

Legislation of 2021 and Anticipated Developments of 2022

Corporate, Commercial, Disputes and General

McCann FitzGerald LLP Knowledge Team

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PART I

1. Objective and Scope of Presentation

This presentation highlights the significant legislative developments of 2021. The assessment of “significance” is ours, based on experience of the clients of McCann FitzGerald. Therefore, extensive though this booklet of notes is, the materials that we address in this presentation are merely a considered selection of the thousands of Irish and EU enactments last year.

Our objective in this lecture is to provide to clients of McCann FitzGerald an overview of general developments to assist current awareness and to help us all to maintain the general legal knowledge and background information that lawyers who have developed a specialist practice must possess nonetheless.

However, although each is an important aspect of our practice, this presentation does not address tax or pensions legislation.

These notes are a collaborative effort of the Knowledge Team in McCann FitzGerald¹.

2. 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;² 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).

3. 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 published³. We have encountered this in particular in the area of pensions.

4. Key Acts, Statutory Instruments and EU Legislative Instruments of 2021

In 2021:

- 50 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 and 2020: 32);
- 781 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 and 2020: 760);
- the State became obliged to transpose a further (approximately) 30 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 and 2020: 30);

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² Interpretation Act 2005, section 16(1).

³ Statutory Instruments Act 1947, section 2(3), (4) and (5).

- the State became subject to approximately 1, 040 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 and 2020: 1,072); and
- the State became subject to approximately 1,382 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 and 2020: 1,313).

These notes have been prepared on the basis of material that is available to us on **4 February 2022**.

PART II

5. Administration of Civil Justice

Acts of the Oireachtas:

5.1 Family Leave and Miscellaneous Provisions Act 2021

Part 9 of the Family Leave and Miscellaneous Provisions Act 2021 amends the Judicial Council Act 2019 and the Personal Injuries Assessment Board Act 2003 to make further provision in relation to the operation of personal injuries guidelines adopted by the Judicial Council. It states that the court and PIAB shall, in assessing damages in a personal injuries action commenced after a certain date:

- (a) have regard to the personal injuries guidelines in force, and
- (b) where it departs from those guidelines, state the reasons for such departure in giving its decision.

The guidelines reduce award levels for most categories of personal injury. Part 9 of the 2021 Act was commenced on 24 April 2021.

The Act also states that the court will continue to have regard to the Book of Quantum where an action was commenced before 24 April 2021 or if an assessment was made by PIAB of the claim and this was not accepted.

5.2 Personal Insolvency (Amendment) Act 2021

The Act, which has been commenced in part, makes a number of amendments to the Personal Insolvency Act 2012.

It increases the value of the assets which a person can have, while still being eligible to avail of a Debt Relief Notice. This increase is from €400 to €1,500.

The Act makes certain amendments to section 115A of the 2012 Act. As things stand, under that provision, a Personal Insolvency Practitioner may bring a court application where a debtor's creditors do not approve a proposal for a Personal Insolvency Arrangement and that proposal includes a debt secured by a home mortgage. That mortgage must have already been in arrears on 1 January 2015. The court will review the proposal and can impose it on creditors.

The 2021 Act extends the time within which this court application can be made. This is from 14 to 28 days after the creditors' meeting. It makes it clear that irrespective of whether the court application is made before or after the protective certificate expires, that certificate will continue in force until there is a final decision on the issue. The Act removes the stipulation that the mortgage should have been in arrears on 1 January 2015.

The Act also introduces a new basis for an extension of a protective certificate in a Debt Settlement Arrangement or Personal Insolvency Arrangement. The court can now extend the protective certificate for up to 40 days where there are exceptional circumstances outside of the control of the debtor or Personal Insolvency Practitioner where it would be fair to do so.

The Act allows a Personal Insolvency Practitioner to delegate work to others within the same firm while still remaining responsible for the performance of the person concerned.

The Act also makes a number of amendments to the 2012 Act in response to Covid-19 restrictions. These include permitting certain meetings to take place remotely and allowing a "confirmation of truth" to be signed and submitted electronically in place of a statutory declaration in certain circumstances.

5.3 Civil Law (Miscellaneous Provisions) Act 2021

This Act came into operation on 3 July 2021 and provides for an increase in the number of ordinary judges of the High Court to 42. It also makes provision for the sale or supply of alcohol in outdoor seating areas of licensed premises.

5.4 Private Security Services (Amendment) Act 2021

The main purpose of the Private Security Services (Amendment) Act is to include an additional category and a definition of "enforcement guard" in the list of security services covered by the Private Security Services Act 2004.

Other reforms in the Act include:

- provision of a further exemption from licensing by the Private Security Authority for those engaged in the enforced collection of Revenue liabilities by a Sheriff or County Registrar;
- provision of enhanced powers to the Private Security Authority in relation to the refusal to renew, suspend or revoke licences;
- creation of an offence of impersonating an inspector of the Private Security Authority;
- enabling the register of licences to be available on the internet as well as the Authority's offices; and
- the repeal of certain provisions of the Private Security Services Act 2004 and the Enforcement of Court Orders Act 1926.

The Act was commenced on 22 July 2021 other than insofar as it inserts definitions of "court messenger" and "enforcement guard" into section 2(1) of the Private Security Services Act 2004.

5.5 CervicalCheck Tribunal (Amendment) Act 2021

The Act was commenced on 16 July 2021 and provides for amendments to the CervicalCheck Tribunal Act 2019 to extend the period for receipt of claims by the CervicalCheck Tribunal and provides that the Minister may by order extend that period further.

5.6 Companies (Rescue Process for Small and Micro Companies) Act 2021

Please see the "*Company Law and Corporate Governance*" section of this paper.

Statutory Instruments (Commencement Orders):

5.7 Family Leave and Miscellaneous Provisions Act 2021 (Part 9) (Commencement) Order 2021⁴

This Order appoints 24 April 2021 as the date on which Part 9 of the Family Leave and Miscellaneous Provisions Act 2021, which deals with amendments to the Judicial Council Act 2019 and the Personal Injuries Assessment Board Act 2003 to make provision in relation to the operation of personal injuries guidelines adopted by the Judicial Council, shall come into operation.

5.8 Judicial Council Act 2019 (Commencement) Order 2021⁵

This Order appoints 24 April 2021 as the date on which section 98 and section 99 of the Judicial Council Act 2019 (as amended by section 30 of the Family Leave and Miscellaneous Provisions Act 2021) shall come into operation. Section 98 and section 99 of the Judicial Council Act 2019 deal with amendments to the Personal Injuries Assessment Board Act 2003 and to the Civil Liability and Courts Act 2004 to make provision in relation to the operation of personal injuries guidelines adopted by the Judicial Council and related matters.

5.9 Personal Insolvency (Amendment) Act 2021 (Commencement) Order 2021⁶

This Order appoints 25 June 2021 as the date on which s1, s2, s3, s5, s6, s7, s10, s13, s14, s17 and s18 Personal Insolvency (Amendment) Act 2021 shall come into operation.

5.10 Private Security Services (Amendment) Act 2021 (Commencement) Order 2021⁷

This Order appoints 22 July 2021 as the date on which s1, s2(1)(a) other than insofar as it relates to the insertion of the definitions of "court messenger" and "enforcement guard" into s2(1), and s3 to s8 Private Security Services (Amendment) Act 2021 shall come into operation.

⁴ SI 180 of 2021.

⁵ SI 182 of 2021. See also SI 180 of 2021.

⁶ SI 305 of 2021.

⁷ SI 379 of 2021.

5.11 **Companies (Rescue Process for Small and Micro Companies) Act 2021 (Commencement) Order 2021**⁸

This Order appoints 7 December 2021 as the date on which the Companies (Rescue Process for Small and Micro Companies) Act 2021 (Commencement) Order 2021 shall come into operation.

Statutory Instruments:

5.12 **Rules of the Superior Courts (CervicalCheck Tribunal) 2021**⁹

This inserts new Order 105C into the RSC to provide for applications and appeals to court under the CervicalCheck Tribunal Act 2019 from 19 February 2021.

5.13 **Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Section 31) (Charity Appeals Tribunal) (Designation) Order 2021**¹⁰

This Order designates the Charity Appeals Tribunal as a body for the purposes of holding remote hearings under s31 Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020.

5.14 **District Court (Gaming and Lotteries) Rules 2021**¹¹

This amends Order 66 of the District Rules and associated forms to facilitate the operation of the Gaming and Lotteries (Amendment) Act 2019, from 25 February 2021.

5.15 **Supreme Court, Court of Appeal and High Court (Fees) (Amendment) Order 2021**¹²

This Order amends the Supreme Court, Court of Appeal and High Court (Fees) Order 2014 in respect of fees payable in the Probate Office and District Probate Registries, from 1 March 2021.

5.16 **Rules of the Superior Courts (Affidavits) 2021**¹³

These Rules amend Order 40 of the Rules of the Superior Courts to provide for remote swearing of affidavits and the use of a business address by a deponent where appropriate, from 31 March 2021.

Order 40 rule 9 now provides that a person swearing an affidavit (the deponent) within Ireland may do so either:

- in the physical presence of the officer before whom it is to be sworn, or
- by videoconference between that officer and the deponent.

The latter option is available where, for particular reasons, it is not practicable for the deponent to meet physically with the officer. Those reasons need to be briefly stated in the relevant affidavit. In addition, where this videoconferencing option is chosen, certain additional conditions must be satisfied to ensure the integrity of the process. These are set out in the new rules.

5.17 **District Court (Affidavits) Rules 2021**¹⁴

These Rules amend Order 50 of the District Court Rules to provide for the option of taking an affidavit by videoconference, from 6 April 2021.

5.18 **Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Section 31) (Standards in Public Office Commission) (Designation) Order 2021**¹⁵

This Order designates the Standards in Public Office Commission, from 20 April 2021, for the purposes of s31 Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020, which permits remote hearings by designated bodies.

⁸ SI 673 of 2021.

⁹ SI 57 of 2021.

¹⁰ SI 59 of 2021.

¹¹ SI 63 of 2021.

¹² SI 80 of 2021.

¹³ SI 127 of 2021.

¹⁴ SI 147 of 2021.

¹⁵ SI 189 of 2021.

- 5.19 **Rules of the Superior Courts (Regulation of Legal Services) 2021**¹⁶
These Rules amend Order 53 and insert new Orders 53A, 53B, 53C, 53D and 53E RSC to facilitate the regulatory regime for legal practitioners introduced by the Legal Services Regulatory Act 2015, from 5 May 2021.
- 5.20 **District Court (Maintenance Rules) 2021**¹⁷
These Rules amend Order 57 and Order 41B of the District Court Rules to provide for the operation of European Union (Hague Maintenance Convention) Regulations 2019, from 5 May 2021.
- 5.21 **Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Section 31) (Commission for the Regulation of Utilities) (Designation) Order 2021**¹⁸
This Order designates the Commission for the Regulation of Utilities, from 29 April 2021, for the purposes of s31 Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020, which permits remote hearings by designated bodies.
- 5.22 **Civil Legal Aid Regulations 2021**¹⁹
These Regulations provide a statutory basis to allow for the provision of legal aid to the families of the 48 victims whose deaths resulted from the Stardust fire in 1981, irrespective of income eligibility or asset contribution limits. These regulations will only apply to the Stardust victims' families in respect of the new inquests directed by the Attorney General on 19 December 2019.
- 5.23 **Justice (Delegation of Ministerial Functions) Order 2021**²⁰
This Order delegates certain powers and duties under the specified enactments from the Minister for Justice to James Browne, Minister of State at the Department of Justice, from 18 May 2021.
- 5.24 **European Union (Enforcement of Data Subjects' Rights on Transfer of Personal Data outside the European Union) Regulations 2021**²¹
This Order, in operation from 24 June 2021, gives further effect to EU Regulation 2016/679 by amending the Data Protection Act 2018 to insert a new s117A in order to provide a judicial remedy (in contract) for infringement of certain appropriate safeguards on transfers of personal data outside the EU where the transfer has been subject to appropriate, and any additional, safeguards provided for in the specified 'relevant instruments'.
- 5.25 **Agriculture Appeals Act 2001 (Amendment of Schedule) Regulations 2021**²²
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, from 16 July 2021.
- 5.26 **District Court (Fees) (Amendment) Order 2021**²³
This Order amends the District Court (Fees) Order 2014 from 30 August 2021 by the substitution of articles 4A and 4B in order to provide that no fee shall be payable in the year 2021 in respect of certain items related to the licensing of premises.
- 5.27 **Rules of the Superior Courts (Procedure on Default) 2021**²⁴
These Rules tighten up the rules in the High Court in relation to obtaining judgment in default and standardise time limits for the delivery of certain documents. The new rules came into operation on 13 November 2021. However, there are detailed application provisions for the new rules which should also be consulted.
- 5.28 **Rules of the Superior Courts (Hague Maintenance Convention) 2021**²⁵
These Rules substitute O42A RSC to provide for the operation of the European Union (Hague Maintenance Convention) Regulations 2019 from 12 October 2021. Those 2019 regulations give effect to

¹⁶ SI 196 of 2021.

¹⁷ SI 202 of 2021.

¹⁸ SI 233 of 2021.

¹⁹ SI 248 of 2021.

²⁰ SI 251 of 2021.

²¹ SI 297 of 2021.

²² SI 368 of 2021.

²³ SI 444 of 2021.

²⁴ SI 490 of 2021.

²⁵ SI 498 of 2021.

the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance as approved on behalf of the EU by Council Decision 2011/432/EU of 9 June 2011.

5.29 **Circuit Court Rules (Intellectual Property) 2021**²⁶

These Rules insert a new Order 5D into the Circuit Court Rules. That order sets out procedures to deal with certain intellectual property claims brought in that court. An “intellectual property claim” is defined in section 2 of the Copyright and Related Rights Act 2000 and includes certain specified proceedings under the 2000 Act as well as under the Patents Act 1992, the Trade Marks Act 1996 and the Industrial Designs Act 2001.

These new court rules follow on from the Copyright and Other Intellectual Property Law Provisions Act 2019. It made various amendments to legislation in this area to allow for the extension of the jurisdiction of the Circuit Court and the District Court to facilitate right-holders in bringing lower value intellectual property infringement claims within the monetary jurisdiction of those courts. The aim was to improve the possibilities for the enforcement of these claims, especially those that would not be economical to prosecute before the High Court.

5.30 **Rules of the Superior Courts (Intellectual Property Proceedings) 2021**²⁷

These Rules substitute Order 63A and Order 94 Rules of the Superior Courts to provide for the establishment of an Intellectual Property and Technology List as a sub-division of the Commercial List and to provide for efficient disposal of intellectual property cases in the High Court, from 22 October 2021.

Order 63A RSC, which governs the Commercial Court, has been amended so that, if “intellectual property proceedings” or proceedings involving issues of “technological complexity in any field of industry” appear in the Commercial Court list, the judge can assign them to the new Intellectual Property and Technology List. This is a sub-division of the Commercial List. Order 63A is also amended to include dedicated and detailed pre-trial procedures for proceedings listed in the Intellectual Property and Technology List.

Order 94 RSC has also been amended. This sets out the rules more generally in relation to intellectual property proceedings.

5.31 **District Court (Fees) (Amendment) (No 2) Order 2021**²⁸

This Order amends the District Court (Fees) Order 2014 in order to provide that fees payable, in respect of specified items, relating to an application for a Special Exemption Order that has effect at any time during the period from 22 October 2021 to 31 December 2021 will be waived.

5.32 **Justice (Delegation of Ministerial Functions) (No 3) Order 2021**²⁹

This Order delegates certain powers and duties under the specified enactments from the Minister for Justice to James Browne, Minister of State at the Department of Justice, from 9 November 2021.

5.33 **Rules of the Superior Courts (Service in Wardship Proceedings) 2021**³⁰

These Rules, in effect from 24 November 2021, amend O67 r94, r95 and substitute form 15 in Appendix K of the Rules of the Superior Courts relating to service on the respondent in proceedings seeking a declaration of wardship, by removing the provisions on non-personal service thereby making personal service mandatory in all cases, including a provision requiring the petition to be read and explained to the respondent.

5.34 **Companies Act 2014 (Prescribed Form and Notice) Regulations 2021**³¹

Please see the “*Company Law and Corporate Governance*” section of this paper.

5.35 **Companies Act 2014 (Section 897) Order 2021**³²

Please see the “*Company Law and Corporate Governance*” section of this paper.

²⁶ SI 499 of 2021.

²⁷ SI 530 of 2021.

²⁸ SI 534 of 2021.

²⁹ SI 594 of 2021.

³⁰ SI 600 of 2021.

³¹ SI 675 of 2021.

³² SI 676 of 2021.

- 5.36 **Courts and Court Officers Act 1995 (Section 9(2)) Order 2021**³³
This Order provides that the number of ordinary judges of the High Court otherwise provided for under any enactment for the time being in force may be exceeded by one.

EU Instruments:

- 5.37 **Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021 amending Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability**
This Directive lays down more stringent rules on motor insurance to better protect victims of motor accidents and improve the rights of insurance policyholders. It will ensure that such victims receive the full compensation they are due, even if the insurer is insolvent. The new rules also ensure that those who have a previous claims history in another EU member state are treated equally to domestic policyholders. By December 2023, member states will have to adopt and publish the necessary measures to comply with the Directive.
- 5.38 **Regulation (EU) 2021/693 of the European Parliament and of the Council of 28 April 2021 establishing the Justice Programme and repealing Regulation (EU) No 1382/2013**
This Regulation establishes the justice programme. 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 and mutual trust; and judicial cooperation. Ireland is not taking part in the adoption of this Regulation.
- 5.39 **Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies**
The aim of the new legislation, which came into force on 28 October 2021, is to ensure the EU's full compliance with the Aarhus Convention concerning the right of members of the public to request the review of non-legislative administrative acts adopted by an EU institution or body, if these acts have legal and external effects and contain provisions that may contravene environmental law. The EU's previous implementation had been criticised as failing to properly give effect to the Convention.
- 5.40 **Regulation (EU) 2021/2260 of the European Parliament and of the Council of 15 December 2021 amending Regulation (EU) 2015/848 on insolvency proceedings to replace its Annexes A and B**
Annexes A and B to Regulation (EU) 2015/848 list, respectively, the national insolvency proceedings and national insolvency practitioners, as notified by Member States, to which that Regulation applies. The annexes are being updated to take account of changes notified by various Member States. Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

Anticipated Developments: Ireland

- 5.41 **Competition (Amendment) Bill 2022**
This proposes a radical new enforcement architecture, proposals for big "administrative" fines, lower thresholds to prove violations, and enhanced surveillance powers. There are also important reforms to Irish merger rules. Violations of competition law will be easier to prove and fines will be higher. This Bill has been published.
- 5.42 **Courts and Civil Law (Miscellaneous Provisions) Bill**
This will enact provisions relating to courts administration and other civil law reform measures (including Immigration and Asylum, Citizenship, Civil Legal Aid, Legal Services Regulation, Succession, Bankruptcy, Licensing and Land and Conveyancing).
- 5.43 **Personal Insolvency (Amendment) (No 2) Bill**
This will update aspects of personal insolvency legislation, following statutory review of the Personal Insolvency Acts.

