

DRAFT GENERAL SCHEME

The Data Bill 2025

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PART 1: INTRODUCTION AND GENERAL TRANSPOSITION

CHAPTER 1: Preliminary and General

Head 1 – Long Title

To provide that the Long Title of the Bill is:

“An Act to give further effect to Regulation 2023/2854 of the European Parliament and of the Council of 13 December 2023¹ on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act); and for that purpose to amend [Competition and Consumer Protection Act 2014](#) and the [Digital Services Act 2024](#) and the [Competition \(Amendment\) Act 2022](#) and the [Communications Regulation Act 2002](#) ; and to enable the Commission for Communications Regulation for the purpose of meeting its expenses properly incurred in the discharge of its functions as the competent authority in respect of Chapters VI and VIII of Regulation (EU) 2023/2854 to impose a levy on data processing service providers ; and for that purpose to amend the [Communications Regulation Act 2002](#) and to provide for related matters”

Explanatory Note:

It is standard to provide each Bill with a LONG TITLE, giving detail as to its scope and purpose.

The long title comprises two parts; the first describes the transposition of the EU Data Act (“the Regulation” from hereon in), and the second describes the provision of levy raising powers to ComReg to carry out its functions under the Regulation.

¹ OJ L, 2023/2854, 22.12.2023, ELI

Head 2 – Short title, collective citation, construction, and commencement

To provide that:

- (1) This Act may be cited as the Data Act 2025.
- (2) This Act (other than Part 6) will come into operation on such day or days as the Minister for Enterprise, Tourism and Employment may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.
- (3) Part 6 of this Act shall come into operation on such day or days as the Minister for Enterprise, Tourism and Employment, following consultation with the Minister for Culture, Communications and Sport, may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Explanatory Note:

This Head provides for the short title, collective citation, construction, and commencement arrangements of the Act. It is standard to provide for a convenient Short Title, by which an Act may be generally referred to and a collective citation, as well as providing for a Long Title giving greater detail as to the scope of the Act in question.

The precedent approach for dividing the commencement provisions is drawn from the Work Life Balance and Miscellaneous Provisions Act 2023.

Implementation of the Regulation is led by the Department of Minister for Enterprise, Tourism and Employment (DETE) and the Minister for Enterprise, Tourism and Employment (METE) will therefore commence part one of the Act.

Part 6 of the Bill gives ComReg levy making powers. ComReg operates under the aegis of the Department of Culture, Communications and Sport (DCCS). However, responsibility for implementation of the Regulation is led by DETE. The Head therefore provides for METE to commence Part 6 following consultation with MCCS. The precedent for this approach is taken from the Digital Services Levy Act 2024.

Head 3 – Definitions

To provide that:

In this Act –

“The Regulation” means the Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828. Also known as the Data Act.

A word or expression that is used in this Part and which is also used in the Regulation has, unless the context otherwise requires, the same meaning in this act as it has in the Regulation.

“Commission” means the Competition and Consumer Protection Commission.

“ComReg” means the Commission for Communications Regulation.

“Minister” means the Minister for Enterprise, Tourism and Employment.

“Act of 2014” means the Competition and Consumer Protection Act 2014

“Competent Authority” means an authority designated in this Act for the purpose of implementing the Data Act Regulation.

This Act applies to the following as set out in Article 1(3) of the Data Act Regulation:

- Data holders;
- Data recipients,
- Manufacturers;
- Participants in data spaces;
- Providers of data processing services;
- Public sector bodies; and
- Users in the European Union of connected products or related services.

Explanatory Note:

This Head provides definitions of key words/terms used in the Act.

Head 4 – Service of documents

To provide that:

(1) A notice or other document that is required to be served on or given to a person under this Act shall be addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address;
- (d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to, him or her in that manner.
- (e) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the notice relates to a premises, by delivering it to the premises or by affixing it in a conspicuous position on or near the premises.

(2) For the purpose of this section, a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

Explanatory Note:

This Head provides for the service of documents on a person. Precedent text for this Head is from the Digital Services Act 2024 and the NIS General Scheme Head 40. This Head will provide certainty and consistency for those in scope of the Act while also providing clear instructions for those who are serving documents.

CHAPTER 2: The Data Act

Head 5 – Certification of out-of-court dispute settlement bodies

To provide that:

- (1) A body which applies to the Commission under Article 10 of the Regulation to be certified as an out-of-court dispute settlement body shall do so in the form and manner specified by the Commission (and a body who so applies is in this section referred to as an ‘applicant’).
- (2) At any time after receiving an application and before determining the application, the Commission may, by notice in writing, require the applicant to provide additional information to the Commission and, where the Commission does so, the applicant shall comply with that requirement within the period specified in the notice.
- (3) Where the Commission is satisfied that an applicant—
 - (a) meets the certification conditions under Article 10(5), the Commission may certify the applicant as an out-of-court dispute settlement body, or
 - (b) does not meet the certification conditions, the Commission may refuse to certify the applicant as an out-of-court dispute settlement body.
- (4) Where the Commission makes a decision under subsection (3), it shall notify the applicant, as soon as is reasonably practicable, in writing of the decision.
- (5) The Commission shall notify the European Commission of any bodies which it has certified as an out-of-court dispute settlement body under [this Head].

Explanatory Note:

This Head is modelled on Section 193 of the Broadcasting Act 2009 (as amended by section 41 of the Digital Services Act 2024). The Digital Services Regulation makes similar provisions for the establishment of out of court dispute settlement bodies.

This Head relates to Article 10 of the Data Act Regulation. Article 10 provides for users, data holders and data recipients to have access to a dispute settlement body, to settle disputes relating to Article 4(3), 4(9), 5(12) and disputes relating to fair, reasonable and non-discriminatory terms and conditions of, and transparent manner of, making data available in accordance with Chapters III and IV. Access to a dispute settlement body does not affect the right to a judicial remedy. It is not mandatory for Member States to establish a dispute settlement body, and it is not the intention of the Department to do so. However, the State is required to certify an entity as a dispute settlement body, at the request of that entity, if it meets certain criteria.

Articles 4(3)(b), 4(9)(b) and 5(12)(b) all specifically provide for the right to refer a matter to a dispute settlement body in accordance with Article 10(1).

On 8 October 2024 Government approved the designation of the Commission as a competent authority under the Data Act, with roles agreed including certification of dispute settlement bodies. This is well aligned with another function of the Commission as the regulatory authority designated in respect to the implementation of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes.

The Regulation does not provide for the Commission to seek additional information (as provided for in Section (2) above) but the Departments considers it prudent to include this text.

The Regulation does not explicitly provide for the Commission to refuse an application for certification (Section (3)(b)) or that the Commission shall make its decision known to the applicant in writing (Section (3)(c)) but the Department considers these to be practical inclusions.

Subsection (5) is intended to give effect to Article 10(6) of the Data Act Regulation. This is to ensure that the European Commission is aware of any bodies which are certified in Ireland to act as an out-of-court dispute settlement body. This information must be transmitted to the European Commission by the CCPC.

Head 6 – Revocation of certification as out-of-court dispute settlement body

To provide that:

- (1) The Commission shall revoke its certification of an out-of-court dispute settlement body if it determines, following an investigation either on its own initiative or on the basis of the information received by third parties, that the out-of-court dispute settlement body no longer meets the conditions set out in Article 10(5)(a) – 10(5)(d) of the Regulation. Before revoking that certification, the Commission shall afford that body an opportunity to react to the findings of its investigation and its intention to revoke the out-of-court dispute settlement body’s certification.
- (2) Where the Commission proposes to revoke the certification of an out of-court dispute settlement body under subsection (1), it shall notify the out-of-court dispute settlement body concerned in writing of the proposed revocation.
- (3) A notification under subsection (2) shall include particulars of the following:
 - (a) the proposal to revoke the certification under subsection (1) and the reason for it;
 - (b) that the out-of-court dispute settlement body is entitled to make representations in accordance with [Head 8] regarding the proposal to revoke the certification;
 - (c) that if the out-of-court dispute settlement body does not make such representations, the proposed revocation of the certification under subsection (1) shall come into operation 14 days from the date of the service of the notification;
 - (d) that the out-of-court dispute settlement body is entitled to seek a review of the decision to revoke the certification in accordance with [Head 7].

Explanatory Note:

The Regulation makes no provision for revocation of the certification of an out-of-court dispute settlement body. The Department notes that, unlike in the Digital Services Act (Regulation), there is no provision in the Data Act Regulation to make certification time limited and subject to review. It is prudent to provide the Commission with powers to revoke the certification to allow the Commission to respond to changes in eligibility of out-of-court dispute settlement bodies.

Section 1 is modelled on Article 21(7) of the Digital Services Regulation, wherein it provides for the Digital Services Coordinator to revoke certification as a result of an investigation carried out by them. As the Data Act Regulation does not contain a similar provision, this section of the Head is necessary to allow the Commission to revoke certification on foot of an investigation.

The precedent text of Sections (2) and (3) is Section 194 of the Broadcasting Act 2009 (as amended by Section 41 of the Digital Services Act 2024). As the Data Act Regulation doesn’t contain revocation provisions, cross references are made with reference to Heads in this document.

The Broadcasting Act 2009 as amended by the Digital Services Act 2024 also includes provisions for a review of refusal of certification or revocation of certification under Section 195; for an out-of-court settlement body to make representations to the Commission under Section 196; and for investigation of an out-of-court dispute settlement body under Section 197. Having considered Sections 195 – 197, the Department considers that a review mechanism is in order in the interest of fair procedures, and inclusion of Section 196 and 197 provisions will provide for consistency with the Digital Services Act 2024.

Head 7 - Review of refusal of certification or revocation of certification

To provide that:

(1) Where—

(a) an application for certification as an out-of-court dispute settlement body is refused by the Commission under [Head 5(3)(b)], or

(b) the certification of an out-of-court dispute settlement body is proposed to be revoked by the Commission under [Head 6(1)], the body may, within 14 days from the date of the notification under section [Head 5(4)] or [Head 6(2)], request in writing a review (in this section referred to as a ‘review request’) of such refusal or proposed revocation in the manner and form specified by the Commission.

(2) The review request shall state the grounds on which the body or out of-court dispute settlement body making the request seeks a review of the refusal or proposed revocation, as the case may be.

(3) The Commission shall, upon receipt of the review request, appoint an independent person (in this section referred to as a ‘reviewer’) to carry out a review in accordance with this section.

(4) The reviewer shall, as soon as is practicable after being appointed, review the decision to refuse or revoke the designation and may recommend to the Commission that—

(a) the decision should be affirmed, or

(b) the decision should be set aside and that the Commission reconsider the decision.

(5) The reviewer shall, within 14 days of making a recommendation under subsection (4), give notice to the person who made the review request, of the recommendation and the reasons for it.

Explanatory Note:

This Head is modelled on Section 195 of the Broadcasting Act 2009 (as amended by s. 41 of the Digital Services Act 2024).

The Regulation makes no provision for the review of refusal of certification or revocation of certification of an out-of-court dispute settlement body, and therefore also makes no provision for the appeal of revocation or refusal. As Head 6 provides for revocation of certification, in order to adhere to the principle of fairness, a review of refusal or revocation is provided for in Head 7.

Head 8 – Representations

To provide that:

(1) Where an out-of-court dispute settlement body has been notified of a proposal to revoke the certification of the out-of-court dispute settlement body under [Head 6], the body may make representations to the Commission about such proposal.

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

(3) Where—

(a) a body makes representations to the Commission in accordance with subsection (1), and

(b) the Commission decides to give effect to the proposed revocation of certification as an out-of-court dispute settlement body,

the termination or revocation shall come into operation 14 days from the date of the notification under [Head 6].

Explanatory Note:

As the Department is providing the Commission with the ability to revoke certification of an out-of-court dispute settlement body following precedent from the Digital Services Act 2024 – there also needs to be a provision for those out-of-court bodies to make representations to the Commission in relation to potential revocation of its certification.

The precedent text is Section 196 of the Broadcasting Act 2009 (as amended by s. 41 of the Digital Services Act 2024).

Head 9 – Investigation of an out-of-court dispute settlement body.

To provide that:

(1) For the purposes of an investigation in accordance with [Head 6(1)] the Commission may appoint an authorised officer to investigate—

(b) the certification of an out-of-court dispute settlement body in accordance with [Head 5(1)],

(2) An investigation under this section shall be carried out by an authorised officer appointed under Section 35 of the Competition and Consumer Protection Act 2014 without undue delay.

(3) For the purposes of an investigation undertaken in accordance with this section, an authorised officer may—

(a) inspect and make copies of any books, records or other documents (including books, records or documents stored in non-legible form), or take extracts therefrom, relating to the trusted flagger, vetted researcher or out-of-court dispute settlement body,

(b) by notice in writing, request the out-of-court dispute settlement body to provide additional information to him or her, and

(c) request any person at the place of work or premises of the out-of-court dispute settlement body concerned, including the owner or person in charge of that place or premises, to give the authorised officer such information and assistance as he or she may reasonably require for the purposes of an investigation under this section.

(4) A person requested to provide information or assistance in accordance with subsection (3)(c) shall comply with a request of an authorised officer to provide such information and assistance as he or she may reasonably require for the purposes of the investigation.

Explanatory Note:

This Head is modelled on Section 197 of the Broadcasting Act 2009 (as amended by Section 41 of the DSA 2024). The Broadcasting Act 2009 provides for a “Digital Services Investigator” to carry out an investigation into where an out-of-court dispute settlement body should have its certification revoked. A Digital Services Investigator is a member of staff of Coimisiún na Meán. For the purposes of the Data Act and for clarity in the Commission’s practical operation of its role, an authorised officer as appointed by the Commission, will have a role in the Data Act equivalent of the Digital Services Investigator in the Broadcasting Act 2009.

As the Department is providing for the Commission the ability to revoke certification of an out-of-court dispute settlement body following precedent from the Digital Services Act 2024 – there subsequently needs to be a provision for the Commission to carry out an investigation to determine if a body fulfils the criteria for certification. [Head 6(1)] provides for revocation of certification of an out-of-court dispute settlement body following an investigation. This Head sets out the processes for conducting that investigation. As the Data Act Regulation doesn’t require revocation of certification or investigations of out-of-court dispute settlement bodies, cross references are made with reference to Heads in this document.

Head 10 – Provision for co-operation between Competent Authorities

To provide that:

(1) The Competent Authorities as designated under [Head 16 – Designation of CCPC, Head 17 – Designation of ComReg] may enter into an arrangement or arrangements with each other and other public sector bodies, public sector authorities and regulators for the purposes of—

(a) facilitating co-operation between the designated competent authorities, public sector bodies and regulators in the performance of the competent authorities’ respective functions in so far as they relate to—

- i. Enabling fair business-to-business and business-to-consumer data sharing
- ii. Setting rules around mandatory business-to-business data sharing
- iii. Protecting against unfair contractual terms
- iv. Governing business-to-government data sharing
- v. Switching between data processing services
- vi. Preventing unlawful third-country government access
- vii. Enhancing interoperability

(b) avoiding duplication of activities by the Competent Authorities,

(c) ensuring, as far as practicable, consistency between decisions made or other steps taken by the Competent Authorities in so far as any part of those decisions or steps consists of or relates to—

- i. Enabling fair business-to-business and business-to-consumer data sharing
- ii. Setting rules around mandatory business-to-business data sharing
- iii. Protecting against unfair contractual terms
- iv. Governing business-to-government data sharing
- v. Switching between data processing services
- vi. Preventing unlawful third-country government access
- vii. Enhancing interoperability

(d) enabling consultation between the Competent Authorities

(e) where appropriate, conducting joint studies or analyses of matters relating to the Data Act Regulation.

and each such agreement that is entered into is referred to in this section as a “co-operation agreement”.

(2) A co-operation agreement shall include provisions—

(a) enabling each party to furnish to another party information in its possession if the information is required by that other party for the purpose of the performance by it of any of its functions,

(b) enabling each party to forbear to perform any of its functions in relation to a matter in circumstances where it is satisfied that another party is performing functions in relation to that matter

(4) A co-operation agreement may be varied by the parties concerned.

(5) The Minister and any other appropriate Minister shall each be furnished by the Competent Authorities with a copy of every co-operation agreement (including any variation of the agreement) that has been made within one month after the agreement (or the variation of it) has been made.

(6) A co-operation agreement, or any variation made to it, shall be in writing and, as soon as practicable after the agreement or variation has been made and furnished to the Minister and any other appropriate Minister, each of the parties shall arrange for it to be published on the internet.

(7) Without prejudice to subsection (8), nothing in any enactment shall be read as preventing the provisions of a co-operation agreement from having effect in accordance with their terms.

(8) If information is furnished by one party to another party pursuant to a provision of a co-operation agreement of the kind referred to in subsection (2)(a), the provisions of any enactment concerning the disclosure of that information by the first-mentioned party shall apply to the second-mentioned party with respect to that information.

(9) A failure by the Competent Authorities to comply with a provision of a co-operation agreement shall not invalidate the exercise by it of any power.

(10) (a) In this section—

“appropriate Minister” means the Minister of the Government on whom functions stand conferred in relation to the competent authorities;

“party” means a party to a co-operation agreement and a reference to another party (whether that expression or the expression “the other party” is used) shall, where there are 2 or more other parties to the agreement, be construed as a reference to one or more of those other parties or each of them, as appropriate;

“prescribed body” means each of the following:

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

Explanatory Note:

Article 37 of the Data Act places an obligation on competent authorities to co-operate with each other. This obligation is referenced in Article 37(2), 37(5)(b), 37(5)(g) and 37(5)(h). While provisions surrounding cooperation between competent authorities in Article 37 of the Data Act likely take direct effect upon designation as a competition authority, we are providing for the ability to enter into cooperation agreements to offer greater certainty for competent authorities. Therefore, the Department considers it useful to enable the authorities to institute arrangements for day-to-day cooperation to ensure cooperation at an operational level.

This Head provides for competent authorities to enter into cooperation agreements so that they may fulfil their functions of the Data Act. The cooperation agreements may be between the competent authorities but also between a competent authority and a public sector body or other regulator in the State. Utilising a list of prescribed bodies for the purposes of bodies that can enter into cooperation agreements for the Data Act may not be suitable as the Data Act Regulation is a cross-sectoral and horizontal Regulation, it is not feasible to maintain a list of prescribed bodies. This Head is modelled on Section 19 of the Competition and Consumer Protection Act 2014 which provides for the Competition and Consumer Protection Commission to enter into co-operation agreements with other prescribed bodies. This Head will allow the Commission and, for example, ComReg to share information with each other. It will avoid duplication of activities by competent authorities and will help to streamline any processes of requesting information between them. This will be beneficial for effectively handling complaints and dealing with cross-border cases.

Subsection 1(a) lists the areas which Competent Authorities have remit over in the Data Act Regulation. This will ensure that cooperation between the competent authorities must be for the purposes of their functions under the Data Act Regulation.

CHAPTER 3: Remedies

Head 11 - Right to lodge a complaint

To provide that:

- (1) A person (in this Act the “complainant”) may make a complaint in writing to a competent authority designated under [Head 16: Designation of the Competition and Consumer Protection Commission] or [Head 17: Designation of the Commission for Communications Regulation], in the manner and form specified by that competent authority, in relation to any matter falling within the scope of the Regulation.
- (2) Where a complainant is unsure which competent authority is most appropriate to lodge their complaint with, in accordance with section (1), they shall make the complaint in writing to the Data Coordinator as designated in [Head 16: Designation of the Competition and Consumer Protection Commission], in the manner and form specified by the Data Coordinator.
- (3) Competent authorities shall adopt procedures for the making and resolution of complaints concerning an infringement of the Regulation, made pursuant to Article 38 of the Regulation.
- (4) Those procedures must provide for effectively and timely handling and resolution of complaints in accordance with the requirements of Article 38 of the Regulation and shall provide for –
 - (a) the procedures by which a complaint may be made,
 - (b) the procedures the competent authority shall follow in considering and assessing complaints
 - (c) the procedures by which the competent authority shall inform the complainant and the subject of the complaint, of the progress of the proceedings and the decision taken.
- (5) Competent authorities shall, carry out an assessment of complaints received and may take any of the following actions:
 - (a) investigate the complaint in accordance with their respective enforcement regimes under the Data Act.
 - (b) dismiss the complaint where the competent authority finds—
 - (i) the complaint is frivolous or vexatious or was not made in good faith, or
 - (ii) the subject matter of the complaint is trivial;
 - (c) take such other action in respect of the complaint as the competent authority considers appropriate.

Explanatory Note:

This Head gives effect to Article 38 – “The right to lodge a complaint” of the Data Act Regulation.

Article 38 of the Data Act Regulation provides for the right of all natural and legal persons to lodge a complaint with the relevant competent authority in their Member State, place of residence or work, or place of establishment. Therefore, complaints may be lodged in other Member States that relate to a data holder/entity established in Ireland. A complaint may be lodged in relation to a perceived infringement of any chapter and/or article in the Data Act Regulation.

If a complainant is unsure of which competent authority to lodge their complaint with, they shall lodge the complaint with the Data Coordinator, who in its capacity as the single point of contact for the Data Act, will then assess the complaint and shall direct the complainant to the appropriate competent authority. Similarly, if a case is related to more than one competent authority or sector it should be lodged with the Data Coordinator (Recital 107). The Competition and Consumer Protection Commission is designated as the Data Coordinator for Ireland. The functions and obligations on the Data Coordinator are further set out in [Head 12: Data Coordinator Role]. The Data Coordinator must, upon request, provide all the necessary information to the complainant for the lodging of their complaints with the appropriate competent authority.

If a complainant knows which competent authority would be the most appropriate to handle their complaint, or has previously handled a similar complaint of theirs, they may directly lodge that complaint with the relevant competent authority. This would streamline the process of lodging a complaint for the complainant and avoid them going to the Data Coordinator unnecessarily. It would also lessen the burden on the Data Coordinator in terms of the volume of complaints that they may have to redirect.

There are several subparagraphs in various Articles in the Data Act Regulation which expressly refer to the right to lodge a complaint, in accordance with Article 38, for infringements of their respective articles. These include Article 4(2), Article 4(3)(a), Article 4(9)(a), Article 4(9)(b), Article 5(12)(a), Article 5(12)(b), Article 17(5), Article 18(5), Article 20(5) and Article 21(5).

Section (1) is modelled on regulation 14 of European Union (Data Governance Act) (No. 2) Regulations SI 734/2024 and ensures that the right to lodge a complaint for any perceived infringement of the Regulation.

Section (2) provides for the Data Coordinator to receive complaints in its capacity as a single point of contact in circumstances where the complainant does not know which competent authority is the most appropriate to handle its complaint.

Section (3) is modelled on Article 139V of the Broadcasting Act 2009 (as amended by the Online Safety and Media Regulation Act 2002(41/2022)). The procedures have been kept high level as they will apply to multiple competent authorities and associated regimes under the Act.

Section (4) follows on from Section 3 in providing for differing procedures for competent authorities in respect of how they wish to set out processes for the handling of complaints. The procedures set out by competent authorities must ensure that complaints are handled and resolved in a timely and effective manner as specified in Article 38(3) of the Regulation.

Section (5) is modelled on Article 201 of the Broadcasting Act 2009 (as amended by s.41 of the Digital Services Act 2024). It provides the power for competent authorities to dismiss a complaint. This is not provided for in the Regulation. Section (5)(a) refers to the investigations which may be undertaken by competent authorities in accordance with their respective enforcement regimes under the Data Act.

Head 12: Data Coordinator Role

To provide that:

- (1) The Data Coordinator as designated in [Head 16 - Designation of the Competition and Consumer Protection Commission] shall perform the functions assigned to it under Article 37(6) of the Regulation:
 - a. act as the single point of contact for all issues related to the application of the Regulation;
 - b. ensure the online public availability of requests to make data available made by public sector bodies in the case of exceptional need under Chapter V of the Regulation and promote voluntary data sharing agreements between public sector bodies and data holders;
 - c. inform the European Commission, on an annual basis, of the refusals notified under Article 4(2) and (8) and Article 5(11) of the Regulation.
- (2) The Data Coordinator shall, upon request, provide all the necessary information to natural and legal persons for the lodging of their complaints with the appropriate competent authority.
- (3) The Data Coordinator may, for the purposes of its role in Subsection (1)(b) to ensure online public availability of requests to make data available under Chapter V, request information and assistance from other competent authorities, sectoral regulators, or public authorities in determining whether an online publication of a request for data could create a risk for public security.

Explanatory Note:

The Data Coordinator's role in the Data Act is simply to receive a complaint and then direct the complainant to the appropriate body. The Data Act sub-group has advised that the Data Coordinator's only necessitated roles are to act as a single point of contact, communicate and coordinate with CION and other Member States as necessary, and to ensure public availability of data requests under Chapter V – there is no obligation on the Data Coordinator to investigate individual complaints or to transmit the complaints.

Subsection (1) sets out that the authority designated as the Data Coordinator for the Data Act is designated in [Head 16 – Designation of the Competition and Consumer Protection Commission]. The Data Coordinator has a specific role and the CCPC's designation as the Data Coordinator is separate to its role as a competent authority. This section explicitly provides for the Data Coordinator to fulfil its assigned functions under the Data Act.

Subsection (2) provides for the Data Coordinator to provide all necessary information to complainants for the lodging of their complaints.

Subsection (3) is intended to provide from the Data Coordinator to request assistance or information from other bodies to determine whether the online publishing of a request for data under Chapter V might create a risk for public security (see Article 17(2)(g)). The Data Coordinator may not always have the expertise required to make this determination itself. Therefore, this subsection allows the Data Coordinator to request assistance or information from appropriate competent authorities, sectoral regulators or other public authorities which may help the Data Coordinator in assessing the risk for public security associated with the publication required under Chapter V.

The main envisaged role of the Data Coordinator is to act as a single point of contact and facilitate cooperation between competent authorities and other Member States. Article 37(5) of the Regulation

lists the obligations on competent authorities, from this it is noted that the data coordinator shall facilitate the cooperation referred to in points (f), (g) and (h) of the Article 37(5) and shall assist the competent authorities upon request. This Act provides in [Head 10 – Provision for co-operation between competent authorities] for competent authorities to cooperate with each other for the purposes of the Data Act.

Head 13 - Complaints to the Data Coordinator concerning the Data Act Regulation

To provide that:

- (1) A person/entity (in this section referred to as ‘a complainant’) may make a complaint to the Data Coordinator, in the manner and form specified by the Data Coordinator, that there has been a failure by an entity/person to comply with a provision of the Data Act Regulation.
- (2) The Data Coordinator shall carry out an initial assessment of the complaint made under subsection (1) to determine which competent authority should have remit over the complaint. The Data Coordinator may direct the complainant to lodge the complaint with —
 - (a) the Competition and Consumer Protection Commission where the complaint concerns Article 3, 4, 5, 6, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 42
 - (b) ComReg where the complaint concerns Articles 23, 24, 25, 26, 27, 28, 29, 30, 31, 34 and 35.
 - (c) the Data Coordinator of establishment, where considered appropriate, accompanied by a reasoned request, or
- (3) The Data Coordinator shall inform the complainant that, following its assessment of the complaint under subsection (2), the complainant should direct the complaint to the competent authority that the Data Coordinator considers appropriate under subsection (2).

Explanatory Note:

This Head is modelled on Section 201 of the Broadcasting Act 2009 as inserted by Section 41 of the DSA 2024. This Head sets out the Data Coordinators role in relation to dealing with complaints it receives. The Data Coordinator can receive a complaint from a complainant and must carry out an initial assessment of the complaint to determine which competent authority should have remit over the request. The Data Coordinator can then direct the complainant to the appropriate competent authority to handle the complaint. After that point, the competent authority with remit over the complaint shall inform the complainant on any updates relating to the complaint.

Subsection (1) is intended to set out that a person/entity may contact the Data Coordinator for the purposes of lodging a complaint if the person/entity suspects that a breach of the Data Act has occurred. However, this does not necessitate that the Data Coordinator carries out an investigation of the complaint.

Subsection (2) is intended to set out that the Data Coordinator, upon receiving the request in Subsection (1) must then carry out an initial assessment of the complaint in order to determine which competent authority is appropriate to handle the request. This assessment is not intended to check whether a complaint should be investigated. The Data Coordinator may determine that the complaint should be handled by the Commission or ComReg. In some circumstances the complaint may be under the remit of a Data Coordinator in another Member State if it appropriate to do so. This is in line with Recital 107 of the Regulation which states the Data Coordinator could be an additional means for facilitating cooperation in cross-border situations, such as when a competent authority from a given Member State does not know which authority it should approach in the Data Coordinator’s Member State.

Subsection (3) is intended to set out that the Data Coordinator must inform the complainant regarding which competent authority has remit over the complaint. The Data Coordinator is not obliged to transmit the request, but just to inform the complainant of the correct competent authority to lodge the complaint with.

Head 14 – Complaints to the Commission concerning the Data Act Regulation

To provide that:

- (1) The Commission shall, when it receives a complaint from either itself in its capacity as the Data Coordinator in line with [Head 13 - Complaints to the Data Coordinator concerning the Data Act Regulation] or directly from a complainant, carry out an assessment of the complaint and may take any of the following actions:
 - (a) serve a compliance notice to an entity under [Head 23 – Compliance Notices];
 - (b) conduct an investigation of the complaint in accordance with [Head 24 – Commencement and terms of investigation];
 - (c) dismiss the complaint where the Commission finds—
 - (i) the complaint is frivolous or vexatious or was not made in good faith, or
 - (ii) the subject matter of the complaint is trivial;
 - (d) take such other action in respect of the complaint as the Commission considers appropriate.
 - (e) transmit or forward the request to a competent authority in another Member State.
- (2) The Commission shall notify the complainant and the entity to which the complaint relates of the complaint made under this section and of any action proposed by the Commission under subsection (1).
- (3) A notification under subsection (2) shall—
 - (a) include particulars of the complaint,
 - (b) state that the subject of the complaint may make representations under subsection (4), and
 - (c) specify the date by which any representations shall be made under subsection (4).
- (4) The subject of a complaint made under subsection (1) and notified under subsection (2) may, within the time specified by the Commission in such notification, make representations to the Commission about such complaint.
- (5) The Commission shall have regard to any representations made to it under subsection (4) in deciding whether to proceed with any proposed action under subsection (1).
- (6) The Commission shall notify the complainant and the subject of the complaint made under subsection (1) of any progress in relation to the proceedings of the complaint and of any decisions made in relation to the complaint.
- (7) Where the complaint has been transmitted to another competent authority in line with section (1)(e), the Commission must inform the complainant of any updates and the progress on the case. The Commission is not required to inform the subject of the complaint of this.

Explanatory Note:

This Head is modelled on Section 201 of the Broadcasting Act 2009 as inserted by Section 41 of the DSA 2024. That Head set out the procedures and processes that the Digital Services Coordinator

follows for the purposes of the Digital Services Act Regulation. Similarly, this Head is intended to set out the process by which complaints relating to the Data Act Regulation may be made to the Commission in its role as a competent authority under the Data Act and how the Commission should handle those complaints. The purpose of this Head is to provide a clear understanding of the Commission's options for handling a complaint. The Commission can receive a complaint either directly from a complainant, or from a complainant after the complainant was advised to direct the complaint to the Commission by the Data Coordinator. The Commission is both a competent authority and the Data Coordinator for the Data Act. Therefore, the Commission may be directed to handle a complaint by itself when acting as a Data Coordinator.

The complainant should be kept informed of the progress of the complaint and notified of any subsequent actions taken by the Commission. The subject of the complaint should also be kept informed of the progress of the complaint and should be notified of any subsequent actions made by the Commission. The notification should inform the subject of the complaint what the complaint is about, how they may respond to the complaint and provide a deadline for making any submissions in relation to the complaint.

The Commission may have to cooperate or transmit complaints to other competent authorities in Ireland, this is provided for in [Head 10: Provision for co-operation between competent authorities.]

Subsection (1) sets out that the Commission may receive a complaint from a complainant where that complainant believes an infringement of the Data Act has occurred. The Commission is designated as both a competent authority and the Data Coordinator and therefore may receive complaints from itself. When the Commission receives complaints from the Data Coordinator/itself, it will be for the Commission to act in its capacity as a competent authority. The Commission, upon receiving the complaint will have the options to either:

- issue a compliance notice,
- conduct a full investigation into the complaint and may take subsequent actions arising from that investigation as are appropriate,
- dismiss the complaint,
- take any other actions that may be considered necessary by the Commission,
- transmit/forward the case to a competent authority in another Member State if it is appropriate to do so.

Subsection (2) is intended to set out that the Commission must notify the complainant and the subject of the complaint, that a complaint has been made and must inform both parties of any actions that the Commission intends to take under subsection (1).

Subsection (3) is intended to set out what the notice referred to in subsection (1) should contain.

Subsection (4) is intended to provide for the subject of the complaint to make representations to the Commission in relation to the complaint.

Subsection (5) is intended to provide for the Commission to consider the representations made to it under subsection (4) before it can proceed with any of the actions in subsection (1).

Subsection (6) is intended to ensure that the Commission must keep both the complainant and the subject of the complaint informed on any progress or other updates in relation to the complaint.

Subsection (7) is intended to set out that where a case has been transmitted to a competent authority in another Member State, the Commission must keep the complainant informed of all updates on the case and any progress made on the case. The Commission is not obligated to provide updates to the subject of the complaint as this will be communicated directly between the competent authority in the other Member State and the subject of the complaint. Providing for the Commission to do so would be inefficient.

Head 15: Complaints to ComReg concerning the Data Act Regulation

To provide that:

- (1) The ComReg shall, when it receives a complaint from either the Data Coordinator in line with [Head 13 - Complaints to the Data Coordinator concerning the Data Act Regulation] or directly from a complainant, carry out an assessment of the complaint and may take any of the following actions:
 - (a) issue a notice of objections [Head 50: Notice of objections] to the subject of complaint;
 - (b) conduct an investigation of the complaint,
 - (c) dismiss the complaint where ComReg finds that—
 - (i) the complaint is frivolous or vexatious or was not made in good faith, or
 - (ii) the subject matter of the complaint is trivial;
 - (d) take such other action in respect of the complaint as ComReg considers appropriate
 - (e) transmit or forward the request to a competent authority in another Member State.
- (2) ComReg shall notify the person who made the complaint and the subject of a complaint made, of a complaint transmitted to it under [Head 13 - Complaints to the Data Coordinator concerning the Data Act Regulation] and of any action proposed by ComReg under subsection (1).
- (3) A notification under subsection (2) shall—
 - (a) include particulars of the complaint,
 - (b) state that the subject of the complaint made may make representations under subsection (4), and
 - (c) specify the date by which any representations shall be made under subsection (4).
- (4) The subject of a complaint made, may, within the time specified by ComReg in a notification under subsection (2), make representations to ComReg about the complaint to which the notification relates.
- (5) ComReg shall have regard to any representations made to it under subsection (4) in deciding whether to proceed with any proposed action under subsection (1).
- (6) ComReg shall notify the complainant and the subject of the complaint made under subsection (1) of any progress in relation to the proceedings of the complaint and of any decisions made in relation to the complaint.
- (7) Where the complaint has been transmitted to another competent authority in line with section (1)(e), the ComReg must inform the complainant of any updates and the progress on the case. ComReg is not required to inform the subject of the complaint of this.

Explanatory Note:

This Head is modelled on Section 48 of the DSA 2024. It sets out the procedures that ComReg should follow upon receiving a complaint. While providing specific guidelines is not necessitated by the Data Act Regulation, it will ensure that ComReg has a clear understanding of their role as a competent authority. This Head will also give effect to Article 37(5)(b) of the Data Act Regulation. This Head will also help to clearly delineate the role of the competent authorities vs. the Data Coordinator. The objective of this Head is to provide clarity and transparency. It is also important to ensure that complainants remain informed of the progress of their complaint. As part of fair procedures for those who may be the subject of a complaint, this Head should also provide for the ability for them to make representations to ComReg once they receive notice that a complaint has been lodged against them. ComReg may have to cooperate or transmit complaints to other competent authorities in Ireland, this is provided for in [Head 10: Provision for co-operation between competent authorities.]

This Head mirrors [Head 14 - Complaints to the Commission concerning the Data Act Regulation].

Subsection (1) sets out that ComReg may receive a complaint from a complainant where that complainant believes an infringement of the Data Act has occurred. ComReg, upon receiving the complaint will have the options to either:

- issue a notice of objection,
- conduct a full investigation into the complaint and may take subsequent actions arising from that investigation as are appropriate,
- dismiss the complaint,
- take any other actions that may be considered necessary by ComReg,
- transmit/forward the case to a competent authority in another Member State if it is appropriate to do so.

Subsection (2) is intended to set out that ComReg must notify the complainant and the subject of the complaint, that a complaint has been made and must inform both parties of any actions that ComReg intends to take under subsection (1).

Subsection (3) is intended to set out what the notice referred to in subsection (1) should contain.

Subsection (4) is intended to provide for the subject of the complaint to make representations to ComReg in relation to the complaint.

Subsection (5) is intended to provide for ComReg to consider the representations made to it under subsection (4) before it can proceed with any of the actions in subsection (1).

Subsection (6) is intended to ensure that ComReg must keep both the complainant and the subject of the complaint informed on any progress or other updates in relation to the complaint.

Subsection (7) is intended to set out that where a case has been transmitted to a competent authority in another Member State, ComReg must keep the complainant informed of all updates on the case and any progress made on the case. ComReg is not obligated to provide updates to the subject of the complaint as this will be communicated directly between the competent authority in the other Member State and the subject of the complaint. Providing for ComReg to do so would be inefficient.

