Transport and to dissolve the Marine Casualty Investigation Board. The Heads of Bill were approved on 7 December 2022.

**21.31 Merchant Shipping (International Conventions) Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme, is intended to provide for the national implementation of certain International Maritime Conventions, the updating of existing statutes in respect of other conventions and to make provision for some miscellaneous maritime safety amendments. The Heads of Bill are in preparation.

<sup>232</sup> SI 4 of 2023.

<sup>233</sup> SI 437 of 2022.

<sup>234</sup> SI 398 of 2022.



21.32 **Vehicle Roadworthiness Bill**

This Bill, which is included in the Spring 2023 Government Legislation Programme, is intended to consolidate the legislative basis for the National Car Test and for the Commercial Vehicle Roadworthiness Test into a single instrument. Work is ongoing.

***EU Instruments***

***(Vehicle Standards)***

21.33 **Commission Regulation (EU) 2022/1379 amending Regulation (EU) 2017/2400 as regards the determination of the CO<sub>2</sub> emissions and fuel consumption of medium and heavy lorries and heavy buses and to introduce electric vehicles and other new technologies**

21.34 **Commission Delegated Regulation (EU) 2022/1398** amending Regulation (EU) 2019/2144 to take into account technical progress and regulatory developments concerning amendments to Vehicle Regulations adopted in the context of the UNECE

21.35 **Commission Implementing Regulation (EU) 2022/1426** laying down rules for the application of Regulation (EU) 2019/2144 as regards uniform procedures and technical specifications for the type-approval of the automated driving system (ADS) of fully automated vehicles

21.36 **Commission Delegated Regulation (EU) 2022/2236** amending Annexes I, II, IV and V to Regulation (EU) 2018/858 as regards the technical requirements for vehicles produced in unlimited series, vehicles produced in small series, fully automated vehicles produced in small series and special purpose vehicles, and as regards software update

21.37 **Commission Regulation (EU) 2022/2383** amending Regulation (EU) No 582/2011 as regards the emissions type-approval of heavy duty vehicles using pure biodiesel

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