³³ SI 778 of 2021.

6. Administration of Criminal Justice

Acts of the Oireachtas:

6.1 **Criminal Justice (Theft and Fraud Offences) (Amendment) Act 2021**

The Criminal Justice (Theft and Fraud Offences) (Amendment) Act 2021 was commenced on 14 April 2021. The Act gives further effect to remaining elements of Directive EU 2017/1371 (“PIF Directive”). This Directive aims to fight fraud against the EU’s financial interests. It establishes minimum rules on the definition of criminal offences and sanctions in this regard.

The Act creates an offence of “fraud affecting the financial interests of the European Union”. It is widely defined and covers a range of activities in and around financial and revenue misconduct involving EU funds or assets with certain areas such as procurement and serious cross-border VAT fraud given express mention.

The Act also creates a new offence of misappropriation. “Misappropriation” means the action of a “public official”, who is directly or indirectly entrusted with the management of funds or assets, to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the EU’s financial interests. “Public official” is also widely defined.

In addition, where a “relevant offence” is committed for the benefit of a body corporate by a “relevant person” and the commission of that offence is attributable to a failure within the company to exercise the requisite degree of supervision or control over the person concerned, then the body corporate will be guilty of an offence.

A “relevant offence” can be either of the two new offences but also includes a corruption offence that damages, or is likely to damage, the financial interests of the EU, as well as an offence of inciting, aiding and abetting, or attempting any of those offences or laundering their proceeds. A “relevant person” in relation to a body corporate, means a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, or an employee, subsidiary or agent of the body corporate. It will be a defence for a body corporate to prove that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence. If the corporate is convicted of an offence, secondary liability may follow for management in certain circumstances.

The Act has extraterritorial jurisdiction for offences committed abroad by Irish citizens, corporates and residents. This means that relevant misconduct committed abroad may be prosecuted in Ireland. This will extend to inciting, aiding and abetting, or attempting the commission of the offence abroad.

Finally, the Criminal Justice Act 1994 has been amended to add the offences of fraud affecting the financial interests of the European Union and misappropriation to the list of offences considered as extended confiscation offences, for the purposes of seeking a confiscation of the proceeds of crime under section 8F of that Act. The Criminal Justice Act 2011 has also been updated to take account of the new offences and apply mandatory reporting obligations to them.

6.2 **Criminal Procedure Act 2021**

The Criminal Procedure Act 2021 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. The Act has not yet been commenced.

The new Act sets out how the provisions will operate and they are likely to be supplemented by court rules. In certain circumstances, the court will have a discretion whether to order a preliminary trial hearing though where the offence is a “relevant offence”, a preliminary trial hearing is mandatory where requested. A “relevant offence” is an offence of a specific gravity or an offence specified by the Minister as such by reference to the nature of the offence or specific complexities in the prosecution of the offence.

In making a decision around the timing of a preliminary trial hearing, the court will have regard to the interests of justice and in particular will seek to:

- facilitate the expeditious and efficient conduct of the proceedings;
- cause the least disruption to the jury and witnesses in the trial of the offence; and
- best protect the interests of any victim of the offence.

The new Act also deals with the provision of information to juries at trial to assist them in their deliberations. Currently, certain pieces of Irish legislation include specific provisions on the giving of information to juries at trial to assist them. The Law Reform Commission has previously recommended that these type of provisions be extended to all trials on indictment. The new Act now does so.

6.3 **Criminal Justice (Perjury and Related Offences) Act 2021**

This Act was commenced on 28 July 2021. It consolidates and codifies the law on perjury and related offences. It provides, for the first time in Ireland, a statutory definition of perjury and of suborning perjury³⁴.

A person commits perjury if he or she, in, or for the purpose of, a judicial or other proceeding, gives a statement material in the proceeding:

- (a) while lawfully sworn as a witness or as an interpreter,
 - (b) on affidavit, or
 - (c) in a statement of truth made in place of an affidavit,
- that is false, and he or she knows to be false.

The offence can apply to evidence given in Ireland in respect of proceedings abroad and to evidence given abroad in respect of proceedings in Ireland.

Prior to its enactment, perjury was a common law offence without a clear definition or sentencing parameters. This made perjury difficult to prosecute. The Act aims to remedy this.

6.4 **Criminal Justice (Amendment) Act 2021**

The purpose of the Act is to rectify the constitutional infirmities in legislation identified by the Supreme Court in *Ellis v Minister for Justice and Equality* [2019] 3 IR 511. In that case, the plaintiff successfully challenged the constitutionality of s27(8) Firearms Act 1964 on the basis that, in providing for a mandatory five-year sentence for a second or subsequent firearms offence, the subsection was an impermissible encroachment on the exclusive jurisdiction of the courts under Articles 34 and 38.1 of the Constitution in sentencing a person convicted of an offence. The 2021 Act remedies this fault in all legislation where such an approach appears. This Act was commenced on 27 December 2021.

6.5 **Criminal Justice (Smuggling of Persons) Act 2021**

The Act, which has been commenced, gives effect to EU Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence (the Facilitation Directive) and EU Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (the Framework Decision). Under these instruments, any person who intentionally assists unauthorised entry, transit, or residence of a non-EU national in the EU, will be sanctioned unless they are doing so for humanitarian reasons.

The Act also implements the UN Protocol against the smuggling of migrants by land, sea and air, supplementing the UN Convention against Transnational Organized Crime and adopted in November 2000. The Act repeals various sections of the Illegal Immigrants (Trafficking) Act 2000, which currently provide for offences related to the smuggling of persons.

6.6 **Health and Criminal Justice (Covid-19) (Amendment) Act 2021**

Please see the “*Health Services and Public Health*” section of this paper.

Statutory Instruments (Commencement Orders):

6.7 **Criminal Justice (Mutual Recognition of Decisions on Supervision Measures) Act 2020 (Commencement) Order 2021³⁵**

This Order appoints 5 February 2021 as the date on which the Criminal Justice (Mutual Recognition of Decisions on Supervision Measures) Act 2020 shall come into operation. This Act gives effect to Council Framework Decision 2009/829/JHA of 23 October 2009 on the application between EU Member States of the principle of mutual recognition of decisions on supervision measures as an alternative to provisional detention. The Framework Decision allows EU citizens awaiting trial in another EU Member State return

³⁴ A person suborns perjury “if he or she procures, persuades, induces or otherwise causes another person to commit perjury, knowing or being reckless as to whether the other person is committing such offence”, and it is immaterial “whether or not the other person referred to ... has been convicted of the perjury to which the alleged subornation of perjury relates.”

³⁵ SI 15 of 2021.

home until their trial begins. Their home Member State supervises them using non-custodial measures. This avoids lengthy pre-trial detention abroad.

6.8 Harassment, Harmful Communications and Related Offences Act 2020 (Commencement) Order 2021³⁶

This Order appoints 10 February 2021 as the date on which the Harassment, Harmful Communications and Related Offences Act 2020 shall come into operation. The primary purpose of the Act is to amend the law and to create new offences in relation to harassment and harmful communications, both online and offline.

6.9 Criminal Justice (Theft and Fraud Offences) (Amendment) Act 2021 (Commencement) Order 2021³⁷

This Order appoints 14 April 2021 as the date on which the Criminal Justice (Theft and Fraud Offences) (Amendment) Act 2021 shall come into operation.

6.10 Criminal Justice (Perjury and Related Offences) Act 2021 (Commencement) Order 2021³⁸

This Order appoints 28 July 2021 as the date on which the Criminal Justice (Perjury and Related Offences) Act 2021 shall come into operation.

6.11 Parole Act 2019 (Commencement) Order 2021³⁹

The Parole Act 2019 provides for the establishment of the Parole Board an independent expert statutory body with responsibility for granting parole. Previously, the de facto parole system operated entirely at the discretion of the Minister for Justice. A parole board was established on a non-statutory basis to advise the Minister as to the suitability for temporary release/parole of such persons as the Minister referred to the board. This Order appoints 30 July 2021 as the date on which the Parole Act 2019 shall come into operation.

6.12 Criminal Evidence Act 1992 (Section 13) (Commencement) Order 2021⁴⁰

This Order appoints 15 December 2021 as the date on which section 13 of the Criminal Evidence Act 1992, which permits a person other than the accused, in relevant proceedings, to give evidence through a live television link, shall come into operation for the District Court sitting in Districts 4, 16, 17, 20 and 21.

6.13 Criminal Justice (Victims of Crime) Act 2017 (Commencement) Order 2021⁴¹

This Order appoints 15 December 2021 as the date on which s30(b)(ii) Criminal Justice (Victims of Crime) Act 2017 (which amends s13 Criminal Evidence Act 1992 to permit the victim of an offence, in relevant proceedings and with the leave of the court, to give evidence through a live television link) shall come into operation for the District Court sitting in Districts 4, 16, 17, 20 and 21.

6.14 Criminal Justice (Smuggling of Persons) Act 2021 (Commencement) Order 2021⁴²

This Order appoints 31 December 2021 as the date on which the Criminal Justice (Smuggling of Persons) Act 2021 shall come into operation.

6.15 Criminal Justice (Amendment) Act 2021 (Commencement) Order 2021⁴³

This Order appoints 27 December 2021 as the date on which the Criminal Justice (Amendment) Act 2021 comes into operation.

Statutory Instruments:

6.16 European Union (European Arrest Warrant Act 2003) (Amendment) Regulations 2021⁴⁴

These Regulations, in effect from 30 March 2021, make various amendments to the European Arrest Warrant Act 2003 and other related pieces of primary legislation to give full effect to giving full effect to parts of the Trade and Cooperation Agreement between the European Union and the European Atomic

³⁶ SI 53 of 2021.

³⁷ SI 167 of 2021.

³⁸ SI 378 of 2021.

³⁹ SI 405 of 2021.

⁴⁰ SI 693 of 2021.

⁴¹ SI 694 of 2021.

⁴² SI 772 of 2021.

⁴³ SI 777 of 2021.

⁴⁴ SI 150 of 2021.

Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and to the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway.

- 6.17 **Justice (Delegation of Ministerial Functions) (No 2) Order 2021**⁴⁵
This Order delegates certain powers and duties under the specified enactments from the Minister for Justice to Hildegarde Naughton, Minister of State at the Department of Justice, from 18 May 2021.
- 6.18 **District Court (Order 38) Rules 2021**⁴⁶
These Rules update and consolidate amendments to Order 38 and certain associated forms and insert a new Order 96D to facilitate the operation of the Sex Offenders Act 2001 as amended by the Criminal Law (Sexual Offences) Act 2017 and s20 International Protection Act 2015, from 2 June 2021.
- 6.19 **Parole Act 2019 (Establishment Day) Order 2021**⁴⁷
This Order appoints 31 July 2021 as the establishment day of the Parole Board for the purposes of the Parole Act 2019.

EU Instruments:

- 6.20 **Regulation (EU) 2021/785 of the European Parliament and of the Council of 29 April 2021 establishing the Union Anti-Fraud Programme and repealing Regulation (EU) No 250/2014**
This Regulation establishes the European Union's (EU) anti-fraud programme. This runs for the duration of the 2021-2027 multiannual financial framework. It sets out the programme's general and specific objectives and level, forms and rules of interventions and the funding. The programme's general objectives are to protect the EU's financial interests and support overall assistance and cooperation between national administrative authorities and the European Commission in applying customs and agricultural legislation.

7. **Aviation**

Statutory Instruments:

- 7.1 **Irish Aviation Authority (Testing for Alcohol) Order 2021**⁴⁸
This Order applies to every member of a flight crew and of a cabin crew (each a "relevant person") who performs duties or functions in relation to the operation of an aircraft in the State or attempts to do so. Relevant persons are prohibited from performing duties or functions in relation to the operation of an aircraft or attempt to do so while under the influence of alcohol or while there is present in the relevant person's body a quantity of alcohol such that (at that time or within three hours thereafter) the concentration of alcohol in the relevant person's breath will exceed a concentration of 9 microgrammes of alcohol per 100 millilitres of breath. Authorised officers of the Irish Aviation Authority may demand breath samples from relevant persons and may prevent an aircraft from flying if for the aircraft to do so would contravene the Irish Aviation Authority Act 1993 or if the aircraft would be a cause of danger to persons or property.
- 7.2 **European Communities (Common Rules for the Operation of Air Services in the Community) (Amendment) Regulations 2021**⁴⁹
These Regulations amend the European Communities (Common Rules for the Operation of Air Services in the Community) Regulations 2008 in order to give further effect to Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community, by transferring – from the Minister for Transport to the Commission for Aviation Regulation – the power to enforce Article 23 of the EU Regulation (prescribed pricing-related information that must be made available in advertising and offering scheduled air services and prohibiting any discrimination based on nationality or place of residence when offering air fares).

⁴⁵ SI 252 of 2021.

⁴⁶ SI 262 of 2021.

⁴⁷ SI 406 of 2021.

⁴⁸ SI 22 of 2021.

⁴⁹ SI 165 of 2021.

7.3 European Union (Consumer Protection) (Commission for Aviation Regulation) Regulations 2021⁵⁰

These Regulations give further effect to Regulation (EU) 2017/2394 on co-operation between national authorities responsible for the enforcement of consumer protection laws in so far as that Regulation relates to national measures concerning consumers' interests specified in column 3 to the Schedule of the European Union (Cooperation Between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2020. These Regulations provide the Commission for Aviation Regulation with the investigation and enforcement powers required under Article 9 of the Council Regulation.

Anticipated Developments: Ireland

7.4 Air Navigation and Transport (International Aviation Agreements) (Amendment) Bill

This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to reflect the Beijing Convention 2010 and the Montreal Protocol 2014 in Ireland.

8. Betting, Gaming and Lotteries

Anticipated Developments: Ireland

8.1 Gambling Regulation Bill

This Bill is intended to provide for "a modern approach to the licensing of gambling activities and to establish a gambling regulator". The Government has approved the Heads of Bill.

9. Broadcasting and Communications

Statutory Instruments

9.1 Wireless Telegraphy (Further Temporary Electronic Communications Services Licences) (No 2) Regulations 2021⁵¹

9.2 Wireless Telegraphy (Further Temporary Electronic Communications Services Licences) (No 3) Regulations 2021⁵²

These Regulations 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, the 2.1 GHz and the 2.6 GHz Bands in order to address the temporary impact upon Electronic Communications Networks and Electronic Communications Services from the extraordinary situation arising from COVID-19.

9.3 Wireless Telegraphy (Liberalised Use and Related Licences in the 700 MHz Duplex, 2.1 GHz, 2.3 GHz and 2.6 GHz Bands) Regulations 2021⁵³

These Regulations prescribe matters in relation to licences for apparatus for wireless telegraphy for terrestrial systems capable of providing Electronic Communications Services in the 700 MHz Duplex, the 2.1 GHz, the 2.3 GHz and the 2.6 GHz Bands.

9.4 Wireless Telegraphy (Third Generation and GSM Licence (Amendment) and Interim Licensing) Regulations 2021⁵⁴

These Regulations prescribe matters in relation to licences for apparatus for wireless telegraphy for terrestrial systems capable of providing Electronic Communications Services in the 2.1 GHz Band.

9.5 Wireless Telegraphy Act 1926 (Section 3) (Exemption of Customer Premises Equipment and User Equipment) Order 2021⁵⁵

This Order provides for the exemption of certain wireless telegraphy apparatus (namely Consumer Premises Equipment and User Equipment) that meet prescribed conditions, from the requirement to be licensed under the Wireless Telegraphy Act 1926.

⁵⁰ SI 195 of 2021.

⁵¹ SI 137 of 2021.

⁵² SI 501 of 2021.

⁵³ SI 264 of 2021.

⁵⁴ SI 265 of 2021.

⁵⁵ SI 282 of 2021.

9.6 **Wireless Telegraphy Act 1926 (Section 3) Satellite Earth Stations for Satellite Personal Communication Services (Revocation) Order 2021**⁵⁶

This Order revokes the Wireless Telegraphy Act 1926 (Section 3) (Exemption of Mobile Satellite Earth Stations for Satellite Personal Communication Systems Operating in Bands Below 1 GHz (S-Pcs<<1 GHz)) Order 2000.

Anticipated Developments: Ireland

9.7 **Communications Regulation (Enforcement) Bill**

This Bill would update the civil and criminal enforcement regime for the Commission for Communications Regulation, in order to introduce new consumer protection measures for consumers of electronic communications services and amend Part 2, 3 and 5 of the Communications Regulation Act, 2002. The Government has approved the Heads of Bill.

9.8 **Security Measures for Electronic Communications and Services Bill**

This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to provide for an assessment of the risk-profile of providers of electronic communications network equipment using clear and objective criteria, such as those recommended in the EU 5G Security Toolbox.

9.9 **Communications (Data, Retention and Disclosure) Bill**

This long-proposed Bill remains within the Spring 2022 Government Legislation Programme. It proposes to revise and replace the Communications (Retention of Data) Act 2011 in light of European Court of Justice judgments. The Government has approved the Heads of Bill.

10. **Commercial and Consumer Law**

Statutory Instruments:

10.1 **Control of Exports (Brokering Activities, Goods and Technology) Regulations 2021**⁵⁷

These Regulations, made under the Control of Exports Act 2008, revoke the Control of Exports (Brokering Activities, Goods and Technology) Order 2018 and provide that a licence will be required for certain brokering activities in relation to goods and technology listed in the Schedule, from 29 April 2021.