PART 2 - THE COMPETITION AND CONSUMER PROTECTION COMMISSION FOR ARTICLES 3, 4, 5, 6, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 42 OF THE DATA ACT REGULATION

Head 16 - Designation of the Competition and Consumer Protection Commission

To provide:

- (1) The Commission is designated as the Data Coordinator within the meaning of, and for the purposes of, Article 37(2) of the Data Act Regulation.
- (2) The Commission is designated, for the purposes of, Article 37(1), as the competent authority in respect of Articles 3, 4, 5, 6, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 42.
- (3) The Commission will have the responsibility to examine requests for data made under Article 22(3), and will take measures set out in Article 22(4).
- (4) Where a public sector body, the Commission, the European Central Bank or a Union body requests personal data in accordance with Article 14 of the Data Act, it is the responsibility of the requesting body to notify the competent authority for Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, in the member state that the requesting body is established.
- (5) A data holder has the right to lodge a complaint with the Commission if it believes that the body requesting data under Article 14, after receiving the data holders data, has infringed Chapter V of the Data Act.
- (6) The Commission will handle complaints arising from obligations set out in the Articles over which they have remit.
- (7) The Commission shall, under their area of remit of the Data Act as outlined in subsection (2), promote data literacy and awareness among users and entities falling within the scope of this Regulation of the rights and obligations under this Regulation.
- (8) The Commission shall, under their area of remit of the Data Act as outlined in subsection (2), monitor technological and relevant commercial developments of relevance for the making available and use of data.

Explanatory Note:

This head designates the Competition and Consumer Protection Commission (“The Commission”) as the Data Coordinator for the purposes of the Data Act and also gives effect to the Government Decision of 8th of October 2024 that it would be designated the Commission as the Data Coordinator for Ireland.

Subsection (1) gives effect to the obligation in Article 37 of the Data Act Regulation to designate a competent authority as the Data Coordinator when a Member State designates more than one competent authority. It also gives effect to the Government Decision of 8 of October 2024 approving the designation of the Competition and Consumer Protection Commission as the Data Coordinator for the purposes of the Regulation. Upon designation as the Data Coordinator, the obligations in Article 37(6) shall apply to the Commission. Precedent text is Section 8 of the Digital Services Act 2024.

Subsection (2) gives effect to the obligation in Article 37 of the Data Act Regulation to designate a competent authority. Article 37(5) of the Data Act requires that the tasks and powers of competent authorities are clearly defined. Therefore, this head specifies that the Commission shall be competent for the oversight of the obligations applicable to connected products and related services. Those

obligations are set out in Articles 3, 4, 5, 6, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 42. Precedent text for Section 1 of this Head comes from Section 8 and 44 of the Digital Services Act 2024. As a competent authority, the powers/tasks listed in Article 37(5) for the purposes of the Regulation should apply to the Commission upon designation.

Subsection (3) clarifies that the Commission will have responsibility for handling requests from other Member States and EU bodies as per Article 22(3) for entities that are based in Ireland. Article 22(4) provides measures that must be taken by a competent authority on receipt of a third country request. While this may take direct effect, for clarity we are providing that the Commission is the competent Authority under Chapter V and therefore will have responsibility to undertake those measures.

Subsection (4) is intended to set out that if a public sector body, the Commission, the European Central Bank and any other Union body requests personal data when making a request for data under Article 14, it is the responsibility of that requesting body and not the CCPC to notify the competent authority for GDPR in the member state that the requesting body is established. In Ireland this is the Data Protection Commission.

Subsection (5) is intended to provide the right for a data holder to lodge a complaint against a public sector body or union body if the data holder believes that the public sector body or union body has utilised the data it received from the data holder in such a way that infringes upon the data holder's rights under the Data Act. It is important to note that the European Data Protection Supervisor ("EDPS") may impose administrative fines in accordance with GDPR for any infringements of Chapter V that concern personal data. These administrative fines must be in accordance with Article 83 of the GDPR.

Subsection (6) is intended to set out that the Commission will have responsibility for handling complaints that are under the Commissions remit as a designated competent authority under the Data Act.

Subsections (7) and (8) ensures that the tasks of competent authorities in Article 37(5)(a) and (e) are assigned to the CCPC in relation to their areas of responsibility in the Data Act.

PART 3- THE COMMISSION FOR COMMUNICATIONS REGULATION FOR ARTICLES 23, 24, 25, 26,27, 28, 29, 30, 31, 34, AND 35 OF THE DATA ACT REGULATION

Head 17 - Designation of the Commission for Communications Regulation

To provide:

- (1) ComReg is designated, for the purposes of, Article 37(1), as the competent authority in respect of Articles 23, 24, 25, 26, 27, 28, 29, 30, 31, 34 and 35.
- (2) ComReg will handle complaints arising from obligations set out in the Articles over which they have remit.
- (3) Where ComReg believes the common specifications adopted by the European Commission under Article 35(5) of the Regulation do not entirely comply with the essential requirements as set out in Article 35(1) and 35(2) of the Regulation, it shall:
provide a detailed explanation of potential non-compliance to the European Commission and may suggest amendments to the common specifications as outlined in Article 35(7).
- (4) ComReg shall, under their area of remit of the Data Act as outlined in subsection (1), promote data literacy and awareness among users and entities falling within the scope of this Regulation of the rights and obligations under this Regulation.
- (5) ComReg shall, under their area of remit of the Data Act as outlined in subsection (1), monitor technological and relevant commercial developments of relevance for the making available and use of data.

Explanatory Note:

This Head designates ComReg as a competent authority for the purposes of the Regulation.

Article 37(1) of the Data Act Regulation provides that Member States shall designate one or more competent authorities to be responsible for the application and enforcement of the Regulation. The Department determined that due to the wide scope of the Data Act, it would not be feasible nor practical to have only one competent authority for the Regulation. It has been agreed that ComReg will take remit over the following:

1. Switching between providers of Data Processing Services. Article 23 – 31. (Chapter 6)
2. Interoperability of Data Processing Services. Articles 34 – 35 (Chapter 8)

Section (1) gives effect to the obligation in Article 37 of the Data Act Regulation to designate a competent authority. Article 37(5) of the Data Act requires that the tasks and powers of competent authorities are clearly defined. Therefore, this head specifies that ComReg shall be competent for the oversight of the obligations applicable to data processing services. Those obligations are set out in Articles 23 – 31, and 34 - 35. If it is necessary to list specifically which powers/tasks are to be assigned to ComReg, the following may be used: Article 37(5)(b), (d), (f), (g), (h), (i). Precedent text for Section 1 of this Head comes from Section 44 of the Digital Services Act 2024. As a competent authority, the powers/tasks listed in Article 37(5) for the purposes of the Regulation should apply to ComReg upon designation. As the data coordinator, the CCPC will handle complaints as the single point of contact for the Data Act, therefore any situations wherein a complainant does not know which authority is most appropriate to raise their concerns with may go to the CCPC and be provided with all the information necessary to lodge their complaint with the relevant competent authority.

Subsection (2) sets out that ComReg will have responsibility for handling complaints in relation to articles specified. The model text is taken from Article 37(5)(i) of the Regulation.

Subsections (3) and (4) give effect to Articles 34 and 35 of the Data Act Regulation which are within ComReg's remit. A competent authority needs to be designated for the role of informing the European Commission if it believes that the common specifications do not entirely satisfy the essential requirements of interoperability as set out in Articles 34 - 35. The precedent text for subsections (3) and (4) are drawn from the respective Articles in the Regulation

PART 4 – DESIGNATION OF OTHER BODIES

Head 18 - Designation of _____ (Chapter VII)

To provide that:

- (1) The _____ is designated, for the purposes of, Article 37(1), as the competent authority for international cooperation in legal matters and enforcement of Article 32.
- (2) The _____ for the purposes of Article 32(3) of the Data Act, may issue opinions, upon request, to the addressee of a decision or judgement of a third-country court, tribunal or administrative authority where there is no international agreement in force between the requesting third country and the EU or Member State. These opinions can relate to whether the conditions set out in the first subparagraph of Article 32(3) are met. They can also relate to whether the data requested concerns national security or defence interests of the Union or its Member States.
- (3) The _____ may consult with the European Commission for the purposes of issuing an opinion referred to in subhead (2).
- (4) The _____ shall, under their area of remit of the Data Act as outlined in subsections (1) and (2), promote data literacy and awareness among users and entities falling within the scope of this Regulation of the rights and obligations under this Regulation.
- (5) The _____ shall, under their area of remit of the Data Act as outlined in subsections (1) and (2), monitor technological and relevant commercial developments of relevance for the making available and use of data.

Explanatory Note:

This Head gives effect to Article 32 of the Data Act Regulation. This Article requires a national body/authority that is competent for international cooperation in legal matters to handle requests for advice/issue opinions relating to its area of competence.

Section (1) designates the _____ as the relevant national authority competent for international cooperation in legal matters. Section (1) precedent text comes from Section 44 of the Digital Services Act 2024.

Section (2) allows the _____ to issue an opinion as to whether a request of a third-country court, tribunal or administrative authority for access to data/data transfer meets the conditions laid out in Article 32(3) of the Regulation.

Section (3) allows for the _____ to consult with the European Commission when forming their opinion on the third-country data access/transfer request.

Sections (4) and (5) ensures that the tasks of competent authorities in Article 37(5)(a) and (e) are assigned to the _____ in relation to their areas of responsibility in the Data Act.

Head 19 - Role of the Data Protection Commission [Placeholder for discussion with the OPC]

To provide that:

- (1) The Data Protection Commission, as the supervisory authority responsible for compliance with the monitoring the application of Regulation (EU) 2016/679 shall be responsible for monitoring the application of this Regulation insofar as the protection of personal data is concerned.
- (2) For infringements of the obligations in Chapters II, III and V of the Data Act, the DPC may, as set out in Article 40(4), within their scope of competence, impose administrative fines in accordance with Article 83 of Regulation (EU) 2016/679 and up to the amount referred to in Article 83(5) of that Regulation.
- (3) The procedures for administrative fines as set out in s.141 to 142 of the Data Protection Act 2018 (as amended), apply to the DPC in relation to its powers set out in subsection 2 above.

Explanatory Note:

This Head has been included as a placeholder for further exploration during drafting.

Ireland only has one supervisory authority under the GDPR, the Data Protection Commission (DPC). It is therefore clear that the DPC has responsibility for monitoring the application of the Data Act Regulation insofar as the protection of personal data is concerned (Article 37(3)).

It is noted that two authorities will have the power to impose sanctions for infringements of Chapters II, III, and V of the Data Act –

- [Head 16 – Designation of the Competition and Consumer Protection Commission] of the General Scheme designates CCPC as the competent authority with responsibility for application and enforcement of Chapters including II, III and V, while
- the Data Act Regulation provides that DPC, may within the scope of their competence, impose administrative fines in accordance with Article 83 of the GDPR up to the amount referred to in Article 83(5) of that Regulation, for infringements of the obligations laid down in Chapter II, III and V.

Article (1)(5) states that in the event of a conflict between this Regulation and Union law on the protection of personal data or privacy, or national legislation adopted in accordance with such Union law, the relevant Union or national law on the protection of personal data or privacy shall prevail.

Section (1) recognises the DPC as the Irish supervisory authority for the GDPR, will have a role in monitoring compliance with the GDPR in the Data Act Regulation.

Section (2) gives effect to Article 40(4) of the Data Act. It allows for the DPC to impose administrative fines in accordance with GDPR (Regulation (EU) 2016/679) for infringements arising from Chapters II, III and V of the Data Act.

Section (3) states that the DPC has the ability to set administrative fines as explained in Section 2 must follow the procedures in S. 141 to 142 of the Data Protection Act 2018. These procedures include the right to appeal, and the obligation of the Circuit Court to confirm the decision to impose the administrative fine.

Further information:

The Data Act Regulation complements and is without prejudice to Union law on the protection of personal data and privacy, in particular the General Data Protection Regulation (“GDPR”) –

Regulation 2016/679, and any processing of personal data pursuant to the Data Act Regulation must comply with EU data protection law.

The DPC's role as the competent authority in Ireland for the application of the GDPR is to uphold the fundamental right of individuals in the EU to have their personal data protected. Any data processed in the Data Act should comply with the GDPR. There may be instances in the Data Act where the processing and sharing of personal data may occur, for example where datasets include a mix of personal and non-personal data. The Data provides for safeguards in place to protect this data such as:

- Utilising non-personal data wherever possible.
- Transmitting only personal data relating to the user requesting the data.
- Specifying any technical and organisational measures necessary and proportionate to implement data protection principles.
- Ensuring the anonymisation, pseudonymisation or encryption of personal data when possible.
- Data minimisation and data protection by design and default.
- In cases of public emergency where the use of personal data is required and anonymisation is not possible, the entity requesting the data must demonstrate the strict necessity and the specific and limited purposes for the processing of the data.

Obligations in regard to the protection and safeguarding of personal data as set out in the GDPR will take precedence over obligations in the Data Act. Recital 7 of the Data Act outlines that the Data Act does not create a new legal basis for providing access to personal data or for making personal data available to a third party and should not be understood as conferring any new right on the data holder to use personal data generated by the use of a connected product or related service.

Recital 107 of the Data Act Regulation states that "The authorities responsible for the supervision of compliance with data protection law and competent authorities designated under Union or national law should be responsible for the application of this Regulation in their areas of competence". The Data Protection Commission is the competent authority in Ireland with responsibility for supervision of the fundamentals right of personal data/GDPR.

Article 1(5) of the Data Act Regulation specifies that "This Regulation is without prejudice to Union and national law on the protection of personal data, privacy and confidentiality of communications and integrity of terminal equipment, which shall apply to personal data processed in connection with the rights and obligations laid down herein, in particular Regulations (EU) 2016/679 and (EU) 2018/1725 and Directive 2002/58/EC, including the powers and competences of supervisory authorities and the rights of data subjects. Insofar as users are data subjects, the rights laid down in Chapter II of this Regulation shall complement the rights of access by data subjects and rights to data portability under Articles 15 and 20 of Regulation (EU) 2016/679. In the event of a conflict between this Regulation and Union law on the protection of personal data or privacy, or national legislation adopted in accordance with such Union law, the relevant Union or national law on the protection of personal data or privacy shall prevail."

PART 5 - ENFORCEMENT

Head 20 – Penalties/Financial Sanctions

To provide that:

- (1) Infringements of the Regulation shall be subject to the imposition of penalties.
- (2) Those penalties must be effective, proportionate and dissuasive, and shall consider the following non-exhaustive criteria:
 - (a) recommendations of the EDIB;
 - (b) the nature, gravity, scale and duration of the infringement;
 - (c) any action taken by the infringing party to mitigate or remedy the damage caused by the infringement;
 - (d) any previous infringements by the infringing party;
 - (e) the financial benefits gained or losses avoided by the infringing party due to the infringement, insofar as such benefits or losses can be reliably established;
 - (f) any other aggravating or mitigating factor applicable to the circumstances of the case;
 - (g) infringing party's annual turnover in the preceding financial year in the Union.
- (3) Where the decision under [Head 74: Decision of adjudicator in relation to breach], [Head 75: Decision of adjudicator in relation to administrative sanction] or [Head 29: Decision by Commission], [Head 32: Determination of amount of administrative financial sanction], [Head 33: Limitations on amount of administrative financial sanction] is a decision to impose an administrative financial sanction on an entity in respect of a contravention that is a failure to comply with the EU Data Regulation, the financial sanction imposed shall not exceed 4% of the infringing party's annual turnover in the preceding financial year in the Union.
- (4) Where the decision under [Head 74: Decision of adjudicator in relation to breach], [Head 75: Decision of adjudicator in relation to administrative sanction] or [Head 29: Decision by Commission], [Head 32: Determination of amount of administrative financial sanction], [Head 33: Limitations on amount of administrative financial sanction] is a decision to impose an administrative financial sanction on an individual or natural person in respect of a contravention that is a failure to comply with the EU Data Regulation, the financial sanction imposed shall not exceed €500,000.

Explanatory Note:

This Head gives effect to Article 40 of the Data Act which sets out that Member States shall lay down the rules on penalties applicable to infringements of the Regulation. The penalties must be effective proportionate and dissuasive and must take into account a number of criteria as listed in Article 40(3). Article 40(4) notes that for infringements under Chapter II, III and V of the Data Act, the Data Protection Authority (DPC in Ireland) may impose administrative fines in accordance with GDPR and up to the amount referred to in Article 83(5) of the GDPR. (€20m/4% of worldwide annual turnover).

The Regulation requires that any penalty imposed for enforcement be proportionate and dissuasive, taking into account inter alia, the nature, gravity, scale and duration of the infringement and the financial benefits gained, or losses avoided due to the infringement. The Regulation does not specify the level of financial penalty to be used for enforcement but does require that Member States must ensure consistency in its application. When setting penalties, Member States must take into account

the recommendations of the European Data Innovation Board (EDIB) which is an advisory body to the European Commission and is made up of representatives from each Member State and sectoral authorities. The EDIB has indicated that it will not be recommending a level of penalties as Member States are at differing levels of advancement in introducing implementing measures for the Regulation. The EDIB has directed Member States to the regulation itself for guidance.

It is clear from Recital (109) of the Regulation that the “the scope and kind of activities carried out, and the economic capacity of the infringing party” will be a relevant consideration in respect of the maximum penalties that should be available under Irish law. Further, whatever maximum penalty is provided for, it must be sufficient to enable the imposing domestic entity to appropriately reflect the various factors set out in Article 40(3) (which include, at para. (f), having regard to the “infringing party's annual turnover in the preceding financial year in the Union”). It is clear from both Article 37 and Article 40, that the maximum penalty available must be such as to enable penalties imposed to have an “effective, proportionate and dissuasive” impact.

The entities which will be subject to Irish jurisdiction, in respect of the policing of the Data Act, will include businesses established or with their head/controlling office located in Ireland, as per Article 37(10). It is notable that several ‘tech giants’ are likely to fall within the scope of Irish jurisdiction. The nature and scope of the activities of the entities that will be regulated in this jurisdiction, their economic capacity, including as assessed by reference to their annual turnover in the previous year throughout the entirety of the EU, must be assessed in determining what maximum penalty should be provided for in Irish law.

The Department has engaged with other Member States on their approach. While the position of all Member States is not known, the maximum level of penalties that has been indicated by those Member States who responded ranged between 4% and 10% of turnover in the Union in the previous financial year.

We envisage that situations may also arise where lesser administrative financial sanctions are required to be imposed on individuals such as sole traders with a low income, or companies which have a low turnover. To ensure appropriate sanction levels for these individuals or companies, we have provided for sanctions capped at a maximum of €500,000 for natural or legal persons. In setting this limit, we have considered other legislation, including the DGA, which is the sister Act of the Data Act. Our maximum level aligns with the provisions of the DGA, which sets a similar upper limit for infringements, including for breaches relating to data intermediation service providers and recognised data altruism organisations. Given the alignment between the Data Act and the DGA, we consider that breaches of the Data Act warrant sanctions no less severe than those outlined in the DGA. In addition, we also understand that other Member States such as Germany and the Netherlands have also adopted comparable tiered sanction levels applicable to natural and legal persons.

We also aim to provide for non-financial sanctions such as compliance notices, commitment agreements and the ability to impose court orders. These will form part of the enforcement regimes of each competent authority and is addressed in those Heads.

Section (2) lists the criteria which must be taken into account to ensure that penalties are effective, dissuasive and proportionate.

Section (3) provides for the maximum level of administrative financial sanctions that can be imposed under the Data Act Regulation. This subsection refers to [Head 74: Decision of adjudicator in relation to breach], [Head 75: Decision of adjudicator in relation to administrative sanction] and [Head 29: Decision by Commission], [Head 32: Determination of amount of administrative financial sanction], [Head 33: Limitations on amount of administrative financial sanction] – these are Heads on enforcement for both the ComReg and the CCPC. This section is intended to set out that the

maximum administrative financial sanction for breaching Data Act obligations is 4% of Union turnover. Precedent text for this section comes from the Digital Services Act 2024.

Subsection (4) provides for an administrative financial sanction to be impose on a natural or individual person. This fine shall not exceed €500,000. This is in line with the DGA and the DSA. Additionally other Member States have opted to provide for this and have set a maximum fine of €500,000. It is important to provide for this as it is possible that natural persons may infringe the Regulation, for example sole traders, or organisations with zero/low turnover.

Explanatory Note:

It is the intention of this Bill to include a general administrative sanctions regime for the Competition and Consumer Protection Commission. This general administrative sanctions regime is proposed to be inserted into the Competition and Consumer Protection Act 2014 (“The 2014 Act”) as opposed to acting as a standalone regime in the Data Bill 2025.

Chapter 2 of the 2014 Act already provides the CCPC with the power to appoint authorised officers (see head 22 below). However, the 2014 Act does not provide the CCPC with any enforcement powers.

The Department wants to incorporate an enforcement regime into the 2014 act which will mirror that set out in part 3 of the Digital Services Act 2024 (which gives the CCPC enforcement powers in the context of Articles 30, 31 and 32 of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2021 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)).

It is envisaged that the proposed general administrative sanctions regime will mirror this administrative sanctions enforcement regime which the CCPC is already operating for its designated competencies under that Act. Specific provisions that will be required only for the purposes of enforcement of the Data Act will remain as standalone Heads in this Bill.

This amendment to the 2014 act will allow the CCPC to utilise the enforcement regime for future EU measures which the CCPC needs to enforce and transposition of future EU measures requiring administrative sanctions can potentially (subject to legal advice) be transposed by statutory instrument under the European Communities Act 1927 (as amended)

Head 22 – CCPC power to appoint an authorised officer (construction of references)

To provide that:

(1) Section 35 of the Competition and Consumer Protection Act 2014 shall apply for the purposes of the Data Act Regulation subject to the modification that references in those sections to the relevant statutory provisions shall be construed as a reference to the Data Act Regulation.

Explanatory Note:

For the purposes of enforcing the Data Act we will need to provide for the appointment of Authorised officers to conduct investigations into suspected breaches of the Data Act. Authorised officers have been appointed for the purposes of previous EU Regulations and Directives such as the Digital Services Act, the Data Governance Act, the Audiovisual and Media Services Directive, and the Digital Markets Act.

As the CCPC's enforcement regime is modelled on the DSA 2024 which provides for the appointment and powers of authorised officers by the CCPC, the same should be provided for the Data Act. The DSA 2024 uses a Construction of References piece (Section 46) to point to the Competition and Consumer Protection Act 2014 Section 35 and applies it for the purposes of the DSA. Section 35 of the 2014 Act empowers the CCPC to appoint authorised officers for the purposes of all or any of the relevant statutory provisions. Section 2 of that act will need to be amended to include the AI Regulation.

In this regard, "relevant statutory provisions" are defined in section 2 of that act as:

- (a) "relevant statutory provisions" within the meaning of the Consumer Protection Act 2007;
- (b) this Act, and any instrument made under this Act for the time being in force;

"relevant statutory provisions" within the meaning of the Consumer Protection Act means—

- (a) existing enactments,
 - [(aa) relevant statutory instruments,]
- (b) the Merchandise Marks Act 1970 and any instruments made under that Act for the time being in force,
- (c) (certain provisions of the Prices Act 1958 referred to in section 92 and the enactments specified in subsection (1)(a) to (e) of that section to the extent to which they remain in force for the purposes of this Act,
- (d) [the enactments specified in subsection (1)(a) to (c) of section 93,
- (e) [this Act and any instrument made under this Act for the time being in force,]]
- (f) the European Communities (Names and Labelling of Textile Products) Regulations 2010 (S.I. No. 485 of 2010),
- (g) the European Communities (Safety of Toys) Regulations 2011,
- (h) the European Union (Protection of Consumers in respect of Timeshare, Long-term Holiday Product, Resale and Exchange Contracts) Regulations 2011,
- (i) (the European Union (Textile Fibre Names and Related Labelling and Marking of the Fibre Composition of Textile Products) Regulations 2012,
- (j) the European Union (Requirements for Credit Transfers and Direct Debits in Euro) Regulations 2013 (S.I. No. 132 of 2013),

(m) the European Union (Interchange Fees for Card-based Payment Transactions) Regulations 2015 (S.I. No. 550 of 2015) F11[, F9[...]]]

(n) the following provisions of the European Union (Payment Services) Regulations 2018 (No. 6 of 2018):

- (i) paragraphs (2), (5) and (6) of Regulation 33, and
- (ii) paragraph (6) of Regulation 86, to the extent that that paragraph applies as respects a case where—
- (I) the payee (within the meaning of those Regulations) is a trader that is not a regulated financial service provider (within the meaning of the Central Bank Act 1942), and
- (II) the payer (within the meaning of those Regulations) is a consumer;]

(o) the Consumer Rights Act 2022

Head 23 – Compliance Notices

To provide that:

(1) Where an authorised officer is of the opinion that an undertaking has infringed a provision of the Data Act Regulation to which this Head applies, the authorised officer may serve a notice (in this section referred to as a “compliance notice”) on the undertaking.

(2) A compliance notice shall—

(a) state the contravention to which it relates,

(b) state the grounds on which the authorised officer is of the opinion referred to in subsection (1),

(c) for the purpose of ensuring compliance by the undertaking with the provision which is the subject of the contravention, require the undertaking to do or refrain from doing anything specified in the notice by a date specified in the notice, and

(d) contain information regarding the bringing of an appeal under subsection (6) against the notice, including information specifying the manner in which an appeal may be brought.

(3) An authorised officer may withdraw a compliance notice at any time.

(4) An authorised officer may amend a compliance notice by notice in writing to the undertaking to substitute any later date for the date for the time being specified under subsection (2)(c) or this subsection

(5) A date specified under subsection (2)(c) or (4) must be later than the date by which an appeal under subsection (6) may be brought

(6) An undertaking may, not later than 14 days after the service on the provider of a compliance notice, appeal against the notice to the District Court.

(7) An appeal under subsection (6) shall be brought in the manner specified in accordance with subsection (2)(d)

(8) The authorised officer and the undertaking concerned shall be entitled to be heard and to adduce evidence at the hearing of an appeal under subsection (6).

(9) The District Court shall, on an appeal under subsection (6) against a compliance notice, do one of the following:

(a) affirm the notice;

(b) cancel the notice;

(c) cancel the notice and require the undertaking to comply with such directions as may be given by the court.

(10) An undertaking on whom a compliance notice is served who fails to comply with the notice by the due date shall be guilty of an offence and liable on summary conviction to a class B fine or imprisonment for a term not exceeding 6 months, or both.

(11) The due date for the purposes of subsection (10) is:

(a) where no appeal is brought under subsection (6), the date for the time being specified in the compliance notice in accordance with subsection (2)(c) or (4);

(b) where an appeal against the notice is brought under subsection (6) and the court affirms the notice in accordance with subsection (9)(a), the day falling immediately after the expiration of the period of 14 days from the date on which the court affirms the notice.

(12) Nothing done under this section prevents or restricts the taking of any other action for the purpose of enforcing a provision to which this section applies.

(13) This section applies to all sections of the Data Act Regulation which are under the remit of the Commission.

Explanatory Note:

This Head is modelled on Section 78 of the DSA 2024. This Head provides for the Commission to issue compliance notices to order undertakings who have infringed upon their obligations in the Data Act Regulation to cease infringing. This Section applies to infringements of obligations in the Articles within the Commission's remit which are Articles 3, 4, 5, 6, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 42. The Commission view the ability to issue compliance notices as an important enforcement tool and that they will require this as part of their enforcement of the Data Act Regulation.

Issuing of compliance notices will ensure consistency with the DSA 2024. Additionally, the Data Act Regulation Article 40 states that penalties should be effective, dissuasive and proportionate. The inclusion of compliance notices as an enforcement mechanism aligns with this requirement.

Head 24 – Commencement and terms of investigation

To provide that:

- (1) If a person authorised by the Commission under subsection (2) believes there is reason to suspect that there has been a contravention, the person may direct an authorised officer to carry out an investigation of the suspected contravention.
- (2) The Commission may authorise any member of the Commission or any member of its staff for the purposes of subsection (1).
- (3) The person who directs the authorised officer to carry out an investigation under subsection (1) shall define the terms of the investigation in writing.

Explanatory Note:

This Head is modelled on Section 49 of the DSA 2024. It aims to provide for the trigger to initiate an investigation for the purposes of the Data Act Regulation. This Head will allow the CCPC to initiate an investigation on their own accord if they suspect an infringement has occurred, in addition to being able to conduct an investigation solely on foot of receiving a complaint. This power is envisaged to be utilised by the CCPC mainly in cases under their remit in relation to Dispute Resolution, but it also will be an important factor in providing for proactive enforcement of the Regulation.

Providing for the CCPC to set out the terms of the investigation provides for consistency with the DSA 2024 but also ensures that the investigation would be less prone to legal challenge due to clearly defining and setting out the terms of the investigation.

Subsection (1) Provides for the CCPC to authorise a person to direct an authorised officer to carry out an investigation if they believe that an infringement of the Data Act Regulation may have occurred.

Subsection (2) Provides for the CCPC to authorise a person to direct an authorised officer to carry out an investigation into a suspected contravention. This section is necessary to give effect to Section (1).

Subsection (3) determines who sets out the terms of the investigation [The CCPC are unsure if they are supportive of including this provision and will provide more feedback on this.]

Some subsections from Section 49 of the DSA 2024 have been excluded as they are necessitated by the Digital Services Act Regulation. This is no similar requirements in the Data Act Regulation, therefore it is not necessary to include them. These are subsection (4), (5), (6), (7).

Head 25 – Investigatory Powers: Oral Hearings

To provide that

- (1) An authorised officer may conduct an oral hearing if he or she considers it necessary for the purposes of an investigation pursuant to a direction under [Head 24(1) Commencement and terms of investigation].
- (2) The Schedule of the DSA 2024, shall have effect for the purposes of an oral hearing referred to in subsection (1).

Explanatory Note:

This Head is modelled on Section 50 of The DSA 2024. Section 50 of the DSA provides authorised officers with the power to conduct an oral hearing as part of its investigation. AN oral hearing should only be conducted when it is considered necessary for the investigation.

Subsection (1) sets out that the Commission may conduct an oral hearing if it is considered necessary for an investigation. It refers to [Head24 Commencement and terms of investigation] to provide for the trigger for an authorised officer to commence the investigation which may require an oral hearing. The CCPC utilises this power already in the DSA 2024, but also in Mergers and the Competition Act.

Subsection (2) of this Head will also require a similar provision to the DSA 2024 which contains a schedule setting out the grounds for an oral hearing. That schedule provides for many protections for the undertakings being investigated and ensures that will have ample opportunity to make their case. In light of the potential fines of the Data Act, providing for entities to have the right to reply and make their case in an oral hearing would be an integral part of fair practice and transparency. It may be most practical to insert into the Oral Hearing section of the DSA 2024 schedule – that the schedule applies to an oral hearing conducting by an authorised officer of the CCPC for the purposes of the Data Act.

Head 26 – Report of an authorised officer

To provide that:

(1) As soon as is practicable after the completion of an investigation pursuant to a direction under [Head 24- Commencement and terms of investigation], an authorised officer shall prepare a draft report of the investigation.

(2) In preparing the draft report referred to in subsection (1), the authorised officer shall consider, in so far as they are relevant to the investigation—

- (a) the terms of the investigation,
- (b) any document, information or content obtained in the course of the investigation,
- (c) any statement or admission made by any person in the course of the investigation,
- (d) any submissions made by any person for the purposes of the investigation,

(3) The authorised officer shall, as soon as is practicable after preparing the draft report, give the inquiry subject—

- (a) a copy of the draft report,
- (b) a copy of any material relied upon by the authorised officer in preparing the draft report,
- (c) a copy of this section, and
- (d) a notice in writing stating that the inquiry subject may, not later than 28 days from the date on which it receives the notice, or such further period as the authorised officer considers necessary, make submissions in writing to the authorised officer on the draft report.

(4) The authorised officer shall, as soon as is practicable after the expiration of the period referred to in subsection (3)(d), and having considered any submissions made under that subsection, make any revisions to the draft report which, in the opinion of the authorised officer are warranted, and finalise the report.

(5) An authorised officer shall not make any recommendation, or express any opinion, in a draft report under subsection (1) or in a final report under subsection (4), as to whether an administrative financial sanction should be imposed under [Head regarding decision of the Commission] in the event that the Commission is satisfied that the inquiry subject has committed a contravention, or as to the amount of any such sanction imposed.

(6) An authorised officer shall, as soon as is practicable after the draft report has been finalised under subsection (4), provide a copy of the final report to the inquiry subject.

(7) An authorised officer shall, as soon as is practicable after the draft report has been finalised under subsection (4), provide a copy of the final report and any submissions made in accordance with a notice under subsection (3)(d) to the Commission.

(8) An authorised officer may provide a copy of the final report and any submissions made in accordance with a notice under subsection (3)(d) to such other persons as he or she considers appropriate.

(9) A person who receives a final report or any submissions shall not, without the prior authorisation of the Commission, disclose the existence or the content of the report or those submissions or views to any other person.

(10) A person who, without reasonable excuse, contravenes subsection (9) shall be guilty of a category 1 offence.

Explanatory Note:

This Head provides for an authorised officer to submit a report to the CCPC following an investigation. It is modelled on Section 55 of the DSA 2024. The authorised officer will also be required to make the report available to the inquiry subject. This Head was included in the DSA 2024 to fulfil the requirement of Article 51(6) of the Digital Services Act Regulation. This is no such similar obligation in the Data Act Regulation, however providing for this Head will ensure consistency with the DSA 2024. This Head also plays an important role in the fair procedures and transparency. It will assist with the decision-making for the CCPC.

Head 27 - Division of Commission

To provide that:

- (1) The functions of the Commission in relation to the decision of the Commission upon receiving the report of an authorised officer [Head 26 - Report of an Authorised Officer], and the imposing of administrative financial sanctions, shall, unless otherwise states, be exercised by a division of the Commission consisting of such uneven number of members of the Commission, not being less than 3, as the Commission may determine.
- (2) If the person who directed that an investigation be carried out under [Head 24 – Commencement and terms of investigation] is a member of the Commission, the division exercising functions in relation to the investigation shall not include that member.

Explanatory Note:

This Head is modelled on Section 60 of the DSA 2024. It ensures that any decision taken by the Commission after considering a report from an authorised officer upon conclusion of an investigation, must be done by an unequal number of Commissioners no less than three. If a Commissioner was the person who directed the investigation to take place, the Commissioner must not partake in the formation of a decision and cannot be included in the number of Commissioners required to make a decision.

This Head is important to ensure fair procedures when the Commission may take further action on the basis of a report or following the conclusion of an investigation. Additionally, this Head will align this procedure with the DSA 2024.

Head 28 - Action by the Commission after receiving a report.

To provide that

- (1) After the authorised officer has complied with sections (6) and (7) of [Head 26 – Report of an Authorised Officer], the Commission shall, subject to subsection (2), give the inquiry subject—
 - (a) A copy of this section, and
 - (b) A notice in writing that the inquiry subject may make submissions in writing to the Commission on the final report and any views to which [Head 26 – Report of an Authorised Officer](8) applies within the period of 28 days from the date the inquiry subject receives the notice or views, or such further period as the Commission may allow.
- (2) The Commission need not comply with subsection (1) if it holds an oral hearing under section (3) at which the inquiry subject may make submissions to it on the final report and any views to which [Head 26 - Report of an Authorised Officer](8) applies.
- (3) The Commission shall at any time after the authorised officer has complied with sections (6) and (7) of [Head 26 – Report of an authorised officer] conduct an oral hearing [in accordance with the schedule] if it considers necessary to do so in order for the procedures under this Part to operate fairly.
- (4) The Commission may, at any time after the authorised officer has complied with sections (6) and (7) of [Head 26 – Report of an Authorised Officer], do any of the following that it considers necessary to resolve an issue of fact or otherwise enable it to make a decision under [Head 29 – Decision by Commission] :
 - (a) Request the inquiry subject to provide the Commission with further information within such period as the Commission specifies
 - (b) request any other person to provide the Commission with further information within such period as the Commission specifies;
 - (c) for the purposes of a request under paragraph (b) or in an oral hearing under paragraph (d), provide a copy of the final report, or of part of the final report, with any redactions the Commission considers necessary, to the person the request is made to;
 - (d) conduct an oral hearing in accordance with the Schedule.
- (5) As soon as is practicable after making a request under section (4)(b), the Commission shall give the inquiry subject a copy of the request.
- (6) As soon as is practicable after receiving any information pursuant to a request under subsection (4)(b), the Commission shall give the inquiry subject—
 - (a) a copy of the information, and
 - (b) a notice in writing stating that the inquiry subject may make submissions in writing to the Commission on the information within the period of 20 working days from the date the inquiry subject receives the notice, or such further period as the Commission may allow.
- (7) A person who receives a copy of a report, or of part of a report, under subsection (4)(c) shall not, without the prior authorisation of the Commission, disclose the existence or the content of the report to any other person.

Explanatory Note:

This Head is modelled on Section 61 of the DSA 2024, which repeats section 139ZR of the Broadcasting Act 2009 as inserted by Section 47 of the Online Safety and Media Regulation 2022. The objective of this Head is to set out procedures that the CCPC must follow after receiving a report from an authorised officer following an investigation. The CCPC must behave in a timely manner and

ensure that the subject of the report receives a copy of the report and to notify them that they may make representations within 28 working days of receiving the report. In the context that the Commission may intend to take further action or make a decision on foot of receiving the report, they may also ask the subject of the inquiry for any further information that the Commission may require.