10.2 **European Communities (Intra-Community Transfers of Defence Related Products) (Amendment) Regulations 2021**⁵⁸

These Regulations revoke the European Communities (Intra-Community Transfers of Defence Related Products) (Amendment) Regulations 2019 and amend the European Communities (Intra-Community Transfers of Defence Related Products) (Amendment) Regulations 2021 in order to give effect to EU Directive 2021/1047 updating of the list of defence-related products in line with the updated Common Military List of the EU, from 6 October 2021.

10.3 **European Union (Certain Minerals from Conflict Zones – Tin, Tantalum, Tungsten, their Ores and Gold) (Supply Chain Obligations) Regulations 2021**⁵⁹

These Regulations provide for penalties for breaches of Regulation (EU) 2017/821 and remedial actions where a breach has occurred, from 21 January 2021.

10.4 **European Union (Control of Trade in Goods that May be Used for Torture) Regulations 2021**⁶⁰

These Regulations revoke the European Communities (Control of Trade in Goods that May be Used for Torture) Regulations 2019 and give full effect to EU Regulation 125/2019.

10.5 **European Union (Consumer Protection) (Commission for Aviation Regulation) Regulations 2021**⁶¹

See item 7.3 (above).

⁵⁶ SI 642 of 2021.

⁵⁷ SI 207 of 2021.

⁵⁸ SI 514 of 2021. See also Commission Delegated Directive (EU) 2021/1047 as regards the updating of the list of defence-related products in line with the updated Common Military List of the EU of 17 February 2020.

⁵⁹ SI 16 of 2021.

⁶⁰ SI 201 of 2021.

⁶¹ SI 195 of 2021.

EU Instruments:

10.6 Regulation (EU) No 2019/452 establishing a framework for the screening of foreign direct investments into the EU

This Regulation came into effect on 11 October 2020 and has direct effect in the State. It is to be supplemented by an Investment Screening Bill in Ireland, probably during 2022.

The Regulation creates an EU-wide framework for screening non-EU foreign direct investment (“FDI”) where there are concerns that an investment may pose a risk to security or public order in the host Member State, or to other Member States, in respect of projects or programmes of EU interest. These include those projects and programmes that involve a substantial amount, or a significant share, of EU funding, or which are covered by EU law regarding critical infrastructure, critical technologies or critical inputs that are essential for security or public order. This framework is intended as a co-operation mechanism through which Member States and the European Commission can exchange information and raise specific concerns about proposed FDI from third countries on security or public order grounds. The European Commission is empowered to issue an opinion in respect of any in-scope proposed investment.

The information that must be supplied in respect of any in-scope investment includes: • the ownership structure of the foreign investor and of the undertaking in which the FDI is planned or has been completed, including information on the ultimate investor and participation in the capital; • the approximate value of the FDI; • the products, services and business operations of the foreign investor and of the undertaking in which the FDI is planned or has been completed; • the Member States in which the foreign investor and the undertaking in which the FDI is planned or has been completed conduct relevant business operations; • the funding of the investment and its source, on the basis of the best information available to the Member State; and • the date when the FDI is planned to be completed or has been completed.

The Annex to the EU Regulation contains a list of EU projects and programmes of particular interest from an investment screening perspective. This list includes: • the European GNSS programmes (Galileo & EGNOS); • the Copernicus programme; • the Horizon 2020 research and development programme; • the Trans-European Networks for Transport (TEN-T); • the Trans-European Networks for Energy (TEN-E); and • the Trans-European Networks for Telecommunications. This Annex is kept under review to ensure it remains up to date.

Anticipated Developments: Ireland

10.7 Investment Screening Bill [Priority Bill]

Further to Regulation (EU) 2019/452, this Bill is intended to develop an investment screening mechanism that will empower the Minister to respond to threats to Ireland’s security and public order posed by particular types of foreign investment, and to prevent or mitigate such threats.

10.8 Control of Exports Bill

This Bill 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.” The Government has approved the Heads of Bill.

10.9 Limited Partnership Bill

This Bill is intended to modernise the Limited Partnership Act 1907 which is concerned with the registration of Limited Partnerships.

10.10 Co-Operative Societies Bill

This Bill 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.

10.11 Consumer Rights Bill

This Bill is intended to give effect to EU Directive 770/2019 on consumer contracts for the supply of digital content and digital services, EU Directive 771/2019 on consumer contracts for the sale of goods, and to update and consolidate the statutory provisions on consumer rights and remedies in relation to contracts for the supply of non-digital services, unfair contract terms, and information and cancellation.

10.12 Representative Actions for the Protection of the Collective Interests of Consumers Bill

This Bill is intended to permit the bringing of collective claims by consumers against traders whose behaviour has breached consumer rights.

10.13 **Electricity Costs (Domestic Electricity Account Holders) Emergency Measures Bill**
This Bill is intended to establish a scheme for the payment of an Electricity Costs Emergency Benefit Payment to domestic electricity account-holders to be funded by moneys provided by the Oireachtas, having regard to the exceptional rise in global energy prices.

10.14 **Defective Concrete Blocks Remediation Bill**
This Bill is intended to provide for a new Defective Concrete Blocks Remediation Scheme which will provide grants to eligible owners of homes that are affected by Mica and Pyrite.

Anticipated Developments: EU

10.15 **Directive (EU) 2019/2161 as regards the better enforcement and modernisation of EU consumer protection rules**
The so-called “Omnibus Directive” is due to have been transposed into national law by 28 November 2021 (that is overdue) and to apply from 28 May 2022. The Directive proposes significant changes in the law in respect of consumer contracts for digital services and in consumer contracts for digital content. The Directive also requires that the concept of “misleading commercial practices” is expanded to ensure that certain practices will always be considered to be unfair (such as internet search returns that are not clearly disclosed as promoted paid advertising). See also the Consumer Rights Bill.

10.16 **Proposal for a Regulation on the protection of the EU and its Member States from economic coercion by third countries**
On 8 December 2021 the European Commission published a proposal for an “anti-coercion” instrument in EU law that would respond to “the rising problem of economic coercion” and would aim to protect the EU’s and Member States’ interests and sovereign choices. The Commission states that the instrument will empower the Commission to apply trade, investment or other restrictions towards any non-EU country that is unduly interfering in the policy choices of the EU or its Member States. In this regard, “economic coercion” refers to a situation in which a third country is seeking to pressure the EU or a Member State into making a particular choice by applying, or threatening to apply, measures affecting trade or investment.

11. Company Law and Corporate Governance

Acts of the Oireachtas:

11.1 **Companies (Rescue Process for Small and Micro Companies) Act 2021**
This Act establishes (from 7 December 2021) a new administrative rescue process (“SCARP”) that is available exclusively to small companies and micro-companies (measured by metrics that are set out below). This was at the 2020 suggestion of the Company Law Review Group which had reported to the Minister that one of the principal barriers to examinership for small companies was the cost involved in the court-led process. In that context, this Act adopts and deploys the key principles of examinership in order to create a new process that is available to small companies and micro-companies to enable them to restructure their debts within 70 days. However, there are important differences between the SCARP process and examinership.

A company may avail of SCARP if it meets at least two of the following criteria:

- turnover does not exceed €700,000 (a micro-company) or €12m (a small company);
- balance sheet total does not exceed €350,000 (a micro-company) or €6m (a small company);
- average number of employees does not exceed 10 (a micro-company) or 50 (a small company).

The SCARP process is based on a “process adviser” to whom the relevant company provides a sworn statement of affairs. If satisfied that the company has a reasonable prospect of survival, the process adviser prepares a report for the company similar to the independent expert’s report in an examinership, *ie* addressing the conditions and funding required in order to allow the company to continue trading as a going concern. Within seven days of receipt of the process adviser’s report, the directors pass a resolution to appoint the process adviser and the process adviser then must, within two working days, notify the company’s creditors of that appointment and request submissions in respect of claims. Should a creditor fail to respond to the request for information, the process adviser will establish the value of the relevant creditor’s claim based on the information available.

The process adviser then must, within 49 days:

- prepare a rescue plan for the company, which is likely to involve a write-down of debt. Although a rescue plan may write down secured debt, as with examinership it must not (a) write down debt below the value of the creditor's security, or (b) impact on the liability of third-party guarantors; and
- hold meetings of the member(s) and creditors of the company to approve the Rescue Plan.

If the rescue plan is passed by 60% of creditors in number of at least one impaired class of creditors, representing a majority in value of the claims in that class, it becomes binding on all creditors within 21 days of a notice being filed with the relevant court (assuming no objection has been filed). A creditor may file an objection with the relevant court (on a number of prescribed grounds) within 21 days of the notice being filed with the court.

Significantly:

- the Revenue Commissioners (and some other State creditors) may effectively 'opt out' of the SCARP process and enforce their debts in full;
- there isn't any automatic moratorium on enforcement within SCARP (as there is in examinership) and a company has to apply to court for protection from an enforcing creditor;
- the SCARP process cannot be initiated by a creditor; and
- the SCARP process is not currently recognised under the Recast Insolvency Regulation (Regulation (EU) 2015/848).

11.2 **Companies (Corporate Enforcement Authority) Act 2021**

This Act provides for the establishment (on a date to be set by the Minister) of a new Corporate Enforcement Authority (with not more than three members) as a statutory and independent agency, with additional resources to investigate and prosecute so-called white-collar crime and to take over the functions of, and replace, the Director of Corporate Enforcement.

Despite the limited scope that the short title of this Act implies, in fact this Act also makes a large number of general amendments to the Companies Act. The "Companies (Corporate Enforcement Authority and Miscellaneous Provisions) Act 2021" would have been a more appropriate title. The miscellaneous amendments include:

- 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 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;
- a company secretary, who is a natural person, must be at least 18 years old; and
- 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.

Statutory Instruments (Commencement Orders):

11.3 Companies (Rescue Process for Small and Micro Companies) Act 2021 (Commencement) Order 2021⁶²

This Order commences the Companies (Rescue Process for Small and Micro Companies) Act 2021 with effect from 7 December 2021.

Statutory Instruments:

11.4 Companies Act 2014 (Section 12A(1)) (Covid-19) Order 2021⁶³

11.5 Companies Act 2014 (Section 12A(1)) (Covid-19) (No 2) Order 2021⁶⁴

Together, these Orders extend – to 30 April 2022 – the “interim period” as defined in section 2⁶⁵ of the Companies Act 2014 in respect of the amendments effected by the following sections of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020:

- 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 (• raising the debt-threshold for the commencement of a winding up by the court (from €10,000 for individual debts and €20,000 for aggregate debts) to €50,000 (a single threshold), and • making similar provision in respect of creditors’ meetings as are, for the interim period, made for general meetings); and
- sections 18 to 25 (permitting an examiner of a company that goes into examinership during the interim period to seek an extended period of 50 days in which to make a report to the court under the Companies Act, entailing a possible maximum period of examinership of 150 days in exceptional circumstances (which include, but are not limited to, the nature and impact of COVID-19 on the company)).

Note that these concessions no longer permit a company to postpone the holding of its AGM (a once-off statutory concession was available in 2020 for this purpose).

11.6 Companies Act 2014 (Fees) Regulations 2021⁶⁶ (revoked)

11.7 Companies Act 2014 (Fees) (No 2) Regulations 2021⁶⁷

Each of these sets of Regulations sets out the fees to be paid to the Registrar of Companies in respect of prescribed matters under the Companies Act 2014. The No 2 Regulations revoke the Companies Act 2014 (Fees) Regulations 2021.

11.8 Companies Act 2014 (Forms) Regulations 2021⁶⁸

These Regulations amend the Companies Act 2014 (Forms) Regulations 2015 in order to prescribe amended Forms F12 (Registration Form: Branch (EEA Country)) and F13 (Registration Form: Branch (Non-EEA Country)), under sections 1302 and 1304 of the Companies Act 2014.

11.9 Companies Act 2014 (Prescribed Form and Notice) Regulations 2021⁶⁹

These Regulations prescribe the form to be used for the purposes of the indicated provisions of the Companies Act 2014 (as amended by the Companies (Rescue Process for Small and Micro Companies) Act 2021):

- delivering a *Statement of Affairs of a Company* (section 558B(4)(b));
- delivering the following notices: • SCARP1: *Notice of Appointment of Process Adviser* (section 558J(2)(a)), • *Public Notice of the Appointment of a Process Adviser* (section 558J(3)), • *Notice of Appointment as Process Adviser* (section 558K(2)(a)), • *Notice of Meeting of Creditors* (section

⁶² SI 673 of 2021.

⁶³ SI 254 of 2021.

⁶⁴ SI 725 of 2021.

⁶⁵ As inserted by the Companies (Miscellaneous Provisions) (Covid-19) Act 2020.

⁶⁶ SI 395 of 2021.

⁶⁷ SI 674 of 2021.

⁶⁸ SI 396 of 2021.

⁶⁹ SI 675 of 2021.

558U(2)), • *Notice of Approval of Rescue Plan* (section 558Z(2)) and • *Notice of Objection to Rescue Plan* (section 558ZC(2)); and

- serving an *Instrument of Proxy* or an *Instrument of Special Proxy* (section 558W(3)).

11.10 Companies Act 2014 (Section 897) Order 2021⁷⁰

This Order provides that the sole means to deliver the SCARP-related and certain other insolvency-related documents for the purposes of the Companies Act 2014 (as listed in this Order) to the Registrar of Companies is by electronic means.

11.11 Migration of Participating Securities Act 2019 (Appointed Date) (Section 10) Order 2021⁷¹

This Order appoints 10 March 2021 at 17:00 hours as the date before which the statement referred to in section 10(1) or 10(3) of the Migration of Participating Securities Act 2019, as the case may be, must be furnished to the Registrar of Companies or, as appropriate, to the Listing Authority, by a participating issuer that wishes to consent to a migration referred to in section 4(1) of that Act of the relevant participating securities in that issuer.

11.12 Migration of Participating Securities Act 2019 (Appointment of Live Date) (Section 12(5)) Order 2021⁷²

This Order appoints 15 March 2021 at 00:01 hours as the “live date” for the purposes of section 12(5) of the Migration of Participating Securities Act 2019, that being the date on which the specified listed securities migrate from the UK-based CREST system to the EU-based Euroclear Bank system.

EU Instruments:

11.13 Environmental, Social and Governance Reporting

The corporate reporting regime for environmental, social and governance (“ESG”) developed in 2021 when the Sustainable Finance Disclosure Regulation (“SFDR”) (Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector) came into effect.

As Article 1 of the SFDR states, it “lays down harmonised rules for financial market participants and financial advisers on transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information with respect to financial products.” Under the SFDR, “financial market participants” must publish on their websites information about their policies on the integration of sustainability risks in their investment decision-making process and “financial advisers” must publish on their websites information about their policies on the integration of sustainability risks in their investment advice or insurance advice. “Financial market participants” include insurance undertakings, investment firms, AIFMs, UCITS managers, etc, and “financial adviser” includes credit institutions and investment firms that provide investment advice.

Supplemented by the Taxonomy Regulation (Regulation (EU) 2020/852) on the establishment of a framework to facilitate sustainable investment, and the regulatory technical standards, a key policy objective of the ESG regime is to prompt in-scope entities to undertake and disclose ESG due diligence in respect of the investments and advice that is provided. This will require disclosure against a set of onerous principles termed the “Principal Adverse Impacts” (“PAI”), which are a list of sustainability factors such as greenhouse gas emissions, waste, biodiversity, human rights, etc) so that such PAIs (and so ESG factors) will become increasingly relevant and material in framing investment policies and in making investment decisions. This will be assisted by the division of relevant entities and investments into categories of non-sustainable (Article 6), ‘light green’ (Article 8 – where ESG benefit is material but incidental) and ‘dark green’ (Article 9 – where ESG benefit is material and is the objective). The raw data for such due diligence by financial market participants and financial advisers must of course come from the investee entities such as listed companies. This requires that investee companies must disclose their PAIs in all relevant areas, such as in respect of greenhouse gas emissions and human rights and market trends seem likely to marginalise companies with inadequate disclosures as they cannot confidently be included in a light green or a dark green fund. Companies’ narrative reporting will also have to improve in order to address ESG requirements and the benchmark PAIs.

⁷⁰ SI 676 of 2021.

⁷¹ SI 99 of 2021.

⁷² SI 111 of 2021.

11.14 **Directive (EU) 2019/2121 on cross-border conversions and divisions and cross-border mergers**

Directive (EU) 2019/2121, which lays down new rules on cross-border conversions and divisions and amends the rules on cross-border mergers, must be transposed by January 2023. When implemented, it will be possible for companies to transfer their “seat” (registered office) to another Member State.

11.15 **Directive (EU) 2021/2101 on public country-by-country reporting**

On 1 December 2021, the EU published Directive (EU) 2021/2101 on public country-by-country reporting (the “CBCR Directive”). The CBCR Directive, which must be transposed by 22 June 2023, will require multinational entities and standalone entities with a consolidated revenue over €750m for each of the last two consecutive financial years, to publicly disclose certain information (including details of revenues, the number of employees and the amount of tax paid) in respect of their activities in each EU Member State, as well as in certain third countries. This information will need to be published on the group’s website by December 2026 for in-scope entities with a 31 December year-end.

Anticipated Developments: Ireland

11.16 **Companies Amendment Bill**

This Bill is intended to provide for miscellaneous amendments to the Companies Act 2014 which may (we understand) include a provision to allow companies to hold virtual general meetings (updating and making permanent provisions contained in Covid related legislation which apply up to the end of an interim period, currently to cease on 30 April 2022).

Anticipated Developments: EU

11.17 **Directive (EU) 2019/1023 on preventive restructuring frameworks**

Directive (EU) 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt and amending Directive (EU) 2017/1132 on restructuring and insolvency (due for transposition by July 2022 but Ireland has formally sought a one-year extension as provided for under Article 34 paragraph 2).