Head 29 - Decision by Commission

To provide that:

- (1) The Commission shall decide, in respect of a person who is the subject of a report under [Head 26 – Report of an authorised officer] —
 - (a) whether or not it is satisfied on the balance of probabilities that the person has committed the contravention to which the investigation relates, and
 - (b) if so, whether or not to impose an administrative financial sanction
- (2) A decision under subsection (1) that a contravention has been committed, or that an administrative financial sanction shall be imposed, does not take effect unless it is confirmed on appeal under [Head 34 - Appeal against decision] or on summary application under [Head 35 – Circuit Court confirmation of decision].
- (3) For the purposes of making a decision under subsection (1), the Commission shall consider—
 - (a) the final report provided under subsection (7) of [Head 26 – Report of an authorised officer] and any submissions or views provided with the report in accordance with that subsection,
 - (b) any evidence adduced or submissions made during an oral hearing conducted under [Head 28 – Action by the Commission after receiving a report],
 - (c) any information provided as a result of a request under [Head 28 (4) – Action by the Commission after receiving a report], and
 - (d) any submissions made pursuant to a notice under subsection (1) or (6) of [Head 28 – Action by the Commission after receiving a report].
- (4) In deciding under subsection (1)(b) whether or not to impose an administrative financial sanction, the Commission shall have regard to the matters referred to in [Head 33 – Limitations on amount of administrative financial sanctions]

Explanatory Note:

This Head is modelled on Section 62 of the DSA 2024. The objective of this Head is to set out the procedure for the Commission to follow when making a decision after receiving a report from an authorised officer. This Head aligns the decision-making process for the Commission with that of the DSA 2024, this ensures consistency between the two regulations and greater efficiencies for the Commission. Additionally, some of the entities in scope of the DSA and the Data Act have the potential to overlap, therefore a similar regime would provide greater certainty for them.

The Commission must decide on whether it believes a contravention in relation to the investigation has occurred, and if it intends to impose administrative financial sanctions.

Subsection (2) provides that the decisions made in Subsection (1) do not take effect unless they have been approved after appeal [Insert Head on appeal] or on summary application [Insert Head on confirmation by court of decision]. This is an important part of ensuring fair procedure for the inquiry subject.

Subsection (3) lists the factors that the Commission should take into consideration when reaching their decision. This includes the report of the authorised officer provided for in [Head 26 – Report of an authorised officer], any evidence or submissions made during an oral hearing conducted under [Head 28 – Action by the Commission after receiving a report.] (this is an oral hearing separate to one which may be conducted during the investigation by the authorised officer.), any submissions made by the inquiry subject to the Commission after they receive a copy of the final report of the authorised officer.

Subsection (4) provides that any decision in relation to the imposition of administrative financial sanctions must be in line with the limitations set out in [Head 33 - Limitations on amount of administrative financial sanctions].

Head 30 – Notice and publication of decision of Commission

To provide that

- (1) The Commission shall, as soon as is practicable after making a decision under [Head 29 – Decision by Commission], give notice in writing of the decision to the inquiry subject.
- (2) The notice under subsection (1) shall set out the decision made and the reasons for it.
- (3) If the Commission decides that a contravention has occurred, the notice shall also—
 - (a) state that the decision does not take effect unless it is confirmed on appeal under [Insert Head on appeal against decision] or on summary application under [Insert Head on court confirmation of decision], and
 - (b) state that, if the inquiry subject does not appeal under [Insert Head on appeal against decision], the Commission will, as soon as is practicable after the expiration of the period for the making of an appeal referred to in [Insert Head on appeal against decision](1), make an application in a summary manner for confirmation of the decision under [Insert Head on court confirmation of decision].
- (4) If the Commission decides to impose an administrative financial sanction, the notice shall also—
 - (a) state that the inquiry subject may make submissions in relation to the application of [Head 33 – Limitations on amount of administrative financial sanctions] to the determination of the amount of the sanction,
 - (b) state either that—
 - (i) those submissions may be made at an oral hearing, under section 65(2)(a), on a date specified in the notice, or
 - (ii) those submissions may be made in writing, under section 65(2)(b), within a period specified in the notice in accordance with that section, and
 - (c) state that the Commission may request further information under section 65(3).
- (5) Where the decision made under [Head 29 – Decision by Commission] relates to a contravention falling within paragraph (a) or (c) of the definition of “contravention” in [Insert Head on Interpretations/Section 43], the Commission shall publish the decision on a website maintained by it and that publication shall include the following matters:
 - (a) the name of the inquiry subject;
 - (b) the nature of the suspected contravention to which the investigation related;
 - (c) the reasons for the decision;
 - (d) such other particulars, reports or material as the Commission considers appropriate.
- (6) The Commission may provide a copy of a notice referred to in subsection (1) to any other person where it considers it appropriate to do so.
- (7) A person who receives a copy of a notice under subsection (6) prior to the publication of the decision under subsection (5) shall not, without the prior authorisation of the Commission, disclose the existence or the content of the notice, including any content redacted in

accordance with subsection (9) from a notice published under subsection (5), to any other person.

(8) A person who, without reasonable excuse, contravenes subsection (7) shall be guilty of a category 2 offence.

(9) The Commission may, for the purposes of publication under subsection (5), redact any particulars which appear to the Commission—

(a) to be commercially sensitive, or

(b) to relate to the commission of an offence.

Explanatory Note:

This Head is modelled on Section 64 of the DSA 2024. It sets out the procedures for the Commission to follow once a decision has been made. It ensures that the inquiry subject is made aware of the decision and is an important part of fair procedures and transparency.

ADMINISTRATIVE FINANCIAL SANCTIONS

Head 31 - Submissions and requests for information

- (1) Subsections (2) and (3) apply where the Commission has made a decision under [Head 29 – Decision by Commission] to impose an administrative financial sanction on a person.
- (2) The person may make submissions to the Commission in relation to the application of [Head 33 – Limitations on amount of administrative financial sanctions] to the determination of the amount of the sanction—
 - (a) at an oral hearing held in accordance with the [Schedule], where the Commission considers it necessary, or
 - (b) otherwise, in writing, within the period of 10 working days from the date the person receives the notice under [Head 30 – Notice and publication of decision], or such longer period as the Commission may specify in the notice.
- (3) Where a person makes submissions to the Commission under subsection (2)(b), the Commission may by notice in writing request the person to provide, within a specified period, such further information as the Commission considers appropriate for the purposes of determining the amount of the sanction.
- (4) A person who—
 - (a) without reasonable excuse fails to comply with a request under subsection (3), or
 - (b) in purported compliance with a request under subsection (3), gives to the Commission information which the person knows to be false or misleading in any material respect, shall be guilty of a category 2 offence.

Explanatory Note:

This Head is modelled on Section 65 of the DSA 2024. It forms part of the Administrative Financial Sanctions part of the regime. This section should explain what will happen after the Commission decides to impose a financial sanction in [Head 29 – Decision by the Commission]. The recipient of the fine should have the right to respond to the decision. The objective of this Head is to outline how the recipient of the fine may respond and within what timeframe. If the Commission asks for the recipient to provide more information based on their response to the decision made, the recipient must respond to the request and provide accurate information. Failure to do this will result in criminal charges. Providing for the ability of the recipient to respond to the decision and make submissions to the Commission is another important safeguard for fair procedures for those who may be fined under this Bill.

Head 32: Determination of amount of administrative financial sanction.

To provide that:

- (1) Where a decision is made under [Head 29 – Decision by Commission] to impose administrative financial sanctions, the Commission shall determine the amount of the sanction in accordance with [Head 33 – Limitations on amount of administrative financial sanction].
- (2) The Commission shall make the determination as soon as practicable after-
 - (a) where section [Head 31(2)(a) - Submissions and requests for information] applies, the data of the oral hearing referred to in that paragraph, or
 - (b) where section [Head 31(2)(b) - Submissions and requests for information] applies, the expiry of the period or further period referred to in that paragraph, or if applicable the period specified in any notice under section [Head 31(3) - Submissions and requests for information]

Whether or not any submission have been made or information provided.

- (3) As soon as is practicable after making the determination, the Commission shall give the inquiry subject a notice in writing of the determination and the reasons for it.

Explanatory Note:

This Head is modelled on Section 66 of the DSA 2024. Section 66 of the DSA repeats Section 139ZV of the Broadcasting Act, as amended by the Online Safety and Media Regulation Act 2022 ('OSMR'). The objective for the DSA was to align the CCPC's procedures with what Coimisiún na Meán was prescribed in the OSMR. For the purposes of the Data Act Bill, aligning the Commission's administrative financial sanctions regime with what is provided for in the DSA would allow for consistency between the two Regulations and would mean greater efficiencies for the Commission. In relation to the subject of the enquiries, many of the undertakings within scope will also be familiar with the regime in the DSA and therefore it might provide some clarity for them in terms of what to expect from the regulator. The amount of the sanctions and the method of calculating them will be specific to the Data Act, but the processes around them shall remain in line with the DSA to ensure consistency between the regulations. Subsections (4) and (5) of Section 66 of the DSA obligate the Commission to publish the notice online, with provisions to redact any commercially sensitive information or information relating to criminal offences. These obligations are not in the Data Act Regulation and therefore these subsections have been excluded.

This Head is providing for the procedures that the Commission should follow once a decision has been made that an administrative financial sanction should be imposed. A separate Head which sets out the rules for calculating the administrative financial sanctions is provided for – [Head 33 – Limitations on amount of administrative financial sanction]. The Commission must calculate the amount of the fine following the rules set out in [Head 33] and should do so in a timely manner.

Subsection (2) explains that if the subject of the enquiry has made any submissions in relation to the decision to impose administrative financial sanctions, then the timely manner in which the Commission can make the determination of the administrative financial sanctions will be dependent on whether the submissions were made as part of an oral hearing, or in writing. If there was an oral hearing, then the timeframe for determination begins after that hearing. If there was no oral hearing, the timeframe for determination begins after the deadline for written submissions has passed. The Commission must make the determination of the administrative financial sanctions after it has received the submissions from the subject of the enquiry, if the subject of the enquiry has made those submissions within the timeframes specified in [Head 31 – Submissions and requests for information].

Providing that the Commission must consider the submissions made before determination of the administrative financial sanctions is an important part of fair procedures for the subject of the enquiry. If the subject of the enquiry does not make any submissions, then the Commission may still go ahead with determination of the amount of the administrative financial sanction.

Subsection (3) provides for the Commission to notify the subject of the enquiry, in writing, of the determination of the administrative financial sanctions, and should provide to them the reasons for the determination. This notice should be given to the subject of the enquiry as soon as practicable after making the determination.

Head 33: Limitations on amount of administrative financial sanction.

(1) In the case of a contravention falling within [Insert Interpretations Head which defines a contravention], the amount of an administrative financial sanction imposed under [Head 29 – Decision by Commission] shall not exceed 4 per cent of the EU-wide annual turnover of the inquiry subject in the financial year preceding the date of the decision under [Head 29 – Decision by Commission] to impose the sanction.

(2) In the case of a contravention falling within [Insert Head that defines contraventions and division of levels therein] of that definition, the amount of an administrative financial sanction imposed under [Head 29 – Decision by Commission] shall not exceed [yet to be determined according to the division of contraventions] of the EU-wide annual income or turnover of the inquiry subject in the financial year preceding the date of the decision under [Head 29 – Decision by Commission] to impose the sanction.

(3) The Commission shall have regard to the following matters in determining the amount of the administrative financial sanction imposed under [Head 29 – Decision by Commission]:

- (a) the nature, gravity, scale and duration of the contravention;
- (b) any action taken by the contravening party to mitigate or remedy the damage caused by the contravention;
- (c) any previous contravention by the infringing party;
- (d) the financial benefits gained or losses avoided by the contravening party due to the contravention, insofar as such benefits or losses can be reliably established;
- (e) any other aggravating or mitigating factor applicable to the circumstances of the case;
- (f) contravening party's annual turnover in the preceding financial year in the Union.
- (g) recommendations of the EDIB.
- (h) any submissions made by the inquiry subject under [Head 31(2) - Submissions and requests for information] in relation to the determination of the amount of the sanction;
- (i) any further information given to the Commission by the inquiry subject in response to a request under [Head 31(3) - Submissions and requests for information];
- (j) previous determinations under this section which have been confirmed or made by the appropriate court (within the meaning of [Head 34 – Appeal against decision]) under [Head 34 – Appeal against decision] or confirmed by the Circuit Court under [Head 35 - Circuit Court confirmation of decision]

(4) The amount of an administrative financial sanction imposed under [Head 29 – Decision by Commission] shall—

- (a) be proportionate to the nature of the contravention, and
- (b) be set with a view to deterring the inquiry subject and other undertakings (within the scope of the Commissions remit in this Regulation) from committing a contravention.

Explanatory Note:

This Head is modelled on Section 67 of the DSA 2024. Section 67 follows the procedures of Section 139ZW of the Broadcasting Act 2009 as amended by the OSMR 2022. Section 67 of the DSA defines the maximum amount of administrative financials sanctions that may be imposed. The maximum fines depend on the type of contravention that has occurred, the size and turnover of the undertaking in scope, and several other factors which are listed out in subsection (3). Article 52 of the DSA Regulation explicitly sets out the levels of the fines which should be applied. Article 52(3) of that Regulation provides that “Member States shall ensure that the maximum amount of fines that may be imposed for a failure to comply with an obligation laid down in this Regulation shall be 6 % of the annual worldwide turnover of the provider of intermediary services concerned in the preceding financial year. There is no equivalent provision to this in the Data Act Regulation.

Article 37(4)(d) of the Data Act Regulation states that Member States may “imposing effective, proportionate and dissuasive financial penalties which may include periodic penalties and penalties with retroactive effect, or initiating legal proceedings for the imposition of fines.”

Article 40(1) of the Data Act Regulation sets out that Member States shall lay down rules on penalties and that they shall be ‘effective, proportionate and dissuasive’. Article 40(3) of the Data Act Regulation lists criteria that should be considered when calculating the penalties for contraventions of the Regulation. The list of criteria is included in this Head to ensure that any fines imposed are in line with the obligations of Article 40. Additionally, Article 40 states that Member States should take into account recommendations of the EDIB in relation to the calculation of fines. To date the EDIB has not offered any recommendations on the level of fines, but discussions are ongoing as part of a sub-group. The sub-group is aiming to achieve harmonisation across the EU by discussing the level of fines proposed by Member States and their reasoning for such fines.

Subsection (1) and Subsection (2) set out the maximum level of fines that can be imposed on an inquiry subject according to the categorisation of the contravention that has occurred. Setting out these caps will offer clear guidelines to the Commission when imposing fines and shall also help undertakings to understand the levels of sanctions that they may face if they breach the Regulation. Once the Department gains further clarification from the EDIB and sub-group on the Data Act Regulation we will revisit this Head and make any changes to the level of sanctions and the categorisation of contraventions. The current figure of 4% of annual EU turnover is not confirmed and is just our suggestion.

Subsection (3) sets out a non-exhaustive list of criteria that the Commission must consider when calculating the level of the fines. Subsection 3(a) to (g) gives effect to Article 40(3) of the Regulation. Subsection 3 (h) to (j) is based on s. 67(3) (n) to (p) of the Digital Services Act 2024. . As the Regulation does not necessitate any other criteria we have not extended the list, however, providing that it is a non-exhaustive list may allow the Commission to consider further conditions which we have not foreseen.

Subsection (4) sets out the objectives that the level of the administrative financial sanctions should achieve. An important one of these is to be proportionate to the level of the contravention. The sanction should serve as a deterrent to the contravening party, but also to deter other undertakings that are in scope of the Regulation from contravening their obligations.

Head 34: Appeal against decision.

(1) The inquiry subject to whom a decision under [Head 29 – Decision by Commission] relates may, within 28 days from the date on which the notice referred to in [Head 30 – Notice and publication of decision] is received, or where [Head 32 – Determination of amount of administrative financial sanction] applies, within 28 days from the date on which the notice referred to in [Head 32(3) – Determination of amount of administrative financial sanction] is received, appeal to the appropriate court against the decision.

(2) The appropriate court may, on the application of the inquiry subject, extend the period for the making of an appeal under subsection (1), where it is satisfied that—

- (a) there is good and sufficient reason for doing so,
- (b) the circumstances that resulted in the failure to bring an appeal within the period referred to in subsection (1) were outside the control of the inquiry subject, and
- (c) an application for confirmation has not been determined under [Head 35 – Circuit Court confirmation of decision].

(3) In considering an appeal, the appropriate court—

- (a) shall have regard to the record of the decision the subject of the appeal, and
- (b) may, where it considers it necessary for the fair and proper determination of the appeal, consider any evidence adduced or submission made by the inquiry subject, whether or not already adduced or made to the authorised officer or the Commission.

(4) Subject to subsection (6), the appropriate court may, on the hearing of an appeal under subsection (1)—

- (a) confirm the decision, or
- (b) subject to subsection (5)—
 - (i) set aside the decision,
 - (ii) set aside the decision and replace it with such other decision as the court considers it just and appropriate to make, including a decision not to impose an administrative financial sanction, or a decision to impose an administrative financial sanction of a different amount, or
 - (iii) remit the decision for reconsideration by the Commission, subject to such directions as the court considers appropriate.

(5) A decision of the Commission may not be set aside or remitted by the appropriate court under subsection (4)(b) for error of law or fact unless the appropriate court is satisfied that the Commission committed a serious and significant error in making the decision, or that the Commission committed a series of minor errors which, when taken together, amount to a serious and significant error.

(6) For the purposes of subsection (4), [Head 29(4) – Decision by Commission] and [Head 33 – Limitations on amount of administrative financial sanction] shall apply to the appropriate court and references to the Commission in those sections shall be construed as references to the appropriate court.

(7) Where the appropriate court is the Circuit Court it may make such interim or interlocutory orders in any proceedings under subsection (1) or (2) as it considers appropriate.

(8) The appropriate court may direct how the costs of an appeal under this section are to be borne.

(9) In this section, “appropriate court” means—

(a) where no administrative financial sanction is imposed under [Head 29 – Decision by Commission] or where the amount of any administrative financial sanction imposed does not exceed €75,000, or such other sum as stands specified in law as that court’s jurisdiction in tort, the Circuit Court, or

(b) in any other case, the High Court.

Explanatory Note:

This Head is modelled on Section 68 of the DSA 2024. Section 68 of the DSA replicates Section 139ZX of the Broadcasting Act 2009 as inserted by Section 47 of the OSMR 2022. Article 51(6) of the DSA obliges Member States to ensure fair procedures for the exercise of investigative powers. There is no explicit provision for this in the Data Act Regulation, however it would be best practice to provide for inquiry subjects to appeal any decision made under [Head 29 – Decision by Commission] and any sanctions imposed upon them.

This Head shall provide that inquiry subjects who are the subject of a decision by the Commission under [Head 29 – Decision by Commission] that determines a contravention has occurred and that it intends to impose an administrative financial sanction on them should have the opportunity to appeal that decision to the courts. The inquiry subject should have the opportunity to do this upon receiving a notice in writing of the Commission’s decision. Notice and publication of the decision is provided for in [Head 30 – Notice and publication of Commission decision]. If the inquiry subject wishes to appeal the determination that a contravention has occurred (but no financial sanctions are proposed) they may appeal to the Circuit Court. If a financial sanction has been proposed, then the inquiry subject may appeal to the High Court.

Head 35: Circuit Court confirmation of decision.

(1) Where the inquiry subject to whom a decision under [Head 29 – Decision by Commission] relates does not appeal against the decision in accordance with [Head 34(1) – Appeal against decision], the Commission shall, as soon as is practicable after the expiration of the period referred to in [Head 34(1) – Appeal against decision], and on notice to the inquiry subject, make an application in a summary manner to the Circuit Court for confirmation of the decision.

(2) On the hearing of an application under subsection (1), the Circuit Court shall confirm the decision unless it is satisfied, on the basis of the evidence that was before the Commission when making the decision—

(a) that the Commission made an error of law which is—

(i) manifest from the record of the decision, and

(ii) fundamental so as to deprive the decision of its basis,

or

(b) that any administrative financial sanction imposed is manifestly disproportionate.

(3) If under subsection (2) the Circuit Court does not confirm the decision it may—

(a) annul the decision, or

(b) remit it for reconsideration by the Commission, subject to such directions as it considers appropriate.

(4) The inquiry subject may, as soon as is practicable after receiving notice of the application under subsection (1), inform the Commission in writing that it does not intend to appear at, or make submissions at, the hearing of the application.

(5) If an application to extend the period for the making of an appeal against a decision is made under [Head 34(2) – Appeal against decision], to the High Court, the Circuit Court shall make an order staying any application under subsection (1) for the confirmation of that decision until the High Court has made a decision under [Head 34(2) – Appeal against decision],

(6) If the High Court makes an order under [Head 34(2) – Appeal against decision], extending the period for the making of an appeal under with [Head 34(1) – Appeal against decision] against a decision, the Circuit Court shall make an order staying any application under subsection (1) for the confirmation of that decision until the High Court has made a decision on the appeal under with [Head 34(4) – Appeal against decision].

(7) The Circuit Court may make such interim or interlocutory orders as it considers appropriate in any proceedings under subsection (1).

(8) The Circuit Court may direct how the costs of an application under subsection (1) are to be borne.

Explanatory Note:

This Head is modelled on Section 69 of the DSA 2024. Section 69 replicates Section 139ZY of the Broadcasting Act 2009 as inserted by section 47 of the OSMR 2022. The Head outlines what the Commission must do after it has made a decision under [Head 29 – Decision by Commission]. It also

ensures fair procedures for the inquiry subjects by providing that any decisions made by the Commission under [Head 29 – Decision by Commission] must be confirmed by the courts.

This Head aims to continue to align the Commissions procedures in its administrative sanctions regime with its regime under the DSA 2024. The Commission will already have experience operating this regime under the DSA and therefore this will ensure consistency between the regulations and for businesses operating within the scope of the Data Act Regulation.

This Head provides that if the inquiry subject doesn't appeal the fine in line with [Head 34 – Appeal against decision], the Commission must notify the inquiry subject and apply to the Circuit Court to confirm the decision.

The Circuit Court should consider whether a serious legal error has occurred or if the fine is disproportionate before it can confirm the decision. If the decision is not confirmed the Court may cancel the decision entirely or rescind it to the Commission. Additionally, the inquiry subject may ask for more time to appeal.

If the inquiry subject asks the High Court for more time to appeal, the Circuit Court must pause (stay) the confirmation process until: The High Court decides whether to allow the late appeal with [Head 34(2) – Appeal against decision], or the High Court rules on the appeal itself with [Head 34(4) – Appeal against decision]

Head 36 – Treatment of amounts paid in respect of administrative financial sanctions.

(1) A payment received by the Commission of any amount due to it pursuant to a decision confirmed or made under [Head 34 – Appeal against decision] or confirmed under [Head 35 – Circuit court confirmation of decision] shall be paid into, or disposed of for the benefit of, the Exchequer in such manner as the Minister for Finance may direct.

Explanatory Note:

This Head is modelled on Section 70 of the DSA 2024. Section 70 of the Data Act replicates Section 139ZZ of the Broadcasting Act 2009 which was inserted by Section 47 of the OSMR 2022. This Head outlines that any money received as payment of an administrative financial sanction should go to the Exchequer, rather than the Commission. The money received should have been paid after the decision on the amount of the fine has been confirmed by either the Circuit Court or the High Court in line with [Head 34 – Appeal against decision and 35 – Circuit Court confirmation of decision]. The Minister for Finance should have remit over how the money is handled once it has been received by the Exchequer.

Head 37 – Reference on a point of law to High Court.

(1) Where a division of the Commission decides, before the making of a decision under [Head 29 – Decision by Commission], or where a decision is made under that section to impose an administrative financial sanction, before the making of a determination under [Head 32 – Determination of amount of administrative financial sanction], to refer any question of law arising under [Heads 27 – Division of Commission, to Head 30 – Notice and publication of decision of Commission] or [Head 31 - Submissions and requests for information, to Head 37 - Reference on a point of law to High Court] to the High Court, the Commission shall refer the question.

(2) Subject to subsection (3), no appeal shall lie to the Court of Appeal from a decision of the High Court on a reference under subsection (1).

(3) The High Court may grant leave to appeal, where it certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Court of Appeal.

Explanatory Note:

This Head is modelled on Section 71 of the DSA 2024. Section 71 of the DSA 2024 replicates Section 139 ZZA of the Broadcasting Act 2009 as inserted by Section 47 of the OSMR 2022. This Head should provide for the ability for the Commission to refer a legal question to the High Court if one arises during their prosecution of breaches of the Data Act Regulation. This will ensure that any unclear legal issue that may arise has been resolved by a judge before the Commission proceeds. This is important to provide clarity and consistency of the prosecution of breaches of the Data Act Regulation. It is not possible to foresee what legal issue may arise but it is prudent to provide for what the Commission should do if such a scenario arises.

Subsection (1) sets out that if the division of the Commission [Head 27 – Division of Commission], the group who make the decision to impose financial sanctions and who determine the amount of the financial sanctions, encounter a legal issue, they should refer it to the High Court for a ruling. They must refer the matter to the High Court if the legal issue arises before a decision to impose a fine has been made [Head 29 – Decision by Commission], or after a decision to impose a fine but before it has determined the amount of the fine [Head 32 – Determination of amount of administrative financial sanction]. The legal issue can relate to any issue of law from [Head 27 to Head 37 – Reference on a point of law to High Court] (the decision of the Commission and administrative financial sanctions sections)

Subsection (2) is intended to outline that for a referral to the High Court under Subsection (1), an appeal on the High Court's decision cannot be made. The only exception to this is noted in Subsection (3).

Subsection (3) is intended to set out that in relation to a decision made by the High Court on the basis of a referral in Subsection (1), an appeal will only be allowed by the High Court if the legal issue is of exceptional public importance or it is in the public interest to allow an appeal. An appeal that meets these criteria should be reviewed by the Court of Appeal. It is unlikely that any issue will meet these standards, and it is envisaged that any referral to the High Court will therefore not be subject to appeal.

Head 38 - Enforcement of investigatory powers by administrative financial sanctions

(1) This section applies, in relation to a Data Act investigation, to each of the following persons:

- (a) the inquiry subject;
- (b) a relevant person;
- (c) a member of staff or representative, or former member of staff or representative, of the inquiry subject or a relevant person,

and “relevant person” in this subsection means a person acting for purposes related to the person’s trade, business, craft or profession who may reasonably be aware of information relating to the suspected contravention to which the investigation relates.

(2) Without prejudice to section 35(8) of the Act of 2014, a person to whom this section applies may, subject to subsection (3), be liable to an administrative financial sanction in accordance with this [Part] if in the course of a Data Act investigation he or she—

(a) obstructs or impedes an authorised officer in the exercise of his or her powers under subsection (1)(a), (b), (c) or (e) of section 36 of that Act,

(b) fails to comply with a request or requirement of an authorised officer under subsection (1)(d), (f), (g) or (h) of that section,

(c) in purported compliance with a request or requirement under that section, gives to an authorised officer information that is false or misleading in a material respect, or

(d) fails to rectify—

(i) any failure on his or her part to comply with a request or requirement of an authorised officer under subsection (1)(d), (f), (g) or (h) of that section, or

(ii) any information which he or she has given to an authorised officer in purported compliance with a request or requirement under that section and which is false or misleading in a material respect.

(3) Where, in the course of a Data Act investigation, a person other than the inquiry subject does an act or makes an omission referred to in any paragraph of subsection (2), that subsection does not authorise the imposition of an administrative financial sanction on that person unless, before the act or omission occurred, the person was given in reasonable time by notice in writing by an authorised officer all relevant information relating to the exercise of the power, or to the request or requirement, referred to in that paragraph, including information about—

(a) the time within which the person was required to comply with the exercise of the power or with the request or the requirement,

(b) the maximum amount of the administrative financial sanction that could be imposed on the person, and

(c) the effect of [Head 29(2) – Decision by Commission], and the sections referred to there, in relation to the imposition of an administrative financial sanction.

Explanatory Note:

This Head is modelled on Section 52 of the DSA 2024. This Head allows the Commission to impose administrative financial sanctions on inquiry subjects, a relevant person and an employee who fails to cooperate with an investigation by the Commission. This Head should define what is deemed to not be cooperating with an investigation. This Head should also take into account third parties who may be in scope of administrative financial sanctions, and that these third parties are given ample warning in advance of any notice or potential sanction.

Subsection (1) defines who is within scope of a potential administrative financial sanction for obstructing or non-compliance with an investigation by the Commission. These are the inquiry subject [as will later be defined in an Interpretations Head], a relevant person/third party – someone who is involved in the business, but not necessarily employed directly by them, who would reasonably be expected to know something about or be aware of a suspected breach, current or former employees or representatives of the inquiry subject or relevant person.

Subsection (2) is intended to outline when an administrative financial sanction may be imposed. It defines what is considered to fail to cooperate with an investigation. It includes obstructing or interfering with an authorised officer's investigation, ignoring or refusing a request that is made by the Commission, providing false or misleading information, failing to fix previous non-compliance or previous misleading or false information that was provided.

Subsection (3) should aim to ensure fairness and protect third parties. If the body in scope of the administrative financial sanction for non-compliance with an investigation is not the inquiry subject, they can only be fined if there were provided a written notice in advance and that note clearly defined what was required of them, the deadline for response and the possible consequences for not complying with or ignoring the notice.

Head 39 - Enforcement of investigatory powers by daily payment penalty

(1) A penalty of a daily payment (in this section referred to as a “daily payment penalty”) may be imposed on a person in accordance with this section for the purpose of enforcing an obligation imposed on that person by an authorised officer in the exercise, in a Data Act investigation, of any power conferred on the authorised officer by section 36 of the Act of 2014, as applied by [Head on Construction of references currently].

(2) Where it appears to an authorised officer to be necessary to impose a daily payment penalty on a person, the authorised officer may give the person a notice in writing which—

- (a) specifies the obligation referred to in subsection (1) in respect of which the notice is given,
- (b) gives the person all relevant information relating to the obligation,
- (c) states the date by which the person must comply with the obligation,
- (d) states that, if the person fails to comply with the obligation by that date, the authorised officer intends to refer the matter to the Commission for a decision whether to impose a daily payment penalty on the person, for each day during which the failure continues, beginning with the day following that date,
- (e) states why it appears to the authorised officer to be necessary to impose the penalty,
- (f) states the maximum daily amount of the penalty that the Commission may impose, and
- (g) invites the person to make written submissions to the Commission regarding the matters to which the notice relates within the period stated in the notice or such further period as the Commission may allow.

(3) The date specified under subsection (2)(c) may not be earlier than the date on which the notice under subsection (2) is given.

(4) The amount of a penalty imposed under this section on a person for each day during which the failure referred to in subsection (2)(d) continues shall not exceed 4 per cent of the person’s average daily income or turnover in the preceding financial year.

(5) Where it appears to an authorised officer that the person to whom a notice under subsection (2) has been given has failed to comply with the obligation specified in the notice by the date specified under subsection (2)(c), the authorised officer may refer the matter to the Commission.

(6) Where a matter is referred to the Commission under subsection (5) and it appears to the Commission, after considering any written submissions made by the person to whom the notice under subsection (2) was given within the period specified in accordance with subsection (2)(g), that it is necessary to impose a daily payment penalty on the person for the purpose of enforcing the obligation specified in the notice, the Commission may—

- (a) determine the daily amount of the penalty to be imposed, and the date on which it is to commence, and
- (b) by notice in writing to the person, impose the penalty.

(7) The functions of the Commission under this section (except this subsection) shall be exercised by a division of the Commission consisting of such uneven number of members of the Commission, not being less than 3, as the Commission may determine.

(8) If the person who gave the direction under [Head 24 – Commencement and terms of investigation] for the investigation referred to in subsection (1) to be carried out is a member of the Commission, the division exercising functions under this section shall not include that member.

(9) A decision of the Commission to impose a daily payment penalty does not take effect unless it is confirmed on appeal under [Head 34 - Appeal against decision] or on summary application under [Head 35 - Circuit court confirmation of decision], as those sections apply in accordance with [Insert Head on appeal and confirmation of daily payment penalty].

Explanatory Note:

This Head is modelled on Section 53 of the DSA 2024. This Head should allow the Commission to impose a daily fine on an undertaking who fails to comply with a legal requirement during a Data Act investigation. This fine should be imposed until the undertaking complies with the investigation requests. It should also include sufficient safeguards for the undertaking whom the fine is being imposed upon.

Subsection (1) shall define what a daily payment penalty is and why it may be imposed. The daily payment penalty is a fine that is charged to an inquiry subject if they fail to comply with a specific requirement imposed by an authorised officer during an investigation. The requirements that may be imposed by the authorised officer come from their powers in the Act of 2014.

Subsection (2) outlines that an authorised must issue a written notice to the inquiry subject if it intends to impose a daily payment penalty. The notice should include what the requirement is that they are not complying with, all the relevant details relating to the requirement, the deadline for compliance, a warning that daily payment penalties will begin if the deadline is not met, why the penalty is needed/appropriate, the maximum daily amount that may be charged, an invitation to submit any written arguments or responses within a set amount of time.

Subsection (3) states that the deadline for compliance with the requirement cannot be earlier than the date that the written notice is given. This ensures that no retroactive penalties can be applied.

Subsection (4) shall state the maximum penalty that can be applied.

Subsection (5) shall state what will happen if the inquiry subject doesn't comply with the authorised officer's requirement. The authorised officer refers the case to the Commission

Subsection (6) shall state what the Commission does when it receives a case from the authorised officer. The Commission shall review the case and any submissions from the inquiry subject. The Commission may decide the daily amount of the fine, set the start date of the fine and send a formal notice that imposes the penalty.

Subsection (7) shall set out who makes the decision on the fine. This is in line with the imposition of administrative financial sanctions for breaches of the Data Act Regulation as set out in [Head 27 - Division of Commission]. The decision shall be made by a division of the Commission of an uneven number, no less than 3 members of the Commission.

Subsection (8) sets out that the member of the Commission who ordered the investigation cannot be part of this division.

Subsection (9) sets out when the decision of the Commission takes effect. It cannot come into effect unless it has been confirmed upon appeal under [Head 34 - Appeal against decision], or on summary application under [Head 35 - Circuit court confirmation of decision], as those Heads apply in accordance with [Head 40 – Daily payment penalty appeal and confirmation].

Head 40 – Daily payment penalty appeal and confirmation

(1) A person to whom a notice under [Head 39(6) - Enforcement of investigatory powers by daily payment penalty] is given may, within 28 days from the date on which the notice is received, appeal to the High Court against the decision to impose the daily payment penalty.

(2) Subsections (2) to (6) and (8) of [Head 34 – Appeal Against decision] apply for the purposes of an appeal by a person under this section as they apply for the purposes of an appeal by the inquiry subject under subsection (1) of that section subject to the following and any other necessary modifications:

(a) references to an administrative financial sanction are references to a daily payment penalty under [Head 39 - Enforcement of investigatory powers by daily payment penalty];

(b) references to the appropriate court are references to the High Court.

(3) Where the person to whom a notice under [Head 39(6) – Enforcement of investigatory powers by daily payment penalty] is given does not appeal in accordance with subsection (1) against the decision to impose a daily payment penalty, the Commission shall, as soon as is practicable after the expiration of the period referred to in subsection (1), and on notice to that person, make an application in a summary manner to the Circuit Court for confirmation of the decision.

(4) [Head 35(2)-(8) – Circuit Court confirmation of decision] apply for the purposes of an application under subsection (3) subject to the following and any other necessary modifications:

(a) the reference to an administrative financial sanction is a reference to a daily payment penalty under [Head 39 - Enforcement of investigatory powers by daily payment penalty];

(b) references to an appeal under [Head 34(1) – Appeal against decision] are references to an appeal under subsection (1) of this section;

(c) references to [Head 35(1) – Circuit Court confirmation of decision] are references to subsection (3) of this section

Explanatory Note:

This Head is modelled on Section 72 of the DSA 2024. This section provides for subjects of daily payment penalties to appeal the penalty and how the Commission may get the penalty confirmed by the Courts if no appeal is made. The penalty should only become enforceable once it has been confirmed by the Circuit Court. The penalty should be issued as outlined in [Head 39 – Enforcement of investigatory powers by daily payment penalty].

Subsection (1) outlines that the recipient of the daily payment penalty has the right to appeal the penalty. Upon receiving the daily payment penalty notice, the recipient has 28 days to appeal the penalty to the High Court. The 28-day period begins once the penalty notice has been received.

Subsection (2) provides that the appeal process should follow the same rules and procedures as set out in [Head 34 – Appeal against decision]. Therefore, for the purpose of this Head, in [Head 34 - Appeal against decision], where “financial sanction” is mentioned, this should be interpreted as referring to the daily payment penalty. Additionally, references to the “Court” or “appropriate Court” should be interpreted as the High Court.

Subsection (3) provides that if the recipient of the daily payment penalty does not appeal the penalty within the 28-day period as specified in Section (1), the Commission must confirm the penalty by applying to the Circuit Court. This should be done as soon as possible after the end of the 28-day appeal period. The Commission should notify the recipient of the penalty that it has applied to the Circuit Court for confirmation of its penalty decision.

Subsection (4) should explain how the process of confirmation of the penalty works. The rules and procedures around how the penalty is confirmed by the Circuit Court should follow the same ones as set out in [Head 35 – Circuit Court confirmation of decision]. Where “financial sanction” is mentioned in [Head 35 – Circuit Court confirmation of decision], this should be interpreted as the daily payment penalty in [Head 39 - Enforcement of investigatory powers by daily payment penalty]. Any references to appeal in [Head 34 – Appeal against decision], should be interpreted as references to appeal under this Head [Head 40 – Daily payment penalty appeal and confirmation.]. References to [Head 35(1)- Circuit Court confirmation of decision] should be interpreted as referring to [Head 40(3) – Daily payment penalty appeal and confirmation].

Head 41 – Commitment Agreements.

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

Explanatory Note:

This Head is modelled on Section 79 of the DSA 2024. It provides the Commission with the power to enter into a commitment agreement with an undertaking to resolve a compliance issue before or without resorting to formal enforcement procedures. This will be an important provision to avoid an excessive number of cases going through full enforcement procedures and should streamline that process.

Subsection (1) outlines what is meant by a commitment agreement. A commitment agreement should be a voluntary agreement between the Commission and an undertaking. The undertaking voluntarily agrees with the Commission that they will take specific actions to address concerns raised by the Commission in relation to compliance. [Note: This should apply to all Articles within remit of the Commission - Articles 3, 4, 5, 6, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 42]

Subsection (2) notes that an agreement made under this Head shall be referred to as a "commitment agreement".

Subsection (3) should note that the Commission may agree to refrain from taking certain enforcement steps if the undertaking complies with the corrective actions cited in the commitment agreement.

Subsection (4) should state that a commitment agreement is a binding agreement for as long as has been determined in the agreement, unless the agreement has been terminated in line with the procedures set out in Subsections (5) and (6).

Subsection (5) states that a commitment agreement can be amended or terminated if both of the parties agree in writing that they wish to do so.

Subsection (6) outlines that the Commission may terminate the commitment agreement by giving the undertaking a written notice that it intends to do so. The Commission may only terminate the agreement if the undertaking does not comply with the agreement or if it appears to the Commission that the undertaking provided incomplete, false or misleading information which the Commission relied upon when entering into the agreement.

Subsection (7) should provide that if an undertaking breaches or does not comply with the agreement after it has become binding, it is liable to administrative financial sanctions.

Head 42 – Contravention Notice

(1) Where—

(a) the Commission has decided under [Head 29 – Decision by Commission] that it is satisfied that a contravention that is an infringement has occurred, and

(b) the Commission’s decision in so far as it relates to the occurrence of the contravention is confirmed under [Head 34 – Appeal against decision] or [Head 35 – Circuit Court confirmation of decision] or is replaced under [Head 34 – Appeal against decision] with a decision to the same effect,

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

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

(a) the steps which the Commission requires the infringing undertaking to take to put an end to the contravention, and

(b) the period within which those steps must be taken.

(3) A notice under subsection (1) shall be given as soon as is practicable after the date on which the decision is confirmed under [Head 34 – Appeal against decision] or [Head 35 – Circuit Court confirmation of decision] or is replaced under [Head 34 – Appeal against decision] with a decision to the same effect.

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

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

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

Explanatory Note:

This Head is modelled on Section 73 of the DSA 2024. Section 73 of the DSA empowers the competent authority to issue a formal notice to an infringing undertaking if that undertaking is continuing to breach obligations within the DSA. If a decision has been previously made that the undertaking was infringing and that decision was been confirmed by the Circuit Court or replaced with a similar decision, then the competent authority may issue a written notice to oblige the undertaking to stop the infringement.

Subsection (1) should provide that the Commission may issue a notice to end a contravention to an undertaking if it has previously been decided that the undertaking breached the Data Act and the Commission believes the breach is ongoing. This decision will have been made under [Head 29 –

Decision by Commission]. The decision must have been confirmed by the Court under [Head 35 – Circuit Court confirmation of decision]. If the Commission believes that the infringement that the decision concerns is ongoing, then it may issue the contravention notice to direct the undertaking to stop the infringement.

Subsection (2) is intended to outline what the notice in Subsection (1) must include. The notice to end a contravention should include the specific actions that the undertaking must take to stop the breach. It must also include a deadline for those actions to be completed.

Subsection (3) is intended to outline that the notice should be issued by the Commission as soon as is possible after the decision by the court that confirms a breach has occurred in line with [Head 34 – Appeal against decision] or [Head 35 – Circuit Court confirmation of decision]. The Commission must believe that the infringement is ongoing when issuing the notice.

Subsection (4) is intended to outline that if a person fails to comply with the contravention notice issued under Subsection (1), that person is guilty of committing a category 1 offence. The person can only fail to follow the notice if they have good reason.

Subsection (5) is intended to outline that if an offence has been committed under Subsection (4) by a company or organisation and the offence was proved to have been committed with the consent, knowledge or due to negligence of a person acting as a manager, director, secretary or any other officer of the corporate body, that person may be also held responsible.

Subsection (6) is intended to outline that similarly to Subsection (5), if a company is run by its members, then those members should be treated like directors or managers and therefore they too may also be held responsible.

Head 43 - Daily payment for failure to comply with notice to end contravention

- (1) Where the Commission gives a notice under [Head 42 – Contravention Notice] to an undertaking, the Commission may, for the purpose of enforcing the notice, impose a penalty of a daily payment (in this section referred to as a “daily payment penalty”) on the undertaking.
- (2) Before the Commission makes a decision to impose a daily payment penalty on an undertaking, the Commission shall give the undertaking a notice in writing which—
- (a) states that if the undertaking fails to take the steps stated under [[Head 42(2)(a) – Contravention Notice] by a date specified in the notice under this subsection, the Commission intends to impose a daily payment penalty on the undertaking for each day during which the failure continues, beginning with the day following that date,
 - (b) states why it appears to the Commission to be necessary to impose the penalty,
 - (c) states the maximum daily amount of the penalty that the Commission may impose, and
 - (d) invites the undertaking to make written submissions to the Commission regarding the matters to which the notice relates within the period specified in the notice or such further period as the Commission may allow.
- (3) The date specified under subsection (2)(a)—
- (a) may not be earlier than the end of the period specified under [Head 42(2)(b) – Contravention Notice], and
 - (b) may not be earlier than the date on which the notice under subsection (2) is given.
- (4) The amount of a penalty imposed under this section shall not exceed, for each day during which the failure referred to in subsection (2)(a) continues, 4 per cent of the undertaking’s average daily turnover in the preceding financial year.
- (5) Where the undertaking fails to take the steps stated under [Head 42(2)(a) – Contravention Notice] by the date specified in the notice under subsection (2), the Commission, after considering any written submissions made by the undertaking within the period referred to in subsection (2)(d), may—
- (a) determine the daily amount of the penalty to be imposed, and the date on which it is to commence, and
 - (b) by notice in writing to the undertaking, impose the penalty.
- (6) A decision of the Commission to impose a daily payment penalty under this section does not take effect unless it is confirmed on appeal under [Head 34 – Appeal against decision] or on summary application under [Head 35 – Circuit Court confirmation of decision], as those sections apply in accordance with [Head 44 Daily payment penalty under [Head 43]: appeal and confirmation.]

Explanatory Note:

This Head is modelled on Section 74 of the DSA 2024. This Head allows the Commission to impose daily financial penalties on an undertaking that fails to comply with a notice to end a contravention. This provision is similar to that in [Head 39: Enforcement of investigatory powers by daily payment penalty]. The undertaking should receive a written notice from the Commission which outlines its

intention to impose a daily payment penalty, the amount of the penalty, specifies the dates that the penalties begin and gives the undertaking the opportunity to appeal the decision to impose the penalty. Providing the undertaking with the ability to appeal the Commission's decision and the amount of the penalty is important to align it with [Heads 39: Enforcement of investigatory powers by daily payment penalty, and Head 40: Daily payment penalty appeal and confirmation.]

Subsection (1) is intended to outline that where the Commission issues a notice to end a contravention to an undertaking in line with [Head 42: Contravention Notice], the Commission may impose a daily payment penalty on the undertaking to enforce compliance with the notice. This is a daily fine which will occur for everyday that the undertaking ignores or does not comply with the notice to end a contravention.

Subsection (2) should state that before the Commission can make a decision to impose the daily payment penalty as outlined in Subsection (1), the Commission must provide, to the undertaking, a notice in writing which shall include:

- (k) a statement that if the undertaking fails to take the necessary steps outlined in the notice to end a contravention in [Head 42(2)(a)], the Commission intends to impose a daily payment penalty on the undertaking for each day during which the failure to comply continues. The notice should set out the date by which the undertaking must comply with the notice to end a contravention and that the Commission may begin to impose the daily payment penalty on the day after that date.
- (l) a statement explaining why the Commission deems it necessary to impose the daily payment penalty,
- (m) a statement setting out the maximum daily amount of the penalty that the Commission may impose
- (n) a statement which should make the undertaking aware that it may make written submissions to the Commission about the notice and the issues that it concerns. The notice should set out a specific period of time for the undertaking to make those written submissions to the Commission, and the Commission may also allow a further period for the making of submission to it.

Subsection (3) is intended to set out the dates referred to in Subsection (2)(a) – the date that the Commission may begin to impose the daily payment penalty. This date should not be earlier than or during the period given for the undertaking to comply with the notice to end a contravention in [Head 42(2)(b): Contravention Notice]. The date should also not be earlier than the date on which the undertaking receives the notice of intention to impose the daily payment penalty in Subsection (2).

Subsection (4) is intended to set out the maximum amount of the daily payment penalty that may be imposed by the Commission for a failure to comply with the notice to end a contravention. The amount should be a maximum of 4% of the undertaking's average daily turnover in the EU in the preceding financial year.

Subsection (5) is intended to set out that if the undertaking fails to take the necessary steps in [Head 42(2)(a): Contravention Notice] by the date specified in the notice under Subsection (2), this constitutes non-compliance with the notice to end a contravention. Therefore, the Commission may then determine the amount of the daily payment penalty to be imposed and the date on which the penalty is to begin. The Commission must impose the penalty by written notice to the undertaking. The Commission may only carry out these actions after it has considered any written submissions made by the undertaking within the period specified in Subsection (2)(d).

Subsection (6) is intended to set out that the decision by the Commission to impose a daily payment penalty on an undertaking for failure to comply with a notice to end a contravention shall not take effect unless it is confirmed on appeal under [Head 34: Appeal against decision], or on summary application under [Head 35: Circuit Court confirmation of decision]. Both of those Heads should only apply in accordance with [Head 44: Daily payment penalty under [Head 43]: appeal and confirmation]. This section should provide for the undertaking to appeal the fine and that the daily payment penalty shall not begin until the appeal process is finished and the decision of the Commission to impose the penalty and its amount has been upheld by the Court.

Head 44 – Daily payment penalty under [Head 43]: appeal and confirmation.

(1) The provider to whom a notice under [Head 43(5): Daily payment for failure to comply with notice to end contravention] is given may, within 28 days from the date on which the notice is received, appeal to the High Court against the decision to impose the daily payment penalty.

(2) Subsections (2) to (6) and (8) of [Head 34: Appeal against decision] apply for the purposes of an appeal by a provider under this section as they apply for the purposes of an appeal by the inquiry subject under subsection (1) of that section subject to the following and any other necessary modifications:

(a) references to an administrative financial sanction are references to a daily payment penalty under [Head 43: Daily payment for failure to comply with notice to end contravention];

(b) references to the appropriate court are references to the High Court.

(3) Where the provider to whom a notice under [Head 43(5): Daily payment for failure to comply with notice to end contravention] is given does not appeal in accordance with subsection (1) against the decision to impose a daily payment penalty, the Commission shall, as soon as is practicable after the expiration of the period referred to in subsection (1), and on notice to the provider, make an application in a summary manner to the Circuit Court for confirmation of the decision.

(4) [Head 35: Circuit Court confirmation of decision – sections (2) to (8)] apply for the purposes of an application under subsection (3) subject to the following and any other necessary modifications:

(a) the reference to an administrative financial sanction is a reference to a daily payment penalty under [Head 43: Daily payment for failure to comply with notice to end contravention];

(b) references to an appeal under [Head 34:(1) Appeal against decision] are references to an appeal under subsection (1) of this section;

(c) references to [Head 35:(1): Circuit Court confirmation of decision] are references to subsection (3) of this section.

Explanatory Note:

This Head is modelled on Section 75 of the DSA 2024. This Head sets out that the Commission's decision to impose a daily payment penalty and the amount of that penalty may be appealed by an undertaking. If an undertaking chooses not to appeal, then the daily payment penalty must be confirmed by the Circuit Court before it can take effect. This Head outlines the process for both appeal and confirmation of the daily payment penalty. While this Head relates specifically to daily payment penalties imposed due to a failure to comply with a notice to end a contravention, it follows a similar format/procedure to [Head 40 – Daily payment penalty appeal and confirmation] which deals with the appeal and confirmation of decision of daily payment penalties relating to non-compliance with investigations carried out by the Commission.

Subsection (1) is intended to set out that the undertaking who receives a notice under [Head 43(5)(b) – Daily payment for failure to comply with notice to end a contravention] may, within 28 days from receiving the notice, appeal against the decision to impose the daily payment penalty to the High

Court. The 28-day period begins the day after the day on which the undertaking received the notice. The undertaking is not obliged to appeal the decision if it does not wish to do so.

Subsection (2) should explain that the rules and procedures for appeals of the penalties in [Head 43: Daily payment for failure to comply with notice to end contravention] are generally the same as those set out in [Head 34 – Appeal against decision] and [Head 40 - Daily payment penalty appeal and confirmation]. Where Subsections (2) to (6) and Subsection (8) of [Head 34 – Appeal against decision] concern the appeal of an inquiry subject, these should apply for an appeal by an undertaking under [Head 44 - Daily payment penalty under [Head 43 - appeal and confirmation]]. References in [Head 34 – Appeal against decision] to “administrative financial sanctions” should be interpreted as references to a “daily payment penalty” as set out in [Head 43 – Daily payment for failure to comply with notice to end a contravention]. Similarly, references in [Head 34 – Appeal against decision] to “the appropriate court” should be interpreted as references to the “High Court”.

Subsection (3) is intended to set out that if an undertaking does not wish to appeal the decision by the Commission to impose a daily payment penalty in line with [Head 43: Daily payment for failure to comply with notice to end contravention.], the Commission will have to make an application to the Circuit Court to confirm that decision. The Commission should make that application as soon as possible after the period of time for an appeal has ended (28 days). The Commission should make the undertaking aware that it is applying to the Circuit Court to confirm its decision. Until the decision is confirmed by the Court, it will not apply.

Subsection (4) is intended to outline that Subsections (2) to (8) of [Head 35: Circuit Court confirmation of decision] will apply to an application made by the Commission to the Circuit Court under Subsection (3) above. References in [Head 35: Circuit Court confirmation of decision] should be interpreted as follows: References in [Head 35: Circuit Court confirmation of decision] to an “administrative financial sanction” should be interpreted as a reference to a “daily payment penalty” under [Head 43: Daily payment for failure to comply with notice to end contravention]. References in [Head 34(1): Appeal against decision] to an appeal should be interpreted as an appeal under section (1) of this Head [Head 44 – Daily payment penalty under [Head 43]: appeal and confirmation]. References to [Head 35(1): Circuit Court confirmation of decision] should be interpreted as references to Subsection 3 of this Head [Head 44 – Daily payment penalty under [Head 43]: appeal and confirmation].

Head 45 – ComReg Enforcement Regime

[Placeholder]

Explanatory Note:

The enforcement regime for ComReg in the Data Act is based on the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (“the 2023 Act”). This was agreed upon on the 4th of September 2025 following extensive engagement with ComReg and D/CCS. The 2023 Act contains a robust and detailed enforcement regime which was drafted post-Zalewski and utilises a new adjudication regime. The adjudication process ensures that the adjudicators are independent and must have the necessary expertise to carry out their functions for the Data Act. Adjudicators will be nominated by ComReg and appointed by the Minister for Culture, Communications and Sport. Adjudicators will consider cases that are referred to them by Authorised Officers and must make adjudication decision or decision on consent. A decision of the adjudication must be confirmed before the High Court before it can be legally binding and enforceable.

Additionally, once the enforcement process reaches adjudication, and a decision has been made that a breach has occurred, the 2023 Act allows for ComReg to make submissions on the proposed penalties and remedies and for the adjudicator to seek the views of the party under investigation. This takes place before any recommendations are made by the adjudicator. The 2023 Act has a preferable decision-making process in relation to the procedures for the application of administrative sanctions. The procedure is transparent, fair and is subject the oversight of the Court. There are also robust mechanisms for parties involved in investigations to make written submissions in relation to the investigation and also for parties to appeal adjudication decisions. Additionally, the 2023 Act contains the option for parties to enter into settlement agreements with ComReg, providing for the opportunity and encouraging parties, to avoid the more cumbersome adjudication proceedings.

Head 46 – ComReg Authorised Officers.

To provide that:

An authorised officer may exercise any powers exercisable by him or her under the Communications Regulation Act 2002 (other than a power exercisable for a purpose specified in section 39(3A) of the Communications Regulation Act 2002) for the purposes of this Act.

Explanatory Note:

This Head takes precedent from Section 4 of the CRDHDA 2023.

ComReg shall have the ability to appoint an authorised officer for the purposes of implementation and enforcement of Data Act that are within ComReg’s remit as a competent authority. Authorised officers should have the powers listed in Section 39 of the Communications Regulation Act 2002 (“CRA 2002”) as general powers for its role under the Data Act.

Section 39 of the CRA 2002 contains the provisions for appointing authorised officers by ComReg, and the powers and responsibilities of those authorised officers once they are appointed. Section 39 also sets out the offences and penalties that are applicable if an authorised officer is obstructed from conducting its investigation, carrying out its responsibilities or if there is a failure by the subject of the investigation to comply with them. This Section should be amended to insert the Data Act as an Act that the Commission may appoint an authorised officer for.

When utilising Section 39(3) of the Communications Regulation Act 2002 for the purposes of the Data Act, “data processing services” should be inserted wherever “electronic communications service” is present. This is necessary to ensure that the powers of the authorised officers are applicable for the Data Act. These amendments are for the purpose of allowing ComReg to appoint authorised

officers to carry out investigations for the Data Act, and for the powers of authorised officers providers for in Section 39 to also apply to authorised officers appointed under the Data Act.

Head 47 – Urgent Interim Measures

To provide that:

(1) Where it appears to ComReg that:—

- (a) a breach has taken place and is continuing, or there is a substantial risk that a breach takes place, and
- (b) the suspected or suspected anticipated breach gives rise to a risk of serious and irreparable harm, or a risk of serious prejudice to the achievement of the objectives of this Act, before a decision in relation to a suspected breach could be made under [Head 74: Decision of adjudicator in relation to breach].

ComReg may, by notice in writing (referred to in this Act as an “urgent interim measures notice”) direct a person to take interim measures (referred to in this Act as “interim measures”) to remedy the breach or the risk of the breach.

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

- (a) state the details of the suspected breach,
- (b) state the grounds on which it appears to ComReg that the suspected breach has occurred and is continuing,
- (c) state the grounds on which it appears to ComReg that the suspected breach gives rise to a risk of serious and irreparable harm, or a risk of serious prejudice to the achievement of the objectives of this Act occurring before a decision in relation to the suspected breach could be made under [Head 74: Decision of adjudicator in relation to breach].
- (d) specify the measure or measures that are required to be taken to remedy the suspected breach or to prevent the anticipated breach from taking place and avoid or limit serious and irreparable harm, and
- (e) specify the date or the date and time by which the interim measures are to be taken.

(3) An urgent interim measure notice shall take effect on such date as ComReg specifies in the notice.

(4) ComReg shall, subject to subsection (6), allow a reasonable period, having regard to the urgency of the interim measures and the particular circumstances, before an interim measure takes effect to enable the person to whom the interim measure is directed to make written submissions to ComReg in relation to any of the interim measures set out in urgent interim measures notice including any remedies that the person concerned may wish to propose.

(5) A person to whom an interim measure is directed may, within the period specified in the urgent interim measures notice, or where the interim measure is varied within the period specified in the notice of such variation, make written submissions to ComReg in relation to the measure or the variation of the measure.

(6) Exceptionally, and in circumstances of extreme urgency, ComReg may specify that an interim measure take effect without the person to whom it is directed having an opportunity to make submissions and where ComReg does so it shall provide the person with an opportunity to make such submissions as soon as possible after the measure takes effect.

(7) Where ComReg receives written submissions in accordance with subsection (5) or (6) in relation to an interim measure it shall, having considered the submissions, by notice in writing to each person on which the urgent interim measures notice was served, confirm, revoke or vary the interim measure.

(8) Subject to subsection (9) and to any order made by the High Court on an appeal under Head 40 an interim measure shall remain in effect until the earlier of:—

- (a) such date as ComReg may specify in the urgent interim measures notice, and
- (b) the expiry of a period of 3 months beginning on the date on which the interim measure first came into effect.

(9) ComReg may by notice in writing to each person on which the urgent interim measures notice was served, in circumstances where enforcement procedures have not been completed, extend the period during which an interim measure remains in force up to a maximum period of 6 months beginning on the date on which the measure first came into effect.

(10) Where there is a material change of circumstances while an interim measure is in effect, a person to whom the measure is directed may make representations to ComReg to have the interim measure varied or revoked.

(11) ComReg may vary or revoke an interim measure at any time on notice in writing to the person on whom the urgent interim measures notice was served, setting out how the interim measure is to be varied or stating that the interim measure is to be revoked and stating the date on which such variation or revocation is to take effect.

(12) An urgent interim measures notice shall cease to have any effect if it is revoked by ComReg

(13) A person to whom an urgent interim measures notice is directed shall comply with any urgent interim measures contained in such notice.

(14) Where a person fails to comply with an interim measure, ComReg may apply to the High Court for an order compelling compliance.

(15) At any time prior to the expiry of an interim measure, ComReg may apply to the High Court for an order pursuant to [Head 48 – Imposition of Urgent Interim Measures by the High Court].

(16) A person to whom an interim measure is directed may appeal the measure in accordance with [Heads 86 – 97]

Explanatory Note:

This Head is modelled on Section 57 of the CRDHDAA 2023. This Head provides ComReg with the power to impose an interim measure where it believes that an entity is acting in breach of the Data Act and that serious and irreparable harm may occur to any person before an investigation and adjudication process can be completed. Provision of this power is required in light of Recital 109 of the Data Act Regulation which provides that “Where appropriate, competent authorities should make use of interim measures to limit the effects of an alleged infringement while the investigation of that infringement is ongoing...”

The significant imbalances in size and market shares in the cloud services sector, which currently has a small number of dominant cloud services providers, brings about the potential for serious economic damage and operational problems creating irreparable harm to market participants and end-users

and/or to the objectives of the Data Act (by hindering the switching process or through practices threatening interoperability, for example). This justifies the need for ComReg to have a power of this nature to intervene subject to and as soon as it forms the view that such serious and irreparable harm may occur.

The Head has been drafted using Section 57 of the CRDHDAA 2023 as a starting point but with amendments made in order to simplify and clarify text to avoid issues of interpretation where possible, and to reflect differences in the relevant EU legislation. In particular:

- Amendments have been made as compared to Section 57(1) of the 2023 Act to address the different threshold required to be met. The threshold set in section 57(1) of the 2023 Act transposes the threshold set out in the European Electronic Communications Code Directive (Directive 2018/1972) which is not relevant to the Data Act. The threshold suggested here sets a high bar for ComReg to meet before imposing urgent interim measures, namely that there is a *prima facie* risk of serious and irreparable harm.
- The word “impose” has been substituted with “direct” to reflect the wording used in Subsections (6), (7) and (8) of Section 57 of the 2023 Act, with those subsections mirrored here in subsections (4), (5) and (6) above.
- In addition, subsection (1) above incorporates the provisions of Section 57(2) of the 2023 Act in order that it is clear that urgent interim measures may only be adopted and issued on notice to the relevant person. Subsection 57(2) has not been replicated on the basis that it is not necessary and its contents are addressed in subsection (1).
- Amendments have been made in subsection (2) above as compared with Section 57(4) of the 2023 Act. Both lists the contents of the urgent interim measures notice. Amendments proposed seek to streamline the contents of such notice noting that matters of evidence will be addressed in the grounds.
- A minor amendment is proposed to the wording in subsection (7) above as compared with Section 57(9) where the obligation on ComReg is, having considered the submission, to confirm, revoke or vary the measures, rather than imposing a separate obligation on ComReg to consider submissions received.
- Amendments have been made throughout as compared to Section 57 to ensure consistent use of “interim measures” and “urgent interim measures notice”.
- Subsection (17) of Section 57 has not been reproduced here on the basis that no criminal offences are being proposed for Data Act enforcement and Section 44 of the 2002 Act does not apply to the Data Act.
- Subsection (19) of Section 57 has not been reproduced here in light of amendments proposed for Section 63, which render a provision similar to Section 57(19) unnecessary.

Head 48 - Imposition of Urgent Interim Measures by the High Court

To provide that:

The High Court may, on an application by ComReg on notice to the person to whom an urgent interim measures notice has been served under [Head 47 – Urgent interim measures],

- (a) make an order on the same or similar terms as an urgent interim measures notice issued under [Head 47 – Urgent interim measures] that has expired or is to expire, or
- (b) extend or vary urgent interim measures imposed under [Head 47 – Urgent interim measures] for a period beyond the period referred to in subsection (12) of that section.

Explanatory Note:

This Head is modelled on Section 58 of the CRDHDAA 2023. This Head provides that the High Court may, by order, require that, on the expiry of any specified urgent interim measure imposed by ComReg, the breach or conduct cease immediately or within a reasonable time period, and that specified measures be taken to remedy the breach or the effects of the conduct concerned. The High Court may also, by order, impose urgent interim measures or extend measures imposed by ComReg beyond the period allowed under [Head 47 – Urgent interim measures].

The Head contrary to section 58 of the 2023 Act does not set out a different threshold for intervention by the Court. This is to address the practical uncertainties and difficulties arising from requiring the High Court to consider conformation or extension of interim measures based on a different assessment from that conducted by ComReg under Head 2.

This Head simplifies the wording as compared to Section 58 by retaining subsection (2) only which contains the orders that ComReg might seek from the High Court. In particular we believe that the wording of Section 58(1) is not necessary given that the High Court would intervene only “on the expiry of any specified urgent interim measure imposed by ComReg” and that it could create uncertainty (including having regard to subsection 13 of [Head 47 – Urgent Interim Measures]) as regards the effect of the interim measures directed by ComReg.

There is no appeal to the Court of Appeal of a decision of the High Court in respect of interim measures under the CRDHDAA 2023.

Head 49 - Power of ComReg to resolve suspected regulatory breach, etc.

To provide that:

- (1) Where there is evidence that a person may have committed or may be committing a breach, and no adjudicator has made a decision in respect of the matter under [Head 74: Decision of adjudicator in relation to breach], ComReg may enter into an agreement in writing with the person to resolve the matter.
- (2) The terms of such an agreement may include terms under which that person/entity accepts the imposition of administrative sanctions.
- (3) Where a person/entity with whom ComReg has entered into an agreement under this section fails to comply with any of the terms of the agreement, ComReg may apply to the High Court for an order under subsection (4).
- (4) If satisfied on application to it under subsection (3) that the person/entity concerned has failed to comply with any of the terms of the agreement under this section, the High Court may make an order requiring that person/entity to comply with those terms or that term, as the case may be.
- (5) ComReg may, by proceedings brought in a court of competent jurisdiction, recover as a debt due to ComReg the amount of any amount agreed to be paid under an agreement entered into under this section.

Explanatory Note:

This Head is modelled on Section 62 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (“CRDHDA 2023”). This section provides for ComReg to reach a written agreement to resolve a suspected breach of a regulatory obligation that is within their remit in the Data Act. This written agreement must be reached before an adjudication decision has been made; therefore, the written agreement can only apply to a suspected breach. There is no burden of proof on ComReg, and it does not need to prove that an infringement has occurred. This provision is envisaged to be used in the early stages of an investigation and its purpose is to avoid lengthy and costly investigations. It should encourage dialogue and cooperation between ComReg and entities in scope of their remit.

Subsection (1) is intended to outline that if there is evidence that a person has committed a breach of the Data Act that is within ComReg’s remit, it may enter into a written agreement with the suspected infringing party to resolve the infringement. This is an optional provision and ComReg may choose to proceed with normal investigations and decision-making procedures.

Subsection (2) specifies that administrative sanctions may be included as part of the written agreement referred to in Subsection (1). It is not obligatory for administrative sanctions to be included in the written agreement.

Subsection (3) is intended to outline that if the subject of a suspected infringement has entered into an agreement with ComReg, and has not complied with any of the terms of the agreement, ComReg can bring the matter to the High Court. This allows the provisions of the written agreement to be enforced and should encourage all parties to comply with the agreement.

Subsection (4) is intended to outline that the High Court, upon receiving an application from ComReg in relation to Subsection (5), may make a legal order forcing compliance with the written agreement. This should happen if the High Court finds that there was non-compliance with the written agreement.

Subsection (5) is intended to outline that in an instance where ComReg is owed an amount of money as part of the written agreement and that term of the written agreement has not been complied with, ComReg may bring a legal proceeding to recover the amount of money owed to it.

Head 50 – Notice of objections

To provide that:

- (1) As soon as practicable after the completion of an investigation, where ComReg forms the preliminary view that a breach has occurred or is occurring, ComReg shall issue to the person that it believes responsible for the breach, a notice of objections.
- (2) The notice of objections shall inform the person that ComReg has formed the preliminary view that a breach has occurred or is occurring and set out the grounds for ComReg’s preliminary view in sufficient detail to allow the person to fully respond to the notice of objections.
- (3) ComReg shall, when issuing a notice of objections, inform the person of its right to make submissions and the period within which that right may be exercised. ComReg may, where it is appropriate to do so in the circumstances of the case, extend the period within which written submissions may be made.
- (4) ComReg shall, as soon as is practicable after issuing the notice of objections, serve on the notified person a copy of, or access to, any material relied upon by ComReg for the purpose of issuing the notice of objections, subject to such redactions as ComReg may consider necessary and appropriate in order to protect the rights of the parties or any other person, to protect commercially sensitive information, or for any other good and sufficient reason.
- (5) ComReg may on notice to the notified person, amend or revoke a notice of objections, informing the person of its right to make submissions on any amendments in accordance with subsection (3).
- (6) ComReg may (save where such publication would, in the opinion of ComReg, prejudice the achievement of the objectives of this Act) publish a notice of objections on the website of ComReg, with due regard for the protection of commercially sensitive information.

Explanatory Note:

This Head is modelled on Section 63 of the CRDHDAA 2023. It provides for ComReg to issue a notice of objections to a person/entity if ComReg has formed the preliminary view that a breach has occurred or if ComReg has evidence that the person/entity has breached their obligations in the Data Act. There are also provisions for ComReg to amend the notice, revoke the notice, or to publish the notice. This is a formal notice to inform the person/entity that ComReg has evidence that a breach may have occurred, it is not a statement that obligations have definitively been breached. The notice should provide details on:

- what the suspected breach is,
- what the grounds for suspicion are, and
- information on how the person/entity can respond if they wish to do so.

Subsection (4) is intended to outline that an authorised officer must provide access to the evidence related to the suspected breach to the suspected person/entity as soon as possible after issuing the notice of objections to that person/entity. This is subject to any redactions that the authorised officer sees fit – particularly in relation to trade secrets and other commercially sensitive information. The information referred to in Subsection (4) that relates to the grounds for the authorised officer’s suspicion is likely to overlap with some of the evidence in this Subsection.

The Head is modelled in part on Section 63 of the 2023 Act but amended to address important practical issues which materially affect ComReg’s compliance investigations. More specifically:

- this Head makes reference to ComReg rather than an authorised officer. This is a critical amendment allowing for ComReg’s reliance on its multi-disciplinary staff in forming a preliminary view.
- given that the function is one of ComReg rather than an individual authorised officer, the requirement that the authorised officer suspects a breach on reasonable grounds has been replaced with a requirement that ComReg forms a preliminary view, which is more appropriate in respect of a statutory body as compared to an individual.
- this in turn is reflected in the description of the notice, which is referred to as a “notice of objections” rather than a notice of objections. The expression “notice of objections” accurately reflects the nature of the notice, which is to advise the relevant person of the concerns of ComReg in respect of its compliance with regulatory requirements.
- in absence of criminal enforcement for the Data Act, there is no requirement for the choice of enforcement mechanism set out in Section 63(3) of the CRDHDAA 2023 and no such subhead has been provided accordingly.
- Subsection (2) is based on Section 63(4) of the CRDHDAA 2023 with amendments reflecting the fact that the notice will issue from ComReg rather than an authorised officer so requirements as regards the form that ComReg may specify are redundant. The requirement in Section 63(4)(c) of the CRDHDAA 2023 has been maintained and is set out in Subsection (3) which also incorporates for brevity and convenience purposes, the requirement set out in Section 63(7). Similarly the power to revoke a notice of suspected non-compliance in Section 65 of the CRDHDAA 2023 is provided for in subhead (5).

For clarity purposes Subsection (6) deals with the power of the Commission to publish a notice of objections which in turn is modelled on section 66 of the 2023 Act.

It is not proposed to mirror Section 64 of the 2023 Act (“Supplementary notice of suspected non-compliance”) by providing for any supplementary notice of objections as ComReg believes that such a provision is unnecessary in practice and creates procedural complexities. Instead it is proposed to provide in subhead (5) for a power of ComReg to amend a notice of objections, subject always to a right of the notified person to make submissions.

Head 51 – Commitments

To provide that:

- (1) A notified person may at any time prior to the date on which an adjudicator makes a decision under [Insert Head 74 decision of adjudicator] in relation to the regulatory breach specified in a notice of objections (referred to in this Subsection as the “relevant breach”), propose to ComReg in writing measures to appropriately address the breach.
- (2) Where ComReg receives a proposal under subsection (1), it may—
 - (a) consult to the extent that it sees fit in relation to the proposal, including consulting publicly or consulting other persons,
 - (b) where it is of the opinion that it requires further information in order to consider the proposal, by notice in writing served on the person that made the proposal, require the person to give to it within a specified period specified information, and
 - (c) where it considers it necessary to do so, at any time before the proposal is made the subject of a commitment, propose to the person modifications, alterations, additions or other changes to the proposal.
- (3) Where ComReg is satisfied that the terms of the proposal (subject to any modifications, alterations, additions or other changes made to the proposal under subsection (2))—
 - (a) appropriately address the relevant breach, and
 - (b) are clear and unambiguous and capable of being complied with,it may notify the person in writing that it is willing to accept a commitment from the person in relation to the proposal.
- (4) Where a person enters into a commitment with ComReg in accordance with this section (referred to in this Act as a “commitment”), ComReg:
 - (o) shall publish the commitment (save where such publication would, in the opinion of ComReg, prejudice the achievement of the objectives of this Act) on the website of ComReg, with due regard for the protection of commercially sensitive information, as soon as practicable after the notified person has entered into the commitment.
 - (p) shall suspend the administrative sanctions proceedings and take no further step in administrative sanctions proceedings in relation to the relevant breach except as provided for in subsection (5)
- (5) ComReg may on notice to the person who has entered into a commitment, and having afforded the person an opportunity to make submissions, reopen administrative sanctions proceedings in relation to the concerns identified in the notice of objections where it is satisfied that—
 - (a) there has been a material change in any of the facts on which the decision to accept a commitment was based,
 - (b) the person concerned has acted contrary to its commitments, or
 - (c) the information submitted by the person at the time it entered into the commitment was incomplete, incorrect, false, or misleading in a material respect.

(6) A commitment may only be amended or terminated with the written agreement of ComReg and ComReg shall make public on its website any such amendment or termination (save where such publication would, in the opinion of ComReg, prejudice the achievement of the objectives of this Act), with due regard for the protection of commercially sensitive information.

Explanatory Note:

This Head is modelled on Section 67 of the CRDHDAA 2023. This Head provides for a suspected person/entity who has received a notice of objections to voluntarily propose, in writing, a corrective action/measure that they can take to resolve the breach. This should be proposed to ComReg, and it must be proposed before an adjudicator has made a decision in relation to the breach specified in the notice of objections. If ComReg decides to accept the proposal it shall become a binding commitment. ComReg must not continue any enforcement proceedings against the suspected person/entity if that person/entity complies with the commitment and continues to comply with it. ComReg may publish the commitment on its website but must take due care not to disclose any commercially sensitive information. If the suspected person/entity fails to comply or stops complying with the commitment agreement, the suspected person/entity should have an opportunity to make a submission to ComReg. However, ComReg may still resume its enforcement proceedings against the suspected person/entity after receiving that submission. Ensuring that the suspected person/entity has an opportunity to propose its own corrective measures and ensuring that they have the opportunity to make a submission to ComReg if the suspected person/entity stops complying with the commitment are both important parts of fair procedures.

Subsection (1) should provide for the person/entity who received a notice of objections to propose to ComReg, measures or corrective actions that can be taken to resolve the suspected breach. This proposal must be made in writing by the suspected person/entity to ComReg and this proposal can only be made and agreed upon before an adjudicator has made a decision in relation to the breach.

Subsection (2) should provide for what ComReg may do before responding to the proposal it has received from the suspected person/entity. ComReg may consult with other persons or consult publicly. ComReg may request further information from the suspected person/entity and ComReg must be specific in the information that it is requesting and give the suspected person/entity a timeframe by which to respond to the request for information. ComReg may also request or suggest changes to the proposal. This request to alter the proposal must be made before the proposal has been accepted and made binding. This allows for some dialogue between ComReg and the suspected person/entity to create a proposal that they are both satisfied with and can reach an agreement on.