12. **Competition Law and State Aid**

Anticipated Developments: Ireland

12.1 **Competition (Amendment) Bill 2022**

This proposal is also addressed in the Disputes materials (focussed as it is on enforcement). The key proposals are to transpose the ECN+ Directive (2019/1/EU) and to provide for:

- (a) *Easier proof of violations:* it is proposed to move the State away from an exclusively criminal enforcement regime (requiring proof of any breach beyond reasonable doubt) and to permit non-criminal sanctions (established on the balance of probabilities) for breaches of competition law by any business that is found to have “intentionally, recklessly or negligently” breached competition law.
- (b) *Increased maximum fines:* the Bill proposes maximum “non-criminal” fines of €10m or 10% worldwide turnover (whichever is greater). Fines for *criminal* violations would be increased (to the greater of €50m or 20% of turnover).
- (c) *New enforcement proceedings:* the Bill proposes a new system of administrative proceedings before adjudication officers (to be nominated by the Competition and Consumer Protection Commission and approved by the Minister), to effectively determine liability for breaches and to be empowered to issue “prohibition notices” and order divestment or other structural remedies.
- (d) *New merger control rules:* new ‘gun-jumping’ prohibitions are proposed, as are mandatory information requests for third parties and CCPC powers to intervene and review below-threshold deals. The CCPC would be empowered to require parties to notify any deal, no matter its size, if the CCPC believes that it “may ... have an effect on competition”. The CCPC would also be empowered to require businesses to unwind certain completed mergers, if the CCPC believes the deal may harm competition.

12.2 **Agriculture and Food Supply Chain (Market Transparency) Bill**

This Bill is to establish a new authority (to be called the National Food Ombudsman) to enforce the EU Unfair Trading Practices (UTP) Directive and to have a specific role in analysing and reporting on price and market data in Ireland.

13. **Data Protection and Information Security**

Statutory Instruments (Commencement Orders)

13.1 **Data Sharing and Governance Act 2019 (Commencement of Certain Provisions) Order 2021**⁷³

Much of the Data Sharing and Governance Act 2019 had been brought into force on 18 April 2019 by the Data Sharing and Governance Act 2019 (Commencement of Certain Provisions) Order 2019. This Order brings the remainder of the 2019 Act into effect on (for various stipulated provisions) 7 July 2021 and 31 March 2022.

Statutory Instruments

13.2 **Data Protection Act 2018 (Section 36(2)) (Health Research) (Amendment) Regulations 2021**⁷⁴

These Regulations amend the Data Protection Act 2018 (Section 36(2)) (Health Research) Regulations 2018 in respect of the processing of personal data for health research purposes, including making changes to the appeals process from decisions of the Health Research Consent Declaration Committee.

13.3 **Health Act 1947 (Personal Data) Regulations 2021**⁷⁵

These Regulations set out the data processing requirements that will apply to arrangements relating to the implementation of sections 38B to 38L of the Health Act 1947 (inserted by the Health (Amendment) Act 2021). Those provisions of the 1947 Act, which have lapsed since then, related to the requirements to, and arrangements for, mandatory quarantine for certain persons arriving in the State during the Covid-19 pandemic.

13.4 **European Union (Enforcement of Data Subjects' Rights on Transfer of Personal Data Outside the European Union) Regulations 2021**⁷⁶

These Regulations amend the Data Protection Act 2018 to (1) provide for an express right on the part of individuals to enforce third party beneficiary rights that are conferred on data subjects under binding corporate rules and under standard data protection clauses adopted by the European Commission or by a supervisory authority and approved by the European Commission; and (2) provide for the enforcement of standard contractual clauses previously brought forward by the European Commission under Directive 95/46/EC, as well as the enforcement of contractual clauses authorised by a supervisory authority pursuant to Article 46(3)(a) of the GDPR.

13.5 **European Union (Open Data and Re-use of Public Sector Information) Regulations 2021**⁷⁷

These Regulations recast the statutory framework for the re-use by businesses and citizens of existing information held by public sector bodies in new products and services. These Regulations promote the publication of dynamic data, limit the existing exemptions from the obligation to permit re-use and strengthen the transparency requirements for public-private agreements.

EU Instruments

13.6 **Regulation (EU) 2018/1807 on the free flow of non-personal data**

This Regulation applies to the processing of electronic data other than personal data in the EU, which is (a) provided as a service to users residing or having an establishment in the EU, or (b) carried out by a natural or legal person residing or established in the EU. Neither the State nor any public body may impose any barrier to the movement of non-personal data in the EU, or impose any "data localisation requirements", except on grounds of public security. Member States have been obliged to remove all data localisation requirements laid down in law, regulation or administrative provision, by 30 May 2021.

⁷³ SI 334 of 2021.

⁷⁴ SI 18 of 2021.

⁷⁵ SI 126 of 2021.

⁷⁶ SI 297 of 2021.

⁷⁷ SI 376 of 2021.

- 13.7 **Regulation (EU) 2021/887 establishing the European Cybersecurity Industrial, Technology and Research Competence Centre and the Network of National Coordination Centres**
This Regulation establishes the European Cybersecurity Industrial, Technology and Research Competence Centre and the Network of National Co-Ordination Centres. It lays down rules for the nomination of national co-ordination centres as well as rules for the establishment of the Cybersecurity Competence Community. The Competence Centre has an essential role in the implementation of the cybersecurity part of the Digital Europe Programme.

Anticipated Developments: Ireland

- 13.8 **Cyber-Security Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to establish the National Centre for Cyber-Security on a statutory basis and to specify its mandate, role and powers.
- 13.9 **Cyber-Crime Bill**
This long-proposed Bill, which remains in the Spring 2022 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.
- 13.10 **Security Measures for Electronic Communications and Services Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to provide for an assessment of the risk-profile of providers of electronic communications network equipment using clear and objective criteria, such as those recommended in the EU 5G Security Toolbox.
- 13.11 **Communications (Data, Retention and Disclosure) Bill**
This long-proposed Bill remains within the Spring 2022 Government Legislation Programme. It proposes to revise and replace the Communications (Retention of Data) Act 2011 in light of European Court of Justice judgments. The Government has approved the Heads of Bill.
- 13.12 **Criminal Justice (Passenger Name Record) Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to 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, and to provide for related matters.
- 13.13 **Independent Commission on Information Retrieval Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to establish the cross-border Independent Commission on Information Retrieval (ICIR) in Irish law as part of the Government's obligations under the 2014 Stormont House Agreement.

Anticipated Developments: EU

- 13.14 **Draft E-Privacy Regulation**
The existing EU e-Privacy Directive (Directive 2002/58/EC) is intended to be updated and replaced by a new EU regulation, the E-Privacy Regulation. As yet, the E-Privacy Regulation has still not been finalised and there is no clear date on which it is expected to be finalised although publication may be during 2022 (it remains in the form of a 2019 draft). The new regulation is expected to update and overhaul the regulation of matters relating to privacy in connection with public telecommunications networks and is expected, for example, to impose revised obligations on the use by organisations of cookies.

14. **Education**

Acts of the Oireachtas:

- 14.1 **Education (Leaving Certificate 2021) (Accredited Grades) Act 2021**
In recognition of the challenges posed by Covid-19 in regard to those that were, at that stage, due to undertake the Leaving Certificate examinations in 2021 and taking account of school closures and loss of learning by students, this Act provided for a set of written Leaving Certificate Examinations in 2021 and, in parallel, a system of "State Examinations Commission accredited grades". Students were able to opt for the written examinations, accredited grades or both.

This Act conferred on the Commission the necessary functions to operate a system of accredited grades and prohibited the canvassing of teachers by students and parents or the giving of false or misleading information. It also indemnified those involved in the process.

Statutory Instruments:

- 14.2 **Education (Leaving Certificate 2021) (Accredited Grades) Act 2021 (Withholding of Accredited Grades and Appeals) Regulations 2021**⁷⁸
These Regulations, in operation from 7 September 2021, set out the procedures to be followed: (i) by the State Examinations Commission when undertaking a review following receipt of information relating to a possible prohibited communication under section 4, or where it is considered that false information may have been provided under section 5 of the Education (Leaving Certificate 2021) (Accredited Grades) Act 2021; and (ii) in order for an examination candidate to appeal any decision by the SEC.
- 14.3 **Technological Universities Act 2018 (Section 36) (Appointed Day) Order 2021**⁷⁹
This Order appoints 1 October 2021 as the day on which the Athlone Institute of Technology and the Limerick Institute of Technology are dissolved and the Technological University of the Shannon: Midlands Midwest is established.
- 14.4 **Student Grant (Amendment) Scheme 2021**⁸⁰
This Scheme makes technical amendments to the Student Grant Scheme 2020.
- 14.5 **Student Support (Amendment) Regulations 2021**⁸¹
These Regulations make technical amendments to the Student Support Regulations 2020.
- 14.6 **Student Grant Scheme 2021**⁸²
This Scheme sets out the rates of grant, qualifying criteria and procedures relating to the administration of the student grant scheme, for 2021-2022, under the Student Support Act 2020.
- 14.7 **Student Support Regulations 2021**⁸³
- 14.8 **Student Support (Amendment) Regulations 2021**⁸⁴
These Regulations prescribe “approved institutions” (including newly-designated universities in Ireland), “approved courses” and “classes of persons”, for 2021-2022, for the purposes of the Student Support Act 2020.
15. **Employment Law**

Acts of the Oireachtas:

- 15.1 **Family Leave and Miscellaneous Provisions Act 2021**
This Act, commenced from 1 April 2021 (other than s30 and s31 which commenced from 24 April 2021), amends the Adoptive Leave Act 1995 to provide for adoptive leave for male same sex couples and to enable adoptive couples to choose which parent may avail of adoptive leave. The Act also amends the Parent’s Leave and Benefit Act 2019 to extend the entitlements to parent’s leave for each parent of a qualifying child and to extend the period in which such leave can be taken from two to five weeks, which may now be taken over two years. In addition, a number of consequential amendments to the Parental Leave Act 1998, the Social Welfare Consolidation Act 2005 and the Workplace Relations Act 2015 are included. The Act also amends the Child and Family Agency Act 2013 to provide for an increase in the Board of the Child and Family Agency from seven ordinary members to nine ordinary members and for a number of consequential amendments.
- 15.2 **Public Service Pay Act 2021**
Please see the “*Public Law (General)*” section of this paper.
- 15.3 **Gender Pay Gap Information Act 2021**
This Act amends the Employment Equality Act 1998 to require regulations to be made that will require certain employers to publish information relating to the remuneration of their employees by reference to the gender of those employees for the purpose of showing whether there are differences in that

⁷⁸ SI 453 of 2021.

⁷⁹ SI 360 of 2021.

⁸⁰ SI 5 of 2021.

⁸¹ SI 6 of 2021.

⁸² SI 131 of 2021.

⁸³ SI 132 of 2021.

⁸⁴ SI 535 of 2021.

remuneration referable to gender and, if there are differences, the size of those differences. It will require the employers to publish statements setting out the reasons for the differences and the measures (if any) taken, or proposed to be taken, by those employers to eliminate or reduce those differences. The Act also makes a consequential amendment to the Irish Human Rights and Equality Commission Act 2014. The Act has not yet been commenced.

15.4 Workplace Relations (Miscellaneous Provisions) Act 2021

The Workplace Relations (Miscellaneous Provisions) Act 2021 was commenced on 29 July 2021 and addresses the deficits recently identified by the Supreme Court in the procedures of the Workplace Relations Commission. In the *Zalewski* case,⁸⁵ Mr Zalewski was dismissed from his employment and brought a claim against his employer under the relevant employment legislation. There were irregularities in the way his claim was decided by an adjudication officer in the WRC. He brought proceedings seeking to quash that decision and to challenge the constitutionality of the decision-making process before the WRC.

The matter ultimately came before the Supreme Court who held that in this case the WRC had been administering justice within the meaning of Article 34 of the Constitution. The majority went on to hold that this was permissible as in doing so, the WRC was acting in a “limited” way within the meaning of Article 37 of the Constitution.

However, the Supreme Court also held that some aspects of the procedure before the WRC were inconsistent with the Constitution, such as:

- there was no justification for a blanket prohibition on hearings in public;
- evidence could not be taken on oath and consequently there no penalty for perjury;
- there was no express provision for cross-examination of evidence.

O’Donnell J also raised concerns about the independence of decision-makers and their freedom from ministerial control and direction in carrying out their functions.

The Act remedies these deficits and also strengthen the rights of employers in matters relating to the enforcement of decisions of an adjudication officer in the District Court.

Statutory Instruments (Commencement Orders):

15.5 Family Leave and Miscellaneous Provisions Act 2021 (Commencement) Order 2021⁸⁶

This Order appoints 1 April 2021 as the date on which the Family Leave and Miscellaneous Provisions Act 2021, other than Parts 4 and 9, shall come into operation.

15.6 Family Leave and Miscellaneous Provisions Act 2021 (Part 4) (Commencement) Order 2021⁸⁷

This Order appoints 1 April 2021 as the date on which Part 4 Family Leave and Miscellaneous Provisions Act 2021 shall come into operation.

15.7 Family Leave and Miscellaneous Provisions Act 2021 (Part 9) (Commencement) Order 2021⁸⁸

This Order appoints 24 April 2021 as the date on which Part 9 Family Leave and Miscellaneous Provisions Act 2021 shall come into operation.

Statutory Instruments:

15.8 European Communities (Reception Conditions) (Amendment) Regulations 2021⁸⁹

These Regulations amend the labour market access permission provisions of the European Communities (Reception Conditions) Regulations 2018, to reduce the timeframe for labour market access from 9 to 6

⁸⁵ *Zalewski v The Workplace Relations Commission* [2021] IESC 24.

⁸⁶ SI 148 of 2021.

⁸⁷ SI 154 of 2021.

⁸⁸ SI 180 of 2021.

⁸⁹ SI 52 of 2021.

months, and to extend the validity of a labour market permission from 6 to 12 months, from 9 February 2021.

- 15.9 **Enterprise, Trade and Employment (Delegation of Ministerial Functions) Order 2021**⁹⁰
This Order delegates the powers (other than to prosecute an offence) and duties of the Minister for Enterprise, Trade and Employment conferred by or under the Protection of Employees (Employers' Insolvency) Acts 1984 to 2020 to Damien English, Minister of State at the Department of Enterprise, Trade and Employment, from 19 January 2021.
- 15.10 **Redundancy Payments Act 1967 (Section 12A(2)) (Covid-19) Order 2021**⁹¹
This Order specifies 20 June 2021 as the end-date of the "emergency period" for the purposes of section 12A of the Redundancy Payments Act 1967, as inserted by section 29 of the Emergency Measures in the Public Interest (Covid-19) Act 2020⁹².
- 15.11 **European Union (Occupational Pension Schemes) Regulations 2021**⁹³
These Regulations amend the Pensions Act 1990 ("1990 Act") to transpose requirements of Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 (IORPs) (recast). While many of the provisions of the Directive were already transposed into Irish law, these Regulations transpose additional requirements of the Directive not already provided for in Irish law.

These Regulations amend the 1990 Act to provide for a range of new requirements concerning governance; management standards in schemes; safekeeping of assets; the provision of clear and relevant information to members; the removal of obstacles to cross-border provision of pension services and the facilitation of cross border transfer of schemes. There are also provisions that will enhance the powers of the Pensions Authority for effective supervision of occupational pensions and to provide for exchanges, disclosures or transmission of information.
- 15.12 **Industrial Training (Process Analytics Industry) (Amendment) Order 2021**⁹⁴
This Order amends the Industrial Training (Process Analytics) Order 2019 by declaring various activities as designated industrial activities for the purposes of the Industrial Training Act 1967, from 11 February 2021.
- 15.13 **Workplace Relations Act 2015 (Workplace Relations Commission Code of Practice on the Right to Disconnect) Order 2021**⁹⁵
This Order declares that the 'Right to Disconnect' code of practice set out in the schedule, the purpose of which is to provide practical guidance and best practice to employers, employees and their representatives, is a code of practice for the purposes of the Workplace Relations Act 2015.
- 15.14 **Safety, Health and Welfare at Work (Chemical Agents) (Amendment) Regulations 2021**⁹⁶
These Regulations amend the Safety, Health and Welfare at Work (Chemical Agents) Regulations 2001 to give further effect to Council Directive 98/24/EC of 7 April 1998, Commission Directive 2000/39/EC of 8 June 2000, Commission Directive 2006/15/EC of 7 February 2006, Commission Directive 2009/161/EU of 17 December 2009, Commission Directive (EU) 2017/164 of 31 January 2017 and Commission Directive (EU) 2019/1831 of 24 October 2019, from 12 May 2021.
- 15.15 **Protection of Young Persons (Employment) (Exclusion of Workers in the Fishing and Shipping Sectors) Regulations 2021**⁹⁷
These Regulations revoke and replace the Protection of Young Persons (Employment) (Exclusion of Workers in the Fishing or Shipping Sectors) Regulations 1997, from 18 May 2021.

⁹⁰ SI 71 of 2021.

⁹¹ SI 103 of 2021. See also SI 284 of 2021 in respect of a subsequent extension.

⁹² During the COVID-19 pandemic closures, there were difficulties for employers in determining when employees would be able to return to work. In recognition of this fact, section 29 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 amended the Redundancy Payments Act 1967 (by inserting a new s12A) to provide that for the duration of a designated "emergency period" employees on lay off or short time would not be in a position to claim a redundancy payment if the lay-off or short time was due to the effects of measures required to be taken by the employer to comply with, or as a consequence of, Government policy to reduce the spread of infection of COVID-19. The "emergency period" began on 13 March 2020 and was extended a number of times during 2020 and 2021 by way of statutory instrument.

⁹³ SI 128 of 2021.

⁹⁴ SI 129 of 2021.

⁹⁵ SI 159 of 2021.

⁹⁶ SI 231 of 2021.

⁹⁷ SI 250 of 2021.

- 15.16 **Redundancy Payments Act 1967 (Section 12A(2)) (Covid-19) (No 2) Order 2021**⁹⁸
This Order extends the emergency period during which s12 Redundancy Payments Act 1967 shall not have effect until 30 September 2021.⁹⁹
- 15.17 **Employment Permits (Amendment) Regulations 2021**¹⁰⁰
These Regulations amend the Employment Permits Regulations 2017 to adjust the lists of professions in specified schedules and to set the minimum annual remuneration and qualification requirements applicable to particular employment categories, from 14 June 2021.
- 15.18 **Early Years' Service Joint Labour Committee Establishment Order 2021**¹⁰¹
This Order establishes the Early Years' Service Joint Labour Committee from 1 July 2021 and confirms the terms of the recommendation from the Labour Court pursuant to section 39 of the Industrial Relations Act 1946 to do so.
- 15.19 **European Union (Training, Certification and Watchkeeping for Seafarers) (Amendment) Regulations 2021**¹⁰²
These Regulations, in operation from 7 September 2021, amend the European Union (Training, Certification and Watchkeeping for Seafarers) Regulations 2014 to give further effect to Directive 2008/106/EU, as amended, on revised requirements for the mutual recognition of seafarers' certificates issued by EU member states; updated minimum requirements for the training and qualifications of masters, officers, ratings and other personnel on passenger ships and new minimum requirements for the training and qualification of seafarers on ships subject to the IGF and Polar Codes.
- 15.20 **Worker Participation (State Enterprises) Act 1988 (Section 9) Order 2021**¹⁰³
This Order provides, from 22 September 2021, that employees of Aer Rianta International cpt (ARI) and daa International Ltd (daaI) are to be regarded as employee of daa plc for the purposes of the Worker Participation (State Enterprises) Acts 1977 to 2001, in order that to participate in the election of employee representatives to the board of daa plc.
- 15.21 **National Minimum Wage Order 2021**¹⁰⁴
This Order sets the national minimum hourly rate of pay, with effect from 1 January 2022, at €10.50, and the board rates at €0.94 per hour worked and the lodging rates at €24.81 per week, or €3.55 per day.
- 15.22 **Safety, Health and Welfare at Work (Construction) (Amendment) Regulations 2021**¹⁰⁵
These Regulations amend the Safety, Health and Welfare at Work (Construction) Regulations 2013 to set out the dates from which, and the time periods during which, safety awareness registration cards shall be regarded as valid, in order to gradually bring to an end the extended validity provided for by the Safety, Health and Welfare at Work (Construction) (Amendment) Regulations 2020.
- 15.23 **Employment Permits (Amendment) (No 2) Regulations 2021**¹⁰⁶
These Regulations amend the Employment Permits Regulations 2017 from 27 October 2021 to adjust the quotas of general employment permits in specified categories of employment and to remove certain categories of employment from Schedule 4 (employments in respect of which an employment permit shall not be granted).

⁹⁸ SI 284 of 2021.

⁹⁹ During the COVID-19 pandemic closures, there were difficulties for employers in determining when employees would be able to return to work. In recognition of this fact, s29 Emergency Measures in the Public Interest (Covid-19) Act 2020 amended the Redundancy Payments Act 1967 (by inserting a new s12A) to provide that for the duration of a designated "emergency period" employees on lay off or short time would not be in a position to claim a redundancy payment if the lay-off or short time was due to the effects of measures required to be taken by the employer to comply with, or as a consequence of, Government policy to reduce the spread of infection of COVID-19. The "emergency period" began on 13 March 2020 and was extended a number of times during 2020 and 2021 by way of statutory instrument.

¹⁰⁰ SI 286 of 2021.

¹⁰¹ SI 292 of 2021.

¹⁰² SI 454 of 2021.

¹⁰³ SI 484 of 2021.

¹⁰⁴ SI 517 of 2021.

¹⁰⁵ SI 528 of 2021.

¹⁰⁶ SI 559 of 2021.

- 15.24 **European Union (Minimum Safety and Health Requirements for Improved Medical Treatment on Board Vessels) Regulations 2021**¹⁰⁷
These Regulations, in effect from 15 November 2021, give effect to Directive 92/29/EEC, as amended, on the minimum safety and health requirements for improved medical treatment on board certain vessels: require the owner to ensure it has sufficient medical supplies and equipment on board and to carry an up-to-date medical guide relevant to the supplies, to provide a sick bay and antidotes when carrying dangerous substances, set out details of training requirements and minimum requirements for lifeboats and life-rafts.
- 15.25 **Sectoral Employment Order (Construction Sector) 2021**¹⁰⁸
This Order gives legal effect to a Labour Court recommendation, which is set out in the schedule to the order, on new pay rates in the construction sector, which will take effect from take effect from 1 February 2022.
- 15.26 **Safety, Health and Welfare at Work (General Application) (Amendment) Regulations 2021**¹⁰⁹
These Regulations transpose the provisions of Commission Directive 2019/1832 amending Annexes I, II and III to Council Directive 89/656/EEC into Irish law and introduce an amendment to the Safety, Health and Welfare at Work (General Application) Regulations 2007 to 2020, specifically to revise Schedule 2 to those Regulations in connection with Personal Protective Equipment (PPE) in line with the provisions of Directive 2019/1832, and came into effect on 21 November 2021.
- 15.27 **Safety, Health and Welfare at Work (General Application) (Amendment) (No 2) Regulations 2021**¹¹⁰
These Regulations, which are to come into operation on 20 November 2023, amend the Safety, Health and Welfare at Work (General Application) Regulations 2007 to 2021, introducing specific PPE requirements for operators of all-terrain vehicles (ATVs) when used as part of work practices.
- 15.28 **Occupational Pension Schemes (Trustee) (Amendment) Regulations 2021**¹¹¹
These Regulations, in effect from 25 November 2021, amend the Occupational Pension Schemes (Trustee) Regulations 2006 by amending the definition of investment manager in order to ensure that the references to EU legal instruments contained therein reference extant EU legal instruments referred to in article 32 Directive (EU) 2341/2016. [I]
- 15.29 **Occupational Pension Schemes (Registration) (Amendment) Regulations 2021**¹¹²
These Regulations, in effect from 25 November 2021, amend the Occupational Pension Schemes (Registration) Regulations 1991 to delete certain provisions which no longer apply arising from the revocation of the Occupational Pension Schemes (External Schemes)(United Kingdom) Regulations 2000 and the Occupational Pension Schemes (Schemes with External Members) (United Kingdom) Regulations 2000 and to amend the period specified in regulation 3(3) in which the trustees of a scheme are required to notify the Pensions Authority of changes to the information that has been provided to it for the purposes of registration under section 60 Pensions Act 1990.
- 15.30 **Occupational Pension Schemes (Duties of Trustees in Connection with Bulk Transfer) (Amendment) Regulations 2021**¹¹³
These Regulations, in effect from 25 November 2021, amend the Occupational Pension Schemes (Duties of Trustees in Connection with Bulk Transfer) Regulations 2009 to allow for due consideration by trustees before a final decision is made. The means of notification has been broadened to allow for communication by electronic means and the means of notifying untraceable deferred members has been broadened to allow for publication in a national newspaper.

¹⁰⁷ SI 591 of 2021.

¹⁰⁸ SI 598 of 2021.

¹⁰⁹ SI 610 of 2021.

¹¹⁰ SI 619 of 2021.

¹¹¹ SI 626 of 2021.

¹¹² SI 628 of 2021.

¹¹³ SI 630 of 2021.

- 15.31 **Occupational Pension Schemes (Funding Standard Reserve) (Amendment) Regulations 2021**¹¹⁴
These Regulations amend the Occupational Pension Schemes (Funding Standard Reserve) Regulations 2013 in respect of the assets prescribed under section 44(2)(a)(iv) Pensions Act 1990, certain definitions and to make a number of technical amendments, from 25 November 2021.
- 15.32 **Occupational Pension Schemes (Cross-border) (Amendment) Regulations 2021**¹¹⁵
These Regulations amend the Occupational Pension Schemes (Cross-Border) Regulations 2006 to give further effect to EU Directive 2016/2341 and to take account of obligations imposed on schemes that operate on a cross-border basis by the European Union (Occupational Pension Schemes) Regulations 2021, from 25 November 2021.
- 15.33 **Occupational Pension Schemes (Funding Standard) (Amendment) Regulations 2021**¹¹⁶
These Regulations amend the Occupational Pension Schemes (Funding Standard) Regulations 1993 from 25 November 2021 by amending article 3 to ensure that the definitions refer to extant legislative provisions, by substituting article 4 in respect of actuarial funding certificates and funding standard reserve certificates and article 5 to specify the investments to be excluded, for the purposes of an actuarial funding certificate, within calculations of the resources of a relevant scheme and the deletion of Schedules A to BC which no longer have any operational effect.
- 15.34 **Occupational Pension Schemes (Investment) Regulations 2021**¹¹⁷
These Regulations, which set out the circumstances in which the trustees of a scheme may borrow money, revoke and replace a number of earlier regulations from 25 November 2021, in order to take account of the transposition of obligations imposed by article 19 Directive (EU) 2016/2341, which were provided for in s59AB Pensions Act 1990, and to give effect to articles 19(3), 30, 36(2) and 44(b) of that Directive.
- 15.35 **Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations 2021**¹¹⁸
These Regulations amend the Occupational Pension Schemes (Disclosure of Information) Regulations 2006 to give further effect to EU Directive 2016/2341, from 25 November 2021.
- 15.36 **Sectoral Employment Order (Electrical Contracting Sector) 2021**¹¹⁹
This is a Sectoral Employment Order dealing with pay and conditions in respect of the electrical contracting sector and applies to qualified electricians and registered apprentice electricians who are directly employed or employed through an employment agency.
- 15.37 **Occupational Pension Schemes (Fees) (Amendment) Regulations 2021**¹²⁰
These Regulations provide for increases in the level of fees, the annual payment of which is required pursuant to s25 Pensions Act 1990, by occupational pension schemes to the Pensions Authority, with effect from 1 January 2022.

EU Instruments:

- 15.38 **Directive (EU) 2021/1233 of the European Parliament and of the Council of 14 July 2021 amending Directive (EU) 2017/2397 as regards the transitional measures for the recognition of third-country certificates.**
This Directive deals with the recognition of professional qualifications in inland navigation.
- 15.39 **Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC**
This is the EU Directive on the new EU Blue Card. It aims to make it easier for European companies to employ non-European highly qualified employees. Ireland is not taking part in the adoption of this Directive.

¹¹⁴ SI 631 of 2021.

¹¹⁵ SI 632 of 2021.

¹¹⁶ SI 635 of 2021.

¹¹⁷ SI 636 of 2021.

¹¹⁸ SI 637 of 2021.

¹¹⁹ SI 703 of 2021.

¹²⁰ SI 774 of 2021.

15.40 **Regulation (EU) 2021/691 of the European Parliament and of the Council of 28 April 2021 on the European Globalisation Adjustment Fund for Displaced Workers (EGF) and repealing Regulation (EU) No 1309/2013**

This Regulation aims to renew the European Globalisation Adjustment Fund (EGF) for the period covered by the multiannual financial framework (MFF) 2021-2027. The EGF is a solidarity fund financing active labour market measures (such as training, job searches and business start-ups) when there are unexpected and significant job losses arising from major restructuring events. It is an emergency fund outside of the MFF ceilings.

Anticipated Developments: Ireland

The following Bills are listed as priority legislation for drafting and publication in the Government Legislation Programme for the Spring 2022 session.

15.41 **Work-life Balance Bill**

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. It will also have provisions for domestic violence leave. The Bill will transpose the EU Directive on Work Life Balance for Parents and Carers. The transposition deadline is August 2022. The Heads of Bill have not yet been published.

15.42 **Employment Permits (Consolidation and Amendment) Bill 2019**

This Bill will consolidate the Employment Permits Acts and make certain amendments to modernise the employment permits system and increase its responsiveness. The Heads of Bill were published in 2019.

15.43 **Right to Request Remote Work Bill 2022**

This will introduce a right for an employee to request remote work. The policy objectives of the legislation are to provide a legal framework around which requesting, approving or refusing a request for remote work can be based. It will also provide legal clarity to employers on their obligations for dealing with such requests. A draft scheme of the Bill has been published.

15.44 **Sick Leave Bill 2021**

This will introduce a statutory sick pay scheme for Ireland. The Heads of Bill were approved on 4 November 2021. The Bill applies to employees who have completed 13 weeks continuous service. The Tánaiste has indicated that the statutory sick pay scheme will be phased in over a four-year period, starting with three days per year in 2022, rising to five days payable in 2023 and seven days payable in 2024. Employers will eventually cover the cost of 10 sick days per year in 2025. It is being phased in to help employers, particularly small businesses, to plan ahead and manage the additional cost, which will be capped. The cap will be set out in regulations. The new legislation will not prevent employers offering better terms or unions negotiating for more through a collective agreement.

15.45 **Protected Disclosures (Amendment) Bill 2021**

This will transpose the EU Whistleblowing Directive by amending the Protected Disclosures Act 2014. It will also introduce other changes beyond what is required for this transposition. Some of the changes are set out below.

The new legislation will provide that the nature of wrongdoings which can be disclosed under the legislation will now extend to breaches of certain EU laws, for example, in the area of public procurement. The Bill also confirms that “interpersonal grievances” will fall outside the scope of the legislation where they can be channelled elsewhere. The scope of the 2014 Act is currently limited to information which comes to the attention of a worker ‘in connection with the worker’s employment’. This will be extended, for example, to shareholders, suppliers etc.

The 2014 Act currently provides for the mandatory adoption by public bodies of workplace channels and procedures for the making of a protected disclosure. This will be extended to certain private entities. There will be more prescriptive obligations regarding the processing of protected disclosures and giving feedback.

A dedicated, independent Protected Disclosures Office is proposed to be established within the Office of the Ombudsman. The Government published the Heads of Bill in July 2021.

16. **Health Services and Public Health**

Acts of the Oireachtas:

16.1 **Health (Amendment) Act 2021**

This Act, part of the Government's continuing response to the Covid-19 pandemic, further amended the Health Act 1947 to make better provision for the enforcement of regulations under s31A of that Act; to provide for the mandatory quarantine of persons coming into the State from certain areas from where there was known to be sustained human transmission of Covid-19 or any variant of concern, or from which there was a high risk of importation of infection or contamination with Covid-19 or any variant of concern by travel from that area (also providing for the designation of such areas by the relevant Minister); to provide for the mandatory quarantine of persons coming into the State who failed to comply with certain requirements relating to testing for the disease, including the: designation of facilities for such quarantine; for the conveying of persons to those facilities; for the making of service agreements to facilitate such quarantine; for alternatives to such quarantine for persons coming into the State where such persons indicated an intention to apply for international protection or where such persons were children who are not accompanied by an adult. The Act came into force on various dates during March 2021 and the sunset clause in section 9 of the Act was extended a number of times by Government resolution, the last being to 31 October 2021.

16.2 **Health (Amendment) (No 2) Act 2021**

This Act, part of the Government's continuing response to the Covid-19 pandemic, further amended the Health Act 1947 in order to provide for the lawful operation of certain indoor premises subject to certain conditions notwithstanding restrictions in place in relation to such premises under the 1947 Act; provided, for those purposes, for a robust and enforceable system of verification of the health status of certain persons, including vaccination or recovery status; and conferred a power on the Minister for Health to prescribe matters related to the foregoing and to provide for enforcement.

This Act also amended certain provisions relating to pre-travel requirements in respect of certain persons arriving in the State and the period to be spent by a person in quarantine at a designated facility in certain circumstances. It updated the power of the Minister for Health to make regulations in relation to tests that may be taken for the purpose of detecting Covid-19 in the context of the requirement to quarantine at a designated facility conferred a power on that Minister to prescribe the purpose for which such a test may be taken.

This Act also provided that quarantine at a designated facility was not required for certain persons arriving in the State in certain circumstances and conferred a power on the Minister for Health to make regulations in relation to those circumstances. The Act was commenced in part from 25 July 2021 and the sunset clause in Part 2 of the Act was extended a number of times by Government resolution, the last being to 9 January 2022. Certain of the provisions were not commenced.

16.3 **Health (Amendment) (No 3) Act 2021**

This Act, part of the government's continuing response to the Covid-19 pandemic, provided for re-introduction on a temporary basis of the mandatory quarantine of persons coming into the State from certain areas from where there was known to be sustained human transmission of Covid-19 or any variant of the virus that causes that disease, or from which there is a high risk of importation of infection or contamination with Covid-19 or any variant of that disease by travel from that area with the necessary and related powers being conferred on the Minister. The Act was enacted from 9 December 2021 but has not yet been commenced.

16.4 **Health and Criminal Justice (Covid-19) (Amendment) Act 2021**

This Act provided for the continuation in operation for a further period (initially to 9 November 2021), which could be extended in certain circumstances (and were extended by government resolutions to the dates indicated below), of certain provisions of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 (extended to 9 February 2022), the Emergency Measures in the Public Interest (Covid-19) Act 2020, the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 (extended to 9 February 2022) and the Health (Amendment) Act 2020 (extended to 9 February 2022), in light of the continuing Covid-19 pandemic in order to mitigate, where practicable, the effects of the spread of that disease (and variants of the virus that causes that disease).

16.5 **Finance (Covid-19 and Miscellaneous Provisions) Act 2021**

This Act provided for the imposition, repeal, remission, alteration and regulation of taxation and of stamp duties*, made further provision in connection with finance and for supports to employers and certain businesses (and for that purpose to amend Part 7 Emergency Measures in the Public Interest (Covid-19) Act 2020 and other enactments).

16.6 Health and Criminal Justice (Covid-19) (Amendment) (No 2) Act 2021

This Act provided for the continuation in operation for a further period (initially to 31 March 2022), which may be extended in certain circumstances, of certain provisions of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020, the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020, the Health (Amendment) Act 2020 and the Health (Amendment) (No 2) Act 2021, in the public interest and having regard to the continuing manifest and grave risk to human life and public health posed by the spread of the disease known as Covid-19 (and variants of the virus that causes that disease) in order to mitigate, where practicable, the effects of the spread of that disease.

Statutory Instruments:

16.7 Medicinal Products (Control of Wholesale Distribution) (Amendment) Regulations 2021¹²¹

These Regulations amend the Medicinal Products (Control of Wholesale Distribution) Regulations 2007 to exempt the supply of Covid-19 vaccinations from the prohibition on the sale by wholesale of medicinal products by registered pharmacists in nominated public and private hospital pharmacy departments, who do not hold a wholesaler's authorisation.

16.8 Medicinal Products (Prescription and Control of Supply) (Amendment) Regulations 2021¹²²

These Regulations amend the Medicinal Products (Prescription and Control of Supply) Regulations 2003 in order to exempt from certain requirements the supply of Covid-19 vaccinations to persons administering such vaccines as part of the vaccination programme implemented in the State to address the Covid-19 emergency.

16.9 Medicinal Products (Prescription and Control of Supply) (Amendment) (No 2) Regulations 2021¹²³

16.10 Medicinal Products (Prescription and Control of Supply) (Amendment) (No 3) Regulations 2021¹²⁴

16.11 Medicinal Products (Prescription and Control of Supply) (Amendment) (No 6) Regulations 2021¹²⁵

These Regulations each further amend the Medicinal Products (Prescription and Control of Supply) Regulations 2003 in order to add additional Covid-19 vaccinations to the Eighth and Twelfth Schedules to the Regulations of 2003.