Subsection (3) should specify how ComReg can accept the proposal of the suspected person/entity. ComReg must be satisfied that the proposal is clear and unambiguous, that it is a workable solution and is capable of being complied with and that it appropriately addresses the breach in the notice of objections. If ComReg determines that these criteria have been met, it may notify the suspected person/entity in writing that ComReg may accept a commitment to the proposal. This Subsection includes a proposal which had implemented any changes or alters that may have been requested by ComReg as mentioned in Subsection (2). This Subsection ensures that the proposal must be considered by ComReg to be an effective, feasible and measurable method of compliance of the suspected person/entity.

Subsection (4) should allow for ComReg to publish that it has entered into a commitment with the suspected person/entity and to publish the details of the commitment on ComReg's website. Publication on ComReg's website of the details of the commitment must not disclose any commercially sensitive information and publication of the commitment should not harm the overall

objectives of the Data Act. This is to ensure transparency of the commitment agreement. ComReg shall also suspend all current administrative sanctions proceedings that relate to the commitment with exceptions to this provided for in Subsection (5).

Subsection (5) should set out that ComReg may reopen administrative sanction proceedings in relation to the breach but this should be done after the person has had an opportunity to make submission and if ComReg is satisfied that there has been a material change to any of the facts which influenced the decision to accept a commitment, the person concerned has not complied with its commitments or the information submitted by the person at the time of entering into the commitment was not complete, was incorrect, false or misleading in a material respect.

Subsection (6) is intended to set out how a commitment may be amended or terminated. Both ComReg and the suspected person/entity must agree to the amendment or termination, otherwise the commitment can not be amended or terminated. Requiring mutual agreement is important to avoid either party reneging on the commitment. Providing for the amendment or termination of the commitment is also prudent to ensure that the agreement remains effective and feasible.

This Head is modelled on Section 67 of the 2023 Act save for the few amendments set out below and would be a useful means by which to enforce the Data Act. Amendments as compared to the 2023 Act include the following:

- Subhead (4) and subhead (5) have been restructured in order to provide clarity as regards ComReg's obligations on accepting a commitment, namely publication of the commitment and suspension of the administrative sanction proceedings which are set out in subhead (4) and separately the course of action open to ComReg where the commitment no longer addresses its objections, namely reopening the administrative sanctions proceedings in case of a change in circumstances, non-compliance with the commitment or the information underpinning the commitment was incomplete, incorrect or misleading in a material way. This restructuring avoids use of the double negative in subsection 67(5)(b) which seemingly imposes an onerous obligation on ComReg to ensure at all times that it is satisfied that the information provided was not incomplete, incorrect, false or misleading. Subhead (5) also requires, in accordance with fair procedures, that ComReg may only reopen proceedings on notice to the person concerned and having considered their submissions.
- Subhead (6) includes a slight variation in the wording of section 67(6) to recognise that the commitment is a commitment from the person and amendments or termination will be at behest of the person concerned – which is subject to the written agreement of ComReg.
- The requirement of subsection 67(7) is included in subhead (5).

Head 52 – Settlements

To provide that:

(1) ComReg may at any time prior to the date on which an adjudicator makes a decision under [Head 74 – Decision of Adjudicator] in relation to the regulatory breach specified in a notice of objections agree a settlement with a notified person.

(2) Where ComReg agrees a settlement with a notified person, ComReg shall—

(a) prepare a report containing at least the following:

(i) a summary of the facts of the case;

(ii) the regulatory breach alleged against the notified person;

(iii) details of any administrative sanction to be imposed on the notified person as part of the settlement;

(iv) a statement that ComReg and the notified person consent to the imposition of the administrative sanction referred to in subparagraph (iii);
and

(v) details of any other measures agreed to be taken either by ComReg or by the notified person on foot of the settlement agreement,

(b) give a copy of the report referred to in paragraph (a) to the notified person, and

(c) subject to subsection (4), refer the matter to an adjudicator for an adjudication on consent.

(3) Where at the time the notified person is given a copy of the report in accordance with subsection (3)(b) where the matter has been referred for adjudication under [Head 53(e): Actions following notice of objections]—

(a) ComReg shall notify the adjudicator concerned of the withdrawal of the referral under [Head 53(e): Actions following notice of objections], and

(b) the matter shall be deemed to have been referred to an adjudicator under subsection (3)(c) above for an adjudication on consent.

(4) Where, following the confirmation of an adjudication on consent under [Head 90: Court confirmation of adjudication] the notified person fails to comply with any of the terms of the settlement, ComReg may apply to the High Court for an order under subsection (6).

(5) If satisfied on application to it under subsection (5) that a notified person has failed to comply with an adjudication on consent confirmed under [Head 90(1): Court confirmation of adjudication], the High Court may make an order requiring that person to comply with the adjudication.

(6) ComReg may, by summary proceedings brought in a court of competent jurisdiction, recover as a debt due to ComReg any amount agreed to be paid by the notified person as part of a settlement confirmed by an order of the Court under section 109 (1).

Explanatory Note:

This Head is modelled on Section 68 of the CRDHDAA 2023. This Head allows ComReg to agree on a settlement with the suspected person/entity before going through an adjudication process. Both ComReg and the suspected person/entity have to agree on the terms of the settlement to make it a

binding agreement. An authorised officer will negotiate with the suspected person/entity and will require approval from ComReg before it can agree a settlement with the suspected person/entity. The settlement may include administrative sanctions, however they are not a requirement. The authorised officer will prepare a report on the settlement and provide the report to the suspected person/entity. The authorised officer may then refer the matter for confirmation to an adjudicator for ‘adjudication on consent’ as opposed to an adjudication decision on a dispute or disagreement. This means that if the breach concerned in the notification of objections has already been referred to an adjudicator for adjudication on a dispute in line with [Head 53(e): Actions following notice of objections], it should now be withdrawn and reclassified as an adjudication on consent. However, that applicable if the adjudicator has not already made a decision under [Head 74: Decision of adjudicator in relation to breach]. This Head should also provide that if the suspected person/entity does not comply with the settlement, ComReg will have the right to bring the matter to the High Court and the High Court may order that suspected person/entity to comply with the settlement. Additionally, if the settlement concerns or include a financial penalty, ComReg will have the right to bring summary proceedings against the suspected person/entity to recover any agreed payment as a debt to ComReg. This process of agreeing a settlement provides an alternative to the full adjudication enforcement regime and allows the suspected person/entity to engage with ComReg to come to an agreement.

Subsection (1) is intended to set out that ComReg may agree a settlement with a suspected person/entity in relation to a suspected breach in a notice of objections. The settlement has to be agreed before an adjudicator has made a decision under [Head 74: Decision of adjudicator in relation to breach] in relation to the breach in that notice of objections.

Subsection (2) should state that ComReg must prepare a report on the settlement after ComReg has agreed on the settlement. ComReg must provide the suspected person/entity a copy of the report. This Subsection sets out the details that must be included in the authorised officers report. These are:

- a summary of the facts of the case;
- the alleged breach that the case relates to;
- details on any administrative sanctions to be imposed on the suspected person/entity;
- a statement confirming the mutual agreement and consent to the administrative sanctions included in the settlement; and
- details of any other measure agreed upon in the settlement, whether the measures are to be taken by ComReg or the suspected person/entity.

ComReg must then refer the report and the matter to an adjudicator for adjudication on consent. This means that the adjudicator does not determine or make a decision on if the breach has occurred or if the suspected person/entity is guilty of breaching the Act. The adjudicator in this instance just formally confirms that the settlement is agreed and therefore is binding. The adjudication on consent is subject to Subsection (4) which outlines the procedures if the matter has already been referred to an adjudicator for a decision based on a dispute (a case where a settlement was not agreed and the notice of objections was investigated and referred to an adjudicator for a decision)

Subsection (3) should explain that in a situation where a case has previously been referred to an adjudicator for decision on a suspected breach of the Data Act and the adjudicator has not yet reached a decision, if that matter is the subject of a report for a settlement agreement in Subsection (3), the original case for an adjudication decision should be withdrawn and reclassified as now being referred to an adjudicator for adjudication on consent. If a decision has already been made by an adjudicator in relation to the same notice of objections, then a settlement agreement cannot then be referred to an adjudicator for adjudication on consent., nor can it be reclassified as such. The authorised officer can reclassify the referral if at the time of providing the report in Subsection (3) to the suspected

person/entity, the other adjudication referral is ongoing. This Subsection is meant to avoid duplication of work for an adjudicator and to avoid the adjudicator making two decisions on the same notice of objections. Adjudication on consent should be less cumbersome for an adjudicator, and it is therefore encouraged as it avoids the full enforcement regime and is less resource intensive.

Subsection (4) is intended to set out that after a settlement has been agreed and confirmed by adjudication on consent in line with [Head 90(1): Court confirmation of adjudication], ComReg may apply to the High Court for an order under Subsection (5) if ComReg believes that the suspected person/entity has breached or failed to comply with any terms of the settlement.

Subsection (5) is intended to set out that upon receiving an application from ComReg in line with Subsection (4), the High Court may make an order requiring the suspected person/entity to comply with the settlement/adjudication on consent or to cease breaching the settlement. The High Court must be satisfied with ComReg's application in Subsection (4) in relation to the non-compliance with the settlement before it can make an order. The High Court must assess the application made by ComReg.

Subsection (6) is intended to set out that ComReg may bring summary proceedings against a suspected person/entity if that person/entity has not complied with or breached the settlement if that settlement included a financial penalty. This gives ComReg the opportunity to recover any debts owed to it from a settlement.

Head 53 – Actions following notice of objections.

To provide that:

As soon as is practicable after receiving submissions on the content of a notice of objections issued under [Head 49 – Notice of objections], or where no such submissions are received within the period specified in the notice of objections, as soon as practicable after the specified period had ended, ComReg may—

- (a) carry out further analysis or otherwise continue the investigation into the matter in question,
- (b) on notice to the notified person, amend the notice of objections, informing the person of its right to make submissions on any amendments in accordance with subsection (3) of [Head 51 – Commitments],
- (c) close the investigation,
- (d) enter into commitments under [Head 51 – Commitments] or into a settlement under [Head 52 – Settlements] with the notified person, or
- (e) refer the matter for adjudication in accordance with [Head 54 – Referral report].

(1) An authorised officer, having investigated a suspected regulatory breach, may, subject to [Head 52 – Settlements] and with the consent of ComReg—

- (a) close the investigation and not take any further action in respect of the matter, or
- (b) where the authorised officer suspects on reasonable grounds that the notified person has committed or is committing a regulatory breach, refer the matter in accordance with [Insert Head on Referral of matter by an authorised officer to adjudicator for adjudication] for adjudication.

Explanatory Note:

This Head is modelled on Section 69 of the CRDHDAA 2023. This Head outlines what ComReg can do following the receipt of submissions from a notified person in respect of a notice of objections. ComReg must ensure that any settlements or decision made in [Head 52 – Settlements] are respected – this may mean pausing the referral under this Section or stopping the process entirely until the settlement process has concluded. ComReg can close the case and not take any further action in relation to the suspected breach. This means that ComReg may find that no breach has occurred or that the breach was very minor and did not require enforcement proceedings. This ensures a proportionate and case-by-case approach. ComReg also has the option to refer the case for adjudication. The process for referring the case for adjudication is detailed in [Head 55: Referral of matter to adjudicator for adjudication].

The Head acknowledges the need to set out the steps in the administrative sanctions proceedings which follow the service of a notice of objections. As such it is modelled on Section 69 of the 2023 Act, but with modifications which reflect the fact that the notice of objections and the decision to refer are decisions of ComReg, and not of one authorised officer and that consequently there are additional options open to ComReg including those set out at (a), (b) and (c). It is also noted that options (a) and (b) reflect requirement under fair procedures that submissions made are effectively taken into consideration.

Head 54 – Referral report

To provide that:

- (1) Prior to referring a matter for adjudication ComReg prepare a report (referred to in this Part as a “referral report”) containing—
- (a) a detailed description of the relevant facts of the case,
 - (b) details of the regulatory breach concerned,
 - (c) an outline of the facts and evidence on which ComReg is relying for the purpose of referring the matter for adjudication,
 - (d) a summary of any submissions made by the notified person to ComReg during the investigation, including in response to the notice of objections,
 - (e) ComReg’s assessment of the extent to which the notified person cooperated with the investigation, and
 - (f) any other information that ComReg to be relevant to an adjudication.

Explanatory Note:

This Head is modelled on Section 70 of the CRDHDAA 2023. This Head provides for an authorised officer of ComReg to refer a suspected breach to an adjudicator for adjudication and sets out that the authorised officer must prepare a referral report before adjudication of the suspected breach can begin. The referral report should be clear and provide the adjudicator with the following information:

- details of all of the relevant facts of the case,
- details of the suspected breach of the case,
- the facts and key evidence that the authorised officer has relied on to refer the case for adjudication,
- a summary of all submissions or responses made to ComReg by the suspected person/entity in relation to the investigation. This includes responses to the notice of objections,
- the authorised officer’s judgement on whether the suspected person/entity was cooperative with the investigation, and
- any other evidence or material which may be considered by the authorised officer to be relevant to the adjudicator and adjudication.

Listing out the criteria required in the referral notice ensures conformity and consistency for adjudicators receiving notices and will streamline the referral process. Additionally, including tall of the submissions or responses that may have been made by the suspected person/entity will allow the adjudicator to fully understand both sides of the case. This should allow for a more appropriate and fair adjudication process.

Head 55 – Referral of matter to adjudicator for adjudication

To provide that:

- (1) ComReg refers a matter for adjudication he or she shall provide the adjudicator with—
 - (a) the notice of objections served by ComReg under [Head 50 – Notice of objections], and any amendment of the notice of objections made by ComReg
 - (b) the referral report,
 - (c) a copy of all material relied upon by ComReg in forming his or her opinion, and
 - (d) any submissions made by the notified person during the investigation.
- (2) ComReg, as soon as is practicable after providing an adjudicator with the information specified in subsection (1), give the notified person—
 - (a) a copy of the referral report, and
 - (b) a copy of, or access to, any material (other than material that has already been provided to the notified person) relied upon by ComReg for the purpose of referring the matter for adjudication, subject to such redactions as ComReg considers necessary and appropriate in order to protect the rights of the parties or any other person, to protect commercially sensitive information, or for any other good and sufficient reason.

Explanatory Note:

This Head is modelled on Section 71 of the CRDHDAA 2023. This Head sets out the process for an authorised officer to transfer a case to an adjudicator for adjudication. An adjudicator should receive all of the relevant material to the case and the suspected person/entity should also receive a copy of this information. Ensuring that both the adjudicator and the suspected person/entity have access to the same case material and report is an important part of fair procedures and should provide for transparency for all involved in the case.

Section (1) is intended to set out that the authorised officer must provide the adjudicator with:

- the notice of objections and supplementary notice that was issued to the suspected person/entity;
- the referral report which is outlined in [Head 54 – Referral report];
- any other evidence or material that was relied upon by ComReg for the case; and
- any submissions or responses received from the suspected person/entity.

Subsection (2) is intended to set out what the suspected person/entity should receive when the authorised officer refers the case to an adjudicator for adjudication. This should include all of the material/reports that the adjudicator received in Subsection (1) – however some redactions may be made to any documents containing sensitive material. Additionally, if the suspected person/entity has already received some of this material from the authorised officer at an earlier stage of the case, there is no obligation for the authorised officer to provide this material to the suspected person/entity again. This avoids duplication of work for the authorised officer. The suspected person/entity should receive a copy of the referral report and any evidence that the authorised officer relied upon during the case that the suspected person/entity has not received already.

Head 56 – Withdrawal by ComReg of matter referred to adjudicator

To provide that:

- (1) A referral under [Head 52(3)(c) – Settlements] or [Head 53 – Actions following notice of objections] may be withdrawn by ComReg at any time before the adjudicator makes an adjudication or, as the case may be, an adjudication on consent.
- (2) Where a referral is withdrawn under this section, the adjudicator shall—
 - (a) notify the notified person of the withdrawal, and
 - (b) take no further action in relation to the matter.

Explanatory Note:

This Head is modelled on Section 72 of the CRDHDAA 2023. This Head allows ComReg to withdraw a case which has been submitted to an adjudicator at any time before the adjudicator has made a decision on the case. Once the adjudicator has made a decision ComReg can no longer withdraw the case. Withdrawal of a case should apply for both cases where the adjudicator is making an adjudication and where the adjudicator is making an adjudication on consent.

Subsection (1) is intended to set out that ComReg may withdraw a case that has been referred to an adjudicator if the adjudicator has not yet made a decision on that case. ComReg can withdraw a case that has been referred for adjudication but also cases that have been referred for adjudication on consent.

Subsection (2) is intended to set out that after a case has been withdrawn by ComReg, the adjudicator must notice the suspected person/entity that was the subject of the case and the adjudicator must then take no further action in relation to the case.

Head 57 – Power of ComReg to share certain documents

To provide that:

- (1) ComReg may provide a copy of any notice or document referred to in [Head 50 – Notice of objections, [Head 55: Referral of matter to adjudicator for adjudication]] or [Insert Head on Notification by adjudicator following referral/section 83] to such other persons as ComReg considers appropriate, subject to such redactions as ComReg considers appropriate.
- (2) A person that is provided with a copy of a notice or document under subsection (1) subject to redactions may appeal against the decision of ComReg to make such redactions—
 - (a) within 14 days of the date of service the copy of the notice or document, and
 - (b) by application to the adjudicator to whom the matter has been referred under [Head 55: Referral of matter to adjudicator for adjudication].
- (3) A person who receives—
 - (a) a copy of a document referred to in subsection (1), or
 - (b) copies of materials under [Head 50(5) – Notice of objections] or [Head 55(2): Referral of matter to adjudicator for adjudication].shall not, without the prior authorisation of ComReg, disclose the existence or the content of the document or materials to any other person.
- (4) A person who contravenes subsection (3) commits an offence and is liable on summary conviction to a class A fine.

Explanatory Note:

This Head is modelled on Section 73 of the CRDHDAA 2023. This Head allows ComReg to share any documents relating to enforcement with third parties – this is intended to be other regulators, any third parties affected by the enforcement or for consultation with experts. ComReg must ensure that any commercially sensitive information or personal information is redacted. If the documents contain information that is not relevant to the third party that ComReg is sharing it with, then that information should also be redacted. Recipients of the information will have the right to appeal any redactions to the adjudicator within 14 days of receiving the document from ComReg. Recipients of documents in this Section must ensure that the documents are safely and securely stored and that the documents are kept confidential unless otherwise indicated by ComReg. If the third party breaches the confidentiality of the document, then the third party is subject to a criminal offence.

Subsection (1) sets out that ComReg has the power to share documents: notices of objections, referral reports and notifications by adjudicators following a referral. ComReg can share these documents – subject to any necessary redactions – with third parties such as other regulators, any third parties affected by the case and any experts or consultants. ComReg must ensure that all confidential or commercially sensitive information is appropriately redacted before sharing the documents with third parties.

Subsection (2) sets out that a third party who receives a redaction document in line with this Head may appeal the redactions. This appeal must be made to the adjudicator, not ComReg. The appeal must be made within 14 days of receiving the document.

Subsection (3) is intended to set out that any person/entity that receives a document under this Head or under [Head 50(5) – Notice of objections and Head 55(2): Referral of matter to adjudicator for adjudication]. cannot disclose or share the documents further without ComReg's authorisation.

Subsection (4) is intended to set out that any person/entity who breaches Subsection (3) shall be guilty of a criminal offence and is liable on summary conviction to a class A fine.

Head 58 - Regulations and rules relating to referrals to adjudicator

To provide that:

- (1) The Minister may prescribe the procedure for—
 - (a) making a referral under [Head 52(3)(c) – Settlements]
 - (b) withdrawing a referral under [Head 56 – Withdrawal by ComReg of matter referred to adjudicator], and
 - (c) making an application for an adjudication on consent under [Head 90(1): Court confirmation of adjudication].
- (2) ComReg may, subject to this Act and to any regulations made under subsection (1), make rules detailing the procedure for—
 - (a) making a referral under [Head 52(3)(c) – Settlements]
 - (b) withdrawing a referral under [Head 56 – Withdrawal by ComReg of matter referred to adjudicator], and
 - (c) making an application for an adjudication on consent under [Head 90(1): Court confirmation of adjudication].

Explanatory Note:

This Head is modelled on Section 74 of the CRDHDAA 2023. This Head allows the Minister to set out formal procedures via a Regulation for settlement referrals (adjudication on consent), withdrawals of referrals and consent adjudications. These are Heads 52, 56 and [Head 90: Court confirmation of adjudication]. ComReg also has the power to make detailed rules relating to the same Heads as long as those detailed rules align with the overall objectives of the Act and with any Ministerial Regulations. This is important to ensure that there is a clear framework for adjudication to operate in and that they receive referrals in a clear and coordinated way.

Subsection (1) is intended to set out that the Minister may make formal regulations to create more detailed procedures for the Heads mentioned – these are Heads relating to the referral process of a case to adjudicators, withdrawal of referrals and for making an application for an adjudication on consent.

Subsection (2) is intended to set out that ComReg can create more detailed operational rules and procedures on how to implement the procedures that the Minister may set out in Subsection (1). The rules the ComReg creates must comply with the obligations of this Act and any procedures set out by the Minister. This provides for ComReg to ensure that the procedures are practicable and that they can operate those procedures effectively.

Head 59 - Nomination of adjudicators

To provide that:

- (1) ComReg shall nominate persons who may be appointed by the Minister under [Head 60 – Appointment of Adjudicators].
- (2) ComReg may nominate persons under subsection (1), including members of ComReg, employees and members of staff of ComReg, who have, in the opinion of ComReg, sufficient relevant expertise to merit such appointment whether or not the persons are members or employees of ComReg.
- (3) The Minister shall, in a manner ensuring the independence of adjudicators in the performance of their functions, prescribe categories of persons who may be nominated and criteria, including requirements and qualifications, by which to determine whether or not a person is eligible to be nominated by ComReg for appointment by the Minister as adjudicators (including a Chief Adjudicator).

Explanatory Note:

This Head is modelled on Section 75 of the CRDHDAA 2023. This Head outlines how ComReg may nominate an individual to be appointed as an adjudicator by the Minister for the purposes of ComReg’s role under this Act. This process must respect the requirement for independence of adjudicators.

Subsection (1) is intended to set out that ComReg may nominate an individual to be appointed by the Minister as an adjudicator for the purposes of the Data Act. The Minister may appoint an individual as set out in [Head 60 – Appointment of Adjudicators].

Subsection (2) is intended to set out that ComReg may nominate an individual for appointment as an adjudicator as outlined in Subsection (1). That individual may be a member of ComReg’s staff, a member of its own Commission or any other individual that ComReg considers to have the necessary expertise for adjudication of the Data Act. The nominee does not have to be a member or employee of ComReg.

Subsection (3) is intended to set out that the Minister must prescribe categories of eligible persons, set criteria, requirements and qualifications for nomination and must ensure the independence of adjudicators in performing their functions. This is important to ensure that adjudicators are appointed based on their suitability, expertise and merit for the role.

Head 60 - Appointment of adjudicators

To provide that:

- (1) The Minister shall appoint persons (referred to in this Act as “adjudicators”) to make adjudications.
- (2) The Minister shall appoint a person nominated by ComReg under [Head 59 - Nomination of adjudicators] unless the Minister—
 - (a) is not satisfied that the nominated person meets the requirements and qualifications prescribed by the Minister, or
 - (b) considers that the nominated person does not have the independence necessary to be appointed as an adjudicator.
- (3) ComReg shall appoint one of the adjudicators appointed under this section to be the Chief Adjudicator.
- (4) Nothing in this Act or the Communications Regulation Act 2002 or in any regulations made under either Act shall prevent—
 - (a) the Minister appointing, under and in accordance with this section, as an adjudicator a person who is, on the nomination of ComReg, appointed as an adjudication officer or Chief Adjudication Officer under the Communications Regulation Act 2002, the Communications Regulation and Digital Hub Development Agency Act 2023 or
 - (b) a person who is appointed by the Minister, under and in accordance with this section, as an adjudicator being appointed as an adjudication officer or Chief Adjudication Officer under the Communications Regulation Act 2002 or the Communications Regulation and Digital Hub Development Agency Act 2023.
- (5) The Minister may make regulations providing for the creation of a panel of adjudicators to perform the functions of adjudicators under this Act.
- (6) If no Chief Adjudicator stands appointed by ComReg under this section the adjudicators standing appointed may agree that one of them perform the functions of Chief Adjudicator.

Explanatory Note:

This Head is modelled on Section 76 of the CRDHDAA 2023. This Head provides for how adjudicators are formally appointed by the Minister. ComReg shall nominate individuals for appointment as an adjudicator as set out in [Head 59 - Nomination of adjudicators].

Subsection (1) is intended to set out that the Minister may appoint adjudicators to carry out functions under ComReg’s remit within the Data Act.

Subsection (2) is intended to set out that the Minister must appoint a person nominated by ComReg unless the Minister considers that the nominee does not meet the prescribed requirements or qualifications for the role, or the Minister believes that the nominee is not compliant with the requirement for independence of adjudicators.

Subsection (3) is intended to set out that once the Minister has appointed adjudicators for the Data Act, ComReg may appoint one of those adjudicators to act as a Chief Adjudicator. This allows an adjudicator appointed for the purposes of the Data Act to be appointed as the Chief Adjudicator for ComReg.

Subsection (4) is intended to ensure that appointment of adjudicators under this Act is harmonised with those in the Communications Regulation Act 2002 and the Communications Regulation and Digital Hub Development Agency Act 2023. A person who has been already appointed as an adjudication officer under the 2002 or the 2023 Act may still be appointed as an adjudicator under this Act. Similarly, a person who is appointed as an adjudicator under this Act may also be appointed as an adjudication officer for the 2002 and 2023 Acts.

Subsection (5) is intended to set out that the Minister may make regulations to provide for the creation of a panel of adjudicators for this Act.

Subsection (6) is intended to set out that if no Chief Adjudicator has been appointed by ComReg under this section, then the adjudicators may themselves agree to appoint a Chief Adjudicator to act in that capacity.

Head 61 - Independence of adjudicators

To provide that:

- (1) Adjudicators shall be independent in the performance of their functions.
- (2) ComReg shall put in place measures to ensure—
 - (a) the independence of adjudicators in the performance of their functions, and
 - (b) the effective implementation of, and adherence to, any regulations made under [Head 64: Regulations in relation to adjudicators] .
- (3) Where an adjudicator believes that performing any of his or her functions as an adjudicator in particular administrative sanctions proceedings would potentially create a conflict of interest, then the adjudicator shall recuse himself or herself from the proceedings in question and shall notify ComReg and the parties concerned of the recusal.
- (4) Where an adjudicator believes that performing any of his or her functions as an adjudicator would give rise to the perception of any potential conflict of interest, the adjudicator shall disclose that fact to ComReg and to the parties concerned in the matter with which the adjudicator is dealing, and shall, having regard to any submissions received from the person concerned or from ComReg, consider whether it is necessary to recuse himself or herself from the proceedings in question.
- (5) An adjudicator shall not make an adjudication where that adjudicator has been involved in any decision of ComReg whether or not to exercise any of the powers referred to in [Head 49 – Power of ComReg to resolve suspected regulatory breach, etc.] to [Head 58 – Regulations and rules relation to referral to adjudicator] (inclusive) for the purposes of an investigation in relation to the matter the subject of the adjudication.
- (6) An adjudicator shall not, during the period of his or her appointment, draw up or decide upon—
 - (a) guidelines under [Head 81: Guidelines](other than subsection (1)(f)), or
 - (b) the policy of ComReg concerning—
 - (i) the making of referrals under [Head 52(3)(c): Settlements] or [Head 55: Referral of matter to adjudicator for adjudication], and
 - (ii) administrative sanctions that may be imposed under [Head 75: Decision of adjudicator in relation to administrative sanction],

but may be consulted in the drawing up or deciding upon of such policy or guidelines, as the case may be.
- (7) Where a decision of ComReg referred to in subsection (5) is made as a college, or in any other manner whereby a decision of ComReg is treated as having been made by all members of ComReg, a member of ComReg who recused himself or herself from the process of making that decision shall, for the purposes of subsection (5), be deemed not to have been involved in that decision, provided that the recusal took place at a point and in a manner which does not compromise the independence of the member of ComReg as an adjudicator.
- (8) The chairperson of ComReg shall not during his or her term of office serve as an adjudicator.
- (9) A member of ComReg may not during his or her term of office serve as Chief Adjudicator.

(10) A member of ComReg or a member of staff of ComReg who is appointed as an adjudicator or is appointed to assist an adjudicator under [Head 65: Assistants to adjudicators] shall not be required by ComReg or by any other person to perform any duty, including any statutory duty, of a member of ComReg or a member of staff ComReg or of an authorised officer or of an adjudicator the performance of which interferes with his or her independence in making an adjudication or, in the case of a person appointed to assist an adjudicator under [Head 65: Assistants to adjudicators], the independence of an adjudicator whom he or she is assisting or may assist.

Explanatory Note:

This Head is modelled on Section 77 of the CRDHDAA 2023. This Head sets out the safeguards surrounding the independence of adjudicators in performing their role under the Data Act. This means that both the adjudicators and ComReg will have to avoid any conflicts of interest, maintain impartiality and ensure that adjudicators are not subject to interferences or influence.

Subsection (1) is intended to set out that adjudicators must be independent in the performance of their functions. This means that the adjudicators must be free from any external pressures, influences or conflicts of interest. This is an important part of fair procedures and maintains legitimacy and transparency surrounding the adjudication process.

Subsection (2) is intended to set out that ComReg must take the necessary measure to guarantee the adjudicators independence as far as possible. ComReg must also take measures necessary to ensure compliance with any regulations that are made under [Head 64: Regulations in relation to adjudicators].

Subsection (3) is intended to set out that if an adjudicator believes that performing their role for an administrative sanctions proceedings would cause a conflict of interest or impair their independence, the adjudicator must remove themselves from the proceedings and must notify ComReg and the parties concerned in the proceedings. The adjudicator should notify ComReg as soon as the adjudicator decides to remove himself or herself from the proceedings. This allows for an adjudicator to recognise when their impartiality might be impaired and take action. This is important to provide transparency for the process.

Subsection (4) is intended to set out that where the adjudicator perceives that there may be a conflict of interest, the adjudicator must disclose this perceived conflict of interest to ComReg and the parties involved in the proceedings. The adjudicator should then consider recusing himself or herself from the proceedings. The adjudicator must consider any submissions from ComReg or the parties involved in relation to the perceived conflict of interest. This is only for a perceived conflict of interest and is intended to recognise that even a perceived conflict of interest may damage the legitimacy of proceedings or bias the proceedings.

Subsection (5) is intended to set out that adjudicators should be barred from adjudication matters if the adjudicator was previously involved in the investigative proceedings and decision under [Head 49 – Power of ComReg to resolve suspected regulatory breach etc.] to [Head 58: Regulations and rules relating to referrals to adjudicator] (inclusive). This is to ensure that there is a clear separation between the investigation and the adjudication proceedings.

Subsection (6) is intended to set out that adjudicators should not be involved in:

- drafting guidelines under [Head 81: Guidelines](other than subsection (1)(f))
- deciding ComReg policy on
 - the making of referrals under [Head 52(3)(c): Settlements] or [Head 55: Referral of matter to adjudicator for adjudication], and

- administrative sanctions that may be imposed under [Head 75: Decision of adjudicator in relation to administrative sanction],

Adjudicators may be consulted however, this should not compromise or affect their independence.

Subsection (7) is intended to set out that if ComReg's decision was made collectively, a member of the ComReg who formally recused themselves is not considered to have participated, provided that the recusal was timely and did not undermine their independence. This is intended to protect adjudicators who are also ComReg members from being unfairly disqualified.

Subsection (8) is intended to set out that the chairperson of ComReg may not also act as an adjudicator at all during their term as chairperson. This is to ensure independence and separation of the roles.

Subsection (9) is intended to set out that a member of ComReg may not be appointed as Chief Adjudicator during the member's term of office. However, ComReg members may be appointed as an adjudicator. This is intended to again ensure independence of the adjudicator by separating the adjudicator from ComReg's executive functions.

Subsection (10) is intended to set out that any adjudicators or those assisting them under [Head 65: Assistants to adjudicators] must not be assigned any duty that could compromise or interfere with their independence. This includes any duties as ComReg members, staff, authorised officers.

Head 62 - Regulations to ensure independence of adjudicators

To provide that:

- (1) The Minister shall make regulations prescribing requirements to be imposed upon ComReg and adjudicators to implement [Head 61 - Independence of adjudicators].
- (2) Adjudicators shall not be involved in investigations of regulatory breaches and shall not act as authorised officers under this Act subject to such exceptions as the Minister may prescribe.
- (3) Regulations under this section may make further provision for the independence of adjudicators (including an effective internal separation between the functions of ComReg and the functions of adjudicators) and any such regulations shall (where appropriate) include provision for—
 - (a) a requirement that adjudicators, and employees of ComReg tasked with assisting adjudicators, shall not communicate with authorised officers, employees and members of ComReg in respect of any proceeding relating to a regulatory breach before ComReg arising under this Act save on notice to the persons concerned in those proceedings the subject of a referral under [Head 52(3)(c): Settlements] or [Head 55: Referral of matter to adjudicator for adjudication], or as otherwise permitted by regulations, which may include communications relating to investigations in which the adjudicators, and employees of the Commission tasked with assisting the adjudicators, have not been nor will be involved in any decision under [Head 55: Referral of matter to adjudicator for adjudication],
 - (b) a requirement that documentation and other information concerning an investigation conducted under [Head 49 – Power of ComReg to resolve suspected regulatory breach etc.] to [Head 58: Regulations and rules relating to referrals to adjudicator] (inclusive) which have been obtained by ComReg in the performance of its functions under this Act, shall not be disclosed to adjudicators that have been directed to make an adjudication in relation to that same investigation or to employees of ComReg or other persons (including any consultant or adviser) tasked with assisting such adjudicators save in accordance with this Act and upon notice to the persons concerned in any referral under [Head 52(3)(c): Settlements] [Head 55: Referral of matter to adjudicator for adjudication],
 - (c) arrangements for oversight by specified members or employees of ComReg for compliance by ComReg with the provisions of [Head 61 - Independence of adjudicators],
 - (d) reporting to the Minister or ComReg by specified members or employees of ComReg or by adjudicators of any breach of [Head 61 - Independence of adjudicators] and for remedying any such breach,
 - (e) a requirement that ComReg publish policies and implement measures sufficient to identify and manage conflicts of interest on the part of—
 - (i) adjudicators, and
 - (ii) any employee of ComReg or other person (including any consultant or adviser) tasked with assisting an adjudicator in the performance of his or her functions under this Act,

and

(f) a requirement that the Chief Adjudicator and ComReg report annually to the Minister on ComReg's compliance with the principle of independence under [Head 61 - Independence of adjudicators] and any regulations made hereunder and the policies the adjudicators or ComReg have adopted in order to do so.

Explanatory Note:

This Head is modelled on Section 78 of the CRDHDAA 2023. This Head provides the regulatory framework to support and enforce the independence of adjudicators as set out in [Head 61 - Independence of adjudicators]. It allows the Minister to prescribe specific requirements and allows for more detailed provisions to be created which will ensure functional separation, conflict management and oversight within ComReg.

Subsection (1) is intended to set out that the Minister may make regulations to ensure the independence of adjudicators in [Head 61 - Independence of adjudicators].

Subsection (2) is intended to set out that adjudicators are prohibited from participating in investigations of regulatory breaches, and acting as authorised officers. There may be some exceptions to this which may be prescribed by the Minister, however this should be very limited in scope and must be a justified and reasoned exemption.

Subsection (3) is intended to set out that there are specific areas and provisions where the regulations that the Minister makes should apply to. These are:

- Communication restrictions. Adjudicators and their assistant/support staff must not communicate with ComReg members or authorised officers about the proceedings unless notice is given to the parties involved in the proceedings or the communication is permitted by regulation.
- Investigation-related documents must not be disclosed to adjudicators assigned to adjudicate that same matter except in accordance with this Act and upon notice to the parties involved.
- Regulations may establish oversight mechanisms within ComReg to monitor compliance with [Head 61 - Independence of adjudicators].
- Provisions on reporting and remediation. Provision may be made for reporting breaches of [Head 61 - Independence of adjudicators] to the Minister or ComReg. Regulations may also be made to address how these breaches should be remedied.
- Conflicts of interest. ComReg must publish and implement policies to identify and manage conflict of interest relating to adjudicators or any person assisting adjudicators.
- Annual reports. The Chief Adjudicator and ComReg must report annual to the Minister on compliance with the independence of adjudicators and any policies adopted to uphold that independence of adjudicators.

Head 63 - Adjudicators may sit together

To provide that:

The powers and functions of an adjudicator shall be exercisable by each adjudicator for the time being standing appointed save that the Chief Adjudicator may direct that an uneven number of adjudicators sit together for the purpose of a particular adjudication or part of an adjudication and where the Chief Adjudicator so directs the functions of an adjudicator for that purpose shall be performed by those adjudicators sitting together.

Explanatory Note:

This Head is modelled on Section 79 of the CRDHDAA 2023. This Head provides flexibility in how adjudication is conducted by allowing multiple adjudicators to sit together on a case. This must be done under the direction of the Chief Adjudicator. This is to ensure that adjudicative powers can be exercised both individually and collectively. This is especially important for more complex or technically intricate cases. The Chief Adjudicator will have the power to convene a panel of adjudicators which must be an uneven number to sit together for a case or part of a case.