16.12 Medicinal Products (Prescription and Control of Supply) (Amendment) (No 4) Regulations 2021¹²⁶

These Regulations amend the Medicinal Products (Prescription and Control of Supply) Regulations 2003 in order to add registered optometrists and registered dentists to the list of professionals who may lawfully supply and administer Covid-19 vaccinations.

16.13 Medicinal Products (Prescription and Control of Supply) (Amendment) (No 7) Regulations 2021¹²⁷

These Regulations amend the Medicinal Products (Prescription and Control of Supply) Regulations 2003 in order to, *inter alia*: • provide for the supply and administration of Covid-19 vaccines by additional health care professionals; and • provide for the administration of Covid-19 vaccines by health care students.

16.14 Medicinal Products (Prescription and Control of Supply) (Amendment) (No 8) Regulations 2021¹²⁸

These Regulations amend the Medicinal Products (Prescription and Control of Supply) Regulations 2003 in order to change the age (from 18 years and 16 years and older) to 12 years and older for administration of the Pfizer (Comirnaty) and Moderna (Spikevax) vaccines respectively.

¹²¹ SI 1 of 2021.

¹²² SI 2 of 2021. The Medicinal Products (Prescription and Control of Supply) (Amendment) (No 5) Regulations 2021 (SI 130 of 2021) correct a typo in the Medicinal Products (Prescription and Control of Supply) Regulations 2003 (SI 540 of 2003).

¹²³ SI 8 of 2021.

¹²⁴ SI 43 of 2021.

¹²⁵ SI 155 of 2021.

¹²⁶ SI 81 of 2021.

¹²⁷ SI 245 of 2021.

¹²⁸ SI 411 of 2021.

- 16.15 **Medicinal Products (Prescription and Control of Supply) (Amendment) (No 9) Regulations 2021**¹²⁹
- 16.16 **Medicinal Products (Prescription and Control of Supply) (Amendment) (No 11) Regulations 2021**¹³⁰
- 16.17 **Medicinal Products (Prescription and Control of Supply) (Amendment) (No 12) Regulations 2021**¹³¹
- 16.18 **Medicinal Products (Prescription and Control of Supply) (Amendment) (No 13) Regulations 2021**¹³²
- 16.19 **Medicinal Products (Prescription and Control of Supply) (Amendment) (No 14) Regulations 2021**¹³³
These Regulations amend the Medicinal Products (Prescription and Control of Supply) Regulations 2003 in order to allow for additional or booster/subsequent doses of the mRNA COVID-19, the Cominarty COVID-19 and the Spikevax COVID-19 vaccines to be supplied and administered to certain persons and to adjust the circumstances in which this may be done.
- 16.20 **Medicinal Products (Prescription and Control of Supply) (Amendment) (No 10) Regulations 2021**¹³⁴
These Regulations amend the Medicinal Products (Prescription and Control of Supply) Regulations 2003 in order to allow COVID-19 vaccinators to administer the seasonal influenza vaccines.
- 16.21 **Medicinal Products (Prescription and Control of Supply) (Amendment) (No 15) Regulations 2021**¹³⁵
These Regulations amend the Medicinal Products (Prescription and Control of Supply) Regulations 2003 in order to update the relevant schedules in relation to COVID-19 vaccines, by taking account of the extension of the vaccination programme to include children aged 5 to 11 years being administered Comirnaty COVID-19 Vaccine (Paediatric Formulation), as per NIAC recommendations of 7 December 2021, and to provide for boosters in accordance with NIAC recommendations of 13 December 2021.
- 16.22 **Medicinal Products (Prescription and Control of Supply) (Amendment) Regulations 2022**¹³⁶
These Regulations amend the Medicinal Products (Prescription and Control of Supply) Regulations 2003 in order to add an additional herpes zoster vaccine to the Eighth Schedule.
- 16.23 **Medicinal Products (Control of Manufacture) (Amendment) Regulations 2022**¹³⁷
These Regulations amend the Medicinal Products (Control of Manufacture) Regulations 2007 in order to remove investigational medicinal products from their scope.
- 16.24 **European Union (Minimum Safety and Health Requirements for Improved Medical Treatment on Board Vessels) Regulations 2021**¹³⁸
These Regulations transpose Directive 92/29/EEC (as amended by Directive 2019/1834) on the minimum safety and health requirements for improved medical treatment on board vessels. In doing so, these Regulations require the owner of a vessel to ensure that it has sufficient medical supplies and equipment on board, relevant to the category of vessel as set out in the Schedule. These Regulations also require the carriage of an up-to-date medical guide relevant to the supplies on board and minimum requirements for lifeboats and life-rafts. Furthermore, there is a requirement to provide a sick bay and antidotes when carrying dangerous substances and to set out information on training requirements.

These Regulations apply to all vessels (including fishing vessels) except warships, non-commercial pleasure craft, inland waterway craft and tugs operating in harbour areas.

¹²⁹ SI 492 of 2021.

¹³⁰ SI 558 of 2021.

¹³¹ SI 578 of 2021.

¹³² SI 605 of 2021.

¹³³ SI 692 of 2021.

¹³⁴ SI 511 of 2021.

¹³⁵ SI 718 of 2021.

¹³⁶ SI 32 of 2022.

¹³⁷ SI 43 of 2022.

¹³⁸ SI 591 of 2021.

- 16.25 **Misuse of Drugs (Prescription and Control of Supply of Cannabis for Medical Use) (Amendment) Regulations 2021**¹³⁹
These Regulations amend the Misuse of Drugs (Prescription and Control of Supply of Cannabis for Medical Use) Regulations 2019 in order to replace Schedule 1 and thereby to list certain cannabis products or preparations for medical use as being “specified controlled drugs”.
- 16.26 **Medical Practitioners Act 2007 (Special Measures Registration having Regard to Covid-19) Order 2021**¹⁴⁰
- 16.27 **Medical Practitioners Act 2007 (Special Measures Registration having Regard to Covid-19) (No 2) Order 2021**¹⁴¹
These Orders specify, respectively, 31 December 2021 and then 30 June 2022, as the date on which a section 110 registration (for a former registrant who has been re-admitted to the register during the Covid-19 pandemic) that might still be in force shall cease to have effect.
- 16.28 **Medical Devices Regulations 2021**¹⁴²
These Regulations: • confer functions on the Health Products Regulatory Authority in relation to medical devices; • lay down requirements for health institutions in relation to making information available to patients who have been implanted with implantable devices; • set out the national position with regard to reprocessing of single-use medical devices in order to make them suitable for further use; • provide for various matters in relation to clinical investigations of medical devices; and • provide offences for breaches of the requirements of the Medical Devices Regulation (Regulation (EU) 2017/745).

These Regulations revoke a large number of previously-applicable statutory instruments, including the European Communities (Medical Devices) Regulations 1994 and numerous amending SIs.
- 16.29 **Medical Devices (Registration) Regulations 2021**¹⁴³
Further to the Active Implantable Medical Devices Directive (Directive 90/385/EEC), the IVD Medical Devices Regulation (Regulation (EU) 2017/746), the Medical Devices Directive (Directive 93/42/EEC) and the Medical Devices Regulation (Regulation (EU) 2017/745), these Regulations provide, in respect of manufacturers that are located in the EEA and the EEA-based authorised representatives of manufacturers that are located outside the EEA, and in respect of health institutions in respect of “in-house devices”, for registration requirements in relation to medical devices, and other devices, that are placed on the market in the State.
- 16.30 **European Union (National Research Ethics Committee for Clinical Investigations of Medical Devices) Regulations 2021**¹⁴⁴
These Regulations provide for the establishment of national research ethics committees for the purpose of ethical approval of clinical investigations of medical devices. They also prescribe rules and procedures that apply to applications to such committees.
- 16.31 **European Union (Clinical Trials on Medicinal Products for Human Use) Regulations 2022**¹⁴⁵
These Regulations give further effect to Regulation (EC) No 536/2014 on clinical trials on medicinal products for human use (the “Clinical Trials Regulation”) which has applied since 31 January 2022. The Clinical Trials Regulation repeals and replaces Directive 2001/20/EC on the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use. These Regulations appoint the Health Products Regulatory Authority as the competent authority for the State for the purposes of the Clinical Trials Regulation and for the purposes of supervision and enforcement.
- 16.32 **European Union (Clinical Trials on Medicinal Products for Human Use) (National Research Ethics Committees) Regulations 2022**¹⁴⁶
These Regulations give further effect to Regulation (EC) No 536/2014 on clinical trials on medicinal products for human use (the “Clinical Trials Regulation”) which has applied since 31 January 2022 and

¹³⁹ SI 557 of 2021.

¹⁴⁰ SI 298 of 2021.

¹⁴¹ SI 684 of 2021.

¹⁴² SI 261 of 2021. See also the Medical Devices (Amendment) Regulations 2021 (SI 510 of 2021) which exclude Switzerland from the definition of “Member State” and make various other amendments.

¹⁴³ SI 691 of 2021.

¹⁴⁴ SI 260 of 2021.

¹⁴⁵ SI 40 of 2022.

¹⁴⁶ SI 41 of 2022.

repeals and replaces Directive 2001/20/EC on good clinical practice in the conduct of clinical trials on medicinal products for human use. These Regulations appoint an independent National Office for National Research Ethics Committees for Clinical Trials of Medicinal Products, to (in part) provide administrative support to Research Ethics Committees under the Clinical Trials Regulation.

- 16.33 **European Union (Veterinary Medicinal Products and Medicated Feed) Regulations 2022**¹⁴⁷
These Regulations give effect to Regulation (EU) No 2019/6, and related implementing and delegated acts, on veterinary medicinal products, and Regulation (EU) 2019/4 on the manufacture, placing on the market and use of medicated feed by providing for offences and penalties for contravention of such and enforcement measures.
- 16.34 **European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) (Amendment) Regulations 2021**¹⁴⁸
These Regulations amend the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016 in order to give effect to Regulation (EU) 2019/1020 on market surveillance and compliance of products.

Anticipated Developments: Ireland:

- 16.35 **Public Health (Tobacco and Nicotine Inhaling Products) Bill**
This Bill would introduce a licensing system for the sale of tobacco and nicotine inhaling products (including e-cigarettes). The Government has approved the Heads of Bill.
17. **Intellectual Property**

Statutory Instruments:

- 17.1 **European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021**¹⁴⁹
These Regulations strengthen the rights and protections afforded to various categories of right-holders in order to reflect the impact of technological advances and increased digitisation. They also provide for wider access and use of copyright protected works to the potential benefit of the creative sectors, press publishers, researchers, educators, cultural heritage institutions, and citizens.

18. **Maritime Law**

Statutory Instruments

- 18.1 **Merchant Shipping (Carriage of Nautical Charts and Publications) Regulations 2021**¹⁵⁰
These Regulations revoke the Merchant Shipping (Carriage of Nautical Publications) Regulations 1985 and implement elements of Chapter V International Convention for the Safety of Life at Sea (SOLAS) 1974 relating to the carriage of nautical charts and publications and require Irish registered ships, with certain exceptions, to carry (i) charts containing sufficient detail to show navigational marks, known dangers and other specified information appropriate for each part of the intended voyage, and (ii) specified published nautical publications and information in a place readily available to the officer of the watch, from 30 March 2021.
- 18.2 **European Union (Ship Inspection and Survey Organisations) (Amendment) Regulations 2021**¹⁵¹
These Regulations amend the definition of “EC Regulation” in the European Communities (Ship Inspection and Survey Organisations) Regulations 2011 in order to take into account the adoption on 25 March 2019 of Regulation (EU) 2019/492 with regard to the withdrawal of the United Kingdom from the EU and the revision of the assessment arrangements for recognised organisations.

¹⁴⁷ SI 36 of 2022.

¹⁴⁸ SI 614 of 2021.

¹⁴⁹ SI 567 of 2021.

¹⁵⁰ SI 149 of 2021.

¹⁵¹ SI 138 of 2021.

19. Professions (Legal)

Statutory Instruments:

- 19.1 **Solicitors Professional Indemnity Insurance (Amendment) Regulations 2021**¹⁵²
These Regulations, made by the Law Society and in the making of which the Legal Services Regulatory Authority concurred, substitute new minimum terms and conditions for professional indemnity insurance for solicitors and registered lawyers in Ireland.
- 19.2 **Solicitors Practising Certificate (Application Fee) Regulations 2021**¹⁵³
These Regulations, made by the Law Society, prescribe the requirements and procedures that are necessary in order to obtain a practising certificate, from 1 January 2022.
- 19.3 **Solicitors Accounts (Amendment) Regulations 2021**¹⁵⁴
These Regulations, made by the Legal Services Regulatory Authority, insert a new regulation 8A into the Solicitors Accounts Regulations 2014 in order to deal with issues arising from the application of negative interest to solicitors accounts and insolvency arrangement accounts.
- 19.4 **Registered European Lawyers Qualifying Certificate (Application Fee) Regulations 2021**¹⁵⁵
These Regulations apply in respect of the 2022 practice year (1 January 2022 to 31 December 2022) and set out the requirements, application fees and procedures necessary to obtain a qualifying certificate for 2022.

20. Public Law (General)

Acts of the Oireachtas:

- 20.1 **Maritime Jurisdiction Act 2021**
This Act updates and sets out in a single enactment the law relating to the State's maritime jurisdiction, including by giving further effect to relevant provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and repeals sections 2 and 3 of the Continental Shelf Act 1968 and Part 3 of the Sea-Fisheries and Maritime Jurisdiction Act 2006.

In this statutory 'tidy-up' and update, this Act: • prescribes the baselines from which the breadth of the State's maritime zones are measured; • defines the territorial sea of the State and empowers the Government to prescribe its outer limit; • stipulates that the seabed of the territorial sea and of the sea areas of the internal waters, and all mineral and other non-living resources and all forms of potential energy there, belong to the State; • provides for the exercise of the criminal jurisdiction of the State with respect to acts committed aboard foreign vessels within the territorial sea or internal waters of the State; • defines the contiguous zone of the State; • defines the exclusive economic zone of the State and the outer limit of the zone; • sets out the sovereign rights and jurisdiction enjoyed by the State within the exclusive economic zone; • provides that the criminal and civil jurisdiction of the State extends to any artificial island or installation located within the exclusive economic zone; • defines the continental shelf of the State and sets out how the outer limit of the continental shelf is to be determined; • empowers the Government to designate by order areas of the continental shelf as ones within which State's sovereign rights and jurisdiction may be exercised and preserves existing designation orders; • sets out the sovereign rights and jurisdiction the State may exercise in a designated area; • extends the criminal jurisdiction of the State to any act committed on board Irish ships outside the territorial sea and internal waters where that act, if committed in the State, would constitute an offence under the law of the State.

- 20.2 **Irish Sign Language Act 2017**
Although a 2017 enactment, this is notable as it came into force on 23 December 2020 and applies to public bodies, including statutory corporations and State companies. It recognises the right of Irish Sign Language users to use Irish Sign Language as their native language and the corresponding duty on all public bodies to provide Irish Sign Language users with free interpretation when availing of or seeking access to public services.

¹⁵² SI 587 of 2021.

¹⁵³ SI 689 of 2021.

¹⁵⁴ SI 463 of 2021.

¹⁵⁵ SI 690 of 2021.

Under the Act, a public body must do all that is reasonable to ensure that interpretation into Irish Sign Language is provided for a person who is competent in that language and who cannot hear or understand English or Irish when that person is seeking to avail of or access statutory entitlements or services provided by or under statute by the public body.

20.3 Houses of the Oireachtas Commission (Amendment) Act 2021

This Act provides for the further funding of the Commission, with a three-year budget of €462.5 million, for the period of three years from 1 January 2022.

20.4 Land Development Agency Act 2021

Part-commenced on 15 December 2021 by the Land Development Agency Act 2021 (Commencement) Order 2021¹⁵⁶, this Act establishes the Land Development Agency (the “LDA”) (previously established under the Land Development Agency (Establishment) Order 2018 (made under the Local Government (Corporate Bodies) Act 1971)) on a statutory basis.

The Agency is formed as a Designated Activity Company (DAC) under the Companies Act 2014 in order to develop and re-generate certain public land for the delivery of housing. The Minister for Housing, Local Government and Heritage and Minister for Public Expenditure and Reform are the shareholders and the LDA may form subsidiaries (further DACs) for the purposes of carrying out its functions.

The LDA may borrow money for the purposes of undertaking its functions and the NTMA is empowered to capitalise the LDA through an investment from the Ireland Strategic Investment Fund (“ISIF”). The previous LDA entity, established by order under the 1971 Act, was has been dissolved and its functions, assets, liabilities and staff have been transferred to the newly established Agency.

The LDA is to provide services to local authorities in order to assist them in the performance of their functions relating to the development of sites for housing and urban development in population centres over 30,000, and will also be a designated development agency under the Planning and Development Act 2000.

The Agency is establishing a Register of Relevant Public Land to identify land in urban population centres with a population greater than 10,000 that can be made available for housing and the Agency will be able to acquire relevant public land (at market value), by means of being offered first refusal on a proposed sale by the land-owning public body. The Agency will also periodically report to Government in relation to public land in the Register, which could be suitable for housing or urban development and the Government may decide that certain land is to be transferred to the Agency for such purposes.

20.5 Public Service Pay Act 2021

This Act, in force from 5 July 2021 (upon enactment), provides for the adjustment of the restrictions, contained in the Financial Emergency Measures in the Public Interest (No 2) Act 2009, on increasing the remuneration payable to public servants and for that purpose to amend that Act and the Ministers and Secretaries (Amendment) Act 2011. In this way, the Act empowers the Minister of Finance to sanction increases in the pay or allowances of public servants.

20.6 Child and Family Agency (Amendment) Act 2021

This Act provides for the transfer of certain functions of the Minister for Children, Equality, Disability, Integration and Youth under the Child and Family Agency Act 2013 to the Minister for Education (and for that purpose to amend the Child and Family Agency Act 2013) and for related matters. The Act was commenced in full from 15 December 2021.

20.7 Defence (Amendment) Act 2021

This Act makes a number of miscellaneous amendments to the Defence Act 1954, including:

- to permit the delegation by the Minister for Defence of a limited degree of day-to-day operational control and authority over a Defence Forces contingent that is deployed as part of an international force to the force commander of that international force;
- to ensure that recruits must be at least 18 years of age; and
- to facilitate the re-enlistment of suitably-qualified former enlisted members of the Defence Forces to fill certain positions.

¹⁵⁶ SI 712 of 2021.

Statutory Instruments:

- 20.8 **Agriculture, Food and the Marine (Delegation of Ministerial Functions) Order 2021**¹⁵⁷
20.9 **Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2021**¹⁵⁸

These Orders are examples of the types of statutory instrument that may initially seem mundane but which, in practice, are extremely important for the correct interpretation and application of statutory powers and procedures. Seven such delegation orders¹⁵⁹ and three such orders for the transfer of ministerial and departmental responsibilities¹⁶⁰ were made in 2021.

While in 2021 the relevant Orders related only to the delegation and transfer of ministerial functions (in each case from a cabinet minister ('full minister') to a minister of state ('junior minister')), in other years such orders have also¹⁶¹ altered the name(s) of Government Departments.

- 20.10 **Transport (Tour Operators and Travel Agents) Act 1982 (Disbursements from Fund) Regulations 2021**¹⁶²

These Regulations revoke the Transport (Tour Operators and Travel Agents) Act 1982 (Disbursements from Fund) Regulations 2020 and provide that payments from the Travellers' Protection Fund may be made to a customer who holds a refund credit note, where the tour operator or travel agent who issued the note is unable or fails to meet the financial or contractual obligations owed to the customer.

- 20.11 **Transport (Tour Operators and Travel Agents) Act 1982 (Claims by Customers) Regulations 2021**¹⁶³

These Regulations amend the Transport (Tour Operators and Travel Agents) Act 1982 (Claims by Customers) Regulations 1983 in order to increase the time-period within which a customer of a tour operator or a travel agent may make a claim for refund of monies paid or for the reimbursement of reasonable expenses necessarily incurred as a result of the inability or failure of the tour operator or travel agent concerned to meet his financial or contractual obligations under a relevant overseas travel contract, from 60 days to 120 days from the date of the failure, effective from 18 June 2021.

- 20.12 **Public Service Pay and Pensions Act 2017 (Section 19(4)) Order 2021**¹⁶⁴

This Order applies to a public servant to whom section 19 of the Public Service Pay and Pensions Act 2017 applies and provides that on and from 1 July 2021, the annualised amount of the basic salary of such a public servant shall stand at the amount at which it stood immediately before the enactment of section 2 of the Financial Emergency Measures in the Public Interest (No 2) Act 2009.

Anticipated Developments: Ireland

- 20.13 **Official Languages (Amendment) Act 2021**

This Act is not yet in force but must be commenced not later than December 2024. When it is commenced, the Act will amend the Official Languages Act 2003 in order to bolster measures supporting the Irish language. Notable features of the Bill Act include the objective that 20% of new recruits to the public service must be competent in Irish and a requirement for a new National Plan for the Provision of Irish Language Services.

- 20.14 **Civil Service Regulation (Amendment) Bill**

First proposed in 2018, this Bill is intended to provide for greater devolution of management and disciplinary functions in respect of public administration. The Bill proposes to do so by amending the Civil Service Regulation Acts 1956-2005 and the Public Service Management Act 1997. As of January

¹⁵⁷ SI 40 of 2021.

¹⁵⁸ SI 302 of 2021.

¹⁵⁹ The six other delegation orders are the: • Enterprise, Trade and Employment (Delegation of Ministerial Functions) Order 2021 (SI 71 of 2021); • Education (Delegation of Ministerial Functions) Order 2021 (SI 222 of 2021); • Justice (Delegation of Ministerial Functions) Order 2021 (SI 251 of 2021); • Justice (Delegation of Ministerial Functions) (No 2) Order 2021 (SI 252 of 2021); • Justice (Delegation of Ministerial Functions) (No 3) Order 2021 (SI 594 of 2021); and • Transport (Delegation of Ministerial Functions) Order 2021 (SI 682 of 2021).

¹⁶⁰ The two other transfer orders are the: • Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2021 (SI 302 of 2021); and • Broadcasting (Transfer of Departmental Administration and Ministerial Functions) Order 2021 (SI 402 of 2021).

¹⁶¹ A recent example is the Transport, Tourism and Sport (Alteration of Name of Department and Title of Minister) Order 2020 (SI 351 of 2020).

¹⁶² SI 105 of 2021.

¹⁶³ SI 290 of 2021.

¹⁶⁴ SI 308 of 2021.

2022, the Government has published the heads of the Bill and pre-legislative scrutiny has taken place. The Bill remains within the Government Legislation Programme for Spring 2022.

- 20.15 **Industrial Development (Miscellaneous Provisions) Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to provide that IDA Ireland would partner with the Ireland Strategic Investment Fund (ISIF) to commercially develop advance office buildings on IDA-owned lands in regional areas and to amend the National Standards Authority of Ireland Act 1996.
- 20.16 **Microfinance Ireland Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to provide for ownership of Microfinance Ireland (MFI) to pass from its current parentage (the Social Finance Foundation) to the Minister for Enterprise, Trade and Employment, and to put in place the consequent governance structures.
- 20.17 **Road Safety Authority (Amendment) Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to update the Road Safety Authority Act 2006.
- 20.18 **Gas (Amendment) Bill**
This Bill, which is included in the Spring 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.
- 20.19 **Water Services (Separation) Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to provide for the separation of Irish Water from the Ervia Group (the former BGÉ), and related matters. This Bill should be read with the proposed Gas (Amendment) Bill.
- 20.20 **Tailte Éireann Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to provide for the establishment of Tailte Éireann, a single body incorporating Ordnance Survey Ireland, the Commissioner of Valuation, the Boundary Surveyor and the Property Registration Authority.
- 20.21 **Údarás na Gaeltachta (Amendment) Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to address the outcome of a review of the selection process in relation to the board of Údarás na Gaeltachta with particular reference to the restoration of direct elections to An tÚdarás.
- 20.22 **National Tourism Development (Amendment) Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to increase the aggregate amount of money that can be advanced to Fáilte Ireland as capital expenditure on projects or enterprises under the National Tourism Development Authority Act.
- 20.23 **Emergency Management and Fire and Public Safety Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to re-cast the structure and arrangements for fire and safety services.
- 20.24 **River Shannon Management Body Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, is intended to create a statutory management body with responsibilities and functions to identify, co-ordinate, monitor and communicate flood-risk management actions and activities for the River Shannon catchment.
- 20.25 **National Concert Hall Bill**
This Bill is intended to give the National Concert Hall legal responsibility for the National Symphony Orchestra (currently that responsibility is with RTÉ).
21. **Public Law (COVID-19)**

Acts of the Oireachtas:

- 21.1 **Health and Criminal Justice (Covid-19) (Amendment) Act 2021**
Please see the “*Health Services and Public Health*” section of this paper.

Statutory Instruments:

21.2 Remote Meetings and Remote Hearings Designation Orders

Five orders¹⁶⁵ have been made in order to designate bodies as a State body for the purposes of section 29 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020, for example:

- **Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Section 29) (Veterinary Council of Ireland) (Designation) Order 2021**¹⁶⁶ This Order designates the Veterinary Council of Ireland for the purposes of holding remote meetings in accordance with section 29 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020.
- **Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Section 29) (Child and Family Agency) (Designation) Order 2021**¹⁶⁷ This Order designates the Child and Family Agency for the purposes of section 29 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020, which permits remote meetings of State bodies, from 22 March 2021.

Three orders¹⁶⁸ have been made in order to designate bodies as a designated body for the purposes of section 31 of the same Act, in relation to the holding of remote meetings and hearings respectively, for example:

- **Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Section 31) (Charity Appeals Tribunal) (Designation) Order 2021**¹⁶⁹ This Order designates the Charity Appeals Tribunal as a body for the purposes of holding remote hearings under s31 Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020.

22. Public Law (Regulatory)

Acts of the Oireachtas:

22.1 Private Security Services (Amendment) Act 2021

This Act amends the Private Security Services Act 2004 to include an additional category and a definition of “enforcement guard” in the list of security services covered by the 2004 Act. Other changes introduced by this Act include: • provision of a further exemption from licensing by the Private Security Authority for those engaged in the enforced collection of Revenue liabilities by a sheriff or a county registrar; • provision of enhanced powers to the Private Security Authority in relation to the refusal to renew, suspend or revoke licences; • creation of an offence of impersonating an inspector of the Private Security Authority; and • enabling the register of licences to be available on the internet as well as at the Private Security Authority’s offices.

22.2 Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Act 2021

This Act prohibits the re-sale of tickets or ticket packages for a price exceeding their original sale price for all events that are to take place in designated venues and for individual events that are designated. The Act provides that a contract term is void insofar as it purports to exclude or limit the transfer of a ticket or ticket package or its sale for a price not exceeding the original sale price.

22.3 Counterfeiting Act 2021

This Act is intended to further protect the euro and other currencies against counterfeiting. It completes the transposition of Directive 2014/62/EU on the criminal law protection of the euro and other currencies and makes further provision for the application of other complementary EU measures that deal with authenticity and fitness-checking of euro banknotes and euro coins and measures for the protection of the euro against counterfeiting¹⁷⁰.

¹⁶⁵ SIs 58, 118, 232, 238, and 311 of 2021.

¹⁶⁶ SI 58 of 2021.

¹⁶⁷ SI 118 of 2021.

¹⁶⁸ SIs 59, 189 and 233 of 2021.

¹⁶⁹ SI 59 of 2021.

¹⁷⁰ The relevant EU instruments are the:

- the “Euro Banknote Decision”: Decision ECB/2010/14 of the European Central Bank of 16 September 2010 on the authenticity and fitness-checking and recirculation of euro banknotes (as amended);
- the “Euro Coin Regulation”: Regulation (EU) No 1210/2010 concerning authentication of euro coins and handling of euro coins unfit for circulation; and

The Act is relevant to “relevant persons”, which are those bodies to which the obligations in the EU instruments and Part 3 of the Act apply and include both regulated financial service providers (already subject to authorisation and supervision by the CBI) and non-regulated financial service providers.

Statutory Instruments:

22.4 European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2021¹⁷¹

Similar disclosure obligations arise for trustees of any “relevant trust” as those that apply in the case of the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019¹⁷². These 2021 Regulations revoke and replace the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019 (the “2019 Regulations”).

In addition to introducing a new reporting requirement to the central register, these Regulations substantially update existing obligations and change what constitutes an in-scope trust arrangement. For in-scope trusts (known as “relevant trusts”¹⁷³), a trustee has a relatively extensive set of obligations, including: (a) maintaining an internal register of “beneficial owners”; (b) reporting beneficial ownership information to the central register maintained by the Revenue Commissioners; (c) notifying any “designated person” (such as a bank) that it acts as a trustee; (d) in certain circumstances, providing the designated person with information on the beneficial owner(s) and keeping the designated person updated on changes to that information; (e) serving a statutory notice on a person suspected of being a beneficial owner (where not already on the register) or having information required to ensure the accuracy of the beneficial ownership information held; and (f) ensuring beneficial ownership information on the internal and central registers remains up-to-date.

The definition of “beneficial owner” captures a broader range of persons than the ordinary meaning of the word might imply. The definition extends to: (i) any individual entitled to a vested interest in the capital of the relevant trust property; (ii) the class of individuals in whose interest the trust is set up or operates (except where the trust is entirely for the benefit of the individual(s) mentioned in the preceding sub-point); (iii) any individual who has control (as defined) over the relevant trust; (iv) the settlor; (v) the trustee; and (vi) the protector (if there is one).

These Regulations will be addressed in greater detail in the presentation on the legislation of 2021 that is relevant to finance and financial services.

22.5 Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Act 2021 (Designation of Venues and Events) Regulations 2021¹⁷⁴

These Regulations set out the requirements for a venue operator or an event organiser that wishes to apply for designation of a venue(s) or an event under section 7 and section 9 Sale of the Tickets (Cultural, Entertainment, Recreational and Sporting Events) Act 2021, from 31 July 2021.

22.6 European Union (Unfair Trading Practices in the Agricultural and Food Supply Chain) Regulations 2021¹⁷⁵

These Regulations transpose Directive 2019/633/EC and establish a minimum list of prohibited unfair trading practices in business-to-business relationships in the agricultural and food supply chain and lay down minimum rules concerning the enforcement of those prohibitions and arrangements for coordination between enforcement authorities.

22.7 European Union (Market Transparency) Regulations 2021¹⁷⁶

These Regulations, in operation from 31 August 2021, give full effect to EU Regulations No 1307/2013 and 1308/2013, to the extent that they apply to the notification of price, production or marketing information to the Commission, and to EU Regulations No 2017/1183 and 2017/1185 (the Market Transparency Regulation) to enable the Minister for Agriculture, Food and the Marine to request certain price,

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- the “Euro Counterfeiting Regulation”: Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting (as amended).

¹⁷¹ SI 194 of 2021.

¹⁷² SI 110 of 2019.

¹⁷³ For this purpose, a relevant trust is “an express trust established by deed or other declaration in writing and any other arrangement or class of arrangements as may be prescribed...” (European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2021 (SI 194 of 2021), regulation 2 and Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, section 106ZC(1)).

¹⁷⁴ SI 399 of 2021.

¹⁷⁵ SI 198 of 2021.

¹⁷⁶ SI 449 of 2021.

production or marketing information, require the information to be provided within a specified time period, appoint authorised officers to carry out the prescribed functions to verify the accuracy of information provided and to issue a compliance notice where it appears there has been a contravention of the Regulations, which the regulations provide will be an offence.

22.8 Sea-Fisheries (Illegal, Unreported and Unregulated Fishing) (Amendment) Regulations 2021¹⁷⁷

These Regulations: • amend the Sea-Fisheries (Illegal, Unreported and Unregulated Fishing) Regulations 2010 in order to add to those ports designated for direct landings by fishing vessels registered to third countries (outside the EU), • allowing entry to the EU of such fishery products with some exceptions and • make some clarifications relating to the authorisations of certain landings, denied landings, the right to appeal, shorter notification periods and the authority of Irish Border Control Post.

22.9 European Union (Common Fisheries Policy) (Point System) (Amendment) Regulations 2021¹⁷⁸

These Regulations amend the European Union (Common Fisheries Policy) (Point System) Regulations 2020 in order to apply those 2020 regulations to a serious infringement of the rules of the Common Fisheries Policy, update the definition of “serious infringement” and assign points to those infringements to be notified to the Licensing Authority and recorded against the on-register fishing capacity of the Irish sea-fishing boat.

22.10 Sea-Fisheries (Quotas) Regulations 2021¹⁷⁹

These Regulations revoke the Sea-Fisheries (Quotas) Regulations 2020 and give effect to Regulation (EU) 2021/92 fixing the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for Union fishing vessels, in certain non-Union waters, for 2021.

22.11 Sea-Fisheries (Quotas) (Deep-Sea Stocks) Regulations 2021¹⁸⁰

These Regulations revoke the Sea-Fisheries (Quotas) (Deep-Sea Stocks) Regulations 2019 and give effect to Regulation (EU) 2021/91 fixing the fishing opportunities for EU fishing vessels for certain deep sea fish stocks for 2021 and 2022.

22.12 Sea-Fisheries (North Western Waters Landing Obligation) Regulations 2021¹⁸¹

These Regulations revoke the Sea-Fisheries (North Western Waters Landing Obligation) Regulations 2020, implement the Landing Obligation in Article 15 of the Common Fisheries Policy Regulation 1380/2013 in respect of certain demersal fisheries in North Western Waters and give effect to Commission Delegated Regulation (EU) 2020/2015. These Regulations will cease to have effect on 31 December 2023.

22.13 Sea-fisheries (Revocation) Regulations 2021¹⁸²

These Regulations revoke certain statutory instruments relating to sea fisheries which are no longer in force/redundant, from 12 November 2021.

22.14 European Union (Making Available on the Market of Electrical Equipment Designed for Use Within Certain Voltage Limits) (Amendment) Regulations 2022¹⁸³

These Regulations give further effect Irish law to Regulation (EU) No 2019/1020 on market surveillance and compliance of products and to Directive 2014/35/EU on the making available on the market of electrical equipment designed for use within certain voltage limits by amending the European Union (Low Voltage Electrical Equipment) Regulations 2016. Regulation (EU) No 2019/1020 confers on national market surveillance authorities strengthened powers to carry out effective market surveillance in order to ensure that relevant products are compliant with certain EU harmonisation legislation (including Directive 2014/35/EU), with a view to ensuring the free movement of compliant products within the Single Market.

¹⁷⁷ SI 37 of 2021.

¹⁷⁸ SI 590 of 2021.

¹⁷⁹ SI 69 of 2021.

¹⁸⁰ SI 70 of 2021.

¹⁸¹ SI 101 of 2021.

¹⁸² SI 602 of 2021.

¹⁸³ SI 14 of 2022.

Anticipated Developments: Ireland

- 22.15 **Protected Disclosures (Amendment) Bill 2021**
The Bill is before Dáil Éireann currently. It proposes to amend the Protected Disclosures Act 2014 in order to transpose the EU Whistleblowing Directive (Directive 2019/1937 on the protection of persons who report breaches of EU law). Implementation of the Directive will involve substantial changes to protected disclosures and whistleblowing legislation across the EU, including extending the definition of both “relevant wrongdoings” and “reporting persons”. Member States had until 17 December 2021 to implement the new provisions.
- 22.16 **Regulation of Lobbying (Amendment) Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to amend the Regulation of Lobbying Act 2015 to improve the operation and functionality of the Lobbying Register, strengthen the existing legislation and its enforcement and make a failure to comply with the post-term employment restrictions in the 2015 Act a relevant contravention and an offence under the 2015 Act.
- 22.17 **Interception of Postal Packets and Telecommunications Messages (Regulation) (Amendment) Bill**
The Bill is included in the Spring 2022 Government Legislation Programme where it is indicated that work on revised heads of Bill is underway. The Bill proposes to amend various pieces of legislation in respect of electronic communications.
- 22.18 **Sale of Alcohol Bill**
This long-proposed Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to codify the law relating to the sale and consumption of alcohol.
- 22.19 **Charities (Amendment) Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, 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.
- 22.20 **Horse-Drawn Carriages Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to reform the regulation and licensing of horse-drawn carriages in Dublin and to confer on local authorities (including Dublin City Council) the power to regulate horse-drawn carriages within their functional areas.
- 22.21 **Large Public Service Vehicle Reform Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to streamline the procedure for the LPSV licensing framework and to eliminate overlap and duplication within the current LPSV licensing regime.
- 22.22 **Marine Casualty Investigation Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to implement recommendations of the review of marine casualty investigation structures in Ireland.
- 22.23 **Railway Safety (Amendment) Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to amend the statutory limits for concentration of alcohol in blood, urine and breath for a railway-safety-critical worker and to update procedures for sampling and testing for intoxicants and associated procedures under the Railway Safety Act 2005.
- 22.24 **Taxi Regulation (Amendment) (Rickshaw) Bill**
This long-proposed Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to provide for “improved public safety and enhanced passenger experience as a result of the wide-ranging concerns raised by multiple stakeholders including the public in relation to rickshaws carrying persons for reward.”
- 22.25 **Manufacture, Sale and Use of Fertiliser Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to provide for the control of the manufacture and sale of fertiliser products, including provision for market surveillance measures, and to provide for the collection of information on fertiliser sales at point of retail, at individual farm level.