Head 64 - Regulations in relation to adjudicators

To provide that:

The Minister shall, in a manner ensuring the independence of adjudicators in the performance of their functions, make regulations to provide for each of the following:

- (a) the term of appointment of adjudicators (including the term of appointment of a Chief Adjudicator), which term shall be specified in the instrument of appointment, and may be—
 - (i) fixed and non-renewable, or
 - (ii) fixed and renewable based upon objective, independently assessed competence-based criteria prescribed by the Minister under [Head 59(3): Nomination of adjudicators].
- (b) the remuneration of the Chief Adjudicator and other adjudicators, which remuneration may—
 - (i) not be reduced during the term of their appointment save in accordance with law, and
 - (ii) vary depending on the category of person prescribed by the Minister under [Head 59(3): Nomination of adjudicators] into which the adjudicator falls;
- (c) such prohibitions on remuneration of adjudicators during their term of office, by persons or bodies other than ComReg, as are necessary to ensure that actual or perceived conflicts of interest do not arise in the performance of the adjudicator's functions;
- (d) the renewal of appointment of adjudicators, including criteria for such renewal;
- (e) the resignation from office of adjudicators;
- (f) procedures and criteria whereby the revocation of appointments of adjudicators may only take place upon decision by the Government after independent assessment and recommendation by persons outside ComReg with relevant experience and expertise and where—
 - (i) the adjudicator concerned has become incapable through ill-health of effectively performing his or her functions,
 - (ii) the adjudicator concerned has engaged in serious misconduct, or
 - (iii) ComReg has been notified of an adjudicator's conflict of interest in more than one matter, which conflict of interest is assessed to be likely to continue,without prejudice to the automatic removal from office as an adjudicator of an employee of ComReg upon cessation of that employment;
- (g) the functions of the Chief Adjudicator;
- (h) the rules concerning adjudications by adjudicators sitting together;
 - (i) the rules concerning promotion and increments of employees of ComReg who act as adjudicators;

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

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

Explanatory Note:

This Head is modelled on Section 80 of the CRDHDAA 2023. This Head provides that the Minister may make regulations that govern the appointment, remuneration, conduct and operational framework of adjudicators. This also includes the Chief Adjudicator. Any regulations must comply with the requirement for independence of adjudicators as set out in [Head 61 - Independence of adjudicators].

Subsection (a) is intended to set out that regulations may by the Minister must specify the duration of the adjudicator's appointment. This includes the Chief Adjudicator. The term of appointment may be:

- Fixed and non-renewable,
- Fixed and renewable, but this must be based on objective and competence-based criteria which are independently assessed and prescribed under [Head 59(3): Nomination of adjudicators]

Subsection (b) is intended to set out that regulations may concern the remuneration of adjudicators. This includes:

- Protection against reduction in remuneration during their term (unless permitted by law),
- Differentiation in pay based on the category of adjudicator as defined in [Head 59(3): Nomination of adjudicators].

Subsection (c) is intended to set out that regulations may state there is a prohibition on external remuneration for adjudicators. This is to prevent actual or perceived conflicts of interest. Regulation must prohibit adjudicators from receiving any external remuneration for any person or body other than ComReg during their term as an adjudicator.

Subsection (d) is intended to set out that regulations may concern criteria and procedures for the renewal of an adjudicators appointment.

Subsection (e) is intended to set out that regulations may concern the process by which an adjudicator may resign from their position as an adjudicator.

Subsection (f) is intended to set out that regulations may concern the revocation of appointment as an adjudicator must be done by a Government decision. An exception to this is if a ComReg employees ceases employment – there is automatic revocation of their role as adjudicator if this occurs. This decision can occur only after an independent assessment and recommendation by a qualified person or persons outside of ComReg. The ground for revocation include but are not limited to:

- Incapacity due to medical reasons,
- Serious misconduct,
- Repeated conflicts of interest which are likely to persist or occur again.

Subsection (g) is intended to set out that regulations may concern the specific functions of the Chief Adjudicator.

Subsection (h) is intended to set out that regulations may concern the procedural rules for adjudications that are conducted by multiple adjudicators sitting together as laid out in [Head 63 - Adjudicators may sit together].

Subsection (i) is intended to set out that regulations may concern how employees of ComReg who act as adjudicators may receive a promotion or salary increments.

Subsection (j) is intended to set out that regulations may concern how ComReg staff may be assigned to assist adjudicators.

Subsection (k) is intended to set out that regulations may concern the appointment and role of external consultants or advisers who assist adjudicators in performing their functions.

Head 65 - Assistants to adjudicators

To provide that:

- (1) ComReg may from time to time—
 - (a) require any employee of ComReg, or
 - (b) appoint such persons (including any consultant or adviser) as it considers necessary,
to assist adjudicators, or an individual adjudicator (including the Chief Adjudicator),
in the performance of functions under this Act.
- (2) Persons assisting an adjudicator in accordance with subsection (1) shall not provide such assistance in connection with any matter in which they have or may have a conflict of interest.
- (3) The Chief Adjudicator may at any time direct that an employee of ComReg required to assist the adjudicators, or an individual adjudicator, under subsection (1)(a) in the performance of powers and functions under this Act, be reassigned by ComReg.
- (4) Persons required to, or appointed to as the case may be, assist adjudicators under subsection (1) may perform other tasks on behalf of ComReg, including performing tasks in any investigation in which they have not been, and will not be, involved in assisting an adjudicator under this section, but they shall be solely responsible to the Chief Adjudicator, or to the adjudicator or adjudicators to which they have been individually assigned, in relation to providing assistance in accordance with subsection (1).
- (5) Employees of ComReg who have been required to assist adjudicators under subsection (1)(a) and persons appointed by ComReg to assist adjudicators under subsection (1)(b) shall not be subject to the direction of any member or employee of ComReg, (other than, where such member or employee is the adjudicator) in relation to the performance of the functions referred to in that subsection.
- (6) Nothing in subsection (5) shall preclude an employee of ComReg or other person appointed by ComReg being subject to the direction of a member or employee of ComReg in relation to the performance of functions not referred to in subsection (1)(a).
- (7) Without prejudice to the responsibility of ComReg for employment and for entering into contracts and determining all matters relevant thereto, where an adjudicator has made a determination that specific assistance is required in a particular matter referred to the adjudicator for a decision under section 90, the adjudicator shall be consulted on decisions concerning the appointment and assignment of a person to provide assistance to the adjudicator.
- (8) The Minister may prescribe detailed requirements governing the appointment and assignment of persons to assist adjudicators under subsection (1)(b).
- (9) The Minister may, where it is necessary to enable the proper functioning of ComReg, make regulations prescribing such limited exceptional circumstances in which persons referred to in subsection (5) may be subject to a direction referred to in that subsection.

Explanatory Note:

This Head is modelled on Section 81 of the CRDHDAA 2023. This Head provides a framework for how adjudicators may be assisted by ComReg employees, consultants, and advisers. This is to

established the rules to prevent conflicts of interest and ensure that adjudicators remain fully independent.

Subsection (1) is intended to set out that ComReg may appoint its own employees or an external person to assist adjudicators in performing their functions under this Act.

Subsection (2) is intended to set out that any person that is assistant an adjudicator must recuse themselves from their role is there is a conflict of interest.

Subsection (3) is intended to set out that the Chief Adjudicator shall have the authority to reassign ComReg employees that are assisting adjudicators.

Subsection (4) is intended to set out that assistants to adjudicators may also carry out other ComReg duties including investigative work, but this is provided that the investigative work is not on the same matter that the adjudicator is making a decision on. In relation to the adjudication-related task that the assistant is working on, they are accountable to the adjudicator that they are assigned to and not any other person or adjudicator.

Subsection (5) is intended to set out that assistants must not be directed by any other ComReg member or staff. The assistant must be directed by the adjudicator that they are assisting and not any other person.

Subsection (6) is intended to set out that assistant to adjudicators may be directed by ComReg staff or members for non-adjudication tasks.

Subsection (7) is intended to set out that if an adjudicator determined that they required specific assistance in their role, then the adjudicator must be consulted on who is appointed as their assistant.

Subsection (8) is intended to set out that the Minister may issue regulations governing how external persons may be appointed and assigned to assist adjudicators.

Subsection (9) is intended to set out that the Minister may make regulations allowing limited exceptions to the rule in Subsection (5) above. This is only if it is necessary for the proper functioning of ComReg.

Head 66 - Effect of appointment as adjudicator on terms of employment or contract with ComReg

To provide that:

(1) Nothing in this Part shall preclude ComReg from relying on any aspect of a contract of service or contract for services in relation to the performance or non-performance of tasks other than—

(a) the functions of an adjudicator under this Act, and

(b) the functions of a person required to assist adjudicators under [Head 65(1)(a)- Assistants to adjudicators] when assisting an adjudicator.

(2) The appointment of a person as an adjudicator shall not in itself—

(a) constitute employment by or within ComReg,

(b) constitute the holding of a position in the civil service, or

(c) otherwise create a contract between an adjudicator on the one part and the Minister or ComReg on the other part.

(3) Save in relation to the application of independence requirements to an adjudicator, nothing in this Part shall alter the terms and conditions of employment of an adjudicator who is an employee of ComReg on the date on which this section comes into operation.

(4) Save for such limited exceptions consistent with the independence of adjudicators in the performance of their functions that the Minister may prescribe, nothing in this Part shall prevent the application by ComReg of disciplinary procedures under a contract of employment save in respect of—

(a) the tasks of an adjudicator under this Act, and

(b) the tasks of a person required to assist adjudicators under [Head 65(1)(a)- Assistants to adjudicators] when assisting an adjudicator.

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

Explanatory Note:

This Head is modelled on Section 82 of the CRDHDAA 2023. This Head provides that the appointment of a person as an adjudicator does not alter their employment states, create unintended contractual relationships, or compromise the independence of adjudicators. It should also delineate the limits of ComReg's authority over adjudicator and the assistants of adjudicators.

Subsection (1) is intended to set out that ComReg retains the right to enforce contractual obligations for non-adjudication tasks. This should include both tasks unrelated to the adjudication functions under this Act and also tasks unrelated to assistance referred to in [Head 65(1)(a) - Assistants to adjudicators].

Subsection (2) is intended to set out that the appointment as an adjudicator does not constitute employment or civil service states/ Therefore being appointed as an adjudicator does not make the person an employee of ComReg, it does not confer civil service status, and does not create a contract between the adjudicator and the Minister or ComReg. This is intended to ensure the independence of the adjudicator.

Subsection (3) is intended to set out if a ComReg employee is appointed as an adjudicator, their employment terms remain unchanged.

Subsection (4) is intended to set out that ComReg may apply disciplinary procedures in relation to tasks outside the adjudication function, and tasks outside the assistance function as set out in [Head 65(1)(a) - Assistants to adjudicators]. There are some very limited exemptions which may be prescribed by the Minister but these must be independent with the independence requirements for adjudicators.

Subsection (5) is intended to set out that the Minister may make regulations to clarify or expand and provide more detailed on the provisions of this Head.

Head 67 - Notification by adjudicator following referral

To provide that:

As soon as practicable after a referral is made to an adjudicator under [Head 52(3)(c) – Settlements] or [Head 55: Referral of matter to adjudicator for adjudication], the adjudicator shall serve on the notified person—

- (a) a copy of this section,
- (b) in the case of a referral under [Head 52(3)(c) – Settlements], a notice in writing stating that the matter has been referred for an adjudication on consent under [Head 90: Court confirmation of adjudication], and asking the person to confirm the matters set out in the report prepared in accordance with [Head 52(3)(a) – Settlements] within the period of 15 days from the date of service of the notice, or such further period, not exceeding 7 days, as the adjudicator may specify in the notice, and
- (c) in the case of a referral under [Head 55 – Referral of matter to adjudicator for adjudication], a notice in writing stating that the person may make written submissions to the adjudicator on the referral report within the period of 30 days beginning on the date of service of the notice, or such further period, not exceeding 15 days, as the adjudicator may specify in the notice.

Explanatory Note:

This Head is modelled on Section 83 of the CRDHDAA 2023. This Head sets out the duty of the adjudicator to notify a suspected person/entity once the adjudicator has formally received a case for adjudication. The notification is different if the case is a case for adjudication on consent in line with [Head 52 – Settlements], or if the case is a case for adjudication in line with a referral receive under [Head 55: Referral of matter to adjudicator for adjudication].

The adjudicator must as soon as possible after formally receiving a referral of a case, notify the suspected person/entity of the case. The adjudicator must provide the suspected person/entity with a copy of this section/Head which outlines the suspected person/entity's rights and obligations.

If the case has been referred under a settlement for adjudication on consent, the suspected person/entity must confirm the matters in the settlement report within 15 days – with a possibility for a 7-day extension. The suspected person/entity must confirm that the facts and sanctions of the settlement were agreed to.

If the case was referred for adjudication under [Head 55 – Referral of a matter by authorised officer to adjudicator for adjudication], the suspected person/entity may make a written submission regarding the referral report within 30 days – with possibility for a 15-day extension. The 30-day period to make a submission to the adjudicator begins once the suspected person/entity has been noticed by the adjudicator that the adjudicator has formally been referred a case by an authorised officer.

Head 68 - Actions following referral under [Head 52(3)(c) – Settlements].

To provide that:

Where a notified person served with a notice in accordance with [Head 67(b) - Notification by adjudicator following referral] confirms the matters set out in the report prepared in accordance with [Head 52(3)(a) – Settlements], an adjudicator may, at any time following such confirmation, impose on the person, in accordance with the report any of the following:

- (a) a requirement to cease the regulatory breach or to take specified measures to remedy the breach;
- (b) a financial penalty in accordance with [Head 78: Requirement to pay financial penalty];
- (c) a requirement to pay a refund in accordance with [Head 79: Requirement to pay refund];
- (d) a requirement to pay compensation in accordance with [Head 80: Requirement to pay compensation.];

Explanatory Note:

This Head is modelled on Section 84 of the CRDHDAA 2023. Subsection (e) of Section 84 of the CRDHDAA 2023 is not applicable for the Data Act and therefore has been removed from this Head. This Head gives legal enforcement power to the settlement of [Head 52 – Settlements] and outlines what powers an adjudicator has after a suspected person/entity confirms the details of a settlement referral – a referral for adjudication on consent in line with [Head 52 – Settlements]. The adjudicator can only utilise these powers once the suspected person/entity has confirmed that the details of the settlement were agreed. The timeframe for the suspected person/entity in relation to this is set out in [Head 67 - Notification by adjudicator following referral]. The adjudicator is simply formalising and imposing the agreed sanctions as opposed to changing the details or deciding upon its own sanctions. This Head provides for the adjudicator to give legal effect to the settlement sanctions.

The adjudicator may:

- order the suspected person/entity to cease the breach or to take the measures specified in the settlement to remedy the breach;
- impose a financial penalty as agreed in the settlement and in line with [Head 78: Requirement to pay financial penalty];
- order the suspected person/entity to pay a refund as agreed in the settlement and in line with [Head 79: Requirement to pay refund];
- order the suspected person/entity to pay compensation as agreed in the settlement and in line with [Head 80: Requirement to pay compensation.];

Head 69 - Actions following referral under [Head 55 – Referral of matter to adjudicator for adjudication].

To provide that:

- (1) In the case of a referral under [Head 55: Referral of matter to adjudicator for adjudication] the adjudicator may do any of the following that he or she considers necessary to resolve an issue of fact or otherwise enable the adjudicator to make an adjudication:
- (a) exercise any of the powers under [Head 71 – Powers of adjudicators and offences];
 - (b) request further information from the person concerned;
 - (c) request further information from any other person, and may, for the purposes of doing so, provide, with due regard for the protection of commercially sensitive information, a copy of the referral report to the person;
 - (d) conduct an oral hearing.
- (2) Where there is a dispute of fact which cannot be successfully resolved in accordance with paragraphs (a) to (c) of subsection (1) the adjudicator concerned shall, on the request of the notified person, conduct an oral hearing in order to resolve the dispute.
- (3) Where an oral hearing takes place at which a person may make submissions to the adjudicator on the referral report, the adjudicator shall not be required to give to the person the material referred to in subsection (5).
- (4) As soon as practicable after making a request under subsection (1)(c), the adjudicator shall give to ComReg, and shall, with due regard for the protection of commercially sensitive information, give to the notified person, a copy of the request.
- (5) As soon as practicable after receiving any information pursuant to a request under subsection (1)(c), the adjudicator shall, with due regard for the protection of commercially sensitive information, give ComReg and the person—
- (a) a copy of the information or, where commercial confidentiality means that such information cannot be provided in full, a summary of such information, and
 - (b) written notice stating that ComReg and the person may make written submissions to the adjudicator on the information within the period of 21 days beginning on the date of service of the notice, or such further period, not exceeding 14 days, as the adjudicator may specify in the notice.
- (6) A person who receives a copy of a report under subsection (1)(c), shall not, without the prior authorisation of the adjudicator, disclose the existence or the content of the report to any other person.
- (7) A person who contravenes subsection (6) commits an offence and is liable on summary conviction to a class A fine.
- (8) An adjudicator may direct an employee of ComReg who has been required under [Insert Head on Assistants to adjudicators/Section 81(1)(a)] to assist the adjudicator in the performance of his or her functions to make any communication on his or her behalf.

Explanatory Note:

This Head is modelled on Section 85 of the CRDHDAA 2023. This Head outlines what powers an adjudicator has after receiving a referral for adjudication under [Head 55 – Referral of matter to adjudicator for adjudication]. These powers do not apply to a referral received for adjudication on consent. That is outlined in the previous Head [Head 68 - Actions following referral under [Head 52(3)(c) – Settlements]]. After an adjudicator has formally received a referral from an authorised officer for adjudication and the adjudicator has notified the suspected person/entity that the adjudicator has received a referral, the adjudicator should have tools to:

- resolve the disputes of the facts of the case;
- gather any extra information necessary;
- conduct an oral hearing; and
- implement any other measures required to ensure transparency of the procedures and fairness for both sides of the case.

The powers are necessary to ensure that the adjudicator has all of the information and context necessary to understand the case and should lead to a fairer decision.

Subsection (1) sets out the adjudicators powers to resolve issues. The adjudicator may use the powers it has under [Head 71 – Powers of adjudicators and offences.]. The adjudicator should also have the power to result any additional information it considers to be necessary from the suspected person/entity or any other third parties. The adjudicator may also conduct an oral hearing if this is necessary to resolve any factual disputes or if it would be useful in clarifying any complex issues.

Subsection (2) further sets out that an adjudicator may conduct an oral hearing if the powers the adjudicator has in Subsection (1)(a)-(c) are not sufficient to resolve the dispute of the facts of the case.

Subsection (3) is intended to set out that if an oral hearing is held in line with Subsection (2), the adjudicator is not required to re-provide any information or material referred to in Subsection (5), that was previously made in the oral hearing in relation to submissions received on the referral report.

Subsection (4) is intended to set out that if any adjudicator requests information from a third party in line with Subsection (1)(c), the adjudicator must give a copy of the request for information to both ComReg and the suspected person/entity. The adjudicator must give this copy to ComReg, and the suspected person/entity as soon as possible must consider any necessary redactions to commercially sensitive information. This is necessary to provide transparency to both ComReg and the suspected person/entity.

Subsection (5) is intended to set out that once the adjudicator receives any information pursuant to a request under Subsection (1)(c), the adjudicator must provide a copy of that information to both ComReg and the suspected person/entity. The adjudicator must also make both ComReg and the suspected person/entity aware that written submissions may be made to the adjudicator within 21 days of receiving a copy or summary of the information that the adjudicator received. This timeframe for written submission to be made to the adjudicator may also be extended by 14 days if necessary. This provides for both sides of the case to offer their comments on the new information and ensures transparency.

Subsection (6) is intended to set out that any person/entity who receives a referral report under Subsection (1)(c) can not disclose that report without the adjudicator's permission. This is to ensure that confidential and commercially sensitive data is protected.

Subsection (7) is intended to set out that if a person/entity does not comply with Subsection (6), and that person/entity discloses the referral report or shares it without the adjudicator's permission, that person/entity is guilty of a criminal offence and is liable on a summary conviction to a class A fine.

Subsection (8) is intended to set out that an adjudicator may direct an employee of ComReg that was appointed under [Insert Head on Assistants to adjudicators/Subsection 81(1)(a)], to communicate on behalf of the adjudicator. This provides for a flexible and more efficient approach to utilising resources.

Head 70 – Admissibility of evidence and rules for oral hearings conducted by adjudicators

To provide that:

- (1) This section applies to an oral hearing before an adjudicator.
- (2) An adjudicator may, by notice, in writing—
 - (a) summon a witness to appear to give evidence, or to produce before the adjudicator any books, documents or records in such person's power or control, or to do both, and
 - (b) require the witness to attend an oral hearing from day to day unless excused, or released from further attendance, by the adjudicator.
- (3) An adjudicator may require evidence to be given on oath or affirmation, and may for that purpose—
 - (a) require a witness to take an oath or affirmation, and
 - (b) administer an oath to the witness orally or permit the witness to affirm.
- (4) The oath or affirmation to be taken by a witness for the purposes of this section is an oath that the evidence the witness will give shall be true.
- (5) The adjudicator may allow a witness at the oral hearing to give evidence by tendering a written statement, provided such statement is verified on oath or affirmation.
- (6) Without prejudice to subsections (1) to (5), the adjudicator has the same powers, rights and privileges as a judge of the High Court when hearing civil proceedings on the occasion of that action including with respect to—
 - (a) the attendance and examination of witnesses on oath or affirmation or otherwise (including witnesses who are outside the State), and
 - (b) compelling the production (including discovery) of records or an identified category or categories of records.
- (7) An oral hearing under this section may, at the discretion of the adjudicator, be held remotely (including in an online format), and evidence may be tendered as permitted by regulations or by an adjudicator.
- (8) At the oral hearing before the adjudicator—
 - (a) an authorised officer or other representative of ComReg or any other person, with leave of the adjudicator, shall present the evidence in support of the referral, and
 - (b) the testimony of witnesses attending the oral hearing shall be given in accordance with this section and any regulations made under this section.
- (9) A person to whom notice is given under subsection (2), or an authorised officer, may be examined and cross-examined at the oral hearing.
- (10) At any oral hearing before an adjudicator, there shall be a right to cross-examine witnesses and call evidence in defence and reply.
- (11) An oral hearing before an adjudicator shall be held in public unless the adjudicator is satisfied that, given the existence of special circumstances (which shall include whether information given or likely to be given in evidence is commercially sensitive information), the hearing or part of the hearing should be held otherwise than in public.

(12) If special circumstances exist (which shall include whether information given or likely to be given in evidence is commercially sensitive information), an adjudicator may impose restrictions on the reporting or distribution of information given at the hearing.

(13) The payment or reimbursement of, or of any part of, the reasonable travelling and subsistence expenses of a witness required to attend an oral hearing, is at the discretion of the adjudicator, and such expenses shall be discharged by ComReg.

(14) The rules of evidence shall apply to an oral hearing before an adjudicator save as may be otherwise prescribed.

(15) Nothing in this section compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person's possession, power or control.

(16) The Minister may make regulations setting out further details or conditions for the receipt of evidence or the conduct of oral hearings under this section.

(17) Subject to any regulations under subsection (16), ComReg shall make rules providing for the conduct of an oral hearing under this section and shall publish such rules on the website of ComReg.

(18) Rules made under subsection (17) shall not have effect until they are published.

Explanatory Note:

This Head is modelled on Section 86 of the CRDHDAA 2023. This Head sets out the procedural rules and powers for adjudicators when conducting an oral hearing as part of an investigation. The purpose of this Head is to ensure that the oral hearings are transparent, fair and legally robust. An adjudicator may summon a witness and administer an oath.

Subsection (1) is intended to set out that this Section applies to oral hearings conducted by an adjudicator.

Subsection (2) is intended to set out that the adjudicator may summon a witness to give evidence or to produce documents to the adjudicator. The adjudicator must provide a notice in writing to the witness to require the witness to give evidence or produce documents. The witness must attend the oral hearing until the adjudicator excuses the witness.

Subsection (3) is intended to set out that the adjudicator may require the witness to give evidence under oath or affirmation. This is to ensure that any testimonies given are truthful and are legally binding. The adjudicator can administer the oath or allow the witness to affirm.

Subsection (4) is intended to set out that the witness must swear that the evidence that they provide will be true. This is to ensure that the witness is truthful and honest.

Subsection (5) is intended to set out that the adjudicator may allow the witness to provide written evidence if that evidence is verified by the witness under oath or via affirmation. This is to provide flexibility in the proceedings and in the case that written evidence may be more efficient to the proceedings.

Subsection (6) is intended to set out that the adjudicator should have the same powers a High Court judge in civil cases. This covers examining witnesses and compelling the production or discovery of documents. This provides the adjudicator with a powerful legal toolbox to ensure that they can effectively manage cases and obtain evidence.

Subsection (7) is intended to set out that the oral hearings may be conducted online or remotely. This will provide for a more efficient and modern proceedings process.

Subsection (8) is intended to set out that during the oral hearings process, an authorised officer, ComReg, a representative of ComReg, or any other person may, with the permission of the adjudicator, present the evidence of support of the referral of the case to the adjudicator. The testimony of the witnesses attending the oral hearing must follow the rules of this Section. This is intended to ensure that all evidence is presented fairly and in line with the relevant processes.

Subsection (9) is intended to set out that a person/witness or authorised officer/ComReg employee who receives a notice from the adjudicator under Subsection (2) may be examined or cross-examined at the oral hearing.

Subsection (10) is intended to set out that at an oral hearing parties may cross-examine and call evidence in defence and reply. This is to ensure the right to a fair hearing and full participation of all parties involved in the oral hearing.

Subsection (11) is intended to set out that oral hearings shall be public unless there is a special circumstance which reasonably justifies privacy. This is to promote and provide for transparency in all oral hearings but to allow exceptions for certain cases such as when commercially sensitive information is involved.

Subsection (12) is intended to set out that an adjudicator may restrict the reporting or distribution of sensitive information. This is to protect commercially sensitive information and privacy.

Subsection (13) is intended to set out that an adjudicator may approve the reimbursement of any reasonable travel/subsistence expenses incurred by a witness in order for that witness to attend the oral hearing. ComReg must pay this reimbursement.

Subsection (14) is intended to set out that the standard rules of evidence shall apply to oral hearings under this Section unless otherwise prescribed. This is to maintain the legal integrity of the process.

Subsection (15) is intended to set out that no witness, authorised officer, ComReg representative or other person shall be compelled to disclose any legally privileged information. This is to protect confidential information or legal communications.

Subsection (16) is intended to set out that the Minister may make regulations on evidence and the oral hearing procedures. This will allow for more detailed or updated procedures to be set out in the future if needed.

Subsection (17) is intended to set out that ComReg must make a publish rules for oral hearings. This is to ensure that there is legal certainty and clarity for all on how the oral hearings process should be conducted. ComReg must publish the rules on it's website.

Subsection (18) is intended to set out that the rules that ComReg makes under Subsection (17) shall only be binding after they are published on ComReg's website.

Head 71 – Powers of adjudicators and offences.

To provide that:

(1) At any time after a referral under [Head 53 – Actions following notice of objections] an adjudicator may, on an application by ComReg or the notified person or of the adjudicator’s own motion, where the adjudicator is satisfied that such direction is necessary for the determination of the issues before the adjudicator—

(a) direct authorised officers of ComReg, or the notified person (each of which, in this section, is referred to as a “party”) to answer (whether on oath or affirmation or otherwise) an identified question or questions in whatever manner or form the adjudicator may specify,

(b) direct a party to adduce evidence or produce books, documents and records in its power or control, and

(c) direct a party to clarify any issue of fact that an adjudicator may deem necessary.

(2) An answer to a question put to a person in response to a direction under subsection (1)(a) is not admissible as evidence against the person in criminal proceedings, other than proceedings for perjury in circumstances where the contested response or information was provided on oath or affirmation.

(3) A summons issued by the adjudicator for the purpose of an oral hearing under [Head 70 - Admissibility of evidence and rules for oral hearings conducted by adjudicators] may be substituted for, and is the equivalent of, any formal process capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of records.

(4) A person the subject of a direction under this section shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in this section as a witness appearing in proceedings before the Court.

(5) A person commits an offence if the person—

(a) is served with a notice under [Head 70(2) - Admissibility of evidence and rules for oral hearings conducted by adjudicators] and does not comply with that notice,

(b) is subject to a direction under subsection (1) and fails to comply with such direction,

(c) having been duly summoned to attend before an adjudicator under [Head 70(2) - Admissibility of evidence and rules for oral hearings conducted by adjudicators] fails without reasonable excuse to attend at the time and place indicated on the summons,

(d) while attending as a witness before an adjudicator at an oral hearing under [Head 70 - Admissibility of evidence and rules for oral hearings conducted by adjudicators] refuses to—

(i) give evidence in the manner lawfully required by the adjudicator to be taken,

(ii) produce any record in the person’s power or control that the person is lawfully required by the adjudicator to produce, or

(iii) answer any question that the person is lawfully required by the adjudicator to answer,

or

(e) while attending before the adjudicator engages in any conduct that, if the adjudicator were a court of law having power to punish for contempt, would be contempt of court.

(6) Where a person fails to comply with a requirement of an adjudicator under [Head 70 - Admissibility of evidence and rules for oral hearings conducted by adjudicators], with a direction under subsection (1), or with a summons to attend before an adjudicator, or refuses, while attending as a witness before the adjudicator, to do anything referred to in subsection (5) that the person is lawfully required by an adjudicator to do, or otherwise fails to comply with a direction of the adjudicator, the Court, on summary application by a party, on notice to that person, may—

(a) by order require the person to attend before the adjudicator or to do the thing that the person refused to do, as the case may be, within a period to be specified by the Court, and

(b) make such interim or interlocutory orders as it considers necessary for that purpose.

(7) A person commits an offence if, having been, or in anticipation of being, required to produce a book, document or record under subsection (1) or under [Head 70(2) - Admissibility of evidence and rules for oral hearings conducted by adjudicators], he or she intentionally or recklessly destroys or otherwise disposes of, falsifies or conceals such book, document or record or causes or permits its destruction, disposal, falsification or concealment.

(8) If information or evidence is provided by a person to an adjudicator in connection with any function of an adjudicator under this Part, that person commits an offence if—

(a) the information or evidence is false or misleading in a material respect, and

(b) the person knows, or ought reasonably to know, that it is false or misleading in a material respect.

(9) A person who provides any information to another person, knowing the information to be false or misleading in a material respect, or who recklessly provides any information to another person which is false or misleading in a material respect, knowing the information is to be used for the purpose of providing information to an adjudicator in connection with any of his or her functions under this Act, commits an offence.

(10) A person who commits an offence under subsection (5), (7), (8) or (9) is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or

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

(11) Proceedings may be brought for an offence under this section regardless of whether or not an order has been made, or has been applied for, under subsection (6).

(12) The Minister may make regulations setting out further details or conditions for the exercise of the powers of adjudicators under this section.

(13) In this section, “Court” means the High Court.

Explanatory Note:

This Head is modelled on Section 87 of the CRDHDAA 2023. This Head outlines the powers that are granted to adjudicators for enforcement proceedings under this Act. This Head outlines the offences that are incurred if those enforcement powers are not complied with. The adjudicator may compel evidence and testimonies, and there are offences for non-compliance or obstruction.

Subsection (1) is intended to set out that an adjudicator following referral, may issue a direction to parties (either to ComReg or the notified person). This power is intended to give adjudicator the ability to gather all information necessary from the parties involved. The directions may require the parties to:

- (a) answer specific questions,
- (b) provide evidence or documents under their control, and
- (c) to clarify any facts.

Subsection (2) is intended to set out that the answers given to the adjudicator under Subsection (1)(a) cannot be used against the person in criminal proceedings, with the exception of cases of perjury. This is envisaged to protect against self-incrimination and to encourage honesty while under oath.

Subsection (3) is intended to set out that a summons issued by an adjudicator for the purposes of an oral hearing shall be treated as legally equivalent to a court-issued summons. This provides adjudicators with a quasi-judicial authority to compel attendance to the oral hearing.

Subsection (4) is intended to set out that a person complying with the direction of an adjudicator under this Head is entitled to the same legal protections as a witness in court would be. This should provide for protection for persons against self-incrimination.

Subsection (5) is intended to set out what behaviour of a person would constitute an offence under this Head. This should provide legal certainty and clarity for the person involved. The offences are:

- Ignoring a notice under [Head 70(2) - Admissibility of evidence and rules for oral hearings conducted by adjudicators.
- Disobeying a direction under subsection (1).
- Failing to attend a hearing without a valid or justified reason.
- Refusing to give evidence, produce records/documents or answer questions.
- Engaging in behaviour which if in a court, would be considered contempt of court.

Subsection (6) is intended to set out a judicial enforcement mechanism which adjudicators may use. This section sets out that if a person fails to comply with [Head 70 - Admissibility of evidence and rules for oral hearings conducted by adjudicators], or with directions from an adjudicator under this Head, an adjudicator may apply to the High Court so that the High Court may:

- Order the person to comply within a specific time,
- Issue interim orders which should facilitate compliance.

Subsection (7) is intended to set out that it is an offence for a person to destroy, falsify, or conceal documents that are required or requested by an adjudicator. This is to ensure that all information required by an adjudicator remains available to them and that the integrity of the adjudication process is maintained.

Subsection (8) is intended to set out that providing false or misleading information or evidence to an adjudicator is an offence if the information or evidence is materially false and if the person knew or should have been reasonably expected to know that the information was false or misleading.

Subsection (9) is intended to set out that it is an offence to knowingly or recklessly provide false information to another person, particularly if it is likely that the information provided will be used in adjudication.

Subsection (10) is intended to set out the penalties for a person who commits an offence under this Head. The penalties should reflect the seriousness of obstructing and undermining the process of adjudication. These penalties are:

- Summary conviction: class A fine or up to 6 months imprisonment, or both.
- Conviction on indictment: up to 5 years imprisonment or a fine up to €250,000, or both.

Subsection (11) is intended to set out that proceedings to be brought for an offence do not require the High Court to have been applied to by an adjudicator under subsection (6) of this Head. Offences may be prosecuted regardless of whether a High Court order was sought or granted. This is to ensure that criminal liability for obstruction or undermining the adjudication process is not reliant on civil enforcement.

Subsection (12) is intended to set out that the Minister may make regulations to give further detail or set out conditions on the powers of adjudicators.

Subsection (13) is intended to set out that “Court” in this Head should be interpreted as the High Court.

Head 72 - Orders for costs in proceedings before adjudicator

To provide that:

(1) No order as to costs shall be made in proceedings before an adjudicator save that an adjudicator may in his or her discretion award the costs of proceedings before an adjudicator against a respondent person or, as the case may be, ComReg if the adjudicator finds that the person or ComReg has engaged in improper, irregular, unfair, or unsatisfactory conduct in connection with the investigation of the alleged regulatory breach or in the conduct of proceedings before the adjudicator.

(2) A requirement to pay costs under subsection (1) shall be proportionate to the nature and extent of the conduct that the person or, as the case may be, ComReg is found to have engaged in, and may be limited to a proportion of the overall costs of proceedings or to the costs of a particular part of the proceedings.

Explanatory Note:

This Head is modelled on Section 88 of the CRDHDAA 2023. This Head sets out the rules for how legal costs are dealt with in adjudication proceedings. Generally, each party to the adjudication should bear its own costs, however, the adjudicator should have the discretion to award costs against either the suspected person/entity or ComReg if the adjudicator finds that the suspected person/entity or ComReg have behaved in an improper or unfair manner during the investigation or adjudication. This is aimed to encourage all parties to behave in a manner that is honest, fair and conducive to the investigation and adjudication. Any costs awarded by the adjudicator must be proportionate to the misconduct.

Subsection (1) is intended to set out that in general, no costs should be awarded to either part by the adjudicator. Each party should bear their own costs. However, there is an exception to this – where an adjudicator considers that either the suspected person/entity or ComReg have behaved in an improper, unfair or a manner that has undermined the adjudication or investigation, the adjudicator may award costs against that party.

Subsection (2) is intended to set out that any costs awarded by the adjudicator in Subsection (1), must be appropriate to the level of misconduct and may be limited to the costs of a specific part of the proceedings of the case where the misconduct took place.

Head 73 - Regulations in relation to proceedings before adjudicator

To provide that:

(1) The Minister may make regulations setting out detailed requirements in relation to decisions of an adjudicator under [Head 74: Decision of adjudicator in relation to breach] and [Head 75: Decision of adjudicator in relation to administrative sanction], in order to implement this section and otherwise in relation to the conduct of proceedings before an adjudicator in any matter referred to an adjudicator under [Head 55 – Referral of matter to adjudicator for adjudication] (in this section referred to as “proceedings”), having regard to the need for efficiency and the rights of the defence, including but not limited to all or any of the following:

- (a) the form and manner of provision of information, records, documents, statements, admissions and evidence to be provided to ComReg or to the adjudicator;
 - (b) time limits to apply to the making and conduct of proceedings;
 - (c) the attendance of witnesses at an oral hearing;
 - (d) the form, and manner of making, of requests by an adjudicator for information, discovery or disclosure from a party to a proceeding, or a person other than a party;
 - (e) the provision by ComReg, or by an adjudicator, to a party to proceedings, or a person other than a party to proceedings, of information received by the adjudicator or ComReg;
 - (f) procedures for the consolidation and hearing of two or more proceedings together;
 - (g) procedures for the separation of proceedings;
 - (h) the publication on the website of ComReg of information and documents provided, for the purposes of proceedings, by a party to a proceeding or by a person other than a party to proceedings;
 - (i) the form and manner in which a proceeding may be withdrawn;
 - (j) any consequential, supplementary or transitional provisions as appear to the Minister to be necessary or expedient for the purpose of giving effect to the regulations.
- (2) ComReg shall publish guidelines on the conduct of proceedings and may publish guidelines on any of the matters the subject of regulations under subsection (1).