22.26 **Dog Breeding Establishment (Amendment) Bill**

This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to amend the Dog Breeding Establishments Act 2010.

23. **Public Procurement**

Statutory Instruments:

23.1 **European Communities (Clean and Energy Efficient Road Transport Vehicles) (Amendment) Regulations 2021**¹⁸⁴

These Regulations amend the European Communities (Clean and Energy Efficient Road Transport Vehicles) Regulations 2011 in order to promote clean mobility solutions in public procurement tenders, to boost demand and further deployment of low and zero-emission vehicles, from 2 August 2021.

EU Instruments¹⁸⁵

23.2 **Commission Delegated Regulation (EU) 2021/1952 amending Directive 2014/24/EU in respect of the thresholds for public supply, service and works contracts, and design contests**

This Regulation adjusts the threshold amounts for the purposes of Directive 2014/24/EU on public procurement, as follows: • public works contracts (€5,350,000 is replaced by €5,382,000); • public supply and service contracts awarded by central government authorities and design contests organised by such authorities (€139,000 is replaced by €140,000); • public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities (€214,000 is replaced by €215,000); • works contracts which are subsidised directly by contracting authorities by more than 50% and the estimated value of which, net of VAT, is equal to or greater than €5,382,000, where those contracts involve one of the following activities: (a) civil engineering activities as listed in Annex II, (b) building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes; and • service contracts which are subsidised directly by contracting authorities by more than 50% and the estimated value of which, net of VAT, is equal to or greater than €215,000 and which are connected to a works contract as referred to in the immediately preceding point.

23.3 **Commission Delegated Regulation (EU) 2021/1953 amending Directive 2014/25/EU in respect of the thresholds for supply, service and works contracts, and design contests**

This Regulation adjusts the threshold amounts for the purposes of Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors, as follows: • supply and service contracts and design contests (€428,000 is replaced by €431,000); and • works contracts (€5,350,000 is replaced by €5,382,000). The threshold amount for service contracts for social and other specific services listed in Annex XVII remains unchanged (€1m).

23.4 **Commission Delegated Regulation (EU) 2021/1950 amending Directive 2009/81/EC in respect of the thresholds for supply, service and works contracts (Defence and Security Procurement)**

This Regulation adjusts the threshold amounts for the purposes of Directive 2009/81/EC on the co-ordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, as follows: • supply and service contracts (€428,000 is replaced by €431,000); and • works contracts (€5,350,000 is replaced by €5,382,000).

23.5 **Commission Delegated Regulation (EU) 2021/1951 amending Directive 2014/23/EU in respect of the threshold for concessions**

This Regulation adjusts the threshold amounts for the purposes of Directive 2014/23/EU on the award of concession contracts, as follows: • €5,350,000 is replaced by €5,382,000.

¹⁸⁴ SI 381 of 2021.

¹⁸⁵ See also https://ec.europa.eu/growth/single-market/public-procurement/legal-rules-and-implementation/thresholds_en

24. **Transport**

24.1 **Road**

Statutory Instruments:

- (a) **European Communities (Road Infrastructure Safety Management) Regulations 2021**¹⁸⁶
These Regulations give effect to Directive (EU) 2019/1936 on road infrastructure safety management and require the establishment and implementation of procedures relating to road safety impact assessments, road safety audits, road safety inspections and network-wide road safety assessments. These requirements apply to roads that are part of the trans-European road network, to motorways and to other primary roads, irrespective of the stage of development at which the relevant road is (whether at design stage, under construction or in operation).
- (b) **Road Traffic (Licensing of Drivers) (Amendment) Regulations 2021**¹⁸⁷
These Regulations amend the Road Traffic (Licensing of Drivers) Regulations 2006 to provide that persons of 70 years or older (except those with an identified/specified illness), applying for a learner permit or driving licence, do not need to submit a medical report with their application during the period beginning on 1 January 2021 and ending on 30 June 2021.
- (c) **Road Traffic Act 1994 (Detention of Vehicles) (Amendment) Regulations 2021**¹⁸⁸
These Regulations amend the Road Traffic Act 1994 (Detention of Vehicles) Regulations 2011 to provide that the relevant waiver of charges provisions in the Regulations apply to all test certificates and certificates of roadworthiness issued by Member States and not only to those issued by Irish authorities.
- (d) **Road Traffic (Driving Instructor Licensing) (Extension of Period of Validity of Licence) Regulations 2021**¹⁸⁹
These Regulations amend the Road Traffic (Driver Instructor Licensing) (No 2) Regulations 2009 to provide that a driving instructor's licence, issued during the period beginning on 1 September 2018 and ending on 03 January 2021, is extended by 1 year.
- (e) **Road Traffic (National Car Test) (Amendment) Regulations 2021**¹⁹⁰
These Regulations provide for the further transposition of Directive 2014/45/EU on periodic roadworthiness testing, addressing, in particular, (a) the introduction of On-Board Diagnostic (OBD) testing at NCT for the inspection of specific items, and (b) an update to Schedules 2 and 3 to provide for the introduction of OBD test items and for the reporting of OBD information.
- (f) **European Union (Roadworthiness Testing) (National Contact Point) Regulations 2021**¹⁹¹
These Regulations give effect to Article 15 of Directive 2014/45/EU and designate the Road Safety Authority as the national contact point responsible for exchanging information with other Member States and the European Commission in the application of Directive 2014/45/EU.
- (g) **Road Traffic (Licensing of Drivers) (Amendment) (No 2) Regulations 2021**¹⁹²
These Regulations further extend the previously applicable extension of validity of learner permits granted in response to the Covid-19 pandemic (so that a learner permit that expired between 1 March 2020 and 30 June 2020 has now been extended for 18 months from the date of expiry specified on the permit; a learner permit that expired between 1 July 2020 and 31 October 2020 has now been extended for 14 months from the date of expiry specified on the permit; and a learner permit that expired between 1 November 2020 and 31 July 2021 has now been extended for 10 months from the date of expiry specified on the permit). These further

¹⁸⁶ SI 612 of 2021.

¹⁸⁷ SI 7 of 2021.

¹⁸⁸ SI 179 of 2021.

¹⁸⁹ SI 215 of 2021.

¹⁹⁰ SI 289 of 2021.

¹⁹¹ SI 621 of 2021.

¹⁹² SI 303 of 2021.

extensions apply to all the licence categories that are listed on the learner permit from the date of expiry for each category.

- (h) **Road Traffic (Courses of Instruction) (Motorcycles) (Extension of Period of Validity of Certificate) Regulations 2021**¹⁹³
These Regulations amend the Road Traffic (Courses of Instruction) (Motorcycles) Regulations 2011 to provide that a certificate of satisfactory completion of initial basic training for motorcyclists (an IBT certificate), issued during the period beginning on 1 March 2018 and ending on 30 June 2018, remained valid until 1 October 2021; an IBT certificate issued during the period beginning on 1 July 2018 and ending on 31 August 2018 remained valid for a period of 3 years and 2 months from the date of issue; and that an IBT certificate issued during the period beginning on 1 September 2018 and ending on 30 June 2019 remained valid for a period of 3 years from the date of issue.
- (i) **Road Traffic (Recognition of Foreign Driving Licences) (New Brunswick) Order 2021**¹⁹⁴
This Order gives effect to an Agreement between Ireland and the Canadian Province of New Brunswick on the mutual exchange of driving licences for cars and certain motorcycles.
- (j) **Road Traffic Act 2010 (Part 3) (Fixed Charge Offences) (Amendment) Regulations 2021**¹⁹⁵
These Regulations increase (from €40 to €80) the fixed charge for parking on a footway, a cycle track, or a bus lane.
- (k) **Local Authorities (Traffic Wardens) Act 1975 (Fixed Charge Offences) (Amendment) Regulations 2021**¹⁹⁶
These Regulations increase, to €80, the fixed charge for parking on a footway, a cycle track, or a bus lane.
- (l) **Authorisation of Commercial Vehicle Roadworthiness Test Operators and Testers (Amendment) Regulations 2021**¹⁹⁷
These Regulations amend the Authorisation of Commercial Vehicle Roadworthiness Test Operators and Testers Regulations 2013 in order to update certain definitions and to remove a prohibition on the transfer of a CVR test operator's authorisation in specific circumstances.
- (m) **Commercial Vehicle Roadworthiness (Vehicle Testing) (Amendment) Regulations 2021**¹⁹⁸
These Regulations amend the Commercial Vehicle Roadworthiness (Vehicle Testing) (No 2) Regulations 2013 to provide that: • a three-month extension is given to test due dates for converted CVR vehicles with a first test due date falling during the period beginning on 28 March 2020 and ending on 30 June 2020, or to converted CVR vehicles with a certificate of roadworthiness in force on 28 March 2020; and • the definitions in the regulations are in line with both the Agricultural Vehicle Type-approval Framework Regulation and the Type-approval Framework Regulations.
- (n) **European Union (Commercial Vehicle Roadworthiness) (Roadworthiness Certificate and Roadworthiness Test) Regulations 2021**¹⁹⁹
These Regulations provide for the further transposition of Directive 2014/45/EU on periodic roadworthiness testing by: • amending the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012 to provide for the recognition of roadworthiness certificates issued by other Member States as required by the Directive; and • amending the Commercial Vehicle Roadworthiness (Vehicle Testing) (No 2) Regulations 2013 in order to determine the test due date for an imported vehicle where a roadworthiness certificate was issued by another Member State in respect of that vehicle and that certificate continues to be in force. These Regulations

¹⁹³ SI 357 of 2021.

¹⁹⁴ SI 615 of 2021.

¹⁹⁵ SI 747 of 2021.

¹⁹⁶ SI 748 of 2021.

¹⁹⁷ SI 443 of 2021.

¹⁹⁸ SI 616 of 2021.

¹⁹⁹ SI 617 of 2021.

also permit the verification of roadworthiness certificates issued by other Member States where the validity of the certificate is in doubt.

- (o) **Roads Act 1993 (Classification of Regional Roads) (Amendment) Order 2021**²⁰⁰
These Regulations amend the Schedule of the Roads Act 1993 (Classification of Regional Roads) Order 2012 to address a number of road classification issues that arose, principally from the opening of the Sligo Western Distributor Road.
- (p) **Vehicle Registration and Taxation (Amendment) Regulations 2022**²⁰¹
These Regulations amend the Vehicle Registration and Taxation Regulations 1992 in order to update the reference to the EU legislative framework for the type-approval of motor vehicles, replacing the reference in regulation 4 of the 1992 Regulations to the Type-Approval Directive (Directive 2007/46/EC) with a reference to the Type-Approval Regulation (Regulation (EU) No 2018/858).
- (q) **European Union (Vehicle Drivers Certificate of Professional Competence) (Amendment) Regulations 2021**²⁰²
These Regulations amend the European Communities (Vehicle Drivers Certificate of Professional Competence) (No 2) Regulations 2008 for the purpose of giving further effect to Directive (EU) 2018/645 of the European Parliament and Council, from 22 July 2021.
- (r) **European Union (Transport of Passengers by Road) Regulations 2021**²⁰³
These Regulations provide for the designation of the National Transport Authority (“NTA”) as the competent authority, and where appropriate as the authorising authority, for the purposes of certain aspects of the EU-UK Trade and Co-Operation Agreement which relate to the transport of passengers by road. Provision is also made for the charging of fees by the NTA in the context of its role as a competent authority/authorising authority under the Regulations.
- (s) **European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) (Amendment) Regulations 2021**²⁰⁴
These Regulations transpose Directive (EU) 2020/1833 on the inland transport of dangerous goods to take into account scientific and technical progress (insofar as that Directive relates to the transport of dangerous goods by road).

EU Instruments

- (t) **Directive (EU) 2021/1187 on streamlining measures for advancing the realisation of the trans-European transport network (TEN-T)**
In respect of the trans-European transport network (TEN-T) and in order to expedite the development of significant portions of TEN-T, this Directive requires the application of particular permit-granting procedures to authorise the implementation of:
 - (a) projects that are part of pre-identified sections of the core network as listed in the Annex (no project in Ireland is included);
 - (b) other projects on the core network corridors, as identified pursuant to Article 44(1) of Regulation (EU) No 1315/2013, with a total cost exceeding €300m,with the exception of projects exclusively related to telematic applications, new technologies and innovation.
- (u) **Commission Delegated Directive (EU) 2021/1717 as regards the updating of certain vehicle category designations and the addition of eCall to the list of test items, methods, reasons for failure and assessment of deficiencies**
This Directive updates certain vehicle categorisations in EU law as a result of technical progress, and requires that, in respect of relevant vehicles, a uniform testing regime must apply to ensure the longevity and durability of the 112-based eCall in-vehicle system.

²⁰⁰ SI 12 of 2021.

²⁰¹ SI 10 of 2022.

²⁰² SI 380 of 2021.

²⁰³ SI 624 of 2021.

²⁰⁴ SI 711 of 2021.

Anticipated Developments: Ireland

- (v) **Large Public Service Vehicle Reform Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to streamline the procedure for the LPSV licensing framework and to eliminate overlap and duplication within the current LPSV licensing regime.
- (w) **Road Traffic and Roads Bill 2021**
This Bill, which is before Dáil Éireann currently, provides for: • measures to link driver licence records and vehicle records; • measures to permit the development of a Motor Third Party Liability (“MTPL”) database; • Transport Infrastructure Ireland to be empowered to set variable speed limits and use gantry displays for signage in order to manage traffic on motorways; • the regulation of “powered personal transporters” (including e-scooters); • motor insurers to have increased access to penalty point records and driver disqualification records; and • the introduction of a ‘fit and proper person’ test for Approved Driving Instructors.

24.2 Rail

Statutory Instruments

- (a) **European Union (Interoperability of the Rail System) (Designated Bodies) (Fees) Regulations 2021**²⁰⁵
These Regulations give further effect to EU Directive 2016/797 on the interoperability of the European rail system and set out the fees payable to the Commission for Railway Regulation for the task of assessing applications from bodies seeking to be designated as the bodies responsible for carrying out conformity assessment activities in respect of national rules and for annual surveillance of those designated bodies by the Commission, from 15 April 2021.
- (b) **Railway Safety Act 2005 (Section 4(5)) (Specified Infrastructure, Monorail) Regulations 2021**²⁰⁶
These Regulations specify monorail infrastructure to be a railway for the purposes of the Railway Safety Act 2005, where monorail means a single rail serving as a track for rolling stock.
- (c) **Railway Safety Act 2005 (Section 26) Levy Order 2021**²⁰⁷
This Order introduces a levy, in accordance with section 26 of the Railway Safety Act 2005, in order to meet the expenditure properly incurred by the Commission for Railway Regulation in the discharge of its functions.
- (d) **European Union (Transport of Dangerous Goods by Rail) (Amendment) Regulations 2021**²⁰⁸
These Regulations amend the European Communities (Transport of Dangerous Goods by Rail) Regulations 2010 in order to give effect to EU Directive 2020/1833 and further effect to Directive 2008/68/EC in relation to inland transport of dangerous goods by rail, from 30 June 2021.

Anticipated Developments: Ireland

- (e) **Railway Safety (Amendment) Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to amend the statutory limits for concentration of alcohol in blood, urine and breath for a railway-safety-critical worker and to update procedures for sampling and testing for intoxicants and associated procedures under the Railway Safety Act 2005.

24.3 Sea

Statutory Instruments:

- (a) **European Union (Passenger Ships) (Amendment) Regulations 2022**²⁰⁹
These Regulations amend the European Union (Passenger Ships) Regulations 2019 in order to give further effect to Regulation (EU) No 2020/411 on safety rules and standards for passenger

²⁰⁵ SI 176 of 2021.

²⁰⁶ SI 589 of 2021.

²⁰⁷ SI 246 of 2021.

²⁰⁸ SI 177 of 2021.

²⁰⁹ SI 19 of 2022.

ships, as regards the safety requirements for passenger ships engaged on domestic voyages. It also amends the Schedule of Sea Areas listed in Schedule 2 to the European Union (Passenger Ships) Regulations 2019.

- (b) **European Union (Marine Equipment) (Amendment) Regulations 2021**²¹⁰
These Regulations amend the European Union (Marine Equipment) Regulations 2017, which gave effect to Directive 2014/90/EU, to take account of EU Regulation 2021/1206 and 2021/1158 on the design, construction and performance requirements and testing standards for marine equipment.
- (c) **Merchant Shipping (Solas V – Navigation Bridge Visibility) (Construction) Rules 2021**²¹¹
These Rules implement Chapter V of the International Convention for the Safety of Life at Sea (SOLAS) 1974, and subsequent Protocols and amendments, by requiring ships to comply with IMO standards. They apply to sea-going Irish passenger ships and Irish ships (other than fishing vessels) of 55 metres in length or over, from 9 June 2021.

Anticipated Developments: Ireland

- (d) **Marine Casualty Investigation Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to implement recommendations of the review of marine casualty investigation structures in Ireland.
- (e) **Merchant Shipping (International Conventions) Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to provide for the national implementation of certain International Maritime Conventions, the updating of existing statutes in respect of other conventions and to provide for some miscellaneous maritime safety amendments.

²¹⁰ SI 625 of 2021.

²¹¹ SI 280 of 2021.

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