Explanatory Note:

This Head is modelled on Section 89 of the CRDHDAA 2023. This Head allows the Minister to make regulations that detail how adjudicators handle the proceedings of matters referred to them under [Head 55 – Referral of matter to adjudicator for adjudication]. This is intended to set a framework for adjudicators to manage disputes and enforcement proceedings. The regulations made by the Minister should provide clarity of the proceedings, ensure fairness for all parties involved in the case and create efficiencies for resolving the cases. This Head also obliges ComReg to publish any guidelines that are made under this Head to ensure transparency.

Subsection (1) sets out that the Minister (for M/ETE) shall have the power to make regulations allowing for more detailed rule for adjudicators. The rules can cover:

- the specific form and how information should be provided to ComReg or the adjudicator,

- setting deadlines for starting and conducting proceedings to ensure that cases are handled efficiently and fairly,
- the attendance of witnesses at an oral hearing,
- the specific form and how an adjudicator can request information, discovery or disclosure from parties or third parties,
- how ComReg or adjudicator share any information received with a party or a third party,
- that a number of cases may be combined into one hearing if it is appropriate,
- that one case may be split into multiple cases if it is appropriate,
- that ComReg may publish documents and information submitted to it during enforcement proceedings on its website to enhance transparency of the process. These documents and information must be related to the proceedings.
- how a case can be withdrawn from proceedings,
- any other additional rules or guidelines that are necessary to make the regulations effective – including any transitional arrangements.

Subsection (2) sets out that ComReg must publish on its website any guidelines or regulations that relate to the conduct of proceedings. ComReg may also publish guidelines on any of the specific matters which are covered in Subsection (1).

Head 74 - Decision of adjudicator in relation to breach

To provide that:

(1) An adjudicator shall consider the following when making a decision in relation to a matter referred to him or her under [Head 55 - Referral of matter to adjudicator for adjudication]:

- (a) the notice of objections served under [Head 50: Notice of objections];
- (b) the referral report;
- (c) any written submissions made by the notified person on the notice of objections and the referral report;
- (d) any submissions, statements, admissions, information, records or other evidence provided to the adjudicator in the course of the proceedings;
- (e) any prior relevant adjudication that has been confirmed by the High Court under [Head 90: Court confirmation of adjudication].

(2) In any matter referred to an adjudicator under [Head 55 - Referral of matter to adjudicator for adjudication] the adjudicator may make a decision as to whether, on the balance of probabilities, a person has committed or is committing a regulatory breach.

(3) A decision under subsection (2) shall be dated and include—

- (a) the reasons for the decision,
- (b) the notice of objections,
- (c) the evidence, including any information, records, documents, statements, admissions, evidence and written and oral submissions, considered,
- (d) information regarding the right of appeal provided for under [Head 87: Appeal against adjudication] where a final decision has been made,
- (e) the name of the person found to have committed, or to be committing, a regulatory breach, and the nature of the breach, and
- (f) such other particulars or material as the adjudicator considers appropriate.

(4) For the avoidance of doubt, a decision may be made under subsection (2) or [Head 75: Decision of adjudicator in relation to administrative sanction.] in relation to conduct that is no longer ongoing at the time at which the decision is made.

Explanatory Note:

This Head is modelled on Section 90 of the CRDHDAA 2023. Section (3) of the CRDHDAA 2023 is not included in this Head as there are no regulatory breaches in the Data Act that would have the seriousness as to constitute a criminal offence. This Head sets out how an adjudicator must make decisions when a case is referred to them under [Head 55 - Referral of matter to adjudicator for adjudication]. An adjudicator must consider a number of different matters before it can make a decision. This is to ensure that the adjudicator has a full picture of the case and reaches a fair decision which is cognisant of these matters. This Head ensures the adjudicators must follow a structure and fair process, that decisions are based on all of the evidence received and that the standard of proof is in line with civil cases. The adjudicator must also provide clear reasoning and documentation to the suspected person.

Subsection (1) sets out what an adjudicator must consider before it can make a decision. This includes:

- the notice of objections,
- the referral report prepared by ComReg,
- any written submissions or applications made by the suspected person,
- all evidence that has been presented during the proceedings up to this point – this includes during the investigation,
- any previous cases or adjudications that have been confirmed by the High Court that are relevant.

Subsection (2) sets out that the adjudicator may decide, on the balance of probabilities, whether or not a suspected person has committed or is continuing to commit a regulatory breach of the Data Act. This is in line with civil proceedings and has a lower threshold than an criminal offence.

Subsection (3) sets out that the adjudicators decision must be dated and must include:

- the reasons for the decision
- the notices of objections,
- all of the evidence that has been considered
- information on the suspected persons right to lodge an appeal against the decision under [Head 87: Appeal against adjudication].
- the name of the person who the adjudicator believes has committed the breach and the nature of the breach,
- any other relevant details that the adjudicator considers appropriate to include.

Subsection (4) states that if the suspected breach is no longer ongoing at the time of the decision of the adjudicator, the adjudicator may still make a decision in relation to the activity. This ensures that there is accountability for breaches even if they are not still ongoing.

Head 75 - Decision of adjudicator in relation to administrative sanction

To provide that:

(1) Where an adjudicator makes a decision under [Head 74(2) - Decision of adjudicator in relation to breach], that a person has committed a regulatory breach he or she may, subject to this section, do one or more of the following:

(a) require the person to cease the regulatory breach or to take specified measures to remedy the breach;

(b) impose a financial penalty on the person in accordance with [Head 78: Requirement to pay financial penalty];

(c) require the person to pay a refund to a third party in accordance with [Head 79: Requirement to pay refund];

(d) require the person to pay compensation to a third party in accordance with [Head 80: Requirement to pay compensation.];;

(2) A decision under this section shall specify the time period within which the person is required, subject to any appeal, to cease a regulatory breach or to take specified measures to remedy the breach or to pay any financial penalty, refund or compensation.

(3) In determining the amount of any financial penalty to be imposed the adjudicator shall have regard to the matters outlined in [Head 78: Requirement to pay financial penalty].

(4) After reaching a decision under [Head 74(2) - Decision of adjudicator in relation to breach] and prior to making a decision under subsection (1), the adjudicator shall provide ComReg and the person to whom the decision relates with a copy of the decision under [Head 74(2) - Decision of adjudicator in relation to breach] and shall inform ComReg and the person of the intention of the adjudicator to do one or more of the things set out in subsection (1).

(5) The adjudicator shall invite ComReg and the person concerned to make written submissions in accordance with subsections (6) and (8).

(6) ComReg may, within a period of 15 working days from the date on which the adjudicator invites it to make written submissions in accordance with subsection (5), or within such further period as is considered appropriate by the adjudicator and specified when inviting submissions, make written submissions to the adjudicator in relation to the application of the criteria specified in [Head 78: Requirement to pay financial penalty], the amount of any financial penalty that may be imposed and in regard to guidelines made by ComReg under [Head 81: Guidelines.] (1)(b) to (d).

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

(8) The person concerned may—

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

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

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

make written submissions to the adjudicator in relation to the application of the criteria specified in section 94, the amount of any financial penalty and in regard to guidelines made by ComReg [Head 81: Guidelines.] (1)(b) to (d).

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

Explanatory Note:

This Head is modelled on Section 91 of the CRDHDAA 2023. Section (1)(e) of the CRDHDAA 2023 has been removed from this Head as that specifically relates to the electronic communications code which is not applicable nor appropriate for the Data Act. Several sections in the CRDHDAA 2023 refer to the Section 98(1)(a) – (e). Point (e) of that section has been removed from this Act as again it specifically concerns matters relating to the European electronic communications code which are not appropriate for the Data Act. Therefore, it is simply (1)(a) – (d) in this Act. Section (9) of Section 91 of the CRDHDAA 2023 has also been removed from this Head as it is another measure specific to the European electronic communications code.

This Head outlines what sanctions an adjudicator may impose after deciding that a suspected person has committed a regulator breach under [Head 74 - Decision of adjudicator in relation to breach]. It also sets out the procedural steps that must be followed by the adjudicator before imposing those sanctions. This includes allowing for ComReg and the suspected person to make submission to the adjudicator. This is an important part of procedural fairness to allow both parties involved in the case to make submissions. This Head is intended to ensure that all sanctions are carefully considered and tailored to the specific breach that has occurred.

Section (1) sets out that once the adjudicator decides that a regulatory breach has occurred under [Head 74(2)- Decision of adjudicator in relation to breach], the adjudicator may impose one or more of the following sanctions:

- order the suspected person to stop the breach or to take a corrective action to remedy the breach,
- impose a financial penalty in line with [Head 78: Requirement to pay financial penalty],
- require the suspected person to refund a third party in line with [Head 79: Requirement to pay refund];
- require the person to pay compensation to a third party in line with [Head 80: Requirement to pay compensation.];

Subsection (2) is intended to set out that the adjudicator must set a specific deadline for the suspected person to comply with the sanctions imposed in line with Subsection (1) above. This timeline is subject to any appeal made by the suspected person.

Subsection (3) is intended to set out that when the adjudicator is deciding on the amount of the financial penalty, the adjudicator must consider the criteria in [Head 78: Requirement to pay financial penalty], and the penalty must comply with that Head.

Subsection (4) is intended to set out that before the adjudicator can impose a sanction on the suspected person, the adjudicator must share the decision of [Head 74- Decision of adjudicator in relation to breach] with ComReg and the suspected person to which the breach relates. The adjudicator must also inform both parties of the sanctions that it intends to impose.

Subsection (5) is intended to set out that the adjudicator must invite written submission from ComReg and the suspected person to which the breach relates.

Subsection (6) is intended to set out that ComReg will have 15 working days – or longer if the adjudicator considers it appropriate – to make a written submission on:

- the criteria considered by the adjudicator in [Head 78: Requirement to pay financial penalty],
- the proposed amount of any penalty,
- the relevant guidelines in [Head 81: Guidelines].

Subsection (7) is intended to set out that if ComReg makes a submission to the adjudicator, the adjudicator must then share those submissions with the suspected person to which the breach relates.

Subsection (8) is intended to set out that the suspected person may make a written submission to the adjudicator on the criteria, penalty amount and guidelines (the same as what ComReg can make a submission on). This submission must be made:

- within 15 working days if ComReg does not make any submissions,
- within 15 working days after receiving ComReg's submissions to the adjudicator,
- within a longer period if the adjudicator considers it necessary and appropriate.

Subsection (9) is intended to set out that that adjudicator may ask the suspected person to provide to the adjudicator more information to help determine the appropriate action that the adjudicator may take. This request should be made in writing to the suspected person and should have a specified timeline for the suspected person to respond.

Head 76 - Adjudication to take effect when confirmed by High Court

To provide that:

- (1) An adjudication shall take effect at the time it is confirmed by the High Court under [Head 90: Court confirmation of adjudication] subject to any order made by a court on an appeal of the adjudication or on an application for leave to appeal the adjudication.
- (2) Where an adjudication has taken effect in accordance with subsection (1) any sanction, including any financial penalty, imposed by such adjudication may be enforced without the need for any further judgment of a court.
- (3) Where an adjudication has taken effect in accordance with subsection (1) any financial penalty imposed by such adjudication may be enforced by ComReg as a judgment debt.
- (4) Where a person fails to comply with an administrative sanction imposed by an adjudication that has taken effect in accordance with subsection (1) the High Court may, on an application to it by ComReg in that behalf—
 - (a) compel compliance with the adjudication and any administrative sanction imposed, or
 - (b) grant any injunctive relief that the Court considers necessary.
- (5) The Court may not require ComReg to give an undertaking as to damages as a condition of granting any injunctive relief under subsection (4)(b).

Explanatory Note:

This Head is modelled on Section 92 of the CRDHDAA 2023. Section (4)(a) of Section 92 of the CRDHDAA 2023 contains a provision relating to general authorisation or rights of use which is not applicable or appropriate for the Data Act. Therefore, this has been removed from this Head. This Head sets out that an adjudicator's decision is not legally enforceable until it has been confirmed by the High Court. Once the High Court has confirmed the adjudicator's decision and its proposed sanctions, the adjudication becomes immediately legally enforceable.

Subsection (1) is intended to set out that an adjudication decision does not take legal effect until it has been confirmed by the High Court. This is subject to any court orders which may have been made on an appeal on the adjudication or an application for leave to appeal. This is an important step in the process of the adjudication process. Ensuring that an adjudication decision is overseen by the High Court creates a more legally robust regime and helps the Act to comply with the Zalewski judgement.

Subsection (2) is intended to set out that once the adjudicator's decision has been confirmed by the High Court, any sanction of the decision may be directly enforced. This allows for a more streamlined process and effective use of resources.

Subsection (3) is intended to set out that a confirmed financial penalty can be enforced by ComReg as if it were a judgement debt. This will give ComReg more robust enforcement powers.

Subsection (4) is intended to set out that if a suspected person fails to comply with a confirmed adjudication, ComReg may apply to the High Court so that the High Court may:

- compel compliance with the adjudication and the sanctions of the adjudication,
- grant injunctive relief in serious cases.

Subsection (5) is intended to set out that if ComReg seeks injunctive relief, the High Court cannot require ComReg to give the suspected person damages. This is to ensure that ComReg is protected from financial liability if the injunction is later considered to have been unnecessary.

Head 77 - Notice of adjudication

To provide that:

- (1) As soon as practicable after the adjudicator has made a decision under [Head 75: Decision of adjudicator in relation to administrative sanction], the adjudicator shall provide ComReg with the decision.
- (2) ComReg shall within 7 days of receipt of the decision of the adjudicator under [Head 75: Decision of adjudicator in relation to administrative sanction], give notice in writing of the decision to the person concerned.
- (3) The notice under subsection (2) shall—
 - (a) include a copy of the decision of the adjudicator under [Head 74(2): Decision of adjudicator in relation to breach.],
 - (b) state that, in so far as it imposes any administrative sanction, the adjudication shall not take effect unless it is confirmed by the Court in accordance with [Head 90: Court confirmation of adjudication], and
 - (c) state that, if the person does not appeal any administrative sanction imposed by the decision under [Head 87: Appeal against adjudication], ComReg shall, as soon as is practicable after the expiration of the period for the making of such an appeal, make an application for confirmation of the adjudication in accordance with [Head 90: Court confirmation of adjudication].
- (4) ComReg may provide a copy of a notice referred to in subsection (2) to a person other than the person concerned where it considers it appropriate to do so.
- (5) A copy of the adjudication shall be published on the website of ComReg.
- (6) A decision referred to in subsection (1) and a copy of the adjudication referred to in subsection (3) may contain such redactions as the adjudicator considers necessary and appropriate, in respect of subsection (1) on his or her own motion, or in respect of subsection (2) or (3) upon application of ComReg or any of the persons concerned—
 - (a) to protect commercially sensitive information,
 - (b) to protect the rights of the person concerned or any other person, or
 - (c) for any other good and sufficient reason.
- (7) A person who receives a copy of a notice under subsection (2) prior to the publication of the adjudication shall not, without the prior authorisation of the adjudicator, disclose the existence or the content of the notice to any other person.
- (8) A person who receives a copy of a notice under subsection (2) that contains material redacted from publication under subsection (6) shall not, without the prior authorisation of the adjudicator, disclose the content of the redacted material to any other person.
- (9) A person who fails to comply with subsection (7) or (8) commits an offence and is liable—
 - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or

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

Explanatory Note:

This Head is modelled on Section 93 of the CRDHDAA 2023. This Head sets out the notification process for an adjudicator to follow after the adjudicator has made a decision under [Head 75: Decision of adjudicator in relation to administrative sanction.]. It ensures that both ComReg and the suspected person are informed properly of the adjudication decision. This Head is intended to ensure timely and transparent notification of adjudication decisions and sensitive information is protected during the adjudication process. Any unauthorised disclose of the adjudication decision shall be penalised.

Subsection (1) is intended to set out that once an adjudicator has made a decision under [Head 75: Decision of adjudicator in relation to administrative sanction.], this decision must be promptly submitted to ComReg.

Subsection (2) is intended to set out that within 7 days of receiving the notice of the adjudicators decision as set out in Subsection (1) above, ComReg must then send a written notice of the decision to the suspected person to whom the decision concerns.

Subsection (3) is intended to set out what the notice must include. These are:

- a copy of the decision made by the adjudication under [Head 74(2): Decision of adjudicator in relation to breach.]
- a statement that any administrative sanction will not take legal effect unless it has been confirmed by the High Court in line with [Head 90: Court confirmation of adjudication],
- a statement that if the suspected person does not make an appeal in line with [Head 87: Appeal against adjudication], ComReg will apply to the High Court for confirmation of the adjudication.

This Subsection is intended to make sure that the suspected person is fully aware of the decision that had been made, what the steps in the process are and that they have the right to make an appeal.

Subsection (4) is intended to set out that ComReg may share the notice of adjudication with any other person if ComReg considers that it is appropriate to do so.

Subsection (5) is intended to set out that ComReg must publish a copy of the adjudication notice on ComReg's website.

Subsection (6) is intended to set out that the adjudicator may redact any parts of the adjudication decisions or the notice of adjudication if the adjudicator considers it appropriate to:

- protect commercially sensitive information,
- protect the rights of individuals concerned,
- for any other good and substantiated reason.

Subsection (7) is intended to set out that if a person or third party receives the notice of adjudication before the publication of the decision, the notice or adjudication decision must not be disclosed without ComReg's permission.

Subsection (8) is intended to set out that if a person or third party receives the notice of adjudication and that version contains redacted content which is not contained in the version published by ComReg. That redacted material must not be disclosed without ComReg's permission.

Subsection (9) is intended to set out that is someone discloses information in breach of the Subsections (7) and (8) above, that person is guilty of committing an offence and that person is liable:

- on summary conviction to:
 - a class A fine,
 - or up to 6 months imprisonment,
 - or both.
- On indictment to:
 - Up to 5 years imprisonment,
 - Or a fine of up to €250,000,
 - Or both.

Head 78 - Requirement to pay financial penalty

To provide that:

- (1) When determining the amount of a financial penalty, an adjudicator shall have regard to—
 - (a) the need to ensure that the financial penalty is—
 - (i) appropriate,
 - (ii) effective,
 - (iii) proportionate to the regulatory breach, and
 - (iv) dissuasive (including whether it will act as a sufficient deterrent to ensure that any similar regulatory breach will not occur in the future),
 - (b) the seriousness of the regulatory breach,
 - (c) in the case of breach by—
 - (i) a person that is not a natural person, the turnover of the person in the State in the financial year ending in the year immediately before the financial year in which the regulatory breach last occurred, or
 - (ii) a natural person, the annual income of the person on whom the financial penalty is to be imposed, in the year preceding the year in which the regulatory breach last occurred,
 - (d) the extent of any failure by the person to cooperate with the investigation concerned, whether or not such failure is prosecuted,
 - (e) any excuse or explanation offered by the person for the regulatory breach or failure to cooperate with the investigation concerned,
 - (f) any gain (financial or otherwise) made, or loss avoided, by the person, or by any other person in which the first-named person has a financial interest, as a consequence of the regulatory breach,
 - (g) the amount of any loss suffered, or costs incurred, by any person as a result of the regulatory breach,
 - (h) the effect of the regulatory breach on other operators, consumers and other end-users,
 - (i) the duration of the regulatory breach,
 - (j) the number of times the regulatory breach has occurred,
 - (k) whether or not the regulatory breach continued after the person was served with a notice of objections,
 - (l) where applicable, the absence, ineffectiveness or repeated failure of internal mechanisms or procedures of the person intended to prevent such a regulatory breach from occurring,

(m) where applicable, the extent and timeliness of any steps taken to end the regulatory breach and any steps taken to remedy the consequences of the regulatory breach,

(n) whether a financial penalty in respect of a similar regulatory breach has already been imposed on the person by a court or a competent authority, including by ComReg,

(o) any precedents set by a court or a competent authority, including ComReg, in respect of a similar regulatory breach,

(p) where applicable, the amount of any compensation paid or to be paid in accordance with [Head 80: Requirement to pay compensation.];,

(q) any specific factors, criteria or methodology relevant to paragraphs (a) to (o) prescribed by the Minister for the purposes of this subsection, and

(r) any guidelines made by ComReg under [Head 81: Guidelines] in respect of the calculation of the amount of a financial penalty.

(2) ComReg may make rules for the purposes of the implementation of this section.

(3) The adjudicator may, having imposed a financial penalty on a person (in this subsection referred to as the “sanctioned person”) in accordance with this section and where he or she considers that it is necessary to do so in order to ensure that the penalty be appropriate, effective, proportionate and dissuasive, impose the penalty (whether jointly with or separately to the sanctioned person) on either or both of the following:

(a) a subsidiary of the sanctioned person;

(b) a person of which the sanctioned person is a subsidiary.

(4) The following shall apply for the purposes of this section:

(a) “subsidiary” shall have the same meaning as it has in section 7 of the Companies Act 2014 ;

(b) where a person is a partnership, for the purposes of the application to it of the definition of “subsidiary”—

(i) references to voting rights attaching to shares in a company shall be construed as references to votes or other rights exercisable by the partners in a partnership giving those partners the potential to exercise control or dominant influence over the activities of the partnership, and

(ii) references to a company’s constitution shall be construed as references to any agreement or practice governing or concerning the operation of the partnership;

(c) where a person is an unincorporated association, for the purposes of the application to it of the definition of “subsidiary undertaking”—

(i) references to voting rights attaching to shares in a company shall be construed as references to votes or other rights exercisable by the members of the unincorporated association giving those members the potential to exercise control or dominant influence over the activities of the unincorporated association, and references to a company’s constitution shall be construed as

references to the constitution or of any agreement or practice governing or concerning the operation of the unincorporated association, and

(ii) references to a company's constitution shall be construed as references to the constitution or of any agreement or practice governing or concerning the operation of the unincorporated association.

(5) The maximum amount of a financial penalty that an adjudicator may impose on a person under this Part in respect of a regulatory breach shall be—

(a) in the case of a person other than a natural person, up to 4 per cent of the turnover of the person in the State in the financial year ending in the year immediately before the financial year in which the regulatory breach last occurred in the State, and

(b) in the case of a natural person, the greater of €500,000 or 4 per cent of the annual income of the person on whom the financial penalty is to be imposed, in the year preceding the year in which the regulatory breach last occurred.

Explanatory Note:

This Head is modelled on Section 94 of the CRDHDAA 2023. This Head sets out how an adjudicator must determine the amount of a financial penalty for a regulatory breach of the Data Act that is within its remit of competence. This Head intended to provide a clear framework for the adjudicator to determine a financial penalty amount, and also to ensure that those penalties are fair, reasonable and effective. This Head also provides for an individual person to be subject to a financial penalty if they breach obligations of Data Act within ComReg's remit. Article 40(1) of the Data Act Regulation sets out that Member States shall lay down rules on penalties and that they shall be 'effective, proportionate and dissuasive'.

Subsection (1) is intended to set out the factors that an adjudicator must take into account before setting the amount of the financial penalty. The general principles for a penalty are that the penalty should be:

- fair,
- reasonable,
- non-discriminatory,
- effective,
- proportionate, and
- dissuasive.

This Subsection lists off a number of specific factors that should be considered to ensure that the general principles of the financial penalty are complied with. This is not an exhaustive list but includes:

- the seriousness of the breach
- turnover or income of the person (depending on whether they are a company or individual)
- cooperation with the investigation
- excuses or explanations offered
- gains or losses resulting from the breach
- impact on others (operators, consumers, etc.)
- duration and frequency of the breach
- whether the breach continued after notice
- failures in internal controls
- actions taken to remedy the breach

- previous penalties or precedents
- any compensation paid
- any Ministerial criteria or methodology
- any Commission guidelines under [Head 81: Guidelines.].

Subsection (2) is intended to set out that ComReg may also make rules to implement this Head.

Subsection (3) is intended to set out that the adjudicator may impose a penalty, either jointly or separately on a parent company of the sanctioned person or a subsidiary company of the sanctioned person. This is intended to prevent evasion of a penalty via complex corporate structures.

Subsection (4) is intended to set out how the term “subsidiary” in Subsection (3) above is defined, and applies to companies, partnerships or unincorporated associations. This is intended to ensure consistent legal application of sanctions.

Section (5) is intended to set out the maximum financial penalty that ComReg can impose for breaches of the Data Act regulation that are within ComReg’s remit. The maximum penalty for an undertaking or non-natural person is 4% of EU turnover in the preceding financial year. The maximum penalty for an individual is €500,000. These fines align with those in the DGA for an individual person.

Head 79 - Requirement to pay refund

To provide that:

- (1) Where an adjudicator considers that an end-user has been overcharged for a service as a result of a regulatory breach, the adjudicator may require that the person concerned refund the end-user in part or in full.
- (2) No maximum or minimum amount shall apply to any refund under subsection (1).

Explanatory Note:

This Head is modelled on Section 95 of the CRDHDAA 2023. This Head gives an adjudicator the power to order a suspected person to issue a refund to an end-user who has been overcharged due to a regulatory breach. This will ensure that consumers are fairly compensated as the adjudicator will have discretion over the amount that the consumer will be refunded.

Subsection (1) is intended to set out that if an adjudicator finds that an end-user or consumer was overcharged due to the breach of the Data Act regulation within ComReg's remit, then ComReg may order the person responsible for that breach to issue a refund to the end-user. The refund may be a full or partial amount, whichever the adjudicator considers appropriate given the context of the case.

Subsection (2) sets out that there is no maximum limit or minimum limit on the amount of the refund. The adjudicator should have full flexibility over the amount of the refund to ensure that it is fair and appropriate.

Head 80 - Requirement to pay compensation.

To provide that:

- (1) This section applies to a requirement to pay compensation in respect of a regulatory breach.
- (2) An adjudicator may require compensation to be paid to an end-user in respect of a regulatory breach notwithstanding that the end-user may have received a refund.
- (3) When determining the amount of compensation to be paid by a person in respect of a regulatory breach, an adjudicator shall take account of at least the following factors, to the extent that they are relevant to the breach:
 - (a) the need to ensure that the compensation is appropriate and proportionate;
 - (b) the amount of any loss suffered, or costs incurred by any person affected by the breach;
 - (c) the effect of the breach on any person affected by the breach, including any distress, inconvenience or emotional upset caused by the breach;
 - (d) whether the regulatory breach continued after the person was served with a notice of objections;
 - (e) if applicable, the extent and timeliness of any steps taken to end the regulatory breach and any steps taken to remedy the consequences of the regulatory breach;
 - (f) any relevant precedents set by a court or ComReg.
- (4) The maximum amount of compensation that a provider may be required to pay to an end-user is €5,000.

(5) Where a regulatory breach is committed by a person other than a natural person the maximum amount of compensation that an adjudicator may require it to pay to all the persons affected by the regulatory breach shall not exceed—

(b) 2 per cent of the annual EU turnover of the person in the State in the financial year ending in the year immediately before the financial year in which the regulatory breach last occurred.

(6) If compensation is required to be paid to more than one person following a finding that a person has committed a regulatory breach and the total amount of such compensation exceeds the maximum limit provided for in subsection (5), the compensation shall be reduced in proportion to the sum of all claims for compensation against the maximum limit.

(7) Where an adjudicator decides to impose both a financial penalty and a requirement to pay compensation in respect of a regulatory breach the cumulative maximum amount of the financial penalty and compensation shall not exceed the relevant limit set out in subsection (5).

Explanatory Note:

This Head is modelled on Section 96 of the CRDHDAA 2023. In the CRDHDAA 2023 there is a provision for a natural person to pay compensation to an affected party if the natural person breaches the Act. This is provided for in Section 6 of Section 96 of the CRDHDAA, however this is not appropriate for the Data Act as a natural person cannot breach the obligations of the Data Act in relation to the areas within ComReg's remit and there is no requirement in the Regulation for a natural person to pay a compensation. Therefore Section (6) of Section 96 of the CRDHDAA is not included in this Head.

This Head provides an adjudicator with the power to order a suspected person to compensate an end-user or consumer who has suffered harm due to a regulatory breach of the Data Act. This compensation order forms part of the sanctions options that the adjudicator may impose as part of its adjudication decision. This Head sets out the criteria for determining compensation, the maximum limits for compensation and how compensation should be handled if multiple people are affected by the breach.

Section (1) is intended to set out that this Head applies specifically to cases where compensation to an end-user or consumer is an appropriate remedy for a regulatory breach of the Data Act.

Subsection (2) is intended to set out that an end-user may still receive compensation if they have already received a refund.

Subsection (3) is intended to set out the factors that an adjudicator should consider before setting the amount of compensation. This list is not comprehensive but includes, when it is relevant to the case:

- whether the compensation is appropriate and proportionate,
- the losses or economic costs suffered by the affected person,
- the inconvenience or other emotional impacts on the affected persons,
- whether the breach continued after a notice of objections was served,
- any steps taken by the suspected person to remedy the breach and the timeliness of those steps,
- any precedent set by the Court or ComReg in relevant cases.

Subsection (4) is intended to set out that the maximum amount of compensation that is payable to any one end-user is €5,000. It is very unlikely that any breaches of the Data Act within ComReg's remit

will result in any compensation requirements for individuals, however it is still prudent to provide for a maximum amount for legal clarity should the issue arise.

Subsection (5) is intended to set out the maximum amount of compensation that is payable to all affected persons if the regulatory breach was committed by a non-natural person. This is set to a maximum of 2% of an EU turnover in the preceding financial year. This is as the suspected breach of the Data Act that would be in scope of this Head would be extremely unlikely to cause serious economic harm and a higher percentage penalty would be disproportionate. It is again highly unlikely that any breaches of the Data Act within ComReg's remit will result in any compensation requirements, however it is still prudent to provide for a maximum amount for legal clarity should the issue arise.

Subsection (6) is intended to set out that if the total compensation claims exceed the caps, the adjudicator must reduce each award proportionally to ensure that the total stays within the limit. This ensures that the liability of the person who has committed the breach is limited and that compensation is distributed fairly.

Subsection (7) is intended to set out that if both a financial penalty and compensation are imposed by the adjudicator, their combined total must not exceed the relevant cap in subsection (5) above. This is to prevent excessive sanctions.

Head 81 - Guidelines

To provide that:

- (1) ComReg may, subject to this Act and any regulations and rules made under this Act, and having regard to the fairness and efficiency of the procedures under this Part, prepare and make guidelines in relation to any matter provided for by or under this Part, including—
 - (a) the conduct of oral hearings,
 - (b) the imposition of administrative sanctions (including the factors applicable to any financial penalty to be imposed under [Head 75: Decision of adjudicator in relation to administrative sanction], and the method of calculation of financial penalties),
 - (c) the award of compensation,
 - (d) the award of refunds,
 - (e) the decision to carry out an investigation where there is evidence of a breach and the conduct of such investigations, including the content of referral reports and other reports of authorised officers,
 - (f) the general policies of ComReg.
- (2) In making an adjudication, subject to this Act and any regulations and rules made under this Act, an adjudicator shall apply guidelines made and published by ComReg under subsection (1) and by the European Commission and European Data Innovation Board unless the adjudicator considers that there is a good and substantial reason not to do so.
- (3) ComReg may amend or revoke guidelines made under subsection (1).
- (4) ComReg shall publish any guidelines made under subsection (1), and any amendment to or revocation of those guidelines, on the website of ComReg.

Explanatory Note:

This Head is modelled on Section 98 of the CRDHDAA 2023. Section 1(e) of Section 98 of the CRDHDAA 2023 is a provision which relates specifically to the European communications code and is not a provision that is applicable to nor appropriate for the Data Act, therefore point (e) has been removed in this Head.

This Head sets out that ComReg can issue practical guidance to support adjudication. Adjudicators show follow these guidelines unless there is a valid and substantiated reason not to. The guidelines that ComReg issues must be publicly available to maintain transparency. The aim of this Head is to promote standardisation of the enforcement procedures via the published guidelines. It allows for ComReg and adjudicators to operate within a clear framework.

Section (1) is intended to set out that ComReg may prepare and issue guidelines on any matter within its remit of the Data Act. The guidelines must align with the overall objectives of the Data Act regulation itself, any other regulations made under this Act. The guidelines must be fair, proportionate and reasonable. The guidelines may relate to:

- procedures for how oral hearings are conducted,
- how administrative sanctions are imposed,
- how refunds are awarded,
- how compensation is awarded,

- how investigations are initiated and conducted, and
- ComReg's general policies and principles.

Subsection (2) is intended to set out how adjudicators should apply guidelines that are issued to them either by ComReg or by the EDIB. Article 42(c)(iii) of the Data Act Regulation allows for the European Commission to adopt delegated acts to further specify essential requirements for interoperability, as part of this the European Commission must consider the advice of the EDIB.

Subsection (3) is intended to set out that ComReg may change or cancel any guidelines that it has issued under Subsection (1). This is to allow any new developments in policy or general guidelines to be accommodated.

Subsection (4) is intended to set out that ComReg must publish all guidelines and any changes or cancellation of those guidelines on its website. This will ensure transparency and clarity for those in scope of the Act.

Head 82 - Regulations in relation to certain matters

To provide that:

The Minister may provide in regulations for any matter referred to in paragraphs (a) to (e) of [Head 81 – Guidelines]

Explanatory Note:

This Head is modelled on Section 99 of the CRDHDAA 2023. In Section 99 of the CRDHDAA 2023, the Minister may provide regulations referred to matters in paragraph (a) to (f), however in this Head there is a slight change made to the text here. This Head is altered to apply to sections (a) to (e) as point (e) in Section 98 of the CRDHDAA 2023 is not applicable to the Data Act and has been removed.

This Head is intended to provide the Minister with the power to make regulations about the specific procedural and enforcement matters that are listed in [Head 81 – Guidelines]. This would be utilised to give further detail for how ComReg should operate in practice. The guidelines specified in [Head 81 – Guidelines] are not binding, however the regulations which may be made under this Head will be legally enforceable and binding.

Head 83 - Admissibility of evidence before Commission

To provide that:

- (1) The type of proof that is admissible as evidence in proceedings under this Part (whether criminal or civil, including proceedings before the Commission or an adjudicator) shall include relevant documents, oral statements, electronic messages, recordings and all other objects containing information, irrespective of the form it takes and the medium on which information is stored, provided that the evidence referred to would have been admissible before a court were it before a court.
- (2) If a document contains a statement by a person specified in subsection (3) asserting that an act has been done, or is, or was, proposed to be done, by another person, being an act that relates to a regulatory breach (the “relevant act”) then subject to the conditions specified in subsection (4) being satisfied, that statement shall be admissible in proceedings in respect of the regulatory breach as evidence that the relevant act was done by that other person or was proposed (at the time the statement was made, or, as the case may be, at a previous time) to be done by him or her.
- (3) The person referred to in subsection (2) is a person who has done an act of the kind referred to in that subsection in relation to the regulatory breach (whether or not the same as the act which the other person referred to in that subsection is alleged to have done or proposed to do).
- (4) The conditions referred to in subsection (2) are that the document referred to in that subsection—
 - (a) has come into existence before the commencement of the proceedings under this Act in which it is sought to tender the document in evidence, and
 - (b) has been prepared otherwise than in response to any enquiry made or question put by a member or officer of ComReg, a member of the Garda Síochána, an officer of the European Commission, or an authorised officer relative to any matter the subject of those proceedings.
- (5) In estimating the weight, if any, to be attached to evidence admitted by virtue of this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.
- (6) Where the proof admitted in evidence by virtue of this section comprises a statement by a person—
 - (a) any evidence which, if the person who made the statement had been called as a witness, would have been admissible as relevant to his or her credibility as a witness shall be admissible for that purpose,
 - (b) evidence may, with the leave of the court or adjudicator seized of the proceedings, be given of any matter which, if that person had been called as a witness, could have been put to him or her in cross-examination as relevant to his or her credibility but of which evidence could not be adduced by the cross-examining party, and
 - (c) evidence tending to prove that that person, whether before or after making the statement, made (whether orally or not) a statement which is inconsistent with it shall, if not already admissible by virtue of any rule of law or other enactment, be admissible for the purpose of showing that he or she has contradicted himself or herself.

(7) Nothing in this section shall prejudice the admissibility in any proceedings under this Act before a court or an adjudicator of any document, as evidence of any matters stated in it—

(a) that is so admissible by virtue of any rule of law or other enactment, or

(b) in respect of adjudicators, that would be admissible before a Court hearing civil proceedings by virtue of any rule of law or other enactment.

(8) The provisions of Chapter 3 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 shall apply to proceedings under this Part of this Act.

Explanatory Note:

This Head is modelled on Section 100 of the CRDHDAA 2023. This Head intends to clarify what kind of evidence may be used during the regulatory proceedings within ComReg's remit under the Data Act and with adjudicators. This is to ensure that the types of evidence are modernised and sufficiently include digital forms of evidence while still being subject to credibility checks to ensure fairness.

Subsection (1) is intended to set out that evidence can include documents, oral statements, electronic messages, recordings and any other information containing objects regardless of their format or medium. This evidence must be admissible in a court of law. The intention of this Subsection is to ensure that all types of evidence are included and treated equally as long as they meet the legal standard to constitute evidence that is admissible in a court of law.

Subsection (2) is intended to ensure that if a document contains a statement by a person saying that another person did or planned to do something that relates to a regulatory breach of the Data Act, that statement may be used as evidence. This is subject to the conditions in Subsection (4) being met.

Subsection (3) is intended to set out who can make the statement. The person making the statement in Subsection (2) must have themselves previously done a similar act related to the breach. This is to ensure that the person has sufficient understanding and experience of the breaches. This is important as the Data Act regulation covers complex and technical areas where expertise in those areas is vital to understanding the breaches that may have occurred.

Subsection (4) is intended to set out the conditions for admissibility of statements in Subsection (2). This is intended to prevent biased statements from being used as evidence. The document which contains the statement must:

- Have been created before any proceedings have begun,
- Not be a statement prepared in response to questions from
 - ComReg or its staff,
 - European Commission officials,
 - Authorised officers.

Subsection (5) is intended to set out that the reliability of evidence must continuously be assessed based on all circumstances of the case. This is important to ensure that adjudicators have discretion to appropriately judge the statement.

Subsection (6) is intended to set out that if the evidence includes a statement by a person, anything that would affect the credibility of that person as a witness can be admitted as evidence. With permission from the Court or adjudicator, cross-examination-type evidence may be introduced. Any contradictory statements made by that person may be used to show inconsistency. This will allow for the credibility of statements to be challenged, thus ensuring a fairer outcome.

Subsection (7) is intended to set out that this Head does not override or have precedent over any other laws or rules that already allow the types of documents mentioned in this Head to be admitted as evidence.

Subsection (8) is intended to set out that the rules in Chapter 3 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 also apply to these proceedings. This is to maintain consistency across existing legislation.

Head 84 - Restrictions on disclosure of certain information

To provide that:

(1) Subject to subsection (2), and save in accordance with law, an adjudicator, an authorised officer, ComReg and its respective servants or agents shall not, without reasonable excuse, disclose to any person any confidential information obtained by virtue of the exercise of powers conferred by or under this Act.

(2) Notwithstanding subsection (1) an adjudicator, ComReg and its servants or agents may disclose information obtained by virtue of the exercise of powers conferred by or under this Act where such disclosure is—

- (a) permitted by this Act,
- (b) otherwise permitted by law, or
- (c) duly authorised by ComReg or an adjudicator in the performance of his or her functions.

(3) Information provided to any person pursuant to subsection (2) may contain such redactions as an adjudicator or ComReg or an authorised officer may consider necessary and appropriate—

- (a) to protect commercially sensitive information,
- (b) to protect the rights of the parties or any other person, or
- (c) for any other good and sufficient reason.

(4) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both.

(5) The following categories of information obtained by a party during investigations by an authorised officer, or administrative sanctions proceedings before an adjudicator under this Act, shall not be used by that party in proceedings before a court prior to the authorised officer or ComReg or an adjudicator, as the case may be, having closed such proceedings with respect to all parties under investigation, whether by making a decision under [Head 74: Decision of adjudicator in relation to breach], or [Head 75: Decision of adjudicator in relation to administrative sanction]:

- (a) information that was prepared by persons specifically for investigations by an authorised officer or administrative sanctions proceedings before an adjudicator;
- (b) information that an authorised officer or an adjudicator has drawn up and sent to the parties in the course of an investigation or administrative sanctions proceedings;
- (c) settlement submissions that have been withdrawn.

Explanatory Note:

This Head is modelled on Section 101 of the CRDHDAA 2023. Section (1) and Section (7) of Section 101 of the CRDHDAA 2023 have been removed from this Head as they do not apply for the purposes of the Data Act Regulation. This Head shall provide for the protection of commercially sensitive information that may be obtained during regulatory investigations and proceedings. It is intended to set out when such sensitive information may or may not be disclose, who these restrictions apply to, any exceptions to the restrictions, penalties for breaching the restrictions and limits on how sensitive information may be used in court. This is all to ensure that commercially sensitive information is

protected and safeguarded so that investigations and proceedings are conducted in a fair and confidential manner.

Section (1) is intended to set out the general confidentiality obligations for adjudicators, authorised officers and any ComReg staff. Adjudicators, authorised officers, ComReg staff must not disclose any confidential information obtained under this Bill or any information obtained under compulsion during an investigation or other proceedings. Disclosure is allowed in certain cases where there is a substantiated and reasonable excuse, or if it is in accordance with law.

Subsection (2) is intended to set out that there are some exceptions to the confidentiality rules in Subsection (1). These exceptions are that disclosure is allowed if this Act permits it, it is otherwise permitted by law, or if it is authorised by ComReg or an adjudicator in the course of their duties. This provides for greater flexibility to ensure that investigations and proceedings can progress.

Subsection (3) is intended to set out that where certain information is disclosed under Subsection (2) above, this information may be redacted as is necessary to protect any commercially sensitive information, to protect the rights of the subject of that information or for any other substantiated and appropriate reason. The aim of this is to ensure that investigations and proceedings can progress transparently while maintaining the safeguards and protection of commercially and personally sensitive data.

Subsection (4) is intended to set out that any breaches of Subsection (1) will constitute a criminal offence and will carry liability of:

- a class A fine,
- or up to 6 months imprisonment,
- or both.

This is to give legal weight to the confidentiality requirements of this Head and to encourage compliance with confidentiality requirements.

Subsection (5) is intended to set out the limitations of using certain information in Court. Before an investigation is formally closed, parties cannot use information prepared specifically for that investigation, documents created and shared by the authorised officer or adjudicator during the process or withdrawn settlement submissions. This is aimed to prevent any premature or unfair use of regulatory materials in unrelated legal proceedings.

Head 85 - Confidentiality rings

To provide that:

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

Explanatory Note:

This Head is modelled on Section 102 of the CRDHDAA 2023. This Head allows for ComReg or an adjudicator to restrict access to any commercially sensitive documents or information by creating a “confidentiality ring”. The confidentiality ring will mean that specific persons authorised by ComReg or an adjudicator will be able to access or view certain documents. This is aimed at protecting any commercially sensitive documents or information during an investigation or regulatory proceeding.

Section (1) is intended to set out that ComReg or an adjudicator has the ability to specify that certain documents or information are subject to a confidentiality ring. This creates restrictions around the confidentiality of those documents in line with this Head. ComReg or the adjudicator must notify the person who has received the documents or information that they are subject to the confidentiality ring restrictions.

Subsection (2) is intended to set out that’s the following people may be specified by ComReg or an adjudicator as having access to or to view the documents or information as part of the confidentiality ring. These specified persons are:

- the person to whom the document or information was provided,
- a legal or professional advisor of the person to whom the documents or information was provided to,
- any other person that ComReg or an adjudicator specifically allows.

Subsection (3) is intended to set out that if a person breaches the obligations of the confidentiality ring as set out in this Head, that person has committed an offence and is liable to:

- a class A fine,
- or up to 6 months imprisonment,
- or both.

Head 86 – Decisions reviewable only by appeal under this Part

To provide that:

- (1) An adjudication shall not be challenged, including as to its validity, other than by way of an appeal under [Head 87: Appeal against adjudication].
- (2) For the avoidance of doubt, in respect of a decision under [Head 74: Decision of adjudicator in relation to breach] or [Head 75: Decision of adjudicator in relation to administrative sanction] no proceeding (including an application for judicial review whether in accordance with ([Insert Head on Judicial review/Subsection 112] or otherwise) may be brought before the courts other than an appeal under [Head 87: Appeal against adjudication] or an application to have the decision confirmed under [Head 90: Court confirmation of adjudication].

Explanatory Note:

This Head is modelled on Section 104 of the CRDHDAA 2023. As urgent interim measures are not being provided for in these HEDAs, some alterations have been made to the text which this Head is being modelled from.

This Head sets out specific rules about how certain decisions made under this Part in ComReg's remit may be challenged. These legal challenges shall be limited to specific appeal routes to avoid excessive and lengthy High Court or judicial proceedings. It also allows for a more streamlined and efficient appeals process.

Section (1) is intended to set out that legal challenges may be made via appeal and not any other mechanisms. However, an adjudication decision may be appealed under [Head 87: Appeal against adjudication].

Subsection (2) is intended to set out that for any adjudication decisions made under [Head 74: Decision of adjudicator in relation to breach] or [Head 75: Decision of adjudicator in relation to administrative sanction], one cannot bring any court proceedings including a judicial review unless an appeal is made under [Head 87: Appeal against adjudication].

Head 87 – Appeal against adjudication

To provide that:

- (1) A person the subject of an adjudication may appeal to the High Court against that adjudication not later than 28 days after the date of service of the notice under [Head 77(2) - Notice of adjudication].
- (2) On application, the High Court may extend the period within which an appeal may be brought under subsection (1), where it is satisfied—
 - (a) that there is exceptional, good and sufficient reason for doing so,
 - (b) that the circumstances that resulted in the failure to bring an appeal within the period provided for in subsection (1) were outside the control of the applicant for the extension, and
 - (c) where an application for confirmation has been brought under [Head 90: Court confirmation of adjudication], that the High Court has neither heard nor determined such application.
- (3) Where an application for confirmation has been brought pursuant to [Head 90: Court confirmation of adjudication] in relation to an adjudication the subject of an appeal under this section, the High Court may, upon application or of its own motion, stay the proceedings under [Head 90: Court confirmation of adjudication].
- (4) Where the High Court confirms an adjudication that imposes an administrative sanction, or substitutes its own decision for the adjudication of an adjudicator and, as part of such adjudication, imposes an administrative sanction, the High Court may set a time limit for the payment of any financial penalty, compensation or refund required to be paid.

Explanatory Note:

This Head is modelled on Section 106 of the CRDHDAA 2023. This Head provides the legal pathway for a person who is the subject of an adjudication decision to appeal that decision to the High Court. This Head sets out the conditions for extension and the procedural consequences of an appeal.

Subsection (1) is intended to set out that a person who is the subject of an adjudication decision may appeal that adjudication to the High Court. The appeal must be made within 28 days of received the notice under [Head 77(2) - Notice of adjudication].

Subsection (2) is intended to set out that there is a possibility of an extension of the time for a person to appeal if the High Court allows it. The High Court may allow an appeal if:

- there is an exceptional, good and sufficient reason,
- the delay was due circumstances beyond the control of the person who is making the appeal,
- if a confirmation application under [Head 90: Court confirmation of adjudication] has been made the High Court has not yet heard or made a decision on that appeal.

Subsection (3) is intended to set out that if an appeal is underway and a confirmation application has been made under [Head 90: Court confirmation of adjudication] and is currently pending a decision, the High Court may pause those confirmation proceedings. This can be done both on request of the person making the appeal or on the High Courts own initiative.

Subsection (4) is intended to set out that if the High Court confirms the adjudication or creates it owns decision and imposes its own sanction, the High Court may set a deadline for payment of:

- financial penalties,
- compensation,
- refund.

Head 88 – Conduct of appeals

To provide that:

- (1) The respondent to an appeal shall be ComReg.
- (2) A person that brings an appeal or an application under [Head 98(3)(a): Appeal against urgent interim measures]
 - (a) may include in such appeal or application, as the case may be, any ground that could, but for [Head 86: Decisions reviewable only by appeal under this Part] , be relied upon by the appellant in an application seeking judicial review, and
 - (b) shall, on the same date as it makes such appeal or application, as the case may be, notify the respondent of the fact that it has made the appeal or application, and of the grounds on which it has made the appeal or application.
- (3) The High Court may, for the purpose of ensuring the efficient, fair and timely determination of an appeal, give directions in respect of the conduct of the appeal.
- (4) An appellant shall, when making an appeal precisely state all of the grounds in law and fact upon which the appeal is made and shall provide to the High Court all of the documents and evidence which it is alleged support the granting of the appeal or upon which the appellant intends to rely to support those grounds.
- (5) A party to an appeal other than the appellant shall, when responding to an appeal, state all of the grounds upon which he or she responds to the appeal and provide to the High Court all of the documents and evidence upon which he or she intends to rely to support those grounds.
- (6) Subject to subsection (7), a party to an appeal shall not be entitled during the course of an appeal to make submissions to the High Court other than submissions related to the grounds stated, or documents and evidence provided under subsections (4) and (5).
- (7) The High Court may, upon application and where it considers it necessary for the fair and proper determination of an appeal, require or permit a party to an appeal to—
 - (a) make submissions to the High Court other than submissions related to the grounds stated or documents and evidence provided under subsections (4) and (5), and
 - (b) provide documents or evidence to the High Court other than documents or evidence provided under subsections (4) and (5).
- (8) Notwithstanding subsection (7), the High Court shall refuse to consider submissions, documents or evidence where it considers that—
 - (a) the submissions, documents or evidence are not relevant to the appeal, or
 - (b) it is appropriate to do so in order to avoid undue repetition of submissions.
- (9) Where the High Court has granted leave to deliver additional submissions, documents or evidence on an application under subsection (7), the High Court shall give directions as to the scope, form and time-frame for delivery of such additional submissions, documents or evidence.
- (10) The High Court may receive evidence by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner.
- (11) The High Court, on hearing an appeal against a decision, may consider—

- (a) whether the jurisdiction existed to make the decision,
 - (b) whether the law was correctly applied in reaching the decision,
 - (c) whether the decision is supported by the evidence including evidence admitted in accordance with subsection (7), and
 - (d) in the case of an appeal against an adjudication, whether an administrative sanction was imposed as part of the adjudication that was appropriate, effective, proportionate and dissuasive.
- (12) In considering an appeal, the High Court shall have regard to—
- (a) the record of the decision the subject of the appeal,
 - (b) the grounds stated by the parties to the appeal, and documents and evidence relied upon by the parties to support those grounds, under subsections (4) and (5), and
 - (c) any submissions, documents or evidence admitted under subsection (7).
- (13) The High Court may, on the hearing of an appeal against a decision—
- (a) confirm the decision, or
 - (b) where it is satisfied by reference to the grounds of appeal that a serious and significant error of law or fact, or a series of minor errors of law or fact which when taken together amount to a serious and significant error, was made in making the decision, or that the decision was made without complying with fair procedures, annul the decision in its totality or in part, and—
 - (i) remit the decision for reconsideration by the adjudicator, or
 - (ii) vary the decision and substitute such other decision as the High Court considers appropriate.
- (14) The High Court shall, in determining an appeal act as expeditiously as possible consistent with the administration of justice.

Explanatory Note:

This Head is modelled on Section 107 of the CRDHDAA 2023. This Head sets out the specific rules and procedures for how appeals under ComReg’s remit in the Data Act should be conducted in the High Court. This is to ensure that all appeals are handled efficiently, fairly and transparently. This is a comprehensive framework.

Subsection (1) is intended to set out that ComReg is always the respondent in an appeal case.

Subsection (2) is intended to set out that the person appealing may raise any ground that would otherwise be available in a judicial review, except those barred under [Head 98(3)(a): Appeal against urgent interim measures]. The person appealing must notify ComReg on the same day that the appeal has been made and must notify ComReg of the grounds for the appeal. This is intended to ensure transparency in the appeals process.

Subsection (3) is intended to set out that the Court may issue directions to manage the appeal efficiently and fairly. This includes the timelines, format of submissions and the procedural steps required.

Subsection (4) is intended to set out the obligations of the person appealing. These are that the person must:

- Clearly state the legal and factual grounds for the appeal.
- Provide all the supporting documents and evidence relevant to the appeal.

Subsection (5) is intended to set out the obligations of the party responding to the appeal. The party responding to the appeal must:

- State their grounds of response to the appeal.
- Provide all supporting documents and evidence.

Subsection (6) is intended to set out the limitations on submissions of the appeals. Parties may only make submission based on the grounds and evidence that they have already provided. This is to prevent parties extended the appeal to issues that were not originally part of the appeal.

Subsection (7) is intended to set out that there may be some exceptions to the limitations in the submission in subsection (6) above. The Court may allow some additional submission or evidence if it is necessary for and would contribute to a fairer determination. This provides for some judicial discretion so that the outcomes of the appeal are fair and balanced.

Head 89 - Orders for costs by Court on appeal

To provide that:

The Court may in its discretion award the costs of an appeal as if [Head 72: Orders for costs in proceedings before adjudicators] applied to such an award.

Explanatory Note:

This Head is modelled on Section 108 of the CRDHDAA 2023. This Head gives the High Court discretion to decide on who should pay the legal costs of an appeal brought under ComRegs remit of the Data Act. The High Court may award costs in an appeal and uses the framework of [Head 72: Orders for costs in proceedings before adjudicators.]

Head 90 – Court confirmation of adjudication

To provide that:

- (1) Where a person does not appeal to the High Court against an adjudication within the period provided for in [Head 87(1) – Appeal against adjudication] ComReg shall, subject to subsection (11), as soon as practicable after the expiration of the period allowed for such an appeal, make an application to the High Court for the confirmation of that adjudication.
- (2) An application by ComReg under subsection (1) shall include a copy of the adjudication together with the documents and evidence that were before the adjudicator which are referred to in that adjudication, and may include any other documents and evidence which were before the adjudicator.
- (3) Notice of an application under subsection (1) shall be served by ComReg on the person the subject of the adjudication within 7 days of ComReg lodging the application in High Court.
- (4) The notice referred to in subsection (3) shall, where possible, specify the time fixed by the High Court for the hearing of the application, and shall enclose copies of all the papers lodged in High Court in relation to the application under subsection (1).
- (5) The High Court shall, on the hearing of an application under subsection (1), confirm the adjudication the subject of the application unless the High Court, on the basis of the findings of fact in the adjudication (which are to be accepted as final by the High Court), determines that—
 - (a) the adjudication contains an error of law which is—
 - (i) manifest from the record of the adjudication, and
 - (ii) fundamental so as to deprive the adjudication of its basis,
 - or
 - (b) the administrative sanction imposed was manifestly—
 - (i) disproportionate,
 - (ii) in excess of the sanction required to be dissuasive,
 - (iii) in excess of the sanction required to be effective, or
 - (iv) in excess of the sanction required to be appropriate.

(6) The High Court—

(a) where it makes a determination referred to in subsection (5)(a), or both a determination referred to in subsection (5)(a) and a determination referred to in subsection (5)(b), in relation to an application under subsection (1), shall remit the matter for reconsideration by an adjudicator, subject to such directions as the High Court considers appropriate including, as the High Court sees fit, directions as to whether or not—

(i) the adjudicator should be limited to reconsidering a specific aspect of an adjudication, and

(ii) the matter should be reconsidered by another adjudicator,

and

(b) where it makes a determination referred to in subsection (5)(b), but does not make a determination referred to in subsection (5)(a), in relation to an application under subsection (1) may—

(i) order either or both that a lesser amount be substituted for the amount of the financial penalty, compensation or refund, and that any suspension or withdrawal of authorisation or rights of use specified in the adjudication be reduced or removed, and confirm the adjudication subject to such substitution, and

(ii) where the High Court does not make an order referred to in subparagraph (i) and considers that the interests of justice so require, remit the matter for reconsideration by an adjudicator, subject to such directions as the High Court considers appropriate including, as the High Court sees fit, directions as to whether or not—

(I) the adjudicator should be limited to reconsidering a specific aspect of an adjudication, and

(II) the matter should be reconsidered by another adjudicator.

(7) The High Court shall hear the application under subsection (1) on the evidence before the adjudicator.

(8) The High Court shall, in determining an application under subsection (1), act as expeditiously as possible consistent with the administration of justice.

(9) The High Court may in its discretion award the costs of an application under this section as if [Head 72: Orders for costs in proceedings before adjudicators] applied to such an award.

(10) Where the High Court confirms or substitutes its own decision for the decision of an adjudicator imposing a requirement to cease a regulatory breach, a requirement to take specified measures to remedy the breach, a financial penalty or a requirement to pay compensation or a refund, the High Court may set a time limit for the requirement to be carried out or the payment of the financial penalty or compensation or refund concerned.

(11) ComReg shall, prior to making an application under subsection (1), seek the consent in writing of the person to the confirmation of the adjudication of the adjudicator.

(12) Where a person consents in writing to the adjudication, the application under subsection (1) (and any remaining steps in such application) may be made ex parte.

Explanatory Note:

This Head is modelled on Section 109 of the CRDHDAA 2023. This Head provides a clear framework of the process by which ComReg must seek the information from the High Court of an adjudication decision if no appeal is made within the specified timeframe. The ensures the adjudication becomes legally enforceable and provides for Court oversight of the adjudication decision to assess the decision for any legal or proportionality issues.

Head 91 – Publication of adjudication

To provide that:

ComReg shall publish an adjudication confirmed by the High Court under [Head 90 – Court confirmation of adjudication] (save where such publication would, in the opinion of ComReg, prejudice the achievement of the objectives of this Act) subject to such redactions as ComReg may consider necessary and appropriate in order to protect the rights of the parties or any other person, to protect commercially sensitive information, or for any other good and sufficient reason, on the website of ComReg as soon as practicable after the adjudication is confirmed.

Explanatory Note:

This Head is modelled on Section 110 of the CRHDAA 2023. This Head provides for ComReg to publish adjudications that have been confirmed by the Court as set out in [Head 90 – Court confirmation of adjudication]. There are some exceptions to this requirement - particularly to protect sensitive information or other legal interests.

ComReg may decide not to publish the adjudication if ComReg believes that the publish would prejudice the objective of the Data Act. However, this is only envisaged to be used in exceptional cases. ComReg may also redact parts of the adjudication before publishing it to protect any commercially sensitive information or rights of other parties. ComReg must publish the adjudication as soon as practicable after the adjudication has been confirmed.

Head 92 – Adjudicator may refer question of law to Court

To provide that:

- (1) An adjudicator may, on her or his own initiative or at the request of ComReg or a person the subject of a referral under [Head 55: Referral of matter to adjudicator for adjudication], refer to the High Court for decision by way of case-stated a question of law arising at a hearing on a referral under [Head 55: Referral of matter to adjudicator for adjudication].
- (2) Where a question has been referred under subsection (1), the adjudicator shall not, in relation to a referral under [Head 55: Referral of matter to adjudicator for adjudication] to which the hearing relates—
 - (a) make a decision under [Head 74: Decision of adjudicator in relation to breach] or [Head 75: Decision of adjudicator in relation to administrative sanction] to which the question is relevant while the reference to the High Court is pending, or
 - (b) proceed in a manner, or make a decision under [Head 74: Decision of adjudicator in relation to breach] or [Head 75: Decision of adjudicator in relation to administrative sanction], that is inconsistent with the High Court's decision on the question.
- (3) Where a question is referred to the High Court under subsection (1)—
 - (a) the adjudicator shall send to the High Court all documents before the adjudicator that are relevant to the matter in question, and
 - (b) at the end of the proceeding in the High Court in relation to the reference, the Court shall cause the documents to be returned to the adjudicator.

Explanatory Note:

This Head is modelled on Section 111 of the CRDHDAA 2023. This Head provides for an adjudicator to refer a question of law to the High Court during a hearing under [Head 55: Referral of matter to adjudicator for adjudication]. This ensures that any complex or uncertain legal issues that arise are resolved by the judiciary. The adjudicator must pause all other relevant decisions until the Court makes a ruling on the point of law that the adjudication has referred a question to it on. This should be a formal and transparent legal process.

Head 93 – Judicial review

To provide that:

(1) The validity of a decision made or an act done by ComReg (including by an authorised officer or adjudicator) in the performance of a function under this Part (whether such function is performed by way of powers conferred by or under this Act or otherwise) shall not be challenged other than—

(a) by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (in this section referred to as “Order 84”), and in accordance with this section, or

(b) in accordance with a process provided for in this Act by which the validity of such decision or act may be challenged.

(2) Notwithstanding [Head 86 – Decisions reviewable only by appeal under this Part] , a person affected by, but not the subject of, a decision under [Head 74: Decision of adjudicator in relation to breach] or [Head 75: Decision of adjudicator in relation to administrative sanction] may, not later than 14 days after the decision is published, apply to the High Court by way of an application for judicial review under Order 84 and in accordance with this section.

(3) At any time after the bringing of an application for leave to apply for judicial review of any decision or other act to which subsection (1) applies and which relates to a matter for the time being before ComReg (including a matter before an adjudicator), ComReg may apply to the High Court to stay the proceedings pending the making of a decision by ComReg (including a decision by an adjudicator) in relation to the matter concerned.

(4) On the making of an application to stay proceedings referred to in subsection (3), the High Court may, where it considers that the matter before ComReg (including an adjudicator and an authorised officer) is within the jurisdiction of ComReg (including an adjudicator and an authorised officer), make an order staying the proceedings concerned on such terms as it thinks fit.

(5) Subject to subsection (6), an application for leave to apply for judicial review under Order 84 in respect of a decision or other act to which subsection (1) applies shall be made in respect of a decision made or an act done under this Part not later than 28 days from the date on which the notice of the decision or act was first sent or published as the case may be or, if notice of the decision or act was not sent or published, from the date on which the person or persons became aware of the decision or act.

(6) The High Court may extend the period provided for in subsection (5) within which an application for leave referred to in that subsection may be made but shall only do so if it is satisfied that—

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

(b) the circumstances that resulted in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension.

(7) An application for leave under this section shall be made by motion ex parte and shall be grounded in the manner specified in Order 84 in respect of an ex parte motion for leave.

(8) The High Court hearing the ex parte application for leave may decide, having regard to the issues arising, the likely impact of the proceedings on ComReg or the person concerned or another party, or for other good and sufficient reason, that the application for leave should be conducted on an inter partes basis and may adjourn the application on such terms as it may direct in order that a notice may be served on that person.

(9) If the High Court directs that the leave hearing is to be conducted on an inter partes basis it shall be by motion on notice (grounded in the manner specified in Order 84 in respect of an ex parte motion for leave)—

(a) if the application relates to a decision made or other act done by ComReg (including an adjudicator and an authorised officer) in the performance or purported performance of a function under this Act or the Principal Act, to ComReg (including an adjudicator and an authorised officer) concerned, and

(b) to any other person specified for that purpose by order of the Court.

(10) The High Court may—

(a) on the consent of all of the parties, or

(b) where there is good and sufficient reason for so doing and it is just and equitable in all the circumstances,

treat the application for leave as if it were the hearing of the application for judicial review and may for that purpose adjourn the hearing on such terms as it may direct.

(11) The High Court shall not grant leave under this section unless it is satisfied that—

(a) there are substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed,

(b) the applicant is materially affected by or has a sufficient interest in the matter which is the subject of the application, and

(c) the matter does not relate to a decision by an adjudicator under [Head 74: Decision of adjudicator in relation to breach] or [Head 75: Decision of adjudicator in relation to administrative sanction].

(12) If the High Court grants leave under this section, no grounds shall be relied upon in the application for judicial review under Order 84 other than those determined by the High Court to be substantial under subsection (11)(a).

(13) The High Court may, as a condition for granting leave under this section, require the applicant for such leave to give an undertaking as to damages.

(14) If an application is made for judicial review under Order 84 in respect of part only of a decision or other act to which subsection (1) applies, the High Court may, if it thinks fit, declare to be invalid or quash the part concerned or any provision thereof without declaring

invalid or quashing the remainder of the decision or other act or part of the decision or other act, and if the High Court does so, it may make any consequential amendments to the remainder of the decision or other act or the part thereof that it considers appropriate.

(15) The High Court shall, in determining an application under this section or an application for judicial review on foot of such leave—

- (a) act as expeditiously as possible consistent with the administration of justice, and
- (b) give such priority as it reasonably can, having regard to all the circumstances, to the disposal of proceedings in that High Court under this section.

Explanatory Note:

This Head is modelled on Section 112 of the CRDHDAA 2023. This Head ensures that judicial review is the exclusive and controlled route for any challenges to the validity of regulatory decisions or measures taken by ComReg. This includes decisions or actions taken by authorised officers and adjudicators. This Head sets out who can apply for judicial review, how they can apply, when they can apply and under what conditions the High Court may grant a judicial review. The process is clearly defined and is time-bound to avoid overly lengthy proceedings.

Section (1) is intended to set out that decisions or actions by ComReg in its performance of functions of the Data Act can only be challenged in one of two ways:

- by a judicial review under Order 84 of the Rules of the Superior Courts,
- through any other specific process that is provided for in this Act.

This aims to avoid parallel proceedings.

Subsection (2) is intended to set out that a person that is affected by a decision under [Head 74: Decision of adjudicator in relation to breach] or [Head 75: Decision of adjudicator in relation to administrative sanction] but is not a subject of those decisions may apply for judicial review within 14 days of the publication of the decision. This provides for third parties with a legitimate and substantial interest to challenge a decision.

Head 94 – Appeals to Court of Appeal

To provide that:

(1) An appeal to the Court of Appeal shall lie in respect of a determination of the High Court on an appeal under [Head 87 – Appeal against adjudication] in respect of a decision by an adjudicator under [Head 74: Decision of adjudicator in relation to breach] or [Head 75: Decision of adjudicator in relation to administrative sanction].

(2) The determination of the High Court on—

(a) an application for confirmation under [Head 90: Court confirmation of adjudication],

(b) an application for judicial review of any other decision made or act done under this Act by ComReg (including decisions made or acts done under this Act by an authorised officer or by an adjudicator),

(c) a reference to the Court by way of case-stated by an adjudicator under [Head 92 – Adjudicator may refer question of law to Court], or

shall be final and no appeal shall lie from the decision of the High Court to the Court of Appeal in any case save with leave of the High Court, which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be made to the Court of Appeal.

(3) In respect of an application for confirmation under [Head 90 – Court confirmation of adjudication], where the point of law which would otherwise be certified is a point that could have been brought by way of an appeal under [Head 87 – Appeal against adjudication] , the High Court may only in exceptional circumstances grant leave to appeal to the Court of Appeal under subsection (2).

(4) Subsection (2) shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

(5) On an appeal from a determination of the High Court to which subsection (2) applies, the Court of Appeal shall—

(a) have jurisdiction to determine only the point of law certified by the High Court under subsection (2) (and to make only such order in the proceedings as follows from such determination), and

(b) in determining the appeal, act as expeditiously as possible consistent with the administration of justice.

Explanatory Note:

This Head is modelled on Section 113 of the CRHDAA 2023. Section (2)(a) and (e) of Section 113 have been removed for these Heads as they relate to urgent interim measures which are not required in the Data Act.

Head 95 - Treatment of amounts paid to ComReg pursuant to this Part.

To provide that:

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

Explanatory Note:

This Head is modelled on Section 114 of the CRDHDAA 2023. This Head sets out what should happen to any money received by ComReg as a result of any enforcement actions or proceedings under this Part that are within ComReg's remit. Any payments that are received by ComReg must be paid into or disposed of for the benefit of the Exchequer. This must be done in a manner directed by the Minister for Finance. This is to ensure that funds are collected correctly and that they are not retained by ComReg unduly, but that they are returned to the State. ComReg should not profit from any enforcement actions and therefore the Minister for Finance should control how funds are managed and allocated.

Head 96 - Non-applicability of limitation periods to certain actions

To provide that:

A notice of objections, may be served, and a referral under [Head 52(3)(c): Settlements] or [Head 55: Referral of matter to adjudicator for adjudication] may be made, by ComReg at any time notwithstanding—

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

Explanatory Note:

This Head is modelled on Section 115 of the CRDHDAA 2023. This Head provides that certain regulatory actions which may be taken by ComReg are not subject to the usual time limits that are set out in the Statute of Limitations Act 1957 and the Statute of Limitations (Amendment) Act 1991. This provides for ComReg to have the ability to act at any time – regardless of how much time may have passed since the suspected breach occurred.

At any time ComReg may issue a notice of objections and may make a referral under [Head 52(3)(c): Settlements] or [Head 55: Referral of matter to adjudicator for adjudication]

Head 97 - ComReg to collect information relating to appeals and decisions to grant interim measures

To provide that:

(1) ComReg shall collect information on the general subject matter of appeals within its remit under this Part, the number of appeals and the duration of appeal proceedings.

(2) The information collected by ComReg under subsection (1) shall be provided to the Minister annually or as requested by the Minister.

Explanatory Note:

This Head is modelled on Section 116 of the CRDHDAA 2023. This Head sets out that ComReg must keep track of information related to appeals made under this Act. This will help to monitor how the Act works in practice and how the enforcement mechanisms are functioning. ComReg must then report this information to the Minister annually or if requested by the Minister. This provides for transparency and oversight of the policy and that data can inform ComReg and the Minister about the legislative resources that may be required for this Act.

ComReg must gather data on the:

- general subject matter of appeals (i.e. what types of issues are being appealed),
- number of appeals,
- duration of appeal proceedings,
- number of decisions to grant urgent interim measures.

Head 98 – Appeal against urgent interim measures notice

To provide that:

(1) A person to whom an urgent interim measure is directed may appeal to the Court against such measure not later than 14 days after the date of service of the urgent interim measures notice under [Head 47: Urgent interim measures].

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

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

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

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

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

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

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

Explanatory Note:

This Head is based on Section 105 of the CRDHDAA 2023.

PART 6 - FUNDING

Head 99 – Levy

To provide that –

- (1) Section 30 of the Communications Regulation Act 2002 is amended -
 - (a) by inserting the following after subsection (2A):

“(2B) For the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions as a competent authority in relation to the Data Act Regulation, the Commission may make an order imposing a levy on providers of data processing services as defined in the Data Act Regulation and having their place of main establishment in the State, within the meaning of Article 37(10) of the Data Act Regulation.”
 - (b) in subsection (3) by inserting “or providers of data processing services” between “subsection (1)” and “as”.
 - (c) by substituting for subsection (11) the following:

“(11) The Commission shall not impose a levy on—

 - (a) providers of electronic communications for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions in respect of postal services or premium rate services [or the Network and information Systems Directive (Directive (EU) 2022/2555) - pending in Heads of the National Cyber Security Bill] or as a competent authority for the purposes of the Data Act Regulation,
 - (b) providers of postal services for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions in respect of electronic communications services or premium rate services or as a competent authority for the purposes of the Data Act Regulation, or
 - (c) providers of premium rate services for the purposes of meeting expenses properly incurred by the Commission in the discharge of its functions in respect of postal services or electronic communications services as a competent authority for the purposes of the Data Act Regulation, or
 - (e) providers of data processing services for the purposes of meeting expenses properly incurred by the Commission in discharge of its functions in respect of postal services or electronic communications services or premium rate services.”
- (2) Section 31(2) of the Communications Regulation Act 2002 is amended by inserting “Articles 23 to 31 and 34 to 35 of the Data Act Regulation,” after “premium rate services,”.
- (3) Section 32(1) of the Communications Regulation Act 2002 is amended by insertion of the following paragraph after paragraph (b):

“(c) its functions as a competent authority for the purposes of Articles 23 to 31 and 34 to 35 of the Data Act Regulation.”
- (4) Section 31B(2) of the Communications Regulation Act 2002 is amended by insertion of the following after paragraph (d):

“(e) Articles 23 to 31 and 34 to 35 of the Data Act Regulation.

- (5) Section 31C(2) of the Communications Regulation Act 2002 is amended by inserting “and its functions as a competent authority for the purposes of Articles 23 to 31 and 34 to 35 of the Data Act Regulation” after “postal services”.
- (6) A register of data processing service provider entities shall be established to maintain a list of providers of data processing services in Ireland. Entities shall register themselves to be added to the list.

Explanatory Note:

ComReg suggested wording to amend Section 30 of the 2002 Act which empowers ComReg to apply levies to entities which it regulates. Section 1 of this Head extends the scope of this power to allow entities which are providers of data processing services, which are established in the State, to be subject to a levy. ComReg is not funded by the Exchequer. Instead, it is funded through fees and industry levies as per Section 30 of the 2002 Act. While Section 30 sets out certain limits on imposing and using levies, it generally permits the regulator to retain all fees and levies for its own use.

Subsection (2) provides that the Data Act Regulation shall be included in the strategy statements that ComReg will be required to draw up and adopt.

Subsection (3) provides that the Data Act Regulation shall be included in ComReg’s accounts of all moneys received or expended by it as required by Section 32 of the Communications Regulation Act 2002.

Subsection (7) is intended to set out that a register of entities which are data processing service providers in Ireland shall be created and maintained. Data processing service providers themselves shall register themselves to be a part of this list. A mechanism must be created for the purpose of creating and maintaining this list. The appropriate mechanisms shall allow for the identification of entities falling within the scope of the legislation.

The longstanding model of ComReg being financed by the industry it regulates is the model used for a number of other sectoral regulators. The principle is believed to be sound and compatible with the EU regulatory framework for telecoms to ensure adequate funding and independence. Article 6 of the European Electronic Communications Code lays out the requirements to ensure the independence of national regulatory bodies and other competent authorities. This includes the provision that 6(2), “Member States shall ensure that national regulatory and other competent authorities exercise their powers impartially, transparently and in a timely manner. Member States shall ensure that they have adequate technical, financial and human resources to carry out the tasks assigned to them.”

Similarly in the EU Data Act Regulation at Article 37(8) and (9), it states:

- “When carrying out their tasks and exercising their powers in accordance with this Regulation, competent authorities shall remain impartial and free from any external influence, whether direct or indirect, and shall neither seek nor take instructions for individual cases from any other public authority or any private party”.
- “Member States shall ensure that the competent authorities are provided with sufficient human and technical resources and relevant expertise to effectively carry out their tasks in accordance with this Regulation